

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1713 of 2012****With****R/CRIMINAL APPEAL NO. 1708 of 2012****With****R/CRIMINAL APPEAL NO. 1709 of 2012****With****R/CRIMINAL APPEAL NO. 1710 of 2012****With****R/CRIMINAL APPEAL NO. 1711 of 2012****With****R/CRIMINAL APPEAL NO. 1740 of 2012****With****R/CRIMINAL APPEAL NO. 1812 of 2012****With****R/CRIMINAL APPEAL NO. 1862 of 2012****With****R/CRIMINAL APPEAL NO. 1050 of 2013****With****R/CRIMINAL APPEAL NO. 1598 of 2013****With****R/CRIMINAL APPEAL NO. 1599 of 2013****With****R/CRIMINAL APPEAL NO. 1600 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE MR.JUSTICE A.S. SUPEHIA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	

3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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DR. MAYABEN SURENDRABHAI KODNANI

Versus

S.I.T

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Appearance:

CRIMINAL APPEAL NO.1713/12

MR ND NANAVATI, SENIOR ADVOCATE, with MR HARDIK A DAVE, ADVOCATE for the Appellant

CRIMINAL APPEAL NO.1708/12

MR BB NAIK, SENIOR ADVOCATE, with MR SAMIR J DAVE, MR HEMANT M PRACHHAK AND MR PARTHIV A BHATT, ADVOCATES for the Appellants No.1, 26, 34, 39 & 47

MR YS LAKHANI, SENIOR ADVOCATE, with MR JAY M THAKKAR, ADVOCATE for rest of the Appellants

CRIMINAL APPEAL NO.1709/12

MR YS LAKHANI, SENIOR ADVOCATE, with MR RAHUL R DHOLAKIA, ADVOCATE for the Appellants

CRIMINAL APPEAL NO.1710-1711/12

MR YS LAKHANI, SENIOR ADVOCATE, with MR PRAVIN GONDALIYA, ADVOCATE for the Appellants

CRIMINAL APPEAL NO.1740/12

MR BHARGAV M BHATT, ADVOCATE for the Appellant

CRIMINAL APPEAL NO.1812/12

MR MIHIR DESAI, SENIOR ADVOCATE, MR YN RAVANI with MR KALPESH N SHASTRI, ADVOCATES for the Appellants

MR YS LAKHANI, SENIOR ADVOCATE, with MR PRAVIN GONDALIYA, for respondent No.1

CRIMINAL APPEAL NO.1862/12

MR YS LAKHANI, SENIOR ADVOCATE, with MR PRAVIN GONDALIYA, for the Appellant

CRIMINAL APPEAL NO.1713/12, 1708-1711/12, 1740/12, 1862/12 AND 1812/12

MR PRASHANT G DESAI, SENIOR ADVOCATE/Special Public Prosecutor
 MR RC KODEKAR, Special Assistant Public Prosecutor
 MR GAURANG A VYAS, Special Asstt. Public Prosecutor
 MR KUNAL AMIN AND MR PRAKASH KAPOOR, ADVOCATES on behalf of
 the respondent-State

CRIMINAL APPEAL NO.1050/13 AND 1598-1600/2013

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 MR KUNAL AMIN AND MR PRAKASH KAPOOR, ADVOCATES on behalf of
 the Appellant-State

MR YS LAKHANI, SENIOR ADVOCATE with MR PRATIK B BAROT,
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MR YS LAKHANI, SENIOR ADVOCATE, with MR PRAVIN GONDALIYA, for
 the Respondents (Criminal Appeal No.1598/13)

MR YS LAKHANI, SENIOR ADVOCATE, with MR PRAVIN GONDALIYA, for
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MR YS LAKHANI, SENIOR COUNSEL, with MR JAY M THAKKAR, for the
 Respondents No.2-6 (Criminal Appeal No.1599/13)

MR YS LAKHANI, SENIOR ADVOCATE, with MR JAY M THAKKAR, for the
 Respondents (Criminal Appeal No.1600/13)

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
 and
 HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 20/04/2018

COMMON CAV JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

Considering the length of the judgment, it is deemed fit
 to provide an index for ready reference.

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I. PREFACE:

1. This case, which is commonly known as the “Naroda Patiya Case” arises out of one of the biggest massacres in the aftermath of the burning of a coach of Sabarmati Express that was carrying Kar Sevaks from Ayodhya, at Godhra. The tragedy has taken toll of ninety six innocent Muslim men, women and children belonging mostly to the labour class, who were migrants from States like Karnataka, Uttar Pradesh, Madhya Pradesh, Rajasthan, Kerala etc., and were done to death in the most inhuman manner and their properties were ransacked, damaged, looted and set on fire, and their religious place, the Noorani Masjid was damaged and set on fire by mobs of Hindus, mostly comprised of members of the Vishwa Hindu Parishad, the Bajrang Dal and BJP. Considering the brutality of the offence, where young girls have been stripped naked, gang-raped and burnt alive and in case of many of the deceased, only remnants of their bodies remained, the case comes across as a horrendous and gruesome act on the part of the perpetrators of the offence, demonstrating the depravity of all those involved. The incidents took place throughout the day, right from around 9:00 to 9:30 in the morning to around 7:00 in the evening.

2. As to what is the prosecution case, would be required to be culled out from the evidence as emerging from the record, because despite the fact that time and again, the court had specifically called upon the learned Special Public Prosecutor to state as to what is the prosecution case as regards the time and the manner in which the incidents had occurred, no clear cut case has been put forth before this court.

3. In connection with the incidents that took place, a first information report came to be lodged on 28.2.2002 by one Vinubhai Solanki (who has subsequently changed his surname to Delvadiya) before Shri K. K. Mysorewala, Senior Police Inspector, Naroda Police Station and is stated to have been recorded from 8:15 onwards and came to be registered at 8:45 p.m. as Naroda Police Station I-C.R. No.100/2002, the contents whereof, as translated into English, read thus:

“The first informant states on behalf of the State Government that, recently, the kar sevaks who had gone to Ayodhya on the issue of construction of a Ram Mandir, were returning by railway and when the train left the Godhra Railway Station, a mob belonging to the Muslim community stopped the train and made the driver get down and violently attacked the kar sevaks and other travellers sitting in the railway coach with deadly weapons and damaged the coach and set it on fire, which resulted in the death of women, men and children and in the context of such incident, the Vishwa Hindu Parishad had given a call for Gujarat Bandh today.

Today, that is, on 28.2.2002, from 7:00 in the morning, police points had been arranged in the police station area and Shri Mysorewala as well as Second Police Inspector Shri V. S. Gohil with their vehicles and he (the first informant) had boarded the requisitioned vehicle and had set out for patrolling in the police station area and ASI Dashrathsinh Udesinh, Police Constable Ashoksinh Laxmansinh, Police Constable Bharatsinh Chanduji, Police

Constable Dipakkumar Govindram, etc. were with him in the requisitioned vehicle. During the bandh call, the situation in the city area appeared to be tense, hence, he and Shri Mysorewala as well as the Second Police Inspector and other requisitioned vehicles had continued strict patrolling and at around 11:00 to 11:30 in the morning, at different places in the police station area, mobs of people started coming on the road, whom they had continued to try to disperse during the course of patrolling; however, as time passed, violent incidents of burning shops and houses started occurring at various places in the police station area, whereupon in the police station area, the police personnel at the point at Patiya, opposite the Noorani Masjid, viz., ASI Ramabhai Parsottambhai, ASI V. T. Ahari, Police Constable Pradipsinh Ratansinh, Police Constable Chandravadan Ramjibhai, Police Constable Kirankumar Parsottambhai as well as from the police point at S.T. Workshop, ASI Sajjansinh Jashwantsinh, Police Constable Vinubhai Harjivandas, Police Constable Jitendradan Takhatdan were present at different points and opposite S.T. Patiya, Noorani Masjid as well as next to S.T. Workshop at the corner of Hussain-ni-Chali, a mob of fifteen to seventeen thousand people had gathered and at this time, Shri Mysorewala and Deputy Police Commissioner, Zone-4 and Assistant Police Commissioner, "G" Division, had also arrived and Shri Mysorewala had released twenty two gas shells through Gasman Chhababhai, however, the mob became uncontrollable and started shouting, "kill, cut" and at that time, the mobs had surged from the direction of Krushnanagar Char Rasta, Saijpur Fadel Tower and

Kubernagar bungalow area, Chharanagar, and the leaders of the mobs who were active workers of the VHP and BJP, namely, Kishan Korani, P. J. Rajput, Harish Rohera, Babu Bajrangi and Raju Chobal, were shouting "kill, hack" and were instigating the people in the mob to accompany them and it appeared impossible to control the people in the mob, despite which, time and again announcements were made to the people in the mob to disperse, else they would resort to firing. Despite giving such warnings repeatedly, the mobs became uncontrollable and started damaging the shops belonging to Muslims near the Noorani Masjid, whereupon pursuant to the orders of the Deputy Police Commissioner, he (the complainant) had fired five rounds from his service revolver and two rounds from a Musket 410 and Shri Mysorewala had also fired eight rounds one after the other and the other policemen and officers had also resorted to firing and released shells, however, it did not have any effect on the people in the mob and the people in the mob which had become more violent, divided into different groups here and there and indiscriminately damaged the Noorani Masjid and torched it, and damaged the shops and houses of Muslims nearby and looted the goods and set them on fire and on the other side, the mobs of Muslims from Hussain-ni- Chali, next to the S.T. Workshop and the Hindus came opposite each other and it was learnt that they had started assaulting each other with iron pipes and sticks and in the arson women, men and young children, in all fifty eight persons were done to death.

It was learnt that during the course of riots, some of the people from the mob reached the Thakkarnagar area and together with other people who had gathered there, damaged Bhagyodaya Hotel situated near Thakkarnagar Char Rasta as well as the shops belonging to Muslims in the vicinity and set them on fire. It was also learnt that the shops of Muslims in the vicinity of Saijpur area had been damaged and set on fire. Thus, today, that is, on 28.2.2002, between 12:00 to 19:30 hours, during the course of Gujarat Bandh, the leaders of a mob of fifteen to seventeen thousand people who are active members of VHP and BJP, namely, Kishan Korani, P. J. Rajput, Harish Rohera, Babu Bajrangi and Raju Chobal, were shouting "kill, hack" and were instigating the people in the mob and in connection with the recent incident of murder of Hindus at Godhra Railway Station, damaged, looted and set on fire S.T., Patiya, the Noorani Masjid and the neighbouring areas in the Naroda Patiya area and there was inter se fighting wherein women, men and small children, in all, fifty eight persons, were killed and in connection therewith, he had lodged the complaint. His witnesses are the policemen accompanying him as well as the policemen at the points and the victims whose houses and shops had been burnt."

3.1 The appellants have disputed the timings of the first information report and have contended that it is ante-timed and ante-dated.

4. After the incidents, majority of the victims and the Muslim residents of the chawls at Naroda Patiya were shifted

to various relief camps set up by their community and the injured were taken to hospitals. Statements of the injured persons and their dying declarations came to be recorded at the hospitals. Insofar as the witnesses who had taken shelter at the relief camps are concerned, complaints in printed forms came to be recorded together with loss and damage analysis forms, which came to be forwarded to the Office of the Police Commissioner. As to who prepared and brought these printed forms and who had recorded the complaints has not been brought on record and some of the witnesses have stated that they were under the impression that the people who took down the complaints were policemen in plain clothes. Some of the complaints came to be registered as first information reports without even identifying as to who the maker thereof is, whereas the other complaints were tagged along with the complaints that were registered.

5. Pursuant to the lodging of the first information report being Naroda Police Station I-C.R. No.100/2002, the investigation came to be handed over to PW-274 Shri K. K. Mysorewala, who was the Senior Police Inspector of that police station. It appears that thereafter the scene of offence panchnama came to be drawn. Statements of the injured victims who were admitted to the Civil Hospital came to be recorded, so also their dying declarations. One single inquest panchnama of fifty eight corpses came to be drawn immediately after the registration of the first information report in question. Subsequently, inquest panchnamas of corpses found at different places at the scene of offence also came to be drawn.

5.1 Shri K. K. Mysorewala was in-charge of the investigation from 28.2.2002 to 8.3.2002. Thereafter, the investigation came to be entrusted to Shri P.N. Barot, A.C.P. 'B' Division (PW-178), who was in-charge of such investigation from 8.3.2002 to 30.4.2002. Thereafter, the investigation came to be entrusted to the Crime Branch and Shri S. S. Chudasama (PW-307) took charge of the investigation from 1.5.2002. The Investigating Officer carried out investigation in the matter and submitted a charge-sheet on 3/4.6.2002 against accused No.1 to 17 in Metropolitan Court No.1, which came to be committed to the Sessions Court on 29.7.2009 where it was registered as Sessions Case No.235/09. From 20.6.2002 to 3.10.2002, the investigation came to be handed over to PW-275 Shri H. P. Agrawat as Shri S. S. Chudasama was not available for some time. Thereafter, Shri S. S. Chudasama once again took over the charge of the investigation. In the meanwhile, a supplementary charge-sheet came to be submitted on 23.8.2002 against accused No.18 to accused No.30, which came to be registered as Criminal Case No.1662/02. Subsequently, the case came to be committed to the Sessions Court on 29.7.2009, where it was registered as Sessions Case No.236 of 2009. It may be noted that apart from the main first information report registered vide Naroda Police Station I-C.R. No.100/02, several other first information reports came to be registered in relation to offences which took place at Naroda Patiya on the day of the incident. By an order passed by the Police Commissioner, it was directed that all the cases be merged with the main first information report and the Investigating Officer was further directed to file 'C' Summary Reports in the other first information reports. Accordingly, on 7.11.2002, 'C' Summary Reports came to be filed in respect of

the other offences.

5.2 Thereafter, Shri Chudasama came to be transferred and the investigation was handed over to Shri H.P. Agrawat on 19.11.2002. Thereafter, PW-317 Shri G. L. Singhal took charge of the investigation from Shri H. P. Agrawat and continued with the investigation till 15.12.2006, when he handed over the charge to Shri H. R. Muliya. The investigation remained with Shri H. R. Muliya till 18.4.2009.

5.3 At this stage, when the case was pending for framing of charge, the trial was stayed by the Supreme Court in Writ Petition (Criminal) No.109/03, WP (Crl) No.11-15/2003, Transfer Petitions (Criminal) No.194-202/2003, SLP (Crl) No.3770/2003, SLP (C) No.7951/2002 and allied matters filed by the National Human Rights Commission (NHRC) in the Supreme Court of India on 21.11.2003.

5.4 Subsequently, the Supreme Court passed the order dated 26.3.2008, inter alia, directing that appropriate notification shall be issued by the State Government regarding creating a Special Investigation Team (SIT), the constitution of which shall be as follows:

- (1) Shri R. K.Raghavan, Retired Director of the CBI.
- (2) Shri C. B. Satpathy, Retired DG, Director, Uttar Pradesh Police College, Moradabad.
- (3) Ms. Geeta Johri
- (4) Shri Shivanand Jha
- (5) Shri Ashish Bhatia.

5.5 The Supreme Court further observed that the officers at Serial No.3 to 5 are IG rank officers and directed that Shri Raghavan will be the Chairman of the Committee and Ms. Geeta Johri shall be the Convener. The Committee shall in its first meeting work out the modalities to be adopted for the purpose of inquiry/investigation. If any person wants to make statement before the SIT for giving his or her version of the alleged incidents, the SIT shall record it. Those who want to give their version shall, in writing, intimate the Convener of the Committee so that the SIT can call him or her for the purpose of recording his/her statement. The court further observed that it was needless to state that the SIT shall not confine the investigation of recording statements of those who come forward to give his or her version and shall be free to make inquiries/investigation as felt necessary by it. One of the cases in which such further investigation was ordered was the Naroda Patiya case arising out of FIR No.100/2002 dated 28.2.2002 of P.S. Naroda, Ahmedabad.

5.6 In compliance with the above directions issued by the Supreme Court, the Government of Gujarat issued a notification dated 1.4.2008 constituting a Special Investigation Team in terms of the said directions.

6. Pursuant thereto, it appears that PW-327 Shri V.V. Chaudhary was directed to take over the charge of the further investigation into the first information report registered vide Naroda Police Station I-C.R. No.100/2002 under section 173(8) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"). Thereafter, the investigation came to be transferred to the SIT and on 18.4.2009, Shri H. R. Muliya

handed over the investigation to PW-327 Shri V. V. Chaudhary.

6.1 During the course of investigation, the Special Investigation Team published an advertisement in leading newspapers in the State of Gujarat, inviting people to contact the SIT in person or through written applications to give any relevant information or evidence in connection with the present case under investigation by the SIT, as a result whereof, applications were also received in this case and statements of several witnesses including the first informant, several police personnel were verified and their further statements were recorded by the SIT, whereas statements of several new witnesses were also recorded by it. Certain other steps were also taken by the SIT including preparation of new maps, photographs of the scene of incident, etc.

6.2 After carrying out further investigation, Shri V. V. Chaudhary filed supplementary charge-sheet on 2.4.2009 and the case was committed to the Court of Sessions on 30.7.2009 where it was registered as Sessions Case No.241/09. Another supplementary charge-sheet also came to be filed on 15.2.2009. Thereafter, the case was committed to the Sessions Court on 30.7.2009 where it was registered as Sessions Case No.242/09. Another charge-sheet came to be filed on 1.5.2009 against Accused No.34 to Accused No.37 and the case was committed to the Sessions Court on 30.7.2009, where it was registered as Sessions Case No.243/09. Accused No.35 died during the pendency of the trial.

6.3 Another supplementary charge-sheet came to be filed on 10.11.2009 against Accused No.38 to 44. The case came to be

committed to the Sessions Court on 30.7.2009 and was registered as Sessions Case No.245/09. Another supplementary charge-sheet came to be filed on 12.12.2008 against Accused No.45 to 59 and the case came to be committed to the Sessions Court on 31.7.2009 and was registered as Sessions Case No.246/09.

6.4 A supplementary charge-sheet dated 13.8.2009 came to be filed against Accused No.60 to 62 and the case was committed to the Sessions Court on 25.8.2009 and came to be registered as Sessions Case No.270/09.

6.5 It appears that originally seventy two persons had been arraigned as accused, however, ten persons died before they could be sent to trial and three persons are still absconding.

II THE CHARGE

7. The trial court framed a consolidated charge vide Exhibit-65 on 8.10.2009 against in all sixty two accused persons. The charge came to be subsequently amended on 13.3.2012. Since the trial court has not referred to the charge in detail, though the same is somewhat lengthy, it is still deemed appropriate to reproduce the same, so as to properly understand the exact nature of charge against the accused.

7.1 As per the amended charge, it has been alleged that on 27.2.2002, the incident wherein fifty eight Hindu Kar Sevaks were burnt alive in a train took place at Godhra.

7.2 To protest against the incident, the Vishwa Hindu Parishad had given a call for Gujarat Bandh on 28.2.2002.

7.3 On 28.2.2002, in the Naroda Patiya area, during the period from 8:00 in the morning till 10:00 at night, the different offences mentioned in the charge came to be committed by the accused with a view to vent their anger against the Godhra murder incident where Hindu Kar Sevaks were burnt alive and to take revenge against the Muslim community, with the intention of causing damage to lives and properties of the Muslim community, attacked the Muslim community with a view to spread fear and anxiety amongst them, in the context of the call for Gujarat Bandh, in a preplanned manner, (a) the accused named in the title of the charge, as well as (b) the accused who had died, and (c) the accused who were absconding and (d) the accused who were not identified (mobs of thousands of people), had agreed to commit different unlawful acts which are hereinafter referred to in detail in the charge, and for this purpose there was complete consensus amongst all the conspirators and all the accused had agreed with each other to hatch the conspiracy; all the accused had hatched a conspiracy and abetted each other and committed the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code and in the context of the criminal conspiracy committed the unlawful acts hereinafter referred to in the charge.

Alternatively

7.4 All the accused named in the title, that is, accused No.1 to 62, the deceased accused named in para-3, the absconding

accused and the unidentified accused, all belonging to the Hindu community [hereinafter with a view to avoid repetition referred to as the "above referred accused"], with a view to unlawfully enter the properties belonging to the Muslim community, with the object of causing mischief, with the object of spreading fear and anxiety amongst the Muslims with unlawful strength and show of unlawful strength, with the object of taking revenge against them for the incidents that had taken place at Godhra, as narrated in detail hereinafter, with the object of taking away their properties and to achieve the specified results, which was the common object of all the accused. To achieve the common object, under the leadership of some of the accused, all the accused had formed an unlawful assembly and had committed the offences hereinafter referred to in detail under the instigation of their leaders, by becoming members of the unlawful assembly, with the knowledge that the assembly was unlawful, continued to remain as members of the unlawful assembly for the purpose of achieving the objects referred to hereinabove collectively and individually, but as members of the unlawful assembly. And in this manner, all the accused had during the period from 8:00 in the morning till 10:00 at night on 28.2.2002, at different places in the Naroda Patiya area as well at different times but as part of a continuous transaction had become members of the unlawful assembly and had committed different acts which resulted into communal tension, all of which have been hereinafter referred to in the charge, and had committed the same as members of the unlawful assembly. Wherein all the accused were aware of the fact that they were members of the unlawful assembly, were fully aware of the object of the unlawful assembly, despite which all the accused

had consciously continued to remain as members of the unlawful assembly and in this manner had committed the offences mentioned in the charge, and

alternatively,

7.5 All the above referred accused were present at the scene of incident and/or had actively participated in the commission of the different offences forming part of the same transaction that were committed on the above mentioned day and all the accused belong to the Hindu community and all the accused with the intention of causing damage to the Muslim community and to the lives and properties of Muslims, Muslim occupations/dwellings, religious places, etc. with a view to take revenge against the Muslim community in the context of the Godhra incident, had come together and all the accused were fully aware of the common intention of all of them and in furtherance of such common intention committed the unlawful acts referred to hereinafter in the charge.

7.6 In the continuous transaction which is hereinafter referred to in the charge, on 28.2.2002, the offences committed by the above referred accused in the Naroda Patiya area have mainly been committed in Hukamsing-ni-Chali, Chetandas-ni-Chali, Pandit-ni-Chali, Kashirammama-ni-Chali, inside and outside the Noorani Masjid, Badarsing-ni-Chali, Hussainnagar, Jawaharnagar, Kumbhaji-ni-Chali, Imambibi-ni-Chali, near the S.T. Workshop, Thakkarnagar area, Bhagoyadaya Hotel, Krushnanagar Char Rasta, Gangotri Society, Near Natraj Hotel, Near the water tank of Gopinath Society, the chawl in the Khada (pit), Saijpur Tower, Excise

Chowky, etc. which were occupied by Muslims, religious places of Muslims and their shops, etc. The offences hereinafter referred to in detail in the charge have been committed within the jurisdiction of the court and all the above referred accused have committed the same in the context of the criminal conspiracy referred to in para-3 and alternatively with a view to achieve the object referred to in para-4 and alternatively with the common intention referred to in para-5.

7.7 Moreover, in this very transaction, all the accused, mainly in the areas mentioned in para-6 of the charge, with the intention of destroying the Muslim colonies which were being used for residential purposes, unauthorisedly and illegally entered the houses of Muslim families and their shops and with the object of causing harm to the properties, used illegal force and looted their safes, cupboards, T.V., embroidery machines, sewing machines, clothes, cash, different vehicles, household articles, furniture, tape recorders, refrigerators, coolers, washing machines, vessels, bed, gas cylinders, gas stoves, mixtures, fan, mattresses, quilts, provisions, ornaments, goats, etc. and with the intention of driving away the people belonging to the Muslim community from their properties and to deprive them from the use of such properties, and with a view to intentionally cause harm to the people of this community, set their houses, buildings and shops on fire, destroyed them, caused mischief and caused damage to the people belonging to the Muslim community.

Moreover, in the same transaction, with the intention of destroying the Noorani Masjid the religious place of Muslims situated in this area, intentionally pelted stones and set it on

fire and caused mischief. In view of the above facts, as per different complaints, statements of witnesses, the entire loss amounts to approximately rupees four crore and in this manner the accused have committed the offences punishable under sections 427, 435 and 436 read with section 149 and alternatively, read with section 34 and alternatively, read with section 120B of the Indian Penal Code, within the jurisdiction of the court.

7.8 Moreover, during the course of the same transaction, the unlawful assembly, with a view to fulfill its unlawful object, on 28.2.2002 from 8:00 in the morning to 10:00 at night, at different places at Naroda Patiya, accused No.1 Naresh Agarsingh Chhara, who is Guddu Chhara's brother and also known as Nariyo, mainly had burning rags and swords, accused No.2 Morlibhai Naranbhai Sindhi, who is also known as Murli, mainly had a revolver and a sword with him, accused No.3 Umeshbhai Surabhai Bharwad, mainly had burning rags, accused No.4 Ganpat Chhanaji Didawala (Chhara), mainly had iron pipe and sword with him, accused No.5 Vikrambhai Maneklal Rathod, who is the son-in-law of Dalpat and also known as Tiniya Chhara, mainly had inflammable substance in a five litre plastic can, accused No.6 Rajesh alias Pangdo Kantilal (Chhara), mainly had a weapon-spear, accused No.7 Champak Himmatlal Rathod (Chhara), mainly had a weapon-stick, accused No.8 Ravindra alias Batakiyo Kantilal Parmar, mainly had a five litre plastic can filled with inflammable substance, accused No.9 Amrut alias Kalubhai Babubhai Rathod, mainly had a five litre plastic can with inflammable substance, accused No.10 Haresh alias Hariyo , who is known as Guddu Chhara's brother, Jivanlal alias Agarsingh Rathod

(Chhara) who mainly had iron pipe and sword, accused No.11 Kaptansingh Jawansingh Parmar (Chhara) who mainly had a sword, accused No.12 Fulsingh Chandansingh Jadeja (Chhara), who mainly had burning rags, accused No.13 Dipak Kantilal Rathod (Chhara) who mainly had a weapon stick, accused No.14 Mahesh Veniram Rathod (Chhara) who mainly had burning rags, accused No.15 Yogesh alias Munno Naranrao Tikade (Marathi), who mainly had an iron pipe, accused No.16 Dhanraj Vadhumal Sindhi, who mainly had a five litre plastic can filled with inflammable substance, accused No.17 Nandlal alias Jacky Vishnubhai (Chhara), who mainly had a sword, accused No.18 Babubhai alias Bajrangi Rajabhai Patel who mainly had a sword, accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala, who mainly had sword, Gupti, iron rod, stick, pipe, trishul, spear, hockey and dharia, accused No.25 Premchand alias Tiwari conductor, who mainly had stones and stick, accused No.26 Suresh alias Sahejad Danubhai Netalkar (Marathi Chharo) and also known as Suresh Mama, who mainly had stick, hockey, iron rod, stones, pipe and sword, accused No.27 Nawab alias Kalubhaiya Harisinh Rathod, who mainly had burning rags, accused No.28 Manubhai Keshabhai Maruda (Bhangi), who mainly had pipe, accused No.30 Shashikant alias Tiniyo son of Yuvraj Patil (Marathi) who mainly had a sword, accused No.31 Ankur alias Chintu Ashokbhai Parmar, who mainly had some sharp edged weapon, accused No.33 Babubhai alias Babu Vanzara Jethabhai Salat (Marwadi), who is also known as Babu Garagewala, mainly had a sword and iron pipe, accused No.34 Laxmanbhai alias Lakho Budhaji Thakore who is also known as Padaliwalo Lakho, who mainly had trishul, accused No.35 Vijay alias Munna Shetty Keshrisinh Didawala Chhara, who mainly had

iron pipe and stones, accused No.36 Janaksinh Dharamsinsh Nehra alias Janak Marathi, who mainly had an iron pipe and stones, accused No.37 Dr. Mayaben Surendrabhai Kodnani, who mainly had pistol and sword, accused No.38 Ashok Hundaldas Sindhi, who mainly had stick and sword, accused No.39 Harshad alias Mungdo Jila Govind Parmar (Chhara), who mainly had gupti and gas cylinder, accused No.40 Mukesh alias Vakil Ratilal Rathod, who is also known as Jaybhavani's son who mainly had sword and stones, accused No.41 Manojbhai alias Manoj Sindhi Renumal Kukrani, who is also known as Manoj Videowala as well as Manoj Tyrewala, who mainly had sword, revolver, trishul, gas cylinder and stones, accused No.42 Hiraji alias Hiro Marwadi alias Sonaji Danaji Meghwal (Marwadi), who mainly had a sword and acid bottles, accused No.44 Bipin alias Bipin Autowala Umedrai Panchal, who mainly had weapons like pistol, sword, hockey, stick, dharia and trishul, accused No.45 Ashok Uttamchand Korani, who is also known as Ashok Pangallawala and Bholenath Pangallawala Ashok Sindhi, who mainly had sword, accused No.49 Ranchhodbhai Manilal Parmar, who is also known as Ranchhod Chhara, who mainly had burning rags and iron scrap pieces (gachcha), accused No.51 Navin Chhaganbhai Bhagekar (Chhara), who mainly had gas cylinder, accused No.52 Sachin Nagindas Modi, who mainly had pipe and hockey, accused No.55 Dinesh alias Tiniyo Govindbhai Barge (Marathi) who is also known as S.R.P. wala Govind's son, who mainly had a sword and plastic can filled with kerosene, accused No.56 Gitaben Ratilal alias Jay Bhawani Rathod, who is also known as Jaybhavani's younger daughter, who mainly had quilts and kerosene, accused No.57 Pankajkumar Mohanlal Shah, who mainly had iron scrap, oil soaked burning rag and stones,

accused No.58 Santoshkumar Kodumal Mulchandani, who is also known as Santosh Dudhwala, who mainly had stones and gas bottles, accused No.59 Subhashchandra Jagannath Darji, who is also known as Maharashtra Darji, who mainly had oil soaked burning rags and iron scrap, accused No.60 Pintu Dalpatbhai Jadeja (Chhara), who mainly had pipe and dagger, accused No.61 Ramilaben Ratilal alias Jay Bhawani Somabhai Rathod who is also known as Jaybhavani's elder daughter, who mainly had quilts, cans filled with inflammable substance and kerosene, which were lethal weapons and the manner in which all the above referred accused have at different times with different dangerous weapons, with the knowledge that death could be caused by them, wielded such weapons and by using force, with the knowledge that this was an unlawful assembly, continued to be a member of such unlawful assembly and committed criminal offences. Moreover, in this transaction, accused No. 1, 2, 3, 10, 18, 19, 20 (also known as Kishansingh) 22, 24, 26, 27, 37, 41, 43, 44, 45 and 62 (known as Mayaben's Assistant), had provided leadership to the unlawful assembly, had instigated the members of the unlawful assembly, by firing, providing weapons, and by becoming leaders of the unlawful assembly and instigating all the accused, uttering and writing inflammatory statements, had actively remained present and different witnesses have identified the accused as leaders of different political parties and their constituents and wings as well as the Vishwa Hindu Parishad, etc.

Moreover, in this very transaction, accused No.21, 23, 29, 32, 46 (who is known as Vijay Chhara), 47, 48 (also known as Kishan Manek and Kishan Dada Marathi), 50 (is also known by the surname Chhara) 53 and 54, had by actively remaining

present in the unlawful assembly with dangerous weapons, uttering slogans, becoming members of the violent mob, instigating, have committed unlawful acts.

Moreover, in this very transaction, while they were members of the unlawful assembly, they had been given lawful orders to disperse, despite which all the accused had joined the unlawful assembly and continued to remain members and, accordingly, all the accused had wielded dangerous weapons, used them for rioting and, accordingly, all the accused had committed the offences punishable under sections 143, 144, 145, 147, 148 read with section 149 of the Indian Penal Code. [Note: The trial court has acquitted all the accused of the offence punishable under section 145 read with section 149 of the Indian Penal Code.]

7.9 Moreover, during the course of the very same transaction, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly as stated in para 4 above, and alternatively, in furtherance of the common intention as stated in para 5 above, at the above time and place, accused No.1 Naresh Agarsingh Chhara, (2) Morli Naranbhai Sindhi, (3) Umeshbhai Surabhai Bharwad, (10) Haresh alias Hariyo Jivanlal alias Agarsinh Rathod (Chhara), (18) Babubhai alias Babu Bajrangi Rajabhai Patel (19) Padmendrasinh alias, P. J. Rajput Jaswantsingh Rajput, (20) Kishan Khubchand Korani (22) Suresh alias Richard alias Suresh Langdo Kantibhai Dedawala (24) Rajkumar alias Raju Chaumal (26) Suresh alias Sahejad Danubhai Netalkar (Marathi Chharo) (27) Nawab alias Kalubhaiyo Harisinh Rathod, (34) Laxman alias Lakho Budhaji

Thakore, (37) Dr. Mayaben Surendrabhai Kodnani (41) Manoj alias Manoj Sindhi Renumal Kukrani (44) Bipin alias Bipin Autowala Umedrai Panchal (45) Ashok Uttamchand Korani (62) Kirpalsingh Jangbahadursingh Chhabda, took over the leadership of the unlawful assembly and the rest of the accused had actively committed unlawful acts and all the accused with the object of outraging the religious sentiments of the Muslim class, with malicious intention, shouted “burn the Miyas” “not a single Miya should remain alive” “burn the Miyas alive” “hack the Miyas” “kill and hack the Miyas” “loot the Miyas”, “break houses of Miyas” etc. and wrote “*Shri Ram ka rajya, yahan koi Muslim nahi rahega*” on the walls of the houses and, accordingly, hurt the religious sentiments of the Muslim community and, promoted disharmony, feeling of enmity, hatred and ill-will between two religions (Hindu and Muslim) and caused fear, alarm and feeling of insecurity and all the members of the unlawful assembly spread ill-will amongst the Hindus and inspired them to resort to rioting to insult the religious sentiments of the Muslim community.

Moreover, in this very transaction, accused No. 2 Morli Naranbhai Sindhi, accused No.44 Bipin alias Bipin Autowala Umedrai Panchal, by firing and accused No.37 Dr. Mayaben Surendrabhai Kodnani by distributing swords to the people in the mob, firing and committing acts which were contrary to the maintenance of public peace, had spread the feeling of fear, alarm and insecurity amongst the Muslim community.

Moreover, in this very transaction, all the accused, though they were aware that the Noorani Masjid which is situated in the Naroda Patiya area, is a Muslim religious place, entered the

Noorani Masjid and unitedly, individually or collectively or as members of the unlawful assembly, by unlawfully entering with the intention of insulting the Muslim religion, pelting stones on the religious place which they consider sacred, causing damage and igniting fire there, by using force and violence and causing damage to this masjid and insulting the religious sentiments of the Muslim community and spreading fear, alarm and feeling of insecurity amongst the Muslim community and promoting enmity, hatred, or ill will amongst the Hindus and Muslims, have committed the offences punishable under sections 153, 153A as well as 153A(2), 295, 295A and 298 read with section 120B of the Indian Penal Code, alternatively read with section 149 and alternatively, read with section 34 of the Indian Penal Code. [Note: All the accused have been acquitted of the offence under section 295A and 298 of the Indian Penal Code]

7.10 Moreover, in above referred continuous transaction of 28.02.2002, all the accused No.1 to 62, had mainly at the different places of offence referred to in para 6 of the charge or at one spot kept with them different dangerous weapons referred to in para 8 of the charge and had used the weapons for committing the unlawful acts narrated in the charge. In this manner, as stated in para 8 of the charge, the accused had kept with them different arms and ammunitions which could be used for causing physical injuries with them in public, and, at that time, the notification of the Police Commissioner under the Bombay Police Act was in force from 1.1.2002, and by intentionally committing breach of the notification, all the accused had committed the offence punishable under section 135(1) of the Bombay Police Act within the jurisdiction of the

court.

Moreover, in this very transaction, all the accused were the members of the unlawful assembly and were active as such, wherein all the accused had committed violent acts of burning vehicles, vandalism, pelting stones, arson, assault, fighting, etc. and had created an atmosphere of communal tension and upon the unlawful assembly formed by them becoming uncontrollable, through loudspeakers on the police vehicles and other lawful methods and orders as per jurisdiction were made and all of them were ordered to disperse. Thereafter also, as the mob of accused did not disperse, the Police Commissioner, Ahmedabad city, as a public servant, with a view to maintain public peace and safety, declared curfew in the area, which all the accused were aware of, despite which, they had intentionally committed breach of the curfew order and had put human life in fear and had dishonoured the curfew order and despite the likelihood of riots and violence, totally disregarded the same and indulged in rioting.

7.11 Moreover, during the course of the same transaction, at the above time and place, all the above named accused, as a part of the criminal conspiracy referred to in para 3 above, and alternatively, to prosecute the common object of the unlawful assembly and alternatively in furtherance of the common intention, at the above time and place, all the accused got together and while they were members of the unlawful assembly, during that time, by obstructing the police officers and staff from the Naroda Patiya area who were on duty in the discharge of their duties, by throwing stones at them and forming a mob and using force and violence together with

weapons, committed the offence of rioting with weapons, etc. and had voluntarily obstructed the police personnel who were discharging their duties as public servants with the intention of preventing them from discharging their duties, put obstacles on the road, and by throwing glass bottles at them. In this manner, with the intention that all the police personnel, and mainly (1) A.C.P. Shri M.T. Rana, (2) P.I. Shri K.K. Mysorewala, (3) P.C. Shri Bharatsinh Chandusinh, (4) A.S.I. Shri Dashrathsinh Udesinh, (5) P.C. Shri Chhababhai Chhaganbhai, (6) P.C. Shri Ashoksinh Laxmansinh, (7) P.C. Shri Dipak Govindram, (8) P.C. Shri Vijay Laxmanrao and (9) P.C. Shri Suresh Sridharan, are obstructed from discharging their lawful duties as public servants, voluntarily caused hurt and inflicted different injuries and by doing so, all the accused have committed the offences punishable under section 332, 186, 188 read with section 149 of the Indian Penal Code, and alternatively read with section 120B and alternatively read with section 34 of the Indian Penal Code within the jurisdiction of the court. [Note: All the accused have been acquitted of the offences punishable under sections 332 and 186 of the Indian Penal Code.]

7.12 Moreover, during the course of the same transaction as well as at the same places, all the above named accused, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute common object of the unlawful assembly as stated in para 4 above and alternatively in furtherance of the common intention as stated in para 5 above, had at the above time and place, formed the above unlawful assembly and were its members, at that time with the deadly weapons wielded by all the members of the unlawful

assembly and with the intention of causing death in a different manner as well as with the knowledge that use of such weapons is likely to cause death, with such knowledge had committed unlawful acts, wherein members of the Muslim community, viz., (1) Sofiyabanu Mahebubhai Shaikh, (2) Abedabibi, wife of Sarmoddin Shaikh, (3) Reshma Salambhai Kureshi, (4) Saidabanu Ibrahimhai Shaikh, (5) Zubedabanu Shabbir Ahemad Shaikh, (7) Zarinabibi, wife of Bundubhai Kureshi, (8) Sharif Iqbalhai Shaikh, (9) Siddiq Salimbhai Shaikh, (10) Meraj Salambhai Abdulla, (11) Asif Sarmoddin Shaikh, (12) Shabnambanu, wife of Mahammad Khurshid Shaikh, (13) Salim Salambhai Kureshi, (14) Deleted, (15) Khwajahussein Abdulmajid Shaikh, (16) Shabbir Ahemad Khurshid Ahmad, (17) Mahammad Ayub Allabax, (18) Farhana, daughter of Ayubbhai Kureshi, (19) Abdul Wahab Abdul Rafiq, (20) Abdulla Abdulgani Shaikh, (21) Nasimbanu, daughter of Bundubhai Kureshi, (22) Salam Abdulla Kureshi, (23) Shahjahan, wife of Sarmoddin Khalid, (24) Sohel Ahamad Ayubbhai Kureshi, (25) Zarinabanu Rahemanbhai Shakurbhai, (26) Nadeem Shabbirbhai Shaikh, (27) Maiyuddin Hasanbhai Abubakar Saiyed, (28) Samsad Rahemanbhai, (29) Rukshana, daughter of Rahemanbhai, (30) Rafiq Sarmoddin Shaikh, (31) Nurjahanbegam, wife of Ismailbhai, (32) Saliyabibi, wife of Jainul Abedin Shaikh, (33) Mahammad Hussein Abdulmajid Shaikh, (34) Kherunisha Mahammadmaruk Abdulrauf, (35) Bilkishbanu Mahammadmaruk Abdulrauf, (36) Ramsurat Babubhai Verma, (37) Hasanali Mahombeali, (38) Mahammadyunus Mahammadrajak Ansari, (39) Noorjahan Mahammadhussein Munirbhai Shaikh, (40) Mohsin Meblahussein Shaikh, (41) Hanifakhatun Abdulwahab, (42) Akram Mahammadharun Shaikh, (43) Fatimabibi Ganibhai

Shaikh, (44) Saminabanu, daughter of Shabbirahemad, (45) Salimabanu Sardar Saiyed, (46) Gulnazbanu Ayubmiya Malek, (47) Mahammadhussein Abdulkadar Kureshi, (48) Irfan Inayat Saiyed, (49) Salman Inayat Saiyed, (50) Ismailbhai Sarmoddin Shaikh, (51) Noorjahan, daughter of Kabilali Abdulbhai Shaikh, (52) Sarmoddin Mahammadmunavar Shaikh, (53) Kausharbanu, daughter of Khalikbhai Noormahammad Shaikh, (54) Hussein Mahammad Masak Kureshi, (55) Gosiyabanu, wife of Mahammadharun, (56) Subhan Jenul Abedin Shaikh, (57) abdukkadir Abdulrasid Shaikh, (58) Kudratbibi Khurshidbhai, (59) Sarmoddin Khalid Noormahammad, (60) Hajrabanu alias Jadikhala abdul Mahammad Saiyed, (61) Asif Shabbirbhai, (62) Supriya Majid, (63) Hamidraja Mahammadmaru, (64) Shakinabanu Maheub, (65) Shakina Babubhai Bhatti, (66) Rajak Babubhai Bhatti, (67) Adamali Mahammadbhai Shaikh, (68) Wasim Abdul Ajj Shaikh, (69) Salim Abdul Ajj Shaikh, (70) Nilofurbanu, daughter of Ibrahimbhai Mansuri, (71) Maheub Abdulmajid Shaikh, (72) Sufiyabegam Abdulahad Luhari, (73) Firoz Mahammad Ayub Shaikh, (74) Mahammad Shahrukh Zakirhussein Shaikh, (75) Muskan, daughter of Jainul Abedin Shaikh, (76) Shahinbanu Abdulmajid Shaikh, (77) Lalbibi, wife of Abdul Majid Shaikh, (78) Abidali Hamidali Pathan, (79) Maheub Khurshidbhai Shaikh, (80) Afrinbanu Abdulmajid Shaikh, (81) Tarkishbibi Abdulgani Ibrahimbhai, (82) Afrinbanu Meblahussein Shaikh, (83) Maheubi Meblahussein Shaikh, (84) Jenbibi Khalid Nurmahammad Shaikh, (85) Rabiyaibibi Rahimbhai Shaikh, (86) Mumtajbanu Mahammadbhai Shaikh, (87) Kalimuddin Ahemadbhai Kureshi, (88) Ismailbhai Punjabhai Mansuri, (89) Abdulkadar Abdulrasul Aanori, (90) Reshmabanu Iqbalahemad Nuruddin Shaikh, and three unidentified Muslim men, in all eighty-three persons and three

missing persons, viz., (1) Madinabibi Babubhai Bhatti, (2) Babubhai A. Rasul Bhatti and (3) Mahammadshakeel A. Alim Chaudhary and others, who also belonged to the Muslim community, by assaulting them, intentionally causing fatal injuries, killing them, murdering them, burning them, causing their death, and after murdering them, and all the accused with a view to save themselves from the punishment for the offence as well as with the intention of saving the co-accused as well as with the intention of destroying the evidence, burnt their dead bodies and destroyed the evidence, wherein fifty-eight persons were killed and set ablaze at one spot and by doing so, all the accused have committed the offences punishable under sections 302, 201 read with section 149, and alternatively read with section 120(B) and alternatively read with section 34 of the Indian Penal Code. [Note: All the accused have been acquitted of the offence punishable under section 201 of the Indian Penal Code.]

7.13 Moreover, during the course of the same transaction, at the above time and place, all the above named accused who had different weapons with them, together with the rest of the accused, united together and used the arms and ammunition for the criminal transaction by pelting stones, firing, assaulting, hacking, setting ablaze and making aggressive fatal attack causing hurt and grievous hurt and by placing people of the Muslim community alive on mattresses, pouring inflammable substances on them and burning them alive and in the same fire, by throwing small children belonging to the Muslim community alive and throwing people belonging to the Muslim community in the dry well, in the same transaction, by hacking, causing injury, killing and throwing in the well and

setting ablaze, burnt them.

In the same manner and by the same kind of acts, all the accused have in the course of the same transaction, by the different offences committed by them, caused hurt and grievous hurt by setting ablaze or murdering or in some other manner causing the total disappearance of the following victims belonging to the Muslim community (1) Babubhai Abdulrasul Bhatti, age 37 years, (2) Madinabibi, wife of Babubhai Bhatti, age 34 years and (3) Mahammadshakeel Abdulsalim Chaudhari, age 20 years.

After committing the aforesaid criminal acts, all the accused, by destroying the evidence of their criminal acts, to escape from lawful punishment or with the intention of screening the co-accused from legal punishment or with the intention to save the co-accused from punishment, destroying the evidence and burning people either dead or alive, have committed the offences punishable under sections 201, 302 read with section 149 and alternatively section 34 and alternatively section 120-B of the Indian Penal Code.

7.14 Moreover, during the course of the same transaction, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly and alternatively, in furtherance of the common intention, the accused, viz., the accused No.1 Naresh Agarsing Chhara, accused No.10 Haresh alias Hariyo Jivanlal alias Agarsing Rathod (Chhara), accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala (Chhara), accused No.26 Suresh alias Sahejad Danubhai Netalkar

(Chhara), accused No.40 Mukesh alias Vakil Ratilal Rathod, accused No.53 Vilash alias Viliyo Prakashbhai Sonar and accused No.60 Pintu Dalpatbhai Jadeja, at the above time and place by catching hold of deceased Siddique and intentionally causing injuries with a dagger on different parts of his body and with the knowledge that a dagger used as a weapon could cause death, by causing grievous injuries by stabbing him with a dagger and causing his death, murdered him.

Moreover, during the course of the same transaction, all the above accused, by intentionally assaulting Naseem a young girl and sister of witness Shabana Bundubhai Kureshi, with a pipe, with the knowledge that assaulting with a pipe could cause death, inflicting blows with a pipe on her and causing grievous hurt and killing her and pouring kerosene on her and setting her ablaze, all the accused and mainly through accused No.1, 10, 22, 26, 40, 53 and 60, murdered her by causing her death.

Additionally, accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala (Chhara) by intentionally stabbing witness Shabana Bundubhai Kureshi's mother (Zarinabanu) with a gupti on the stomach, with the knowledge that assaulting with a gupti can cause death, causing fatal injuries and sprinkling inflammable substance like kerosene and setting her ablaze, all the accused and mainly owing to the accused No.1, 10, 22, 26, 40 and 60, by causing the death of Shabana's mother, murdered her, and by doing so, all the accused through accused No.1 Naresh Agarsing Chhara, accused No.10 Hareh alias Hariyo Jivanlal alias Agarsing Rathod (Chhara), accused No.22 Suresh alias Richard alias

Suresh Langdo Kantibhai Didawala (Chhara), accused No.26 Suresh alias Sahejad Danubhai Netalkar (Chhara), accused No.40 Mukesh alias Vakil Ratilal Rathod, accused No.53 Vilas alias Viliyo Prakashbhai Sonar and accused No.60 Pintu Dalpatbhai Jadeja, murdered witness Shabana's mother.

In this manner, all the accused have committed the offences punishable under sections 302, 201 read with section 149 and alternatively read with section 120(B) and alternatively read with section 34 of the Indian Penal Code, within the jurisdiction of the court.

7.15 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly as stated in para 4 above, and alternatively in furtherance of the common intention as stated in para 5 above, all the accused and mainly through accused No.30 Shashikant alias Tiniyo Marathi, accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala (Chhara), accused No.40 Mukesh alias Vakil Ratilal Rathod, accused No.26 Suresh alias Sahejad Danubhai Netalkar (Chhara), accused No.48 Kishan Shankarbhai Mhadik (Kishan Marathi) knowing full well that assaulting with deadly weapons would cause death, intentionally caused fatal injuries with sword, hockey, pipe to the witness Sharifabibi Iqbalbhai's son Sharif, and sprinkled inflammable substances like kerosene or petrol and set him ablaze and murdered him by causing his death and by doing so, all the accused have committed the offence punishable under sections 302, 201 read with section 149 and alternatively read with section 120 and alternatively

read with section 34 of the Indian Penal Code.

7.16 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above, and alternatively to prosecute the common object of the unlawful assembly as stated in para 4 above, and alternatively in furtherance of the common intention as stated in para 5 above, all the accused mainly through the accused No.1 Naresh Agarsing Chhara, accused No.10 Hareesh alias Hariyo Jivanlal alias Agarsing Rathod (Chhara), accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala (Chhara), accused No.26 Suresh alias Sahejad Danubhai Netalkar (Chhara), accused No.40 Mukesh alias Vakil Ratilal Rathod, accused No.44 Bipin alias Bipin Autowala Umedrai Panchal, murdered Zarinabanu, Naseembanu, Kherunbanu, Bilkishbanu, Sharif Iqbal and Salimbhai, and Zulekhabegum's deceased husband Mahammadayub owing to accused No.22 Suresh with other deceased accused, committed criminal acts and murdered them, and deceased Rabiya Bibi was murdered through accused No.52 Sachin Modi; Rafikanbanu's three children were killed through accused No.22 and accused No.55 Tiniyo Marathi; through accused No.38 Ashok Sindhi caused grievous hurt with a sword on the neck and hands of deceased Hasanali Mahobeali and put him on a cot and placed a mattress on him and burnt him alive and killed him; and through accused No.56 and the deceased accused, called the mob, and the people in the mob poured kerosene on a quilt and set ablaze Hajrabibi alias Jadikhala and together with her, also burnt and killed her grandchildren and another girl Noori who was engaged; and through accused No.2 Murli Sindhi, accused No.44 Bipin

Autowala and accused No.55, lifted a boy named Ayub who had fractures on both his legs and put him in an auto rickshaw and sprinkled inflammable substance on him and set him ablaze and intentionally killed him; moreover, through accused No.61 Ramilaben Ratilal, handed over the quilts and kerosene etc. to the riotous mob comprised of all the accused and she had a white can in her hand containing inflammable substance which she had kept; and had committed the criminal acts and in this manner, all the accused had murdered different victims or burnt them alive knowing that by burning them, they would cause their death and with the intention of screening the offenders from legal punishment, destroyed the offence and by doing so, the accused have committed the offences punishable under sections 302, 201 read with section 149 and alternatively read with section 120B and alternatively read with section 34 of the Indian Penal Code.

7.17 Moreover, during the course of the same transaction, at the above time and place, all the above named accused, as part of the criminal conspiracy referred to in para 5 above and to prosecute the common object of outraging the modesty of Sofiyabanu and gang raping her, all the accused in the violent mob and mainly owing to accused No.1 Naresh Agarsing Chhara, accused No.10 Haresh alias Hariyo Jivanlal alias Agarsing Rathod (Chhara), accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala (Chhara), accused No.28 Manubhai Keshabhai Maruda (Bhangi) and accused No.40 Mukesh alias Vakil Ratilal Rathod (Jaybhavani's son), got together, aided and abetted each other, came together and with the intention of outraging the modesty of witness Abdulmajid Mahammadusman Shaikh's daughter Sofiyabanu

as a woman, stripped her, attacked her, used criminal force and outraged her modesty and with the above common intention, committed gang rape on her and thereby, the accused No.1, 10, 22, 28 and 40 committed the offences punishable under sections 354, 376(2)(g) read with section 34 of the Indian Penal Code.

Moreover, as a part of the same transaction, all the accused No.1 to 62, in the context of the criminal conspiracy referred to in para 3 above, to prosecute their common object and in furtherance of the common intention as per para 4 and 5 above, by sprinkling inflammable substance on her and with the intention of screening themselves and the co-accused from legal punishment and with the intention of destroying the evidence, setting her ablaze and intentionally committing her murder and knowing full well that by burning her, they could cause death, all the accused have also committed the offence punishable under section 302, 201 read with section 34 and alternatively read with section 149 and alternatively read with section 120(B) of the Indian Penal Code.

7.18 Moreover, during the course of the same transaction, at the above time and place, the violent mob comprised of the accused, viz., accused No.25 Premchand alias Tiwari Conductor, accused No.26 Suresh alias Sahejad Danubhai Netalkar (Marathi Chharo) and accused No.28 Manubhai Keshabhai Maruda (Bhangi) and all the accused, in furtherance of their common intention as referred to in para 5 above and with the intention of committing gang rape on Farhana and outraging her modesty, at the above time and place, pulled witness Farzana Ayubbbhai's daughter Farhana and took her

away, she being a woman, with the intention of outraging her modesty, committed criminal acts, used criminal force, attacked her, outraged her modesty, pulled her and assaulted her and to prosecute the common intention, committed gang rape on her and accordingly, accused No.25, 26 and 28 have committed the offences punishable under section 354, 376(2) (g) read with section 34 of the Indian Penal Code.

Moreover, in the same transaction and at the same place and time, knowing that assaulting with a dagger can cause death, intentionally inflicted blows with a dagger on Farhana's stomach and to escape from punishment and to protect the co-accused, to destroy the evidence, sprinkled kerosene on her and set her ablaze and caused her death and accordingly, accused No.1 to 62 have committed the offences punishable under section 302, 201 read with section 34 and alternatively section 120(B) and alternatively read with section 149 of the Indian Penal Code.

7.19 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly as referred to in para 4 above and alternatively in furtherance of the common intention as referred to in para 5 above, all the accused and mainly owing to accused No.40 Mukesh alias Vakil Ratilal Rathod, accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala, accused No.26 Suresh alias Sahejad Danubhai Netalkar (Marathi Chharo), accused No.30 Shashikant alias Tiniyo Marathi, accused No.48 Kishanbhai Shankarbhai Mahadik (Kishan Marathi), with the knowledge

that throwing inflammable substances like kerosene or petrol and burning Sharifabibi's son and younger son can cause death, have set them ablaze and caused their death and to destroy the evidence against all the accused and co-accused and with the intention of screening the offenders from legal punishment, all the accused had burnt Sharafibibi's son and younger son and the accused No.1 to 62 have committed the offences punishable under sections 302, 201 read with section 34 and alternatively read with section 120(B) and alternatively read with section 149 of the Indian Penal Code within the jurisdiction of the court.

7.20 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly as referred to in para 4 above and alternatively in furtherance of the common intention as referred to in para 5 above, all the accused through the accused No.20 Kishan Khubchand Korani, accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala and accused No.41 Manojbhai alias Manoj Sindhi Renumal Kukrani (Manoj Videovala), all of whom were part of the violent mob and unlawful assembly and with the knowledge that setting the house of Abdulmajid, resident of Jawannagar-ni-Chali, on fire and burning them alive would cause their death, had burnt seven persons of his family alive and murdered them and all the accused and co-accused, with the intention of screening the offenders from legal punishment and with the intention of destroying the evidence of the offence had burnt them alive and murdered them and have committed the offences punishable under sections 302, 201

read with section 34 and alternatively read with section 120(B) and alternatively read with section 149 of the Indian Penal Code, within the jurisdiction of the court.

7.21 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute common object of the unlawful assembly as referred to in para 4 above and alternatively in furtherance of the common intention as referred to in para 5 above, all the accused formed an unlawful assembly and were its members; the members of the unlawful assembly were armed with deadly weapons and by using them in other ways, caused different fatal injuries to the following victims, viz., (1) Safi alias Bablu Mahemudbhai, (2) Raziyanu Mahammad Ayub, (3) Yasin Abdul Majid, (4) Shahenaz Munavarbhai, (5) Bashir Ahemad Mahammad Hussein Shaikh, (6) Ayeshabanu Mahammad Maru Pathan, (7) Afsanabanu Rahemanbhai Saiyed, (8) Sabir Ahemad Munir Ahemad Shaikh, (9) Naimuddin Ibrahimbhai Shaikh, (10) Farzanabanu Ayubkhan Pathan, (11) Sabiraben Abdul Aziz Shaikh, (12) Usman Valibhai, (13) Yasin Usmanbhai Mansuri, (14) Shabana Abdulrahim, (15) Shoyeb Mahammad Ayub Shaikh, (16) Ahemad Badshah Mahemud Hussein Shaikh, (17) Parveenbanu Salambhai Abdulla, (18) Ahemadhusein Mahammadhusein Saiyed, (19) Mahammad Maruf Raufvaliullakhan Pathan, (20) Shahzahan, (21) Shahrukh Shabbir Kabirali Adambhai Shaikh, (22) Kamarraja Mahammadmarufa, (23) Sufiyabanu alias Bibibanu Maheubub Khurshid Shaikh and (24) Rashid Rahimbhai Shaikh, inflammable substance was thrown on his head and he was set ablaze; and all of them, with the intention of causing their

death and with the knowledge that these injuries would cause their deaths, threw inflammable substances on them and caused hurt and grievous hurt to them and burnt them which had caused the death of the above named persons and hence, all the accused have committed the offences punishable under section 307 read with section 149 and alternatively read with section 120(B) and alternatively read with section 34 of the Indian Penal Code within the jurisdiction of the court.

7.22 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly as referred to in para 4 above and alternatively in furtherance of the common intention as referred to in para 5 above, all the accused, as members of the above referred unlawful assembly, being armed with deadly weapons as referred to in para 8 of the charge and using such weapons and in other ways, causing injuries to members of the Muslim community wherein (1) Jetunbibi Aslammiya Shaikh, and (2) causing fractures on both the hands of Reshmabanu Ayubkhan Pathan and injuring her, moreover, (3) Kulsumbanu Ibrahimhai, (4) Zarinabanu Naimuddin, (5) Sufiyabanu Inayat Saiyed, (6) Saukat Nabibhai Mansuri, (7) striking Mahammad Ayub Sofilal Shaikh with a stone, (8) striking Peshimam Abdulsalam Shaikh with a bottle on his leg, (9) hitting Sabiyabibi on the head with stone, (10) pelting stones on Salauddin Abdulkarim's leg, (11) Mehboobbibi on her forehead and (12) causing injuries to Taufik on his leg by pelting stones, etc., and voluntarily causing hurt and grievous hurt to other victims and by using aggressive deadly weapons or in some other manner, causing

hurt and grievous hurt, all the accused have committed the offences punishable under section 323 and/or section 324 and/or 325 and/or section 326, all read with section 149 and alternatively section 34 and alternatively section 120(B) of the Indian Penal Code, within the jurisdiction of the court.

7.23 Moreover, during the course of the same transaction, at the above time and place, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly as referred to in para 4 above and alternatively in furtherance of the common intention as mentioned in para 5 above, all the accused and mainly accused No.40 Mukesh alias Vakil Ratilal Rathod, accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala, accused No.26 Suresh alias Sahejad Danubhai Netalkar (Marathi Chharo), accused No.30 Shashikant alias Tiniyo Marathi, accused No.48 Kishanbhai Shankarbhai Mahadik (Kishan Marathi) etc., with a view to outrage the modesty of young Muslim girls as well as witness Naeem's wife, used criminal force and attacked them, and accused No.22 Suresh Chharo and accused No.26 Sahejad and accused No.42 Hiro Marwadi, with the intention of outraging the modesty of deceased persons as well as a girl named Nagina, her sister and her mother, used criminal force and attacked them and pulled at their clothes and disrobed them, etc. and committed other kinds of acts and outraged their modesty and in this manner, the above accused No.22, 26, 30, 40, 42 and 48 committed the offence punishable under section 354 read with section 34 of the Indian Penal Code.

7.24 Moreover, during the course of the same transaction, at

the above time and place, all the above named accused, as a part of the criminal conspiracy referred to in para 3 above and alternatively to prosecute the common object of the unlawful assembly referred to in para 4 above and alternatively in furtherance of the common intention referred to in para 5 above, all the accused got together and individually and collectively, at the different places in the Naroda Patiya area of Ahmedabad city as mentioned in para 6 of the charge, unauthorizedly entered different properties belonging to the Muslim community referred to in para 7 of the charge and ransacked them, set them ablaze, and all the accused aided and abetted each other and committed dacoity in the houses of Muslims, committed loot, used different weapons to cause hurt and grievous hurt to different people belonging to the Muslim community and as stated hereinabove, to commit dacoity, tried to murder different persons and caused their death, armed themselves with deadly weapons, used different weapons to commit loot and dacoity and made preparations to cause deaths of people belonging to the Muslim community in many violent incidents as well as to cause injuries to them, committed the offences of mischief, caused damage, committed arson, drove them away from the houses belonging to Muslims in their possession, religious places, vehicles, household goods and properties as well as caused heavy losses to the life and properties of persons and all the accused got together and committed the offences of dacoity, loot and mischief and caused wrongful loss of around rupees four crore and in this manner, the houses which were being used as residences by Muslims, religious places, the Noorani Masjid, shops, vehicles, etc. were intentionally looted, dacoity was committed, torched, pelted stones, committed mischief and in

this manner, committed the offences punishable under sections 395, 396, 397, 398, 427, 440, 435, 436 etc. read with section 149 and alternatively read with section 34 and alternatively read with section 120B of the Indian Penal Code, within the jurisdiction of the court.

7.25 Moreover, during the course of the same transaction, at the above time and place, all the above named accused, as a part of the common intention as referred to in para 5 of the charge and to prosecute the common intention to murder the pregnant Kausharbanu and cause the death of her unborn child, accused No.18 Babubhai alias Babu Bajrangi Rajabhai Patel and accused No.22 Suresh alias Richard alias Suresh Langdo Kantibhai Didawala (Chhara), with the intention that the child is not born out of the womb of a pregnant Muslim woman and that it dies after it is born, before the pregnant woman's child was born, inflicted a blow on her stomach with a sword and split her stomach and upon the foetus coming out, bounced it on the tip of a sword and threw it and it was done in such a manner that upon Kausharbanu trying to flee to escape from the mob, accused No.18 and accused No.22, with a common intention, armed with swords in their hands, struck the pregnant Kausharbanu on her stomach and split her stomach and upon the foetus coming out, bounced it on the tip of the sword and threw it and in this manner, the accused No.18 and accused No.22 committed the offence punishable under section 315 read with section 34 of the Indian Penal Code, within the jurisdiction of the court.

Moreover, to achieve the common object, all the accused No.1 to 62, as a part of the criminal conspiracy referred to in para 3

of the charge and/or to prosecute the common intention as referred to in para 4 or in furtherance of the common intention in para 5, threw Kausharbanu and her new born child in the fire and in this manner, all the accused with the knowledge that throwing Kausharbanu and her new born child in the fire, would cause their death, have committed the murder of Kausharbanu and her new born child and with the intention of screening the accused and their co-accused/accomplice offenders from legal punishment, and with a view to destroy the evidence, burnt them both in the fire and caused their death and murdered them and in this manner, all the accused and co-accused, committed the offences punishable under sections 302, 201 read with section 149 and alternatively read with section 34 and alternatively read with section 120(B) of the Indian Penal Code within the jurisdiction of the court.

7.26 In view of the above facts, all the accused committed all the offences in the context of the criminal conspiracy shown in para 3 of the charge and alternatively to prosecute the common object as shown in para 4 of the charge and alternatively in furtherance of the common intention as shown in para 5 of the charge, caused the damage shown in para 7 of the charge as well as on the facts in the other paragraphs of the charge, committed different offences shown in the relevant / corresponding paragraphs, were armed with weapons shown in para 8 of the charge and used such weapons to commit the different offences shown in the entire charge, whereby the accused No.1 to 62 have committed the offences punishable under sections 120(B), 153, 153A, 153A(2), 186, 188, 201, 295, 295A, 298, 302, 307, 323, 324, 325, 326, 332, 395, 396, 397, 398, 427, 435, 436, 440 etc., all offences read with

section 149 and alternatively read with section 120(B) of the Indian Penal Code.

Moreover, all the accused have also committed the offences punishable under sections 143, 144, 145, 147 and 148 read with section 149 of the Indian Penal Code.

As shown in the corresponding paragraphs, all the accused have committed the offence punishable under section 135(1) of the Bombay Police Act.

Accused No.1, 10, 22, 25, 26, 28 and 40 have committed the offences punishable under sections 376(2)(g), 354 read with section 34 of the Indian Penal Code.

Moreover, accused No.22, 26, 30, 42 and 48 have committed the offences punishable under section 354 read with section 34 of the Indian Penal Code, accused No.18 and 22 have committed the offences punishable under section 315 read with section 34 of the Indian Penal Code. All the accused have committed the offences punishable under the Indian Penal Code and the Bombay Police Act as described in detail in the charge during the period from 8:00 in the morning to about 10 o'clock on 28.02.2002 and in this regard, all the accused be put to trial.

8. The charge came to be read over to the accused and the trial court recorded the plea of each accused. All of them pleaded not guilty and claimed to be innocent and prayed for a trial.

9. During the course of the trial, accused No.35 passed away. Accordingly, an order came to be passed recording that the case has abated qua the said accused. It may be noted that some of the accused viz. Guddu Chhara, Bhavanisingh Chhara, Dalpat Chhara, etc. had passed away much earlier and hence, they were not arraigned as accused. It is necessary to note this aspect, because despite the fact that the deceased persons were not even arraigned as accused, the trial court in paragraph 34 of Chapter V of its judgment, which bears the heading "Culpability of the accused" has under the heading "Deceased Accused (Conspirators as well as members of unlawful assembly)" pronounced upon their guilt.

III EVIDENCE ADDUCED DURING THE COURSE OF TRIAL:

10. With a view to bring home the charge against the accused, the prosecution has examined in all 327 witnesses, who are (1) witnesses residing in the chawls, who were present on the day of the incident; (2) eyewitnesses who have witnessed the incidents that took place on that day and who have been categorized by the trial court into three categories, viz., (a) witnesses of the morning incident, (b) witnesses of the noon incident and (c) witnesses of the evening incident; (3) witnesses of the sting operation; (4) witnesses who were in some manner connected with the mobile phone recovered by PW-135 Hussainabanu Asgarkhan Pathan from the scene of incident; (5) medical witnesses, (6) police witnesses, including the eye witnesses; and (7) panch witnesses, etc.

11. The prosecution has also produced a plethora of documentary evidence as referred to in detail in paragraph

13B of the impugned judgment and order, wherein reference has been made to in all six hundred documents. By and large, the documentary evidence is comprised of the panchnamas of the scene of offence, panchnamas of the residences of the individual witnesses, inquest panchnamas, identification parade panchnamas, yadis for identification parade, injury certificates, postmortem reports, dying declarations, copies of the first information reports which are stated to have been included in the FIR registered vide Naroda Police Station I-C.R. No.100/2002, printed form complaints, applications made to the SIT by witnesses, affidavits filed by the witnesses for the purpose of submitting before the Supreme Court, certified copy of a judgment in Sessions Case No.241/2003 and 243/2003 (in connection with the death of Ranjit), copy of the first information report registered vide I-C.R. No.134/2002 dated 10.3.2002, certified copies of Vardhi book, "C" summary case papers of various first information reports registered with the Naroda Police Station, etc.

12. After recording the evidence, the learned Sessions Judge put the incriminating material to each of the accused under section 313 of the Code and their response was in the nature of complete denial. The accused have also filed detailed statements under section 313 of the Code. The accused also produced several documentary evidences along with their further statements which have been referred to in detail in paragraph 17 of the impugned judgment and order.

IV THE FINAL ORDER PASSED BY THE TRIAL COURT:

13. The trial court after considering the evidence on record

and the submissions advanced by the learned advocates for the respective parties, by the impugned judgment and order dated 5th October, 2012, acquitted accused No.1 to 34 and 36 to 62 of the charge under section 145 read with section 149, IPC and sections 186, 201, 295A, 298, 315, 332 and 395, 396, 397 and 398 read with section 149 of the Indian Penal Code and/or the same offences read with section 120(B), IPC, by granting them the benefit of doubt.

13.1 The trial court held accused No.1, Naresh Agarsinh Chhara to be guilty of the offences punishable under section 143, 144, 147, 148 read with section 149 of Indian Penal Code section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code. The trial court also convicted him for the offences punishable under section 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act, but acquitted him by granting him benefit of doubt for the charged offences under sections 354 and 376(2)(g) read with section 34 of the Indian Penal Code.

13.2 Accused No.2, Morlibhai Naranbhai Sindhi @ Murli came to be convicted for the offences committed under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offences punishable under section 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act.

13.3 Accused No.4, Ganpat Chhanaji Didawala (Chhara) came to be convicted for the offences committed under section 143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code as well as for the offences punishable under sections 188 of the Indian Penal Code and section 135(1) of Bombay Police Act. The trial court also granted benefit of doubt under sections 295 and 153A (2) read with section 149 of Indian Penal Code as well as for the offences under section 120-B, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302, 307 all read with section 120-B of Indian Penal Code.

13.4 Accused No.5, Vikrambhai Maneklal Rathod (Chhara) @ Tiniyo came to be convicted for the offences committed under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offences punishable under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act.

13.5 Accused No.10, Haresh @ Hariyo Son of Jivanlal @ Agarsing Rathod (Chhara) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian

Penal Code as well as for the offences punishable under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act. The trial court also acquitted him by granting benefit of doubt for the charged offences under sections 354 and 376(2)(g) read with section 34 of the Indian Penal Code.

13.6 Accused No.18, Babubhai @ Babu Bajrangi Son of Rajabhai Patel came to be convicted for the offences committed under sections 143, 144, 147, 148 read with 149 of Indian Penal Code, under sections 295, 427, section 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offences punishable under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act.

13.7 Accused No.20, Kishan Khubchand Korani came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with sections 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offences under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act.

13.8 Accused No.21, Prakash Sureshbhai Rathod (Chhara) came to be convicted for the offences committed under sections 143, 144, 147, 148 read with section 149 of Indian

Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offences under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act.

13.9 Accused No.22, Suresh @ Richard @ Suresh Langado Son of Kantibhai Didawala (Chhara) came to be convicted for the offences committed under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offences punishable under sections 188, 120-B, 354 and 376 of the Indian Penal Code. The trial court acquitted him by granting benefit of doubt for the charged offences under section 376(2)(g) read with section 34 of the Indian Penal Code.

13.10 Accused No.25, Premchand @ Tiwari Conductor, son of Yagnanarayan Tiwari came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offence punishable under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act.

13.11 Accused No.26, Suresh alias Sehjad Dalubhai Netlekar (Marathi Chharo) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the offences read with section 120-B of the Indian Penal Code as well as for the offence punishable under sections 188, 120-B of the Indian Penal Code and section 135(1) of Bombay Police Act. The trial court acquitted him by granting benefit of doubt for the charged offences under section 354 and 376(2) (g) read with section 34 of the Indian Penal Code.

13.12 Accused No.27, Navab @ Kalu Bhaiyo Harisinh Rathod came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and 135(1) of the B.P. Act. The trial court acquitted him by granting benefit of doubt for the offence punishable under section 188 of Indian Penal Code.

13.13 Accused No.28, Manubhai Keshabhai Maruda came to be convicted for the offences punishable under sections 143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code as well as for the offences punishable under sections 188 of the Indian Penal Code and section 135(1) of B.P. Act. The

trial court granted benefit of doubt under section 295 and section 153-A(2) read with section 149 of Indian Penal Code as well as for the charge under section 120-B, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302, 307 all read with section 120-B of Indian Penal Code as well as for the charge under section 354 and 376(2)(g) read with section 34 of the Indian Penal Code.

13.14 Accused No.30, Shashikant @ Tiniyo Marathi Son of Yuvraj Patil came to be convicted for the offences committed under section 143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code as well as for the offence committed under section 188 of the Indian Penal Code and section 135(1) of Bombay Police Act. The trial court granted benefit of doubt under section 295 and 153-A(2) read with section 149 of Indian Penal Code as well as for the charge under section 120-B, under section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302, 307 all read with section 120-B of Indian Penal Code as well as for the charge under section 354 and 376(2)(g) read with section 34 of the Indian Penal Code.

13.15 Accused No.33, Babubhai @ Babu Vanzara son of Jethabhai Salat (Marvadi) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offence punishable under section

120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has granted benefit of doubt under section 188 of Indian Penal Code.

13.16 Accused No.34, Laxmanbhai @ Lakho son of Budhaji Thakor came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offence under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has granted benefit of doubt under section 188 of Indian Penal Code.

13.17 Accused No.37, Dr.Mayaben Surendrabhai Kodnani came to be convicted for the offences punishable under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 120-B of the Indian Penal Code as well as for the offences punishable under section 120-B of the Indian Penal Code. The trial court has acquitted her by granting benefit of doubt for the offence under section 143, 144, 147, 148, 153, 153-A, 153-A(2), 295, 302, 307, 323, 324, 325, 326, 427, 435, 436, 440 read with section 149 of the Indian Penal Code, under section 188 of Indian Penal Code and under section 135(1) of Bombay Police Act.

13.18 Accused No.38, Ashok Hundaldas Sindhi came to be convicted for the offences punishable under sections 143, 144,

147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has granted benefit of doubt under section 188, IPC.

13.19 Accused No.39, Harshad @ Mungda Jilagovind Chhara Parmar came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has acquitted him by granting benefit of doubt for the offence committed under section 188 of the Indian Penal Code.

13.20 Accused No.40, Mukesh @ Vakil Ratilal Rathod Son of Jaybhavani came to be convicted for the offences under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offence punishable under section 188 of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has

acquitted him by granting benefit of doubt for the charged offences under section 354 and 376(2)(g) read with section 34 of the Indian Penal Code.

13.21 Accused No.41, Manojbhai @ Manoj Sindhi son of Renumal Kukrani came to be convicted for the offences committed under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as for the offence punishable under section 188 of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act.

13.22 Accused No.42, Hiraji @ Hiro Marvadi @ Sonaji son of Danaji Meghval (Marvadi) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323, 324, 325, 326, 302 and 307 read with section 149 of Indian Penal Code and for the same offences read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has acquitted him by granting benefit of doubt for the offence punishable under section 188 of the Indian Penal Code as well as for the charged offences under section 354 and 376(2)(g) read with section 34 of the Indian Penal Code.

13.23 Accused No.44 viz. Bipinbhai @ Bipin Autowala son of Umedrai Panchal came to be convicted for the offences

punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as for the offence committed under section 188 of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act.

13.24 Accused No.45, Ashokbhai Uttamchand Korani (Sindhi) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has acquitted him by granting benefit of doubt for the offence committed under section 188 of the Indian Penal Code.

13.25 Accused No.46, Vijaykumar Takhubhai Parmar came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as for the offence punishable under section 188 of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act.

13.26 Accused No.47, Ramesh Keshavlal Didawala (Chhara) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has acquitted him by granting benefit of doubt for the offence committed under section 188 of the Indian Penal Code.

13.27 Accused No.52, Sachin Nagindas Modi came to be committed under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as for the offence punishable under section 188 of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act.

13.28 Accused No.53, Vilas alias Viliyo Prakashbhai Sonar came to be convicted for the offences punishable under sections 143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A, 323 to 326, 302 and 307 read with section 149 of Indian Penal Code as well as for the offence punishable under section 188 of the Indian Penal Code and under section 135(1) of the Bombay Police Act. The trial court has granted benefit of doubt under section 295 and section 153A (2) read with section 149 of

Indian Penal Code as well as for the charge under section 120-B, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302, 307 all read with section 120-B of Indian Penal Code.

13.29 Accused No.55, Dinesh alias Tiniyo Govindbhai Barge (Marathi) came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code section 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as under section 188 of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act.

13.30 Accused No.58, Santoshkumar Kodumal Mulchandani, known as Santosh Dudhwala came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has acquitted him by granting benefit of doubt for the offence committed under section 188 of the Indian Penal Code.

13.31 Accused No.60, Pintu Dalpatbhai Jadeja (Chhara) came to be convicted for the offences committed under sections 143, 144, 147, 148, 427, 435, 436, 440, 153, 153-A,

323 to 326, 302 and 307 read with section 149 of Indian Penal Code as well as under section 188 of the Indian Penal Code and under section 135(1) of the Bombay Police Act. The trial court has granted benefit of doubt under section 295 and 153A (2) read with section 149 of Indian Penal Code as well as granted benefit of doubt for the charge under section 120-B, under section 295, 427, 435, 436, 440, 153, 153-A, 153- A(2), 323 to 326, 302, 307 all read with section 120-B of Indian Penal Code.

13.32 Accused No.62, Kirpalsingh Jangbahadursing Chhabda came to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of Indian Penal Code, under sections 295, 427, 435, 436, 440, 153, 153-A, 153-A(2), 323 to 326, 302 and 307 read with section 149 of Indian Penal Code and for the same sections read with section 120-B of the Indian Penal Code as well as under section 120-B of Indian Penal Code and section 135(1) of the Bombay Police Act. The trial court has acquitted him by granting benefit of doubt for the offence under section 188 of the Indian Penal Code.

SENTENCE:

The further operative part of the judgment and order whereby the trial court has sentenced the accused is as follows:

“[1] The following named and numbered accused have been held guilty by this Court on 29/08/2012 for commission of

different offences.

<i>Accused No.</i>	<i>Name of Accused</i>
<i>A-1</i>	<i>Naresh Agarsinh Chhara</i>
<i>A-2</i>	<i>Morlibhai Naranbhai Sindhi @ Murli</i>
<i>A-4</i>	<i>Ganpat Chhanaji Didawala (Chhara)</i>
<i>A-5</i>	<i>Vikrambhai Maneklal Rathod (Chhara) @Tiniyo</i>
<i>A-10</i>	<i>Haresh @ Hariyo Son of Jivanlal @ Agarsin Rathod (Chhara)</i>
<i>A-18</i>	<i>Babubhai @ Babu Bajrangi Son of Rajabha Patel</i>
<i>A-20</i>	<i>Kishan Khubchand Korani</i>
<i>A-21</i>	<i>Prakash Sureshbhai Rathod (Chhara)</i>
<i>A-22</i>	<i>Suresh @ Richard @ Suresh Langado Son of Kantibhai Didawala (Chhara)</i>
<i>A-25</i>	<i>Premchand @ Tiwari Conductor Son of Yagnanarayan Tiwari</i>
<i>A-26</i>	<i>Suresh @ Sehjad Dalubhai Nettlekar (Marathi Chharo)</i>
<i>A-27</i>	<i>Navab @ Kalu Bhaiyo Harisinh Rathod</i>
<i>A-28</i>	<i>Manubhai Keshabhai Maruda</i>
<i>A-30</i>	<i>Shashikant @ Tiniyo Marathi Son of Yuvraj Patil</i>
<i>A-33</i>	<i>Babubhai @ Babu Vanzara Son of Jethabhai Salat (Marvadi)</i>
<i>A-34</i>	<i>Laxmanbhai @ Lakho Son of Budhaji Thakor</i>
<i>A-37</i>	<i>Dr.Mayaben Surendrabhai Kodnani</i>
<i>A-38</i>	<i>Ashok Hundaldas Sindhi</i>
<i>A-39</i>	<i>Harshad @ Mungda Jilagovind Chhara Parmar</i>
<i>A-40</i>	<i>Mukesh @ Vakil Ratilal Rathod Son of Jaybhavani</i>
<i>A-41</i>	<i>Manojbhai @ Manoj Sindhi Son of Renumal Kukrani</i>
<i>A-42</i>	<i>Hiraji @ Hiro Marvadi @ Sonaji Son of Danaji Meghval (Marvadi)</i>
<i>A-44</i>	<i>Bipinbhai @ Bipin Autowala Son of Umedrai Panchal</i>
<i>A-45</i>	<i>Ashokbhai Uttamchand Korani (Sindhi)</i>
<i>A-46</i>	<i>Vijaykumar Takhubhai Parmar</i>
<i>A-47</i>	<i>Ramesh Keshavlal Didawala (Chhara)</i>
<i>A-52</i>	<i>Sachin Nagindas Modi</i>
<i>A-53</i>	<i>Vilas @ Viliyo Prakashbhai Sonar</i>
<i>A-55</i>	<i>Dinesh @ Tiniyo Govindbhai Barge (Marathi)</i>
<i>A-58</i>	<i>Santoshkumar Kodumal Mulchandani, known as</i>

	<i>Santosh Dudhwala</i>
<i>A-60</i>	<i>Pintu Dalpatbhai Jadeja (Chhara)</i>
<i>A-62</i>	<i>Kirpalsing Jangbahadursing Chhabda</i>

[2] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30,33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 143 read with section 149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[3] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 144 read with section 149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[4] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 147 read with section 149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[5] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 148 read with section 149 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[6] Accused No.1, 2, 5, 10, 18, 20, 21, 22, 25, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, and 62 (in all 25 accused) are convicted of the offence under section 295 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 295 read with section 120-B of I.P.C. (thus in all 26 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[7] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 427 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 427 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[8] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30,

33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 435 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 435 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[9] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 436 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 436 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) each, in default, to suffer further rigorous imprisonment for 30 days.

[10] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 440 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 440 read with section 120-B of I.P.C (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 5 (five)years, and shall also pay a fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[11] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 153 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 153 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 1 (one) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[12] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 153-A read with section 149 of I.P.C. and A-37 is convicted for the offence under section 153-A read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 3 (three) years, and shall also pay a fine of Rs.300/- (Rupees Three Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[13] Accused No.1, 2, 5, 10, 18, 20, 21, 22, 25, 27, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 55, 58, and 62 (in all 25 accused) are convicted of the offence under section 153-A(2) read with section 149 of I.P.C. and A-37 is convicted for the offence under section 153-A(2) read with section 120-B of I.P.C. (thus in all 26 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 3 (three) years, and shall also pay a fine of Rs.300/- (Rupees Three Hundred

only) each, in default, to suffer further rigorous imprisonment for 20 days.

[14] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 323 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 323 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[15] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 324 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 324 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 1 (one) year, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 15 days.

[16] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 325 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 325 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is

sentenced to suffer rigorous imprisonment for 7 (seven) years, and shall also pay a fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[17] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 326 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 326 read with section 120-B of I.P.C, (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) each, in default, to suffer further rigorous imprisonment for 30 days.

[18] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 28, 30, 40, 41, 44, 46, 52, 53, 55 and 60 (in all 20 accused) are convicted of the offence under section 188 of I.P.C. wherein, each of them is sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) each, in default, to suffer further rigorous imprisonment for 7 days.

[19] No separate sentence has been recorded for the offence committed under section 135(1) of the B.P Act and 120-B of the I.P.C.

[20] A-22 is convicted of the offence under section 354 and under section 376 of I.P.C. wherein, he is sentenced to suffer rigorous imprisonment respectively for 2 (Two) years and for

10 (ten) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) and Rs.500/- (Rupees Five Hundred only). In default he shall suffer rigorous imprisonment respectively for 2 (two) months and 6 (months).

[21] Accused No.1, 2, 4, 5, 10, 18, 20, 21, 22, 25, 27, 28, 30, 33, 34, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 30 accused) are convicted of the offence under section 307 read with section 149 of I.P.C. and A-37 is convicted for the offence under section 307 read with section 120-B of I.P.C. (thus in all 31 accused) wherein, each of them is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) each, in default, to suffer further rigorous imprisonment for 30 days.

[22] Accused No.37 is convicted of the offence under section 302 read with section 120-B of I.P.C. and is sentenced to suffer rigorous imprisonment to serve a minimum sentence of 18 (eighteen) years in jail without remissions before consideration of her case for premature release and shall also pay a fine of Rs.5000/- (Rupees Five Thousand only), in default, to suffer further rigorous imprisonment for 40 days.

[23] Accused No.1, 2, 10, 22, 25, 41 and 44 are convicted of the offence under section 302 read with section 149 of I.P.C. and are sentenced to suffer rigorous imprisonment to serve a minimum sentence of 21 (twenty one) years in jail without remissions before consideration of their case for premature release and shall also pay a fine of Rs.5000/- (Rupees Five Thousand only), in default, to suffer further rigorous

imprisonment for 40 days.

[24] Accused No.18 is convicted of the offence under section 302 read with section 149 of I.P.C. and is sentenced to suffer rigorous imprisonment for remaining period of his natural life subject to remission or commutation at the instance of the Government for sufficient reason only and shall also pay a fine of Rs.500/- (Rupees Five Hundred only), in default, to suffer further rigorous imprisonment for 15 days in case, if his case is considered for commutation or remission.

[25] Accused No.4, 5, 20, 21, 27, 28, 30, 33, 34, 38, 39, 40, 42, 45, 46, 47, 52, 53, 55, 58, 60 and 62 (in all 22 accused) are convicted of the offence under section 302 read with section 149 of the Indian Penal Code wherein, each of them is sentenced to the life imprisonment (to be meant in usual terms) and shall also pay a fine of Rs.3000/- (Rupees Three Thousand only) in default, to suffer further rigorous imprisonment for 20 days.

[26] As has been discussed and held while discussing Point for Determination No.XI at Part-7 of the Judgement since PW-205 named Zarinabanu Naimuddin Shaikh was subjected to the crime known as worst form of human right violation of the woman viz. the commission of offence of sexual violence in the light of international concern for growing menace of sexual violence against the women and since she was a victim of the offence of gang rape which gives a serious blow to her supreme honour, her self-esteem and her dignity as woman, this Court gives direction to appropriately consider the case of compensation of the PW-205 who is hereby ordered to pay

compensation of Rs.5,00,000/- for the gang rape committed on her. The commission for women in Gujarat State, the Principal Secretary of the Department of Social Welfare, Sachivalaya Gandhinagar, Gujarat State and the Board formulated for the compensation of the rape victim in the State of Gujarat shall see to it that the compensation as awarded of Rs.5,00,000/- from the Gujarat State exchequer shall be paid to PW-205 at the earliest upon due verification and proper procedure to be adopted for her identity. Yadi to all the three.

[27] All the substantive sentences, except the sentences for imprisonment for life, the applicable meaning of which has been given by this Court in this order with reference to each of the accused, shall run concurrently.

[28] The sentences of imprisonment for life and the applicable meaning of which has been given by this Court in this order with reference to each of the accused, shall run after the expiration of the concurrent sentences for imprisonment for the mentioned terms.

[29] The Sessions case No.236/09 is ordered to be kept pending in the original file of this Court till the N.B.W. Issued against A-26 stands executed. The matter qua A-26 has now been kept on 03/09/2012 for the execution of the N.B.W. and /or for production of action taken report by the investigating agency.

All the mentioned 7 cases for all the mentioned accused and the Sessions Case No.236/2009 for all the accused except for A-26, hereby stand disposed of in light of the further final

order passed herein above.

[30] All the accused shall be entitled for set off in accordance with law.

[31] As far as A-52 is concerned, he shall be entitled for set off in accordance with law for all the substantive sentences for the mentioned terms.

[32] A-52 shall be protected against the imposition of life sentence second time on him while the first sentence is in operation, hence, he shall be entitled to his statutory right under section 427(2) of the Cr.P.C.

Accused No.26, viz. Suresh @ Sehjad Dalubhai Netlekar (Marathi Chharo) has been held guilty by this Court on 29/08/2012 is sentenced as below.

[1] Accused No.26 is convicted for the offence under section 143 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 7 days.

[2] Accused No.26 is convicted for the offence under section 144 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 2 (two) years, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[3] Accused No.26 is convicted for the offence under section

147 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 2 (two) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[4] Accused No.26 is convicted for the offence under section 148 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 2 (two) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[5] Accused No.26 is convicted of the offence under section 295 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 2 (two) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[6] Accused No.26 is convicted for the offence under section 427 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 2 (two) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[7] Accused No.26 is convicted for the offence under section 435 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 2 (two) years and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[8] Accused No.26 is convicted for the offence under section 436 read with section 149 of I.P.C. wherein he is sentenced to

suffer rigorous imprisonment for 10 (ten) years and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) in default, to suffer further rigorous imprisonment for 30 days.

[9] Accused No.26 is convicted for the offence under section 440 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 5(five) years and shall also pay a fine of Rs.500/- (Rupees Five Hundred only) in default, to suffer further rigorous imprisonment for 20 days.

[10] Accused No.26 is convicted for the offence under section 153 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 1 (one) year, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 7 days.

[11] Accused No.26 is convicted for the offence under section 153A read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 3 (three) years, and shall also pay a fine of Rs.300/- (Rupees Three Hundred only) each, in default, to suffer further rigorous imprisonment for 20 days.

[12] Accused No.26 is convicted for the offence under section 153-A(2) read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 3 (three) years, and shall also pay a fine of Rs.300/- (Rupees Three Hundred only) in default, to suffer further rigorous imprisonment for 20 days.

[13] Accused No.26 is convicted for the offence under section 323 read with section 149 of I.P.C. wherein he is sentenced to

suffer rigorous imprisonment for 6 (six) months, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 7 days.

[14] Accused No.26 is convicted for the offence under section 324 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 1 (one) year, and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 15 days.

[15] Accused No.26 is convicted for the offence under section 325 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 7 (seven) years, and shall also pay a fine of Rs.500/- (Rupees Five Hundred only) in default, to suffer further rigorous imprisonment for 20 days.

[16] Accused No.26 is convicted for the offence under section 326 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) in default, to suffer further rigorous imprisonment for 30 days.

[17] Accused No.26 is convicted for the offence under section 188 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 6 (six) months and shall also pay a fine of Rs.200/- (Rupees Two Hundred only) in default, to suffer further rigorous imprisonment for 7 days.

[18] No separate sentence has been recorded for the offence committed under section 135(1) of the B.P. Act and 120-B of the I.P.C.

[19] *Accused No.26 is convicted for the offence under section 307 read with section 149 of I.P.C. wherein he is sentenced to suffer rigorous imprisonment for 10 (ten) years, and shall also pay a fine of Rs.1000/- (Rupees One Thousand only) in default, to suffer further rigorous imprisonment for 30 days.*

[20] *Accused No.26 is convicted for the offence under section 302 read with section 149 of I.P.C. and is sentenced to suffer rigorous imprisonment to serve a minimum sentence of 21 (twenty one) years in jail, without remissions, before consideration of his case for premature release and shall also pay a fine of Rs.5000/- (Rupees Five Thousand only), in default, to suffer further rigorous imprisonment for 40 days.*

[21] *All the substantive sentences, except the sentence for imprisonment for life, the applicable meaning of which has been given by this Court in this order with reference to the accused, shall run concurrently.*

[22] *The sentences of imprisonment for life and the applicable meaning of which has been given by this Court in this order with reference to the accused, shall run after the expiration of the concurrent sentences for imprisonment for the mentioned terms.*

[23] *The accused shall be entitled for set off in accordance with law."*

V APPEALS:

14. Being aggrieved by the impugned judgment and order of conviction and sentence passed by the trial court, the original accused No.1, 4, 5, 10, 21, 22, 25, 26, 27, 28, 30, 33, 34, 39, 40, 42, 46, 47, 52, 53, 55 and 60 have filed a consolidated appeal being Criminal Appeal No.1708 of 2002; the accused No.2, 20, 38, 41 and 45 have filed a consolidated appeal being Criminal Appeal No.1709 of 2012; the accused No.18 has filed an appeal being Criminal Appeal No.1710 of 2012; the accused No.62 has filed Criminal Appeal No.1740 of 2012; the accused No.58 has filed Criminal Appeal No.1862 of 2012; the accused No.2, 41, 44 and 55 have filed Criminal Appeal No.1598 of 2013; the accused No.37 has filed appeal being Criminal Appeal No.1713 of 2012.

14.1 The State of Gujarat has preferred an appeal challenging the acquittal of accused No.19, 24, 43, 56 and 61 being Criminal Appeal No.1030 of 2013; the State of Gujarat has preferred Criminal Appeal No.1598 of 2013 for enhancement of the sentence for the conviction recorded by the impugned judgment and order dated 31.8.2012 and 5.10.2012 qua accused No.2, 41, 44 and 55; the State of Gujarat has preferred Criminal Appeal No.1599 of 2013 for enhancement of sentence for the conviction recorded by the impugned judgment and order dated 31.8.2012 and 5.10.2012 qua accused No.18, 22, 25, 26, 28 and 30; the State of Gujarat has preferred Criminal Appeal No.1600 of 2013 seeking enhancement of sentence for the conviction recorded by the impugned judgment and order dated 31.8.2012 and 5.10.2012 qua accused No.1, 10, 40, 52, 53 and 60.

14.2 Against the judgment and order of acquittal, some of the original prosecution witnesses/victims have preferred an appeal being Criminal Appeal No.1812 of 2012 challenging the acquittal of in all twenty accused.

15. Since all these appeals arise out of a common judgment and order of conviction dated 31.8.2012 and sentence dated 5.10.2012 passed by the learned Special Judge, Designated Court for Speedy Trial of Riot Cases, in Sessions Case No.235/2009 with Sessions Cases No.236/2009, 241/2009, 242/2009, 243/2009, 245/2009, 246/2009 and 270/2009, the same were taken up for hearing together and are decided by this common judgment.

VI GENERAL PRINCIPLES FOR APPRECIATION OF EVIDENCE:

16. The learned counsel for the respective parties have made submissions on the general principles for appreciation of evidence and have made specific submissions regarding each individual witness wherever necessary and have made submissions point-wise in respect of different points that arise for determination for the purpose of considering the complicity or otherwise of the accused. Since the submissions have been made point-wise, reference to the submissions shall be made while discussing such points.

17. Before referring to the testimonies of the witnesses and analysing the credibility of each witness, it may be germane to first refer to the principles which are required to be

kept in mind while appreciating the evidence in the light of the decisions cited by the learned counsel for the respective parties. At the outset, it may be noted that this case arises out of one of the most brutal massacres that took place in the aftermath of the Godhra incident, commonly known as the Godhra riots. It is therefore but natural that emotions and sentiments run high and the victims are clamouring for justice and the public at large has its own perception of the matter. Therefore, before we venture to discuss the merits of the case, we may remind ourselves about the following observations of the Supreme Court in ***State v. Mahender Singh Dahiya***, (2011) 3 SCC 109, which has been cited by Mr. N. D. Nanavati and Mr. Y.S. Lakhani, senior advocates, learned counsel for the concerned appellants/accused:

“24. We have examined the submissions made by the learned counsel for the parties, particularly keeping in view the gruesome nature of the crime and the complexities presented in the investigation, as also at the trial of this particular case. Undoubtedly, this case demonstrates the actions of a depraved soul. The manner in which the crime has been committed in this case, demonstrates the depths to which the human spirit/soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the court has to be on its guard and to ensure that the conclusions reached by it are not influenced by emotion, but are based on the evidence produced in the court. Suspicion no matter how strong cannot, and should not be permitted to take the place of proof. Therefore, in such cases, the courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in court.” [Emphasis supplied]

17.1 Another decision cited by the learned counsel is also worth referring to at this stage, viz. the decision of the Supreme Court in ***Dilavar Hussain v. State of Gujarat***, (1991) 1 SCC 253, the relevant portion whereof is extracted herein below:

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (sic). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of.

17.2 Yet another decision which needs to be kept in mind is the decision of the Supreme Court in ***Ashish Batham v. State of M.P.***, (2002) 7 SCC 317, wherein the court observed

thus:

“On a careful reading of the relevant portions of the judgment of both the learned Sessions Judge as well as the Division Bench of the High Court, to which our attention has been invited by the learned counsel appearing on either side, we are constrained to place on record that both the courts below have committed the same serious error in presuming the guilt of the appellant first and try thereafter to find out one or the other reason to justify such a conclusion without an objective, independent and impartial analysis or assessment of the materials, before recording a finding on the guilt of the appellant. Contradictory standards or yardstick and lack of coherence is found writ large in the manner of consideration adopted by the courts below. In the case of evaluation of the evidence, it could be seen so patently that insignificant things have been unduly magnified and serious lapses and withholding of vital materials and relevant witnesses have been unjustifiably glossed over despite the fact that the production of those materials would have really helped to fix the guilt or otherwise of the appellant concretely and bring about the real truth about the matter. We find, on going through the materials on record and the judgments of the courts below, the case before us to be an ideal and illustrative one to justify the apprehensions often reiterated by this Court that the mind is apt to take pleasure in adopting the circumstances to one or the other circumstance without straining a little to supply even the links found wanting to render them complete. The fact that at a busy place like the one in and nearby the hospital area, thickly residential with surroundings as spoken to by the witnesses such murder of two girls could be said to have been executed without attracting the attention of anyone nearby or regular passers-by at that point of time in the area also seriously improbabilises the prosecution version that the appellant alone was and could have been the culprit. We are also of the view that the doubtful and suspect nature of the evidence sought to be relied upon to substantiate the circumstances in this case themselves suffer from serious infirmities and lack of legal credibilities to merit acceptance in the hands of courts of law, since the very circumstances sought to be relied upon themselves stood seriously undermined the existence or proof of one or more of stray circumstances in the chain, break and dislocate the link in such a manner so as to irreversibly snap the link in the

chain of circumstances rendering it difficult, inappropriate as well as impossible too, to consider even one or more of them alone to either sufficiently constitute or provide the necessary basis to legitimately presume the guilt of the appellant. We could not resist but place on record that the appellant seems to have been roped in merely on suspicion and the story of the prosecution built on the materials placed seems to be neither the truth nor wholly the truth and the findings of the courts below, though seem to be concurrent, do not deserve the merit of acceptance or approval in our hands having regard to the glaring infirmities and illegalities vitiating them and patent errors apparent on the face of the record, resulting in serious and grave miscarriage of justice to the appellant.”

18. We stress upon this decision for the reason that the same aptly describes the approach adopted by the trial court in this case. On a close reading of the impugned judgment and order, it appears that the trial court has committed the error of first presuming the guilt of certain accused and has then looked for reasons to justify the same without an objective, independent and impartial analysis or assessment of the materials, before recording a finding on the guilt of such accused. Contradictory standards or yardstick and lack of coherence is found writ large in the manner of consideration adopted by the trial court. In the case of evaluation of the evidence, it could be seen so patently that insignificant things have been unduly magnified and serious lapses and withholding of vital materials and relevant witnesses have been unjustifiably glossed over despite the fact that the production of those materials would have really helped to fix the guilt or otherwise of the accused concretely and bring about the real truth about the matter.

19. At the outset, Mr. Yogesh Lakhani, Senior Advocate,

learned counsel for the appellants (most of the convicted as well as acquitted accused) submitted that certain aspects are required to be kept in mind while appreciating the evidence in a criminal case. It was submitted that the incident in question is no doubt a very ghastly and gruesome one, which has been committed by a group of persons and the victims and their relatives have suffered a lot in terms of casualties, injuries caused to their body and mind, the damage and loss that they have suffered, and they have a right to seek justice and seek conviction of those accused whose complicity is found beyond reasonable doubt. At the same time, the court would see to it that no innocent person or an accused falsely involved and incriminated is convicted merely because a large number of witnesses either name him or attribute some role to him, maybe in their initial statement or later statement, but they are found to be not reliable and trustworthy. Therefore, the court while ensuring that justice is done to the victims and family members should also see that no innocent is convicted.

19.1 It was submitted that the prosecution is obliged to prove the case beyond reasonable doubt and it is the bounden duty of the prosecution to prove all the facts alleged to the satisfaction of the judicial conscience and to convince the court that the accused are guilty of having committed the offences with which they are charged.

19.2 The accused are not expected to prove their defence even if specifically set up, and failure on the part of the accused to prove the defence would in no way strengthen the prosecution case. The burden on the accused to prove

their defence is not as heavy as the burden that lies on the prosecution to prove the case and the accused are required to show to the court that the defence they have set up is possible and or plausible.

19.3 While appreciating the evidence of the witnesses, the court will of course ignore and not give much importance to the minor, negligible and natural contradictions and omissions, etc., which may have intervened because of the passage of time or because of the fact that the witnesses are rustic and they lack photographic memory. However, if the contradictions, omissions, improvements and embellishments are found to be apparent in nature, major and substantial which definitely affect seriously, the core substratum of the prosecution case, the court will not hesitate to reject the entire testimony of the witness by placing it out of consideration.

19.4 Quality and not quantity of the evidence is required to prove the complicity of the accused in the crime alleged and for that the evidence of the witness has to be of sterling quality, to the satisfaction of the court and the testimony of an unreliable witness cannot be used to corroborate the testimony of another witness who is identically situated.

19.5 When there are a large number of accused as well as a large number of witnesses, the court will evaluate the evidence very carefully and with great caution to rule out all or any possibility of either false or over implication of the accused, and in such a case, would adopt the theory of more than one, two, three or four witnesses as laid down by the

Supreme Court.

19.6 If the court finds any reasonable doubt in the prosecution case which is not fanciful, the benefit of doubt must go to the accused.

20. As regards the principles that are required to be kept in mind while appreciating the evidence, a brief reference may be made to the decisions cited by the learned counsel for the respective parties.

20.1 Mr. Y.S. Lakhani and Mr. B.B. Naik, Senior Advocates, learned counsel for the appellants placed reliance upon the decision of the Supreme Court in **C. Magesh v. State of Karnataka**, (2010) 5 SCC 645, for the proposition that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Consistency is the keyword for upholding the conviction of an accused. The court referred to its earlier in the case titled *Suraj Singh v. State of U.P. (2008) 16 SC 686* wherein it was held thus:

"14. '21. ... The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; ... the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.' "

The court held that in a criminal trial, evidence of the eyewitness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no

man is guilty until proven so”, hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. Criminal jurisprudence entails that a thorough appreciation of records needs to be done in order to do complete justice.

20.2 Reference was made to the decision of the Supreme Court in **A. Shankar v. State of Karnataka**, (2011) 6 SCC 279, for the proposition that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. “Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a

crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. *“Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.”* The omissions which amount to contradictions in material particulars, that is, materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. [Emphasis supplied.]

20.3 Reliance was also placed upon the decision of the Supreme Court in ***Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra***, (2010) 13 SCC 657, wherein it has been held thus:

“30. *While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan, (2008) 17 SCC 587.)*

31. *Where the omission(s) amount to a contradiction,*

creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106.)

32. *The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. (Vide Mahendra Pratap Singh v. State of U.P. (2009) 11 SCC 334)*

33. *In case, the complainant in the FIR or the witness in his statement under Section 161 CrPC, has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. (Vide State v. Sait, (2008) 15 SCC 440.)*

34. *In State of Rajasthan v. Kalki, (1981) 2 SCC 752, while dealing with this issue, this Court observed as under:*

“8. ... In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.”

35. *The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (See Syed Ibrahim v. State of A.P. (2006) 10 SCC 601 and Arumugam v. State, (2008) 15 SCC 590.)*

36. *In Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186 this Court examined the issue and held:*

“9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.”

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

20.4 Strong reliance was placed upon the decision of the Supreme Court in **Narender Kumar v. State (NCT of Delhi)**, (2012) 7 SCC 171 179, for the proposition that even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. *However* great the suspicion against the accused and *however* strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide *Tukaram v. State of*

Maharashtra, (1979) 2 SCC 143 and Uday v. State of Karnataka, (2003) 4 SC 46.) The court further held that the prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

20.5 Reliance was also placed upon the decision of the Jharkhand High Court in the case of ***Chadra Munda v. The State of Jharkhand***, 2004 Cri.L.J. 3369, wherein the court has held that as the order of conviction was based only on the assumption that due to the lapse of time, there was contradiction in the evidence of the interested witnesses, it could not be sustained. It was submitted that this decision would be squarely applicable to the facts of the present case.

20.6 For the proposition as to when can a witness be said to be a sterling witness, reliance was placed upon the decision of the Supreme Court in ***Rai Sandeep v. State (NCT of Delhi)***, (2012) 8 SCC 21, wherein the court held thus:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a

position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

20.7 Reference was made to the decision of the Supreme Court in **Ashish Batham v. State of M.P.** (supra), wherein it has been held thus:

“8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between “may be true” and “must be true” and this basic and golden rule only helps to maintain the vital distinction between “conjectures” and “sure conclusions” to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”

“15. The learned counsel for the respondent strenuously contended that though, each of the above circumstances, may not by themselves point towards the guilt of the appellant, but taken together, lead to the only inevitable and inescapable conclusion that it is the appellant who committed the murder of the two daughters of PW 2 cannot, at any rate, be doubted. We have carefully considered this aspect of the matter also, despite the doubtful nature of the very circumstances themselves to be really facts established, but could not be persuaded to either agree with the learned counsel for the respondent or approve the findings of the courts below. On a careful reading of the relevant portions of the judgment of both the learned Sessions Judge as well as the Division Bench of the High Court, to which our attention has been invited by the learned counsel appearing on either side, we are constrained to place on record that both the courts below have committed the same serious error in presuming the guilt of the appellant first and try thereafter to find out one or the other reason

to justify such a conclusion without an objective, independent and impartial analysis or assessment of the materials, before recording a finding on the guilt of the appellant. Contradictory standards or yardstick and lack of coherence is found writ large in the manner of consideration adopted by the courts below. In the case of evaluation of the evidence, it could be seen so patently that insignificant things have been unduly magnified and serious lapses and withholding of vital materials and relevant witnesses have been unjustifiably glossed over despite the fact that the production of those materials would have really helped to fix the guilt or otherwise of the appellant concretely and bring about the real truth about the matter. We find, on going through the materials on record and the judgments of the courts below, the case before us to be an ideal and illustrative one to justify the apprehensions often reiterated by this Court that the mind is apt to take pleasure in adopting the circumstances to one or the other circumstance without straining a little to supply even the links found wanting to render them complete. The fact that at a busy place like the one in and nearby the hospital area, thickly residential with surroundings as spoken to by the witnesses such murder of two girls could be said to have been executed without attracting the attention of anyone nearby or regular passers-by at that point of time in the area also seriously improbabilises the prosecution version that the appellant alone was and could have been the culprit. We are also of the view that the doubtful and suspect nature of the evidence sought to be relied upon to substantiate the circumstances in this case themselves suffer from serious infirmities and lack of legal credibilities to merit acceptance in the hands of courts of law, since the very circumstances sought to be relied upon themselves stood seriously undermined the existence or proof of one or more of stray circumstances in the chain, break and dislocate the link in such a manner so as to irreversibly snap the link in the chain of circumstances rendering it difficult, inappropriate as well as impossible too, to consider even one or more of them alone to either sufficiently constitute or provide the necessary basis to legitimately presume the guilt of the appellant. We could not resist but place on record that the appellant seems to have been roped in merely on suspicion and the story of the prosecution built on the materials placed seems to be neither the truth nor wholly

the truth and the findings of the courts below, though seem to be concurrent, do not deserve the merit of acceptance or approval in our hands having regard to the glaring infirmities and illegalities vitiating them and patent errors apparent on the face of the record, resulting in serious and grave miscarriage of justice to the appellant.”

21. On behalf of the prosecution, Mr. Prashant Desai, Senior Advocate, learned Special Public Prosecutor placed reliance upon the decision of the Supreme Court in **Mukesh v. State for NCT of Delhi**, AIR 2017 SC 2161, and more particularly paragraphs 72 to 74 thereof, wherein the court has reiterated the principles propounded in the above referred decisions.

21.1 Reference was made to the following observations of the Supreme Court in **Sanjeev Kumar Gupta v. State of U.P.**, (2015) 11 SCC 69:

“29. Coming to the question of inconsistency in the statement given by PW 1 in the FIR and the statement given in the court, we do not find this to be fatal to the prosecution case. We cannot rule out the possibility of post-incident trauma and shock which might have been caused to the injured eyewitness. In such a situation one cannot expect the witness to depose about every detail with accuracy. Further, this Court has held in a number of cases that the testimony of an injured eyewitness has to be given much credence. Apart from this, this Court has also laid down in Dharmendrasinh v. State of Gujarat, (2002) 4 SCC 679, that when other evidence, such as medical evidence, supports the prosecution case, the difference in what is stated in the FIR and in the court as regards the weapon of offence is a very insignificant contradiction. This Court in paragraph 10 of the above-mentioned judgment observed:

“10. ... In this connection, the other related

argument which has been raised is that in the FIR PW 3 had mentioned that the appellant had assaulted the children with an axe but later on changed her statement in the court saying that it was by mistake she had mentioned 'axe' in the FIR but in fact it was dharia. In our view it is a very insignificant contradiction which may not lead to any worthwhile conclusion in view of the fact that it was immaterial whether the weapon was an axe or a dharia as both are sharp-edged weapons and according to the statement of the doctor the injuries as received by the two children were caused by a sharp-edged weapon. There was thus no design or purpose in changing the statement or deliberately giving out something wrong in the first information report about the weapon used by the appellant to cause the injuries upon the deceased persons. The medical evidence supports the prosecution case in all respects. We therefore find no force in this submission as well."

21.2 Reliance was placed upon the decision of the Supreme Court in **State of U.P. v. Krishna Master**, (2010) 12 SCC 324, wherein the court held thus:

"15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. *If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.*

17. *In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case."*

21.3 Reliance was placed upon the decision of the Supreme Court in **Ranjit Singh v. State of M.P.**, (2011) 4 SCC 336, for the following proposition of law:

“Falsus in uno, falsus in omnibus

15. In *Balaka Singh v. State of Punjab*, (1975) 4 SCC 511, this Court observed as under:

“8. ... It is true that, as laid down by this Court in *Zwinglee Ariel v. State of M.P.* AIR 1954 SC 15 and other cases which have followed that case, the court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.”

16. In *Ugar Ahir v. State of Bihar*, AIR 1965 SC 277, this Court held as under:

“6. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.”

17. A similar view was taken in *Nathu Singh Yadav v. State of M.P.*, (2002) 10 SCC 366.

18. The maxim has been explained by this Court in *Jakki v. State*, (2007) 9 SCC 589, observing:

“8. ‘51. ... The maxim *falsus in uno, falsus in omnibus* ... has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to

is, that in such cases testimony may be disregarded, and not that it must be [discarded]. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”.’”

19. *It is well settled in law that the maxim falsus in uno, falsus in omnibus (false in one, false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the court. (Vide Kulwinder Singh v. State of Punjab, (2007) 10 SCC 455, Ganesh v. State of Karnataka, (2008) 17 SCC 152, Jayaseelan v. State of T.N. (2009) 12 SCC 275, Mani v. State, (2009) 12 SCC 288 and Balraje v. State of Maharashtra, (2010) 6 SCC 673.)*

20. *This position of law has been reiterated by this Court in Prem Singh v. State of Haryana, (2009) 14 SCC 494, wherein the Court clearly held as under:*

“14. It is now a well-settled principle of law that the doctrine ‘falsus in uno, falsus in omnibus’ has no application in India.”

21. *In view of the above, the law can be summarised to the effect that the aforesaid legal maxim is not applicable in India and the court has to assess as to what extent the deposition of a witness can be relied upon. The court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded.”*

21.4 Reference was made to the decision of the Supreme Court in **Rameshbhai Mohanbhai Koli v. State of Gujarat**, 2011 (1) GLR 860, wherein it has been observed thus:

“10 *In C. Muniappan & Ors. vs. State of Tamil Nadu, JT 2010 (9) SC 95, this Court, after considering all the earlier decisions on this point, summarized the law applicable to the case of hostile witnesses as under:*

“70.1 The evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or

the defence.

70.2 In the instant case, some of the material witnesses i.e. B. Kamal (PW.86); and R. Maruthu (PW.51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law.

70.3 Some omissions, improvements in the evidence of the PWs have been pointed out by the learned Counsel for the appellants, but we find them to be very trivial in nature.

*71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide *Sohrab and Anr. V/s. The State of M.P.*, AIR 1972 SC 2020; *State of U.P. v. M.K. Anthony*, AIR 1985 SC 48; *Bharwada Bhogini Bhai Hirji Bhai V/s. State of Gujarat*, AIR 1983 SC 753; *State of Rajasthan V/s. Om Prakash*, AIR 2007 SC 2257; *Prithu @ Prithi Chand and Anr. V/s. State of Himachal Pradesh*, (2009) 11 SCC 588; *State of U.P. V/s. Santosh Kumar and Ors.*, (2009) 9 SCC 626 and *State V/s. Saravanan and Anr*, AIR 2009 SC 151)" [Emphasis supplied.]*

21.5 Strong reliance was placed upon the decision of the Supreme Court in ***Leela Ram v. State of Haryana***, (1999) 9 SCC 525, wherein it was held thus:

“9. *Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular*

account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony, (1985) 1 SCC 505. In para 10 of the Report, this Court observed:

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ

with individuals.”

10. *In a very recent decision in Rammi v. State M.P. with Bhura v. State of M.P., (1999) 8 SCC 649, this Court observed:*

“24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

This Court further observed:

“25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

‘155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

(1)-(2)

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;’

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be ‘contradicted’ would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness,

but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. AIR 1959 SC 1012)."

11. *The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.*

12. *It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.*

13. *In this context, reference may be made to the decision of this Court in the case of Appabhai v. State of Gujarat, 1988 Supp SCC 241, wherein this Court in para 11 of the Report observed:*

"Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim

and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror-stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.”

In para 13 of the Report this Court further observed:

“The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

21.6 Several other decisions of the Supreme Court and High Courts have also been cited, wherein similar principles of

law have been reiterated. With a view to avoid prolix and needless repetition, the same are not referred to herein. Suffice it to say that the principles enunciated in those decisions stand covered by the above decisions.

22. From the decisions cited by the learned counsel for the respective parties, the following principles which are required to be kept in mind while appreciating the evidence on record can be culled out:

- In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.
- The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version,

when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. *“Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.”* The omissions which amount to contradictions in material particulars, that is, materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited.

- Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

- While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course

would not be justified in reviewing the same again without justifiable reasons.

- The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt.
- In case, the complainant in the FIR or the witness in his statement under section 161 of the Code, has not disclosed certain facts but meets the prosecution case for the first time before the court, such version lacks credence and is liable to be discarded.
- In the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

- Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.
- Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars, that is, go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited.
- Even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. *However* great the suspicion against the accused and *however* strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The

accused is entitled to the benefit of every reasonable doubt.

- The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.
- The "sterling witness" should be of a very high quality and calibre, whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a

position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

- While appreciating the evidence of a witness, the approach must be whether the evidence of the witness

read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

- If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details.
- Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding

by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

- In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out.
- The court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the

chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

- The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.
- The evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.
- It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an

undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

- The High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason thereof should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.
- While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and

evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.

- When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the

court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

- It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be 'contradicted' would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.

- To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness.
- The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.
- One hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

- Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror-stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.

- The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors

due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

VII APPLICATIONS TO THE SIT:

23. In this case, after the constitution of the SIT, in terms of the directions issued by the Supreme Court, it appears that the SIT had issued a public notice calling upon persons who wanted their statements to be recorded to make applications to it. Pursuant thereto several witnesses has made applications. Such witnesses have been cross-examined by the defence as regards the contents of such applications and as to who had written down the same, etc. In most cases the witnesses have pleaded ignorance about the person who wrote down the application. Insofar as the contents of the applications are concerned, they are almost identical in certain respects and contain two statements which are common in most applications.

24. Mr. Y. S. Lakhani, learned counsel for the appellants

submitted that after the SIT came to be constituted, pursuant to a public notice issued by it, various witnesses had made applications to the SIT. If all such applications are read together, the following glaring facts can be noticed:

(i) The tenor of all the applications is almost identical; be it that the witness has come back to his original place of residence; has changed the place of residence; is staying somewhere in Ahmedabad; staying outside Ahmedabad; or staying outside Gujarat.

(ii) Two allegations are common in majority of the applications. Firstly, that the witness is being threatened by the accused on the way; and secondly, that two police officers, namely, Mr. Mysorewala and Mr. Chudasama should not be entrusted with any part of the investigation as earlier, they did not investigate properly. It was submitted that when the witnesses are confronted with the aforesaid facts stated in the applications, most of them have stated that they had not received any threats from the accused and/or that they had not made such allegations in such applications and/or they pleaded ignorance about such contents in the applications.

24.1 It was pointed out that a few of the witnesses like PW-149 Faridabibi Abdulkadar Khalifa, PW-150 Ishaqkhan Sardarkhan Pathan and PW-157 Mahammadshafi Allabax Mansuri, in their statements to the SIT being Exhibits-1034, 1045 and 1112 respectively, have made allegations that their statements have not been recorded by local police as stated by them and, therefore, they had requested for recording of their statements by the SIT. However, when they were

confronted with such allegations, they have stated that they had come to know about the contents of their statements recorded by the police for the first time at the time when such applications were read over to them prior to recording of their statements by the SIT. It was submitted that this clearly means that the witnesses had no knowledge or occasion or any intention to make such grievance at the time of making applications before the SIT much prior to the recording of their statements by the SIT.

24.2 It was urged that this clearly shows that such serious allegations which find place in the SIT application regarding the police not having recorded their statements correctly, are in fact, the brainchild of someone other than the witnesses themselves, and then taking shelter behind such allegations, the witnesses were tutored to say so before the court to justify their SIT statements with improved stories/facts and involvement of more/other accused, which again were given before the SIT only at the instance of such persons.

24.3 It was submitted that thus the investigation by the SIT pursuant to the directions of the apex court does not disclose the real facts and chain of events but such alleged revelation of additional facts and implication of more persons, is the result of definite purposeful intentional and ill-motivated action/intervention of such NGOs/community leaders/community lawyers, etc. and strong tutoring by them.

25. FINDINGS: In the backdrop of the above submissions, reference may be made to the applications Exhibit 1034, 1045 and 1112, to which reference has been

made by the learned counsel for the appellants. The application Exhibit 1034 has been made by PW 149 Khalifa Faridaben Abdul Kadar. In the application it has been stated that communal riots had taken place at Naroda Patiya in 2002 wherein first information report and statement has been registered with the Crime Branch, Ahmedabad by name; however, they had written her statement against her will and the same does not contain facts stated by her, and hence, consent be granted to record a statement with correct facts. Such application is dated 5.5.2008. The witness has deposed in her examination-in-chief that she had made an application to the SIT, in connection with which she had received a summons and her statement came to be recorded. In her cross-examination she has stated that she had got the application written by someone from Ektanagar, whose name she had not asked. She has stated that the youth was writing down the application as stated by her.

25.1 The application Exhibit 1045 has been addressed to the SIT and is signed by one Ishaq Khan (PW 150). This witness, in his examination-in-chief has stated that he had made an application to the SIT pursuant to which his statement was recorded. In his cross-examination, it has been elicited that the application was written by his neighbour Jafferbhai. This witness is also a resident of Ektanagar. This application is identically worded to the application Exhibit 1034 and is dated 5.5.2008.

25.2 The undated application Exhibit 1112 made by PW 157 Mahammadsafi Allabux Mansuri is slightly differently worded and it is stated therein that in 2002, after the Godhra

incident, communal riots had erupted in Gujarat and communal elements had formed a mob and had set his house at the address stated above ablaze and looted it, in connection with which he had given a complaint to the Crime Branch; however, due to mental tension he had given an incomplete complaint, which he desires to give in terms of the order of the Supreme Court and has requested that he be intimated the place and the time for doing so. The witness, in his examination-in-chief has stated that he had made an application to the SIT pursuant to which his statement came to be recorded. Upon being shown the handwritten application Mark-644/36, the witness has identified his signature thereon. Upon the contents of the application being read over to him, he has stated that all the facts recorded therein have not been stated by him. He, however, has voluntarily stated that the main object of the application was to ensure that the SIT records his statement. He has stated that as far as he recollects, he had got the application written by a youth who had come to his shop, wherein he may have written down facts on his own. The application is thereafter exhibited as Exhibit 1112.

25.3 Reference may also be made to the application Exhibit 1016 made by PW 147 Reshmabanu Nadeembhai Saiyed. This application does not bear any date. It has been stated therein that in the communal riots that took place on 28.2.2002 their relatives and other Muslim persons were killed and set ablaze and their corpses were surreptitiously disposed of. Moreover, in their Naroda area, houses, shops and cabins of Muslims were damaged, looted and set ablaze. In connection with the said incident a first information report has been

registered vide Naroda Police Station I C.R. No.100/2002. The applicant is an eyewitness to the incident and the applicant is required to remain present before the SIT for recording her statement once again, in terms of the order of the Supreme Court. However, the accused in this case are threatening the applicant while going on the road and the applicant fears that her life is in danger. It is further stated therein that the SIT should do the needful to ensure that the applicant can give her statement before the SIT impartially, without any inhibitions, fear or apprehension, by giving protection to the applicant so that at the time when the applicant comes before the SIT, the accused and their accomplices do not threaten her or attack her. It is also stated therein that at the relevant time the investigation into the incident had been carried out by Shri K.K. Mysorewala and Shri S.S. Chudasama and their role in such investigation is suspect. If those police officers are involved in the re-investigation of the offence, immense harm would be caused to their case and they would suffer.

25.4 This witness in her examination-in-chief has stated that her statement was recorded by the SIT. She, however, has not stated that she had made an application to the SIT for this purpose. In her cross-examination the witness is shown an application Mark 644/31 which is an application made to the SIT. The witness has admitted her signature thereon. In her cross-examination it has been elicited that she has never gone to the Naroda Police Station and she does not know any Mysorewala or S.S. Chudasama. Till the time she went to give her statement before the SIT, she had not received any threat and no accused had threatened her. The witness has stated that the person who had written the application had read it

over to her. The witness has stated that when the application was read over to her she had not felt that certain facts stated therein were correct and some were not true. The witness was not aware as to who had written the application. The application Mark 644/31 is given Exhibit-1016. The witness has admitted that she did not know that at the relevant time Shri K.K. Mysorewala and Shri S. S. Chudasama were investigating this offence. The contents of paragraph 5 of the application are read over to the witness and she has stated that she has not stated such facts.

25.5 From the evidence of this witness, it is clear that the application made by her to the SIT contained facts which were not within her knowledge and were not stated by her.

25.6 Having regard to the contents of the applications and the testimonies of the witnesses in this regard, it emerges that the applications stated to have been made by the witnesses contain facts that were not actually stated by them. Moreover, while in the applications made by the witnesses they have stated that the police have not recorded their statements correctly and that they are dissatisfied with the investigation, etc.; however, in their cross examination, the witnesses have admitted that their police statements were not read over to them and that they came to know that their statements were not recorded correctly only when their statements were read over to them by the SIT. On behalf of the defence it has been emphatically argued that if the witnesses were not aware that the police had not recorded their statements correctly, there was no reason for them to

make applications making such allegations, which gives rise to believe they were tutored to make false statements before the SIT implicating more persons. Moreover, in their statements recorded by the SIT, it has been recorded that their statements were read over to them and that they had stated that the same were correct.

25.7 In the opinion of this court, insofar as the common statement contained in the statements of all the witnesses recorded by the SIT to the effect that the witness' police statement was read over to him/her and that the contents thereof were correct is concerned, it is a formal paragraph added by the Investigating Officer SIT on his own, without the witness having stated so. Insofar as being unaware of the fact that the statements were not recorded by the police as stated by them is concerned, it appears that the witnesses may not be aware of what was recorded by the police at the relevant time as such statements may not have been read over to them. Thereafter, since the cases were pending for long, the witnesses may have thought that justice may not be done and with all the general talk about investigation not being carried out properly, the witnesses may have carried the impression that the investigation has not been carried out properly without any factual basis. Upon constitution of the SIT, it appears that notices were published in the daily newspapers calling for applications from those who wanted to say anything regarding the incident to the SIT. It appears that at this stage some well-meaning persons may have persuaded the witnesses to make such applications stating that if they want justice they would have to approach the SIT, and may have

accordingly drafted the applications for the witnesses, stating on their own facts like the previous statement not having been recorded correctly, the witnesses having been threatened, etc.

25.8 It appears to the court that the applications made to the SIT were more in the quest of justice than for ventilating any grievance against the previous investigation. Merely because the witnesses had been assisted by some interested parties in making the applications, there is no reason to believe that the witnesses were tutored and not stating correct facts before the court. The evidence of each witness has to be appreciated independently, and if in a given case a witness appears to be tutored, the evidence of such witness would be evaluated accordingly. However, merely because the applications were drafted in a manner not stated by the witnesses is no reason to believe that they were tutored.

VIII PRINTED COMPLAINTS:

26. In this case, several printed complaints wherein certain facts were printed and certain details were handwritten, form part of the investigation record. Many such complaints bear the names of several persons as accused and in some cases no names or a few names have been given. Such complaints have been given in the names of witnesses and are mostly accompanied by loss and damage analysis statements. Basically, therefore, these printed complaints were for the purpose of getting compensation for the loss/damage sustained by such person.

26.1 The learned counsel for the appellants submitted that before the affidavits came to be made in November 2003, printed complaints came to be submitted by many victims. It was submitted that within a few days of the incident took place on 28.2.2002, after the victims were brought to the relief camps, printed complaints with extremely serious allegations of general nature with blanks kept for mentioning optional facts and also the names of accused, have surfaced in bulk. Many such printed complaints were signed by witnesses or their thumb impressions were taken thereon, most of whom have pleaded ignorance about the printed contents in such complaints and have denied having dictated such facts to be incorporated in it. Significantly, the witnesses and even the investigating officers of the initial investigation did say before the court that the leaders of the community/lawyers, etc. were found in relief camps helping victims. However, neither the local police nor the SIT in further investigation, has tried to bring on record as to how such printed complaints came into existence, at whose instance they were printed, who brought them to the relief camp, where were they printed and who drafted the contents thereof. It was urged that no investigation was carried out by the SIT in connection with such printed complaints and the allegations made therein, the allegations made in the applications to SIT, as well as there was no recording of statements of the author and printer of such printed complaints. This clearly means that there were persons who were interested in making such allegations without the knowledge of the victim or without the victims, in fact, disclosing such facts. Thus, it has to be taken as one of the strong circumstances to infer that right from the beginning NGOs/individuals have come into picture behind the curtain to

create/mould/modulate stories and at the end, accordingly, tutor the witnesses and thereby to implicate selected accused on them being targeted for extraneous reasons/purposes.

26.2 FINDINGS: Insofar as the printed complaints are concerned, except that the same form part of the investigation record, no further investigation has been carried out in that regard. There is no investigation as regards who got such complaints printed, who filled in such complaints inasmuch as many of the witnesses have denied having filed any such complaint. The complaints appear to have been directly submitted to the Commissioner of Police, but it is not known as to who submitted them to the Commissioner of Police. It has come on record that such printed complaints were accompanied by loss/damage analysis forms. It appears that on the basis of such printed complaints, some first information reports came to be registered and subsequently such FIRs came to be merged with the main FIR being Naroda Police Station I C.R. No.100/02. A perusal of the contents of some of the first information reports which are exhibited as Exhibits 293, 294, 295, 296, 297, 298, etc. reveals that the allegations made therein relate mostly to the loss/damage sustained by the informant. Therefore, it appears that the purpose of these printed complaints was to claim compensation for the loss/damage sustained by the victims. In the opinion of this court, insofar as such printed complaints are concerned, they are merely pieces of paper and have no evidentiary value as the makers of such complaints are not known. Merely because a complaint has been addressed in the name of a particular witness, it does not become his complaint inasmuch as the police have not verified as to who has made such complaint.

Since the printed complaints have not been proved in accordance with law, the same cannot be looked into and read into evidence nor can they be used to contradict a witness unless he admits the contents thereof.

IX DYING DECLARATIONS:

27. Before evaluating the evidence of the witnesses, it may be noted that in this case after the injured witnesses were taken to the hospital, their dying declarations came to be recorded, and during the course of their cross-examination, they have been confronted with the contents of their dying declarations. Therefore, it is essential at the outset to examine the veracity of such dying declarations and as to whether they can be considered to be previous statements for the purpose of contradicting the concerned witnesses.

27.1 In this case, in all, dying declarations of fifteen witnesses have been recorded at the Civil Hospital or the Vadilal Sarabhai Hospital, as the case may be. PW-130 Smt. Urvashi Silvant Gohel has been examined at exhibit 83. In her examination-in-chief, the witness has, inter alia, proved the dying declaration of Sufiyabanu Abdul Majid which has been exhibited as exhibit No.836 as well as the dying declaration of Sarmuddin Khalid Noormohammed Shaikh, which has been exhibited as exhibit 837. In the cross-examination of the witness, at the instance of the learned advocates for the defence, ten other dying declarations have been brought on record and have been exhibited as exhibits 838 to 847. A perusal of the dying declarations recorded by this witness indicates that the dying

declaration of Sufiyabanu Abdul Majid Shaikh (exhibit 836) has been recorded on 3.3.2002 from 15:50 to 16:05 hours. The place shown is Civil Hospital, Ward No.E/7, Bed No.15. The dying declaration of Sarmuddin Khalid Noormohammed Shaikh, exhibit 837 has been recorded on 3.3.2002 between 16:05 to 16:20 hours. The place shown is Civil Hospital, Ward No.E/7, Bed No.19. The dying declaration of Shahjahan Kabir Ahmed Shaikh has been recorded on 3.3.2002 from 13:20 to 13:35 hours at the Civil Hospital, Ward No.E/7, Bed No.23. The dying declaration of Shabbir Ahmed Munir Ahmed Shaikh, exhibit 839 has been recorded on 3.3.2002 from 13:40 to 14:00 hours at the Civil Hospital, Ward No.E/7, Bed No.2. The dying declaration of Farzanabanu Ayubkhan Pathan (PW-106) has been recorded on 3.3.2002 from 14:05 to 14:25 hours at the Civil Hospital, Ward No.E/7, Bed No.7. The dying declaration of Naimuddin Ibrahimhai Shaikh has been recorded on 3.3.2002 from 14:30 to 14:55 hours at the Civil Hospital, Ward No.E/7, Bed No.5. The dying declaration of Mohammadmahu Abdulrauf Pathan (PW-191), exhibit 842 has been recorded on 3.3.2002 from 15:00 to 15:20 hours at the Civil Hospital, Ward No.E/7, Bed No.22. The dying declaration of Sabera Abdul Aziz Shaikh (exhibit 843) has been recorded on 3.3.2002 from 15:25 to 15:45 hours at the Civil Hospital, Ward No.E/7, Bed No.16. The dying declaration of Usman Vali Mansuri (exhibit 844) has been recorded on 3.3.2002 from 16:20 to 16:35 hours at the Civil Hospital, Ward No.E/7, Bed No.18. The dying declaration of Yasin Usman Mansuri (exhibit 845) has been recorded on 3.3.2002 from 16:50 to 17:05 hours at the Civil Hospital, Ward No.E/7, Bed No.4. The dying declaration of Sufiyabanu Inayatalli Saiyed (exhibit 846) has been recorded on 3.3.2002 from 16:35 to 16:50 hours at the Civil Hospital, Ward No.E/7, Bed

No.17 (12). The dying declaration of Afsana Rahman Saiyed (exhibit 847) has been recorded on 3.3.2002 from 17:05 to 17:20 hours at the Civil Hospital, Ward No.E/7, Bed No.17. Thus, on the same day, viz. 3.3.2002, PW-130 Urvashi Silvant Gohel has recorded statements of twelve victims from 13:20 to 17:20 hours. From the timings of the dying declarations, it appears that the Executive Magistrate has recorded the statements of each victim within fifteen-twenty minutes. A close look at the timings reveals that the time at which recording of the dying declaration of one victim ends, immediately the recording of the statement of another victim starts. There is no gap between the recording of the dying declarations of any two victims. A perusal of the dying declarations reveals that there is no endorsement of any medical officer to the effect that the witness is conscious and is in a position to give his/her dying declaration. Every dying declaration contains an endorsement of the Executive Magistrate that at the time of recording the dying declaration, the patient is totally conscious and is mentally competent to answer the questions and that at the time of recording of the dying declaration no relative or police staff was present which has been ascertained. Each dying declaration contains a questionnaire of eleven handwritten questions. Considering the manner in which the dying declarations have been recorded, it is evident that the Executive Magistrate was not serious in recording proper dying declarations and had hurried from one bed to the other and has recorded dying declarations of the victims without obtaining any endorsement of the concerned medical officer regarding the patient being conscious and in a fit mental position to given his/her dying declaration. Within a span of approximately fifteen minutes in case of each of the

victims, eleven questions and answers as well as the endorsement below each dying declaration, have been recorded by the Executive Magistrate. Therefore, it appears that the dying declarations have not been recorded properly and the entire exercise has been carried out perfunctorily. Many of the victims, whose dying declarations have been recorded, have passed away subsequently. Considering the nature of the injuries sustained by them, it was incumbent upon the Executive Magistrate to patiently record the statements of such victims. However, the haste with which the statements have been recorded indicates that the same have not been recorded properly and no credence can be attached to the statements recorded in this manner.

27.2 PW-131 Prajapati Vishnubhai Dhanjibhai has been examined at exhibit 849. This witness has recorded the statements of Mehboobhai Khurshidbhai Ahmed Shaikh (exhibit 853) on 4.3.2002 from 15:55 to 16:20 hours at Vadilal Sarabhai Hospital. He has also recorded the statements of Sakinabanu Farooq Ahmed Bhati (exhibit 854) on 4.3.2002 from 15:20 to 15:40 hours at the V.S. Hospital. A perusal of the dying declarations recorded by this witness indicates that there was a questionnaire of thirteen questions. The dying declaration does not bear any endorsement of any medical officer stating that the patient is conscious and in a fit state of mind to get his statement recorded. Once again, the manner in which the dying declarations are recorded does not inspire confidence and appears to be a mere formality carried out by the concerned Executive Magistrate. No credence can therefore, be attached to such dying declarations, which have been recorded in this manner. One more dying declaration

came to be recorded by one Mr. K.P. Shah (exhibit 1066), however, the said witness has not been examined to prove the dying declaration.

27.3 Considering the manner in which the dying declarations have been recorded, in the opinion of this court, no credence can be attached to them and they cannot be treated as previous statements of the witnesses, so as to bring out omissions and contradictions in the testimony of the witnesses.

X. DELAY IN RECORDING STATEMENTS OF WITNESSES:

28. In this case, initially, almost immediately viz. within a week or ten days after the incident, statements of some of the witnesses, mostly injured witnesses, were recorded at the Civil Hospital or the V.S. Hospital as the case may be. Thereafter statements of witnesses were recorded in the months of April, May, 2002 and thereafter, and lastly by the SIT in the year 2008. Thus, the case involves delay in recording statements at two stages. The first stage involves a delay of a few months in recording statements at the time of the initial investigation by the local police; and the second stage involves a delay of six years, when the statements of witnesses came to be recorded by the SIT. The question that arises for consideration is whether such delay would affect the credibility of such witnesses.

28.1 Mr. Y. S. Lakhani, learned counsel for the appellants

submitted that most of the statements of witnesses have been recorded after more than two months while the witnesses were in relief camps. There is no evidence that at the relief camps, the witnesses were feeling unsafe and/or they were in any traumatic condition and on the contrary, the evidence on record is otherwise. It was submitted that even if for the sake of argument, it is assumed that until the statements of witnesses came to be recorded by the local police/crime branch, the witnesses were in a traumatic condition, which might have made the witnesses miss out mentioning some important facts or names of some accused, there is also no evidence on record that such traumatic condition of all such witnesses continued for a long period of six and a half years until the SIT started investigation in the year 2008. It was submitted that the witnesses themselves do not claim either in their SIT statements or in their testimonies before the court that they could not give full details of the incident and/or the accused before the police because of their traumatic mental state. It was argued that as to whether the witnesses were in a traumatic mental condition is "a fact". A fact in issue as defined under section 3 of the Evidence Act needs to be proved like any other fact. It was submitted that such "facts in issue" can never be subject matter of presumption and/or inference under section 114 of the Evidence Act. It was contended that none of the witnesses has ever made any grievance before the trial court that even the SIT did not record their statements in this regard as per the version given by them where they wanted to state about their traumatic mental condition for not giving the complete facts before the police at the initial stage. It was pointed out that as against this, the Investigating Officers and the assignee officers have

categorically admitted before the court on oath, that they had written down everything which the witnesses had stated and that they have not written down something on their own, which is not stated by the witness. It was submitted that thus these being very vital and relevant facts need to be proved by the prosecution by leading cogent and convincing evidence and if not so proved, omission of important facts and names of accused cannot be brushed aside on this ground, as is fancifully projected by the learned Public Prosecutor on his own without any evidence on record.

28.2 On behalf of the prosecution, Mr. Prashant Desai, learned Special Public Prosecutor submitted that all statements of witnesses from 2002 to 2008 have to be seen and if the facts and names of the accused are not there in the 2002 statements but find place in the 2008 statements, such facts and names of the accused have to be considered as reliable piece of evidence for two reasons, (i) that the 2008 statements are made before the SIT in pursuance to the order of the apex court and (ii) the examination-in-chief of the witnesses is based on such statements recorded in 2008. As regards the contradictions as to the previous statements of the witnesses, it has been submitted on behalf of the prosecution and the victims, that the statements of the witnesses are required to be considered as a whole and that a contradiction or omission can be deemed to be proved only after considering the subsequent statement recorded by the SIT. In other words, it has been submitted that only if such contradiction or omission is also in respect of the statement recorded by the SIT, can such contradiction or omission be said to be proved. According to the learned counsel, since investigation has been carried

out by the SIT pursuant to further investigation directed by the Supreme Court, the statements recorded by the SIT are required to be given due weightage accordingly. It was submitted that since the SIT has recorded statements only during the course of further investigation, the delay in recording such statements cannot be given undue importance and such delay is required to be ignored.

28.3 In rejoinder, Mr. Lakhani submitted that the delay in disclosing the facts by the witnesses is one of the most relevant facts, which needs to be explained by cogent evidence. If important, material, vital and relevant facts about the incident or accused are coming on record, firstly after more than two months or so and subsequently, after a period of more than six and a half years, there has to come on record some reason/explanation, more so, a cogent/convincing, logical and acceptable reason/explanation, which is completely lacking in the present case. It was urged that such unreasonable delay in disclosing facts or names of the accused ultimately does affect the very credibility of a witness and thus, adversely affects the quality of evidence of such witness. The very requirement of a witness being of sterling quality is lost, the moment the consistency is lost.

28.4 Before adverting to the merits of the rival submissions, reference may be made to the following decisions of the Supreme Court concerning delay in recording statements of witnesses.

1. ***Kehar Singh v. State (Delhi Admn.)***, (1988) 3 SCC 609:

“71. *It could not be doubted that the two versions given out by this witness are not such which could easily be reconciled. In fact in his first version there is nothing against Balbir Singh. In his second statement he has tried to introduce things against him. This apparently is a clear improvement. It is well settled that even delay is said to be dangerous and if a person who is an important witness does not open his mouth for a long time his evidence is always looked with suspicion but here we have a witness who even after 25 days gave his first statement and said nothing against the present accused and then even waited for one more month and then he suddenly chose to come out with the allegations against this accused. In our opinion, therefore, such a witness could not be relied upon and even the High Court felt that it would not be safe to rely on the testimony of such a witness alone.*

78. *The finding of guilt recorded by the High Court against Kehar Singh is a mixture of both relevant and irrelevant evidence adduced by the prosecution. We will consider only those that are most important and relevant. Material evidence against Kehar Singh is the evidence of PW 65, Bimla Khalsa wife of Beant Singh. She was examined by the police on 16-1-1985 and 19-1-1985. This witness although has been declared hostile, but her statement could not be discarded in toto merely because on certain questions she had chosen not to support prosecution. It is true that her statement for the first time during investigation was recorded on 16-1-1985 but it could not be disputed that after all she is the wife of the main accused in this case. She has lost her husband on October 31. She was placed in a situation where it would have been very difficult for her to compose herself in a manner in which she could give her statement immediately. It is nobody's case that she has any grudge against anybody.*

302. *An endeavour is made to impeach Bimla Khalsa, first, on the ground that she turned hostile, and second, that she was examined belatedly. I must state that merely because she turned hostile, her evidence cannot be discarded. That is a well accepted proposition. She has no axe to grind against any person. She gains nothing by telling falsehood or incorrect things against Kehar Singh. She has revealed what she was told and what she had*

witnessed on 17-10-1984 in her own house. There is, therefore, no reason to discard that part of her testimony. As to the second complaint, it is true that the police did not record her statement immediately after the incident. That is understandable. She has lost her husband. She was in immeasurable grief. She ought to be allowed time to compose herself. Both the objections raised against her testimony are, therefore, not sound.

2. **Lal Bahadur v. State (NCT of Delhi)**, (2013) 4 SCC 557:

“14. The High Court on the first issue regarding delay in filing of FIR held that the circumstances of the present case are extraordinary as the country was engulfed in communal riots, curfew was imposed, Sikh families were being targeted by mobs of unruly and fanatic men who did not fear finishing human life, leave alone destroying/burning property. As regards recording of the statements of witnesses by the police on 30-11-1984 after a delay of 27 days, the High Court observed that the city was in turmoil and persons having witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators, till things settled down; that the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it. The High Court further found that the witnesses prior to the incident were the residents of the same area and knew the assailants and it was not the case of the appellants that the delay could have resulted in wrong identification of the accused.

15. As regards contradictions in the testimony of various witnesses, the High Court observed as under:

“19. ... Harjit Kaur had mentioned that her house was looted by a mob comprising, inter alia, of Lal Babu and Surinder. Her subsequent mentioning of names of other respondents does not appear to be an improvement of such importance that her entire eyewitness account which finds corroboration by other witnesses can be overlooked. At best here a doubt may arise only with regard to complicity of Virender and Ram Lal (it seems to have mistakenly typed as

Surinder in ... trial court judgment) because later she had identified the other respondents Virender and Ram Lal also as having participated in looting her house.

*** **

23. It is no doubt true that the entire case of the prosecution hinges upon the neighbours and the widow of the victim, who may be interested in securing conviction of the accused persons but no rule of law prescribes that conviction cannot be based on the testimony of such witnesses. The only requirement of law is that the testimony of those witnesses must be cogent and credible. Here it is apposite to extract the substance of the testimony of PWs. ...

*** **

27. On reading of the evidence of above witnesses, we find that the testimonies of the witnesses are trustworthy. This we say so on account of the fact that their evidence has been consistent and they have also remained unshaken during their cross-examination. Thus, we do not find any reason to discard the evidence of these witnesses in totality. They do not vary in any manner on any material fact and if there are any discrepancies, the same are trivial, immaterial and could not be made the basis of the acquittal."

We fully endorse the view expressed by the High Court and reject the contentions raised by the appellants."

28.5 Thus, the Supreme Court had endorsed the view that where the city was in turmoil, the persons having witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators till things settled down; that the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it. This decision would be squarely applicable to the facts of the present case insofar as the statements recorded by the first investigating agency are concerned.

3. **Vijay Kumar Arora v. State (NCT of Delhi), (2010) 2 SCC 353:**

“55. On reappraisal of the evidence, this Court finds that it is true that the police statements of the abovenamed three witnesses were recorded after one month from the date of the death of the deceased. However, neither an explanation was sought from any of the witnesses as to why their police statements were recorded after a delay of one month nor the investigating officer was questioned about the delay in recording statements of those witnesses. The law on the point is well settled. Unless the investigating officer is asked questions about delay in recording statements and an explanation is sought from the witnesses as to why their statements were recorded late, the statements by themselves did not become suspicious or concocted.

4. **Narinder Kumar v. State of J&K, (2010) 9 SCC 259:**

“23. It was also contended by Mr Gupta that statements of some of the eyewitnesses were recorded belatedly. This aspect too has to be seen in the background of the facts and circumstances of the case. Whether or not delay has affected the credibility of the prosecution is a matter on which no straitjacket formula can be evolved nor any thumb rule prescribed for universal application. The courts below have, in our opinion, correctly appreciated this aspect and rejected the contention that the delay in the recording of the statements of some of the witnesses was fatal to the case. That is specially so when the prosecution version, based on the statement made by Balwant Raj was known on the date of the incident itself. PW Balwant Raj had in the said statement attributed the gunshot injury sustained by the deceased to the appellant. Delay in the recording of the statements of the other eyewitnesses, two of whom were brothers of the deceased was not, therefore, used to falsely implicate the appellant.”

28.6 Thus, whether or not the delay in recording statements of eye-witnesses has affected the credibility of the prosecution is a matter on which no straight jacket formula can

be evolved nor any thumb rule prescribed for universal application. The aspect regarding delay in recording statements of the witnesses has to be considered in the background of the facts and circumstances of the case. Where the city was in turmoil and the persons who have witnessed the crimes were naturally apprehensive and afraid in coming forward to depose against the perpetrators till things settled down and the State machinery was overworked; delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it.

28.7 According to the learned Special Public Prosecutor, the main reason as to why the statements made by the witnesses before the SIT should be accepted despite a delay of more than six and a half years is that the SIT had conducted the investigation pursuant to the directions of the Supreme Court. In this regard it may be noted that a copy of the petition filed before the Supreme Court has not been placed on the record of this court, therefore, this court does not have the benefit of perusing the contents thereof. Insofar as the order of the Supreme Court directing constitution of a Special Investigation Team is concerned, the same is based on a consensus and therefore, no reasons have been assigned for directing further investigation in the case. There is no comment on the previous investigation carried out by the police as to whether the same is deficient or unreliable. It cannot be gainsaid that if the Supreme Court was of the opinion that the previous investigation stood vitiated, it would have directed reinvestigation and not further investigation. Moreover, the very expression "further investigation" indicates investigation in furtherance of the investigation carried out

earlier. Therefore, the question of discarding the previous statements recorded by the police or giving lesser weightage to the same does not arise. Needless to state that it is settled legal position that the version given by a witness at the first point of time is of utmost significance. Subsequent statements may be given based on tutoring, deliberations, etc. which is normally absent in the first statement which normally is recorded immediately after the incident.

28.8 On behalf of the prosecution, it has been pointed out the witness after witness has stated that though they had named the accused, the police had not written them down and therefore, when the witness has named the accused for the first time before the SIT and then in his/her deposition and has identified them, such evidence deserves to be accepted. In this regard, it may be noted that the accused whom the witnesses have named, except for accused No.37 Mayaben Kodnani and a few others, like accused No.52 Sachin Modi, have been named by certain witnesses in their statements recorded by the police. In fact the police witnesses have also named certain accused persons. Now, in the case of these very accused whose names have been recorded by the police in the case of some witnesses, it is the case of other witnesses that the police were not recording the names of such accused. When the names of certain accused have been recorded by the police, it is difficult to believe that in case of other witnesses, the names of those accused would not be recorded.

28.9 In the opinion of this court, the submission that as the statements have been recorded by the Investigating Officer SIT in view of the further directions issued by the

Supreme Court, the same should be given more weightage, does not merit acceptance, inasmuch as, further investigation in the ordinary course or pursuant to directions issued by the Supreme Court, still amounts to further investigation under section 173(8) of the Code. In case of any witness whose statement has been recorded by the SIT after a period of more than six years of the incident, such delay has to be explained. When a witness names certain accused before the police and subsequently names some other accused before the SIT, some plausible explanation has to come forth as to why such names were not given first in point of time, and not a stock statement that they were giving the names but the police were not recording the same. Notably, most of the witnesses have claimed that the contents of their police statements were not read over to them and therefore, they had no reason to believe that the police had not recorded the names of the accused as stated by them.

28.10 Insofar as the statements recorded by the initial investigating agency wherein there is a delay of one or two months or more in recording the statements are concerned, it may be noted that since the houses of the affected persons had been burnt down and considering the situation prevailing at the relevant time, most of the residents of the chawls were uprooted from their normal habitats and had been lodged in relief camps. The situation was tense for a considerable period after the riots and the members of the minority community had reason to fear about their safety in case they ventured outside the relief camps. Considering the situation prevailing at the relevant time, one could hardly expect the victims of the offence to come forward on their own

for recording their statements, more so, considering the terror to which they were subjected to and the fact that the police have actively connived with the offenders. The first priority of the witnesses in such a situation would be to save their lives and whatever they could salvage in the circumstances. When despite being present at the site, the police offered no assistance to the victims; they certainly had nowhere to go with the grievances. Insofar as the investigating agencies are concerned, it has come on record that on account of the prevailing situation, they were busy in maintaining law and order and hence, could not record statements of witnesses immediately after the incident. Be that as it may, it is only when the police went to the relief camps to record the statements of witnesses that their statements could be recorded. Therefore, no fault can be attributed to the witnesses insofar as late recording of their statements is concerned. Moreover, as discussed elsewhere in this judgment, the reluctant investigating agencies whiled away a lot of time in preparing panchnamas of the loss/damage caused to the witnesses, instead of concentrating on the investigation. Having regard to the overall facts that have come on record, in the opinion of this court, the delay in recording the statements of witnesses at the initial stage would not affect their credibility.

28.11 Another aspect which needs to be noted is that most of the witnesses have been confronted with their statements recorded by the SIT to the effect that before the SIT they had stated that their previous statements recorded by the police were read over to them and that they were as stated

by the witness and correct and proper. Firstly, this part of the testimony is not admissible in evidence as the statement recorded by the Investigating Officer SIT is a statement under section 161 of the Code and cannot be used for any purpose except to contradict the witness. Moreover, as rightly observed by the trial court, this appears to be a formal statement recorded by the SIT in every statement and it is quite possible that while the earlier statement may have been read over to the witness, he would not have stated that it was correct and proper and as stated by the witness, because had that been the position, there was no reason for the witnesses to approach the SIT for getting their statements recorded.

XI EVIDENCE OF EYE WITNESSES

29. Since the prosecution case rests mainly on the testimonies of the eyewitnesses, it may be germane to refer to the relevant parts of their depositions and analyse the same to ascertain their evidentiary value in the light of the submissions advanced by the learned counsel for the accused.

29.1 As noted hereinabove, in all, 327 witnesses have been examined by the prosecution. The learned counsel for the appellants have referred to the witnesses in seriatim as well as in groups, whereas the learned Special Public Prosecutor has referred to the witnesses on the basis of the time of the incident in respect of which they have deposed, viz. morning incident, noon incident and whole day. For the sake of convenience, reference is made to the testimonies of the witnesses in the sequence referred to by the learned counsel for the appellants.

30. The learned counsel for the appellants had firstly referred to a group of witnesses who are stated to have submitted affidavits before the Supreme Court in a petition for transfer/further investigation pending before it. There are, in all, six such witnesses:

1. PW 114 Rahemanbhai Shakurbhai Saiyed
2. PW 137 Rafikanbanu Rahemanbhai (wife of PW 114)
3. PW 141 Kaiyumbhai Rashidkhan Pathan
4. PW 147 Reshmabanu Nadeembhai Saiyed
5. PW 156 Abdulmajid Mahammadusman Shaikh
6. PW 162 Rafiq Kallubhai Shaikh

AFFIDAVITS:

31. Before advertng to the testimonies of these witnesses, it may be necessary to discuss the relevance of such affidavits insofar as the facts of the present case are concerned.

32. The learned counsel for the appellants submitted that out of many witnesses, six witnesses who were examined before the trial court by the prosecution had filed affidavits before the apex court wherein serious allegations on facts of the incidents in question and accused persons have been made. In the evidence of the witnesses the circumstances under which such affidavits were filed as well as naming the person of the NGO called "Citizens for Peace and Justice" to whom such core

information was divulged by the witnesses, has been brought out. Such witnesses are:-

- PW No. 114 – Affidavit Exh 742
- PW No. 137 – Affidavit Exh 920
- PW No. 141 – Affidavit Exh 960
- PW No. 147 – Affidavit Exh 1017
- PW No. 156 – Affidavit Exh 1094
- PW No. 162 – Affidavit Exh 1152

32.1 It was submitted that when submissions in detail were made qua the evidence of such witnesses with reference to their police statements, affidavits before the apex court, statements before the SIT, etc., in reply to such submissions, the learned Special Public Prosecutor on behalf of prosecution submitted that the prosecution does not rely upon the affidavits and the witnesses are not admitting the contents of such affidavits but they are admitting only their signatures on affidavits, and, therefore, the facts and contents of the affidavits may just be ignored.

32.2 The learned counsel emphatically argued that copies of such affidavits were part of the investigation made by the SIT and such copies are produced along with the charge-sheet by the SIT. The contents of the affidavits and facts narrated by the witnesses are stated on oath and that too before the highest court of the country. The facts narrated in such affidavits are obviously used to get some favorable order of getting direction of further investigation from the apex court. It was submitted that the constitution of the SIT and further investigation by it,

is the direct result of such proceedings before the apex court wherein such affidavits can be treated as having been considered and contents thereof appreciated. Such affidavits are statements of facts made on oath by the witnesses, the affirmation of which and the signatures thereon are though admitted by witnesses in the court of law but now they have pleaded ignorance of the contents thereof and thus the prosecution says that it does not rely upon it and they may be ignored. According to the learned counsel, such facts on record lead to any of the following three conclusions/possibilities:

(i) That, the witnesses were telling lies before the trial court that they do not know the contents of the affidavit, or

(ii) That, the witnesses knew that they have made false/incorrect statements before the apex court in such affidavits and therefore to save their skins from the accusation of making such false/incorrect statements before the highest court of the country and thereby to save themselves from being exposed to the perjury proceedings which ultimately would have seriously and adversely affected their deposition before the trial court on the touchstone of appreciation of evidence, they are pleading ignorance regarding the same, or

(iii) That, the affidavits obviously and apparently are prepared by some third party/NGOs/activists/community leaders/community lawyers without letting the witnesses know about their contents and thereby such witnesses/deponents of the affidavits are used by getting

such affirmation without their knowledge regarding the contents thereof taking advantage of their illiteracy to get the desired result from the apex court.

32.3 It was submitted that in the facts of the case and in view of the submissions made by the prosecution in reply, the possibility of the last conclusion is more evident and such third party/NGOs, etc. in the name of helping the witnesses have misused the process of law for achieving their ill-motivated purpose of projecting facts wrongly, creating more serious facts, involving more accused and giving a different color to the core issues.

32.4 The learned counsel for the appellants submitted that the affidavits which were filed before the Supreme Court were affirmed by the witnesses and it was meant to be submitted before the highest judicial forum of the country and the statement made on oath has its own sanctity. It was submitted in the light of the above submissions, the prosecution cannot be heard to contend that it is just not relying on the affidavits because it is part of the record and part of the investigation and filing of such affidavits has not been disputed by any of the witnesses.

33. Mr. Bhargav Bhatt, learned advocate for the accused No.62 submitted that the affidavits were placed on record with the charge-sheet. They are part and parcel of the investigation and have reached the record of the court and the same being in the nature of previous statements of the witnesses can certainly be used to contradict the witnesses.

34. Mr. Mihir Desai, Senior Advocate, learned counsel for the victims submitted that there is a common thread in all the affidavits, namely, that all the six persons are residents of Naroda Patiya. All the six persons were present when the violence took place. Some have lost family members. From the night of the 28th of February, they were in the camps. They have said that they tried to give the names of the accused. The possibility that when they were before the investigating agency, one may name the foot soldiers, but are scared of naming the powerful people, but when they come to the court and feel safe, they can narrate the actual facts in detail; the atmosphere in the court can bring out the truth. It was submitted that if the affidavits are treated as previous statements under section 145 of the Evidence Act and are being used, the method to be adopted for contradicting them is that the actual statements have to be shown to the witnesses. In the present case, the contradictions qua the statements made in the affidavits are not proved in accordance with law. Reliance was placed upon the decision of the Supreme Court in the case of **V. K. Mishra and another v. State of Uttarakhand and another**, (2015) 9 SCC 588, wherein it has been held thus:

“19. *Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the*

notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.”

34.1 It was submitted that the affidavits cannot and have not been used to contradict the witnesses inasmuch as the context in which the affidavits were made is for a totally different reason and the purpose of the affidavits is different from the purpose of deposing before the court.

FINDINGS:

35. The trial court in the impugned judgment has held thus:

“ (8.25) The emphasis on the affidavit before the Supreme Court requires to be dealt with. It is not on record and it has not been admittedly investigated that whether this affidavit was in fact presented before Hon'ble Supreme Court or not,

these are not the certified copy of the affidavit, why these affidavits were needed and who drafted it and whether is it under the instruction of the witness or not and whether in fact it was filed or not, are all the questions which need to be answered before believing it for either purpose. There is no endorsement that this affidavit is made under the instruction of the witness or not hence without reference to context, it does not sound to be proper to appreciate the oral testimony basing upon this affidavit.

(8.26) *Moreover, the purpose of the affidavit is different then the purpose of statement given before the SIT and testimony before the Court, hence affidavit cannot be treated as document from which the truthfulness of the witness should be decided qua the testimony before the Court. It is in no case an earlier statement."*

36. In this case, in all six witnesses have filed affidavits for the purpose of submitting them before the Supreme Court, namely PW 114 Rehmanbhai Sakurbhai Saiyed, PW 137 Rafikanbanu Rehmanbhai Saiyed, PW 141 Kaiyumbhai Rashidkhan Pathan, PW 147 Reshmabanu Nadeembhai Saiyed, PW 156 Abdul Majid Mahammadusman Shaikh and PW 162 Rafiq Kallubhai Shaikh.

37. Before referring to the individual witnesses, it may be pertinent to note that none of the witnesses have referred to the affidavits in their examination-in-chief and such affidavits have been brought on record by the defence during the course of the cross-examination of the concerned witness. These affidavits are not originals and therefore, not in the nature of primary evidence. The copies of the affidavits are not even certified copies of the originals but are merely copies of affidavits alleged to have been made by the witnesses, the source whereof, has not been proved. In these circumstances,

the affidavits would be required to be proved in accordance with the provisions of section 65 of the Evidence Act.

38. Insofar as PW 114 Rehman Khan Shakurbhai Saiyed is concerned, in his cross-examination he has admitted his signature on the affidavit Exhibit 742, but has expressed total ignorance about the contents thereof. He has stated that the document is in English whereas he does not know how to read English nor was the document read over to him. Thus, though this witness is stated to be the maker of this affidavit, he is completely ignorant about the contents thereof, but the trial court has still exhibited the document. In the absence of the contents of the affidavit having been proved in accordance with law, the same was not admissible in evidence and ought not to have been exhibited. Since no evidence has been led to establish that it is this witness who had made such affidavit, the same cannot be used as a previous statement to contradict the witness. The mere fact that the prosecution has placed these affidavits along with the charge-sheet does not mean that the same are duly proved in accordance with law.

39. PW 137 Rafikanbanu Rehmanbai Saiyed in her cross-examination has stated that she had seen Teesta Setalvad once at Delhi. During the course of the cross-examination of this witness, the defence has produced the affidavit dated 9.11.2003, allegedly made by this witness in a transfer petition filed before the Supreme Court and had requested the court to exhibit it. The witness has stated that she had a talk with Teesta Setalvad about the incident on phone. The witness has denied that anyone had given Samsad a glass of petrol and

that she had not stated any such fact to Teesta Setalvad. The witness has admitted her thumb impression on the affidavit but does not remember any other details as to when and where and before whom she had put such thumb impression. The affidavit has been exhibited as Exhibit 920, however, the contents thereof have not been read over to the witness, nor has she admitted the same.

40. PW 141 Kaiyumkhan Rashidkhan Pathan has deposed that he, along with five to six other persons, had gone to an office at Shahpur. The second time he went to the office, his affidavit was prepared. He has admitted that he had taken a Gujarati version of what was to be stated in the affidavit. He has stated that though he was illiterate he was acquainted with the facts in the document. He has stated that the Gujarati version was translated into English but is not aware as to who had done it. He has stated that he had a talk on telephone with a lady (madam) regarding the affidavit. He has admitted that prior to making the affidavit the contents thereof were read over to him. The witness has admitted his signature on the affidavit. The affidavit is exhibited as Exhibit-960. In his cross-examination he has further admitted that the contents of the affidavit are true and nothing that he has not seen has been stated therein. However, a perusal of the testimony of this witness shows that he has not been confronted with any part of his affidavit to contradict any part of his testimony.

41. PW 147 Reshmabanu Nadeembhai Saiyed in her cross-examination has stated that she does not know Madam Teesta Setalvad, but she had gone to her when her affidavit was

prepared. She has stated that she had purchased the stamp paper for the affidavit and had signed it. Upon being shown the signature, she has stated that it does not appear to be her signature. She has stated that she had gone to Raees Khan's office and informed about the details of the incident. She has stated that when she narrated the facts about the incident Teesta Madam was not present and that she had talked with her on the phone and acquainted her with the facts. The witness has further stated that the contents of the affidavit were explained to her and they were as stated by her. The affidavit is exhibited as Exhibit-1017. The witness has denied having stated in the affidavit that a truck filled with diesel was brought in front of the masjid and the compound wall was broken by forcibly driving the tanker at the wall and was then set ablaze and the entire masjid was destroyed. The witness has also denied having stated certain other facts as contained in paragraphs 7, 8 and 9 of the affidavit. In paragraph 99 of her deposition, the witness has stated that she probably had told the person who drafted the affidavit that "*.... and Bhavanisingh struck her on her stomach with a sword and killed her and had taken out the foetus from her womb*" and has voluntarily stated that in fact it was Guddu Chhara but it could be that by mistake she had stated the name of Bhavanisingh in the affidavit.

41.1 In the cross-examination of this witness it has further been elicited that she had not taken the affidavit home and had handed it over to Raiskhan on that day. She had not gone to the Supreme Court at Delhi to submit the affidavit. She has stated that she had given Raiskhan the authority to submit the

affidavit. She has stated that she is not aware as to who had and in which case, submitted the affidavit. They had made this affidavit for the purpose of getting justice.

42. Considering the evidence of this witness, to the extent she has accepted the contents of the affidavit, the same would stand proved and it was permissible for the defence to contradict her testimony with the contents thereof.

43. PW 156 Abdulmajid Mahammadusman Shaikh has, in his cross-examination admitted that he had stated all the facts that he knew in the affidavit to be submitted to the Supreme Court. He has voluntarily stated that he had stated certain facts and certain facts were not stated by him. The witness has denied that when the affidavit was prepared he did not know the names of the accused referred to in his examination-in-chief. This witness is cross-examined with regard to the contents of his statement recorded by the SIT in connection with the affidavit and the contents of such statement are sought to be brought on record in this manner. Considering the fact that the statement recorded by the SIT is a statement under section 161 of the Code, the same could be used only for the purpose of contradicting the witness qua any part of his testimony. The contents thereof could not be brought on record except to contradict the witness, which is not the case here, inasmuch as through the process of cross-examination, the contents of the statement recorded by the SIT have been brought on record, which is hit by the bar contained in section 162 of the Code. The witness has admitted his signature on the affidavit which has been exhibited as Exhibit-1094. In his

cross-examination, it has inter alia been elicited that he was not aware as to in the context of which right he had made the affidavit, but from educated people as well as through television he had come to know that Teestaben was carrying out such activities and the organisation was assisting their people and hence he had made the affidavit. The witness has further deposed that he had talked with Teestaben on telephone and she had told him that if he wanted to file a case before the Supreme Court it could be done through this affidavit. The witness has denied that he was not aware of the contents of the affidavit. He has admitted that he had stated all that he had undergone to Teesta madam on the telephone. He has denied that when he talked with Teesta madam he had not felt that anything remained to be stated. He has voluntarily stated that he had said whatever he found necessary. At that time he did not feel that anything was left out from what he had said to Teesta madam. He has admitted that the affidavit was read over to him in a language which he understood. In his cross-examination (paragraphs 211 to 215) the witness has denied having stated certain facts contained in the affidavit Exhibit- 1094. The witness has denied that in the affidavit filed before the Supreme Court he has not referred to the incidents involving Mayaben, Ayub and three trunks in two police vehicles, however, a perusal of the affidavit reveals that while the witness has stated that he had named several accused before the police, the name of Mayaben does not find place therein. There is also no reference to the Ayub incident and the trunks in the police vehicles. Therefore, to the extent of such omissions in the affidavit, the defence is justified in contradicting the witness during the course of his cross-examination.

44. The last witness who had made such affidavit is PW 162 Rafiq Kallubhai Shaikh. This witness has stated that he has not met Madam Teesta Setalvad personally, but has talked with her on the phone. The witness has admitted that someone had told him that he was required to make an affidavit before the Supreme Court and that Teestaben had told him that to get justice they would have to go to the Supreme Court and for that purpose he was required to make an affidavit. He has further admitted that till he made the affidavit, he had not filed any complaint. The witness is shown the affidavit produced by the defence with a purshis Exhibit 739 and has admitted that this is the affidavit he had made before the Supreme Court. He has also admitted his signature thereon. The affidavit has been exhibited as Exhibit 1152. The witness has stated that when the affidavit was typed, Teestaben's secretary was present. He had given the typist writing in Gujarati which was written by Teestaben's secretary. The witness has admitted that the same was read over to him and that he had not felt that any facts not stated by him were written down therein. He has admitted that what was written in English was translated to Gujarati and read over to him. He has further stated that at the time when he went to the notary for notarizing the affidavit, the notary had read over the facts to him and he had not felt that any additional facts other than those stated by him were written down therein. The witness has admitted that he had instructed Teestaben to write that the police was not properly investigating the case and there was no progress in the trial; that the cases of Naroda Gam and Naroda Patiya are required to be transferred outside Gujarat; and that it is necessary to

transfer the cases outside Gujarat for the reason that in the meanwhile attempts were being made to suppress the facts and the evidence. The witness has voluntarily stated that the reason for saying so was because at the time of making the panchnama of his house, the police were not writing down everything. The witness has stated that he himself had stated the facts regarding Jaydeepbhai in the affidavit Exhibit 1152; but the actual fact is that he had heard through talks about Jaydeep Patel's leadership and other facts. He has denied that he had told Teestaben to write in the affidavit that he had seen Jaydeepbhai. He has stated that there is no reason for stating incorrect facts about Jaydeepbhai in the affidavit. He has further stated that he cannot cite any reason as to why he had falsely stated in the affidavit that he had seen Sahejad Chhara. He has stated that if any incorrect fact has been stated or written down in the affidavit, he does not want to give any explanation in respect thereof.

45. The relevance of the affidavits is only to the aforesaid extent. From the cross-examination in the context of the affidavits, it emerges that PW 147 Reshmabanu Nadeembhai Saiyed had stated in the affidavit that it was Bhavanisingh who had struck a sword on Kausarbanu's stomach and taken the foetus out of her womb, whereas in her testimony before the court she has named Guddu Chhara as the culprit; PW 158 Abdulmajid Mahammadusman Shaikh had not mentioned having named Mayaben Kodnani before the police, nor had he mentioned the Ayub incident or the incident of the police taking out three trunks from two vehicles; and that PW 162 Rafiq Kallubhai Shaikh is not averse to stating incorrect facts

on oath and does not deem it fit to explain the reason for doing so, which dents his credibility to that extent. Another notable aspect is that through the cross-examination of the witnesses it has been brought out that certain facts not stated by the witnesses have found place in the affidavit. This court, therefore, does not subscribe to the view of the trial court that the purpose of the affidavit being different from the purpose of the statement given before the SIT and testimony before the court, the affidavit cannot be treated as a document to ascertain the truthfulness of the witness and is not an earlier statement. In the opinion of this court, an affidavit is made on oath and therefore, great sanctity is attached to the averments made on oath, and notwithstanding the purpose for such affidavit, the deponent thereof is required to say the truth and nothing else. The contents of the affidavits to the extent admitted by the witnesses, therefore, can certainly be treated to be previous statements of the witnesses and be used to contradict them.

XII TESTIMONIES OF WITNESSES WHO MADE AFFIDAVITS FOR SUBMITTING BEFORE THE SUPREME COURT AND RELATED WITNESSES:

46. **PW-114 Rahemanbhai Shakurbhai Saiyed**, aged 50 years, has been examined at Exhibit-740. This witness has deposed that he was residing at *Jawannagar, Naroda Patiya* in the year 2002. He has deposed that he deals in business of selling toys on the foot-path outside Kalupur station since the last fifteen years. In the year 2002, he was residing at *Jawannagar, Naroda Patiya* and his native is *District Mathura*,

Uttar Pradesh.

46.1 The witness has deposed that in the year 2002, he was residing at Jawannagar, Naroda Patiya with his family which was comprised of his wife Rafikanbanu, his six children, namely, daughter Afsanabanu, son Aasmahammad, daughters Ruksanabanu, Zarinabanu, sons Iqbalbhai, Samshad. Out of the six children he had in the year 2002, presently only three are alive, out of whom, one was injured. His daughter Afsanabanu was injured and the remaining three children, viz., Ruksana, Zarina and Samsadbhai died in the incident.

46.2 The incident took place on 28.2.2002. On that day, he was at home. In the morning at around 9:00, he was sitting at home and he learnt that a train had been burnt at Godhra on account of which, there was a call for bandh. On that day, at around 9:00 to 9:30, he went towards the road, where the mobs were gathering. The mobs were gathering near the Noorani Masjid. The people in the mob had tied yellow bands around their foreheads on which the words "Shri Ram" were written. The mob kept growing. The mob was pelting stones at the Noorani Masjid. Thereafter, he returned home. He stayed at home with his children. At that time, they were surrounded from all four sides, despite which, they had stayed at home. When they felt that they would not be saved, then at 6 o'clock in the evening, they (his entire family) left their house.

46.3 There is a gate of the S.R.P. near Gangotri Society. They had reached there. He and his family and other persons were there. They hid near the gate of the S.R.P. Thereafter, at around 7 o'clock in the evening, when it was slightly dark, the

S.R.P. people had beaten them up and driven them towards the water tank near Gangotri Society. At this time, stones continued to be pelted at them from the S.T. Workshop.

46.4 At this time, though there was one road going towards the masjid, they went on the road leading towards Teesra Kuva. When they went a little further towards Teesra Kuva, they saw a big mob coming from the opposite side and the people in the mob were showing them the newspaper and telling them, "*look at what you have done in Godhra*". In the mob, someone was igniting fire, someone was cutting, they were hacking down innocent children, women, etc. with swords.

46.5 At this place, he got separated from his family and the mob had hacked his daughters Rukshanabanu, Zarinabanu and son Samsad. All these three children were with him. Upon seeing this, he hid himself. His children had been hacked down after 7:00 in the evening. When he hid himself, it was around 9 o'clock. He was quietly sitting and hiding in a lane. He saw another mob on that side and therefore, he went and hid on other side. He felt that he would not be safe and hence, he shifted to a safer place. On all four sides, there was violence and hacking. Gas cylinders were being burst. In the incident in which his children were killed, Bhavanisingh, Guddu Chhara and Suresh Langda were there in the mob. At this time, Bhavanisingh had a can, Guddu Chhara had a trishul and Suresh Langda had a sword. The witness has stated that he would be in a position to identify these three persons. However, Bhavanisingh and Guddu Chhara have passed away, and hence, he can identify Suresh Langda. The witness has

thereafter identified Suresh Langda (Accused No.22).

46.6 The witness has stated that he kept hiding till 1 o'clock at night, whereafter a police vehicle came at 1 o'clock and took them to the Shah Alam relief camp. When he sat in the vehicle for going to the relief camp, in the same vehicle he met his wife and two children Iqbal and Aasmahammad. They all were taken in that vehicle to the relief camp. He had asked his wife about his four children and his wife replied that she did not know. After eight days in the camp, they came to know that one of their children Afsanabanu was alive and was in the Civil Hospital; hence, he had gone to the Civil Hospital. There, his daughter had told him that their three brother and sisters had been killed, which was with reference to Samsadbhai, Rukshabanu and Zarinabanu. Afsana took treatment in the Civil Hospital for one and half months. His house at Jawannagar had been looted and set on fire. The police had recorded his statement in connection with the incident; however, no one was listening to them. Thereafter, their statement was recorded at SIT, Gandhinagar. Probably, his statements were recorded twice. He had also made an application to the SIT for recording his statement.

46.7 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that at the time of the incident, S.R.P. Quarters had two gates, one was towards the national highway and the second gate was towards Gangotri which was a small gate. The witness is cross-examined at length with regard to the topography of the area. In his cross-examination, he has stated that Guddu as well as Bhavanisingh have not met him and that he has heard their names. He has stated that

Suresh had also not met him and has voluntarily stated that none of them had ever met him. It has also come out that he had no monetary transactions with Guddu, Bhavanisingh and Suresh and had no social relations with them. The witness has denied that he had only heard the names of these three persons and has voluntarily stated that he had seen all three of them.

46.8 The witness has admitted that prior to the incident he had heard the names of the three persons. In his cross-examination, it has further come out that no test identification parade of Suresh Langda, Guddu and Bhavanisingh had been carried out through him. The witness has stated that he is totally illiterate, but knows how to sign. The witness has admitted his signature at the bottom of the application Mark 644/16. The document is given Exhibit-741 and the contents thereof are read over to the witness who has admitted the same to be correct.

46.9 In his cross-examination, it has come out that after the incident he had seen the police for the first time at the Shah Alam Camp. He had stayed at the camp for around six months. The witness does not remember whether he had lodged any complaint prior to 9.5.2002 in connection with the incident. He has stated that he had lodged his complaint at the Dargah Police Chowky next to the Shah Alam Camp and has admitted that they had taken his signature thereon. In his cross-examination, it has come out that after 9.5.2002 and before 30.5.2008 as well as 5.7.2008, many persons other than the police had put questions to him. The witness has stated that amongst all those people, there were media persons also

who used to ask questions and take his signature. The witness has admitted that a particular woman had met him on several occasion, however, he does not remember her name. The witness has admitted that he has not talked about the incident on phone with anyone. The witness has stated that it has never happened that he had made any affidavit in connection with the incident. The witness has stated that he does not remember that in the presence of Raiskhan, he had talked to anyone on telephone at Bombay. The witness has stated that no person from an organization called Citizens for Justice and Peace had come to meet him and has voluntarily stated that all that he knows is that some organization had given him a house. The witness has stated that he does not know Teestaben Setalvad and has never met her and never had any occasion to talk with her on the telephone.

46.10 The witness has stated that he does not know as to who had written down the application Exhibit-741 for him. He has further been cross-examined with regard to the manner in which the application was made and the contents thereof. The witness has admitted that prior to making the application, none of the accused had ever threatened him and that prior to making the application, he had never gone to the Naroda Police Station.

46.11 The witness does not remember whether he was present in Ahmedabad city on 11.11.2003. The witness is shown a four page document and he has admitted his signature thereon. The witness is shown the fourth page of the document wherein there is a signature in the capacity of deponent and the witness has admitted that it is his signature.

The document is a notarized document which is given Exhibit-742. The witness has stated that he cannot say as to whether the writing in Exhibit-742 is in English because he is not literate. The witness does not remember as to whether the document Exhibit-742 was read over to him. The witness has admitted that he does not know English and therefore, he does not know what is written in the paper. He has stated that Raiskhan Azizkhan Pathan has never read over the contents of the document to him. It may be noted that despite the fact that the witness has expressed total ignorance as regards the contents of Exhibit-742, the same has been exhibited by the trial court.

46.12 The witness has denied that the people of their chawl had not given any response against the mob. The witness has denied that for their protection they had attacked the people in the mob and despite having defended themselves, the Hindu mob was not within their control. The witness has admitted that Suresh Langda and Suresh Chhara is one and the same person. The witness has denied that at the relevant time, he had seen Bhavanisingh with a sword in the mob and has voluntarily stated that he had seen him with a kerosene can.

46.13 The witness has denied that he had counted the number of dead persons in the incident. He has stated that he does not know Sufiyabanu, but has heard her name. He has not seen any person commit rape on Sufiyabanu on that day.

46.14 The witness has admitted that his daughter Rukshanabanu had got separated from him. The witness has

admitted that he has not seen as to what had happened to his daughter Rukshanabanu after she got separated from him. The witness has admitted that till Rukshanabanu was with him, nothing had happened to her. This part of the cross-examination of the witness brings out a contradiction as regards what is stated by the witness in paragraph 9 of his deposition, wherein he has stated that his daughters Rukshanabanu, Zarinabanu and son Samshad had been hacked by the mob near a wall near the tank.

46.15 The witness has admitted that he used to feel that they would not get justice in Gujarat. The witness has stated that nobody had told him so. The witness has admitted that he had made an application in this regard. The witness does not remember as to whom, where and when he had made the application and has voluntarily stated that the application must have been given where it is required to be given.

46.16 The witness is cross-examined with regard to the affidavit Exhibit-742. The witness has stated that he does not remember whether he had made the affidavit Exhibit-742 for the purpose of filing any application before the Supreme Court. The witness has admitted that the affidavit Exhibit-742 was given by him for presenting before the Supreme Court. The witness is thereafter further cross-examined with regard to the affidavit.

46.17 In his cross-examination, it has come out that Rafikanbanu is his wife. The witness has admitted that till he and his wife Rafikanbanu got separated on the day of the incident, nothing had happened to her. The witness has

admitted that he does not know as to what happened to his wife Rafikanbanu after she got separated from him.

46.18 The witness has stated that when on the very same day that he came to know that his daughter Afsanabanu was at the Civil Hospital, he had gone to the Civil Hospital. The witness has admitted that his daughter Afsanabanu had not told him anything about the incident.

46.19 The witness has denied that on the day of the incident, he had not gone on the road at 9:00 to 9:30 in the morning and has voluntarily stated that he had gone on the road, but had returned immediately. The witness has admitted that on the day of the incident, he had not gone out of his house till 6 o'clock in the evening. Certain extracts of the statement dated 30.5.2008 recorded by the SIT have been put to the witness, however, since the same have not been put to the witness to contradict any part of his testimony, the same are not admissible in evidence.

46.20 The witness is confronted with his previous statements to the effect that in none of the statements, he had stated that Guddu Chhara had a trishul and Suresh Langda had a sword. (The trial court has made a note that in his statement dated 30.5.2008 before the SIT, the witness has stated that Guddu Chhara had a sword and Suresh Langda had a trishul.).

46.21 In his cross-examination, it has further come out that he had seen Guddu with a trishul at Jawannagar at around 6:00 to 7:00 in the evening on the day of the incident. He had seen Suresh Langda with a sword at the same time. The

witness has voluntarily stated that all three of them were together and he had seen them in Jawannagar-ni-Chali. The witness has voluntarily stated that he had seen them at Jawannagar-ni-Chali, where his three children were killed. The witness has further voluntarily stated that his children were killed at a spot on the corner of Jawannagar where the boundaries of both Jawannagar and Gangotri Society meet.

46.22 The witness has admitted that the incident of his children took place at around 7 o'clock in the evening. The witness has admitted that on that day at 7 o'clock, it had become dark. The witness has admitted that on that day at that time, a huge mob of Hindus had come from the direction of Teesra Kuva and that the people in the mob had weapons in their hands.

46.23 The witness has denied that the second mob had come from the side of Uday Gas Agency and has stated that the mob had come from the direction of the S.T. Workshop. The witness has admitted that both these mobs had entered Gangotri Society. The witness has admitted that he had not seen the mobs before and had seen them in Jawannagar. The witness has voluntarily stated that the mobs had come from three sides and had gathered at Jawannagar.

46.24 In his cross-examination, it has come out that he does not know that Suresh Langda had a love marriage with a Muslim girl and has further admitted that he had identified him for the first time on that day.

46.25 The witness has admitted that he was at home till 7

o'clock in the evening, and till then, he had not seen any incident on the national highway. Thereafter, the witness has denied that he was at home till 7 o'clock in the evening and till then, he had not seen any incident at Jawannagar. The witness has denied that except for the incidents narrated by him, he had not seen any incident.

46.26 The attention of the witness is drawn to the fourth sentence to the sixth sentence of paragraph 9 of his examination-in-chief, wherein he has stated that at this place, his daughters Rukshanabanu, Zarinabanu and son Samshad were hacked by the people in the mob. The witness has stated that he does not remember whether he has stated these facts in his statement dated 9.5.2002. The witness has admitted that he has not lodged any complaint with regard to his three children being killed.

46.27 The witness has denied that the mobs which assaulted and the mob which set them ablaze were different and has voluntarily stated that all the mobs had gathered together.

46.28 To prove the omissions and contradictions brought out in the testimony of this witness as to his previous statement, the defence has cross examined PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT), who, in his cross-examination has admitted that he has recorded the statements of this witness on 30.5.2008 and 5.7.2008. The contents of paragraph 72 of the deposition of the witness are read over to the Investigating Officer, wherein he has stated that in the morning at around 9:00 to 9:30, he had gone towards the road

and thereafter had returned and mobs had gathered near Noorani Masjid. The Investigating Officer has denied that the witness has not stated such facts before him and that the witness had stated that at around 10 o'clock he came out of his house, mobs had gathered near Noorani Masjid and the witness had come out of his house. Apart from the fact that there is no actual contradiction in any case, what is stated in paragraph 72 is something that is elicited in the cross-examination and not a fact asserted by the witness in his examination-in-chief and, therefore, cannot be contradicted as to the previous statement of the witness.

46.29 Certain extracts of paragraph 73 of the deposition of the witness, wherein he has stated that out of fear that there would be riots, he had not come out of his house are put to the Investigating Officer, who has denied that the witness has not stated such facts in the statement recorded by him. Certain other extracts of paragraph 73 of the witness are read over to the Investigating Officer wherein the witness has stated that, therefore, together with the family members they hid in the house itself and at around 5 o'clock a major part of the chawls were burnt and the mob was carrying out the task of killing people and had become very volatile and frenzied due to which, the people of the community from their chawl were running towards Gangotri Society, S.R.P. to escape. The Investigating Officer has admitted that the witness has stated these facts in the statement recorded by him. He has also admitted that the witness has stated before him that in the affidavit, it has been stated that he with his own eyes has seen Bhavanisingh rape Abdul Majid's daughter Sofiyabanu and that he had also seen the rape of his own daughter Rukshanabanu,

which is not true. He has not seen any such act of Bhavanisingh with his own eyes, but had heard from talk about the happening of such incident, which he had written in his affidavit.

46.30 The Investigating Officer has admitted that the witness had stated before him that Guddu Chhara had a sword and Suresh Langdo had a trishul and had not stated that Guddu Chhara had a trishul and Suresh Langdo had a sword.

46.31 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the testimony of the witness to point out various omissions and contradictions in the evidence of the witness. It was submitted that even if this witness is taken to be completely ignorant about the contents of the affidavit, it has come on record that he has affirmed some affidavit for the purpose of it being produced before the Supreme Court and his signature has been taken though he says that he did not know where it was signed and stamped by somebody and whether he has purchased the stamp paper or not. Thus, there is some agency working who was getting such affidavits of witnesses without making the witnesses aware of the contents thereof for some specific purpose. It was submitted that the only accused who is alive who is sought to be implicated by this witness is accused No.22 who is implicated for the first time after seventy days, that is, on 9.5.2002 in his police statement and as admitted by this witness in paragraphs 28 and 29 of his cross-examination, he had never met Suresh earlier, that he had no relations with him and that he had heard his name. Therefore, in the absence of a test identification parade, the identification of Suresh for

the first time in the court creates doubt about his complicity in the offence. It was submitted that this witness has also stated that he made a complaint before the Dargah Police Chowky and has also confirmed that he has signed it which his wife has also confirmed. It was submitted that in the investigation which is subsequently transferred to the SIT, it is not that the evidence has come in its natural way. It was submitted that the statements which are recorded of the witnesses before the SIT were engineered, motivated and tutored. It was pointed out that the witness has not identified anyone qua the morning incident and has stated that he left his house at 6:00 p.m., whereas PW-137 viz., his wife Rafikanbanu has stated something different about the time when they left their house. It was submitted that on the other hand, his daughter Afsana also gives some different time. It was submitted that according to this witness, they went to the S.R.P. Quarters at around 7:00 p.m. and were driven out, after which, they went to the water tank near Gangotri. It was submitted that the witness does not speak about another mob from the side of the Noorani Masjid. He says that at that place, his family got separated and the three children who were with him, namely, Rukshana, Zarina and Shamsad, all the three of them, were killed. It was submitted that this witness has stated that the incident happened after 7:00 p.m. and he has named Bhavani with a kerosene can, Guddu with a trident and Suresh with a sword. It was pointed out that in paragraph 13 of his examination-in-chief, the witness has stated that he had inquired from his wife about his three children, to submit that if the witness had seen his three children being killed, there was no question of his asking such a question to his wife. It was submitted that though the witness is residing in the area since ten years, he

does not name anyone else other than his children who were also killed. In paragraph 14 of his deposition, the witness has stated that Afsana was injured in that incident and she told him about her brother and sister being killed. It was submitted that if this witness was present, he would have seen the incident of Afsana also. Reference was made to the contents of paragraphs 28 and 29 of the cross-examination of the witness, to submit that the witness had only heard the names of the accused prior to the incident and he did not know them, despite which, no test identification parade has been carried out. It was submitted that there are *inter se* contradictions between the statements of this witness, his wife, his daughter as well as other witnesses.

46.32 Mr. Prashant Desai, learned Special Public Prosecutor submitted that this witness has stated that he was in his house till 6 o'clock and then he went with his family whereafter this incident took place at 7:00 p.m. It was submitted that it cannot be said that the witness cannot be believed because there is a discrepancy between the evidence he has given and his cross-examination. It was submitted that insofar as the affidavit made by the witness is concerned, he has admitted the factum of signing it, but has not admitted the contents thereof. Therefore, the contents of the affidavit are not proved. It was submitted that in the affidavit, the witness did not state about the incident in question and on the contrary, the defence is coming out with an argument that the witness has stated about Rukshana and Sofiya being ravished by the accused. In his chief, he does not say anything about Rukshana and Sofiya, so there is no contradiction qua his earlier statement. Referring to paragraphs 77 to 80 of his

cross-examination, it was submitted that the witness has specifically stated about the role played by the three accused persons, who were in possession of lethal weapons and the hacking of the three children by the mob in which they were members, and the place of incident. It was submitted that as regards the hacking of three children having not been stated by the witness in his statement dated 9.5.2002, he has stated these facts before the SIT, and hence, it cannot be said that there is any contradiction or omission in the previous statement of the witness. It was submitted that the fact in issue is that the witness's children were killed, his daughter was molested and burnt, and therefore, so far as the relevant facts are concerned, there is no contradiction. It was submitted that there is no suggestion that no children were killed. It was submitted that the presence of the witness is established from the examination-in-chief as well as from paragraph 77 of his cross-examination. It was submitted that in his cross-examination, the witness has referred to all the three accused and the exact place where he had seen them. It was submitted that this witness is a natural witness, who had seen the incident, and has not exaggerated anything, and therefore, cannot be said to be not credible. It was submitted that no major contradiction has been brought out in his cross-examination and his entire evidence is logical and natural and he is an eyewitness who cannot be disbelieved easily. Referring to paragraph 13 of the examination-in-chief of the witness, it was pointed out that this witness was passing through great mental trauma after the incident.

46.33 ANALYSIS: This witness has stated that he left his

house at 6 o'clock, after which they went near the S.R.P. gate near Gangotri Society. Around 7 o'clock the S.R.P. people beat them up and drove them away, whereupon they went on the road towards the open ground leading to Teesra Kuva. Before they reached there, they saw a mob coming from the opposite direction. Another mob was coming from the side of the S.T. Workshop and there were mobs on all sides. His three children Rukshana, Zarina and Samsad were hacked by the mob at around 7 o'clock near the wall of a tank and he hid in the lanes till 9 o'clock at night. In the incident of his children, he had seen the three accused in the mob. A contradiction has been brought out to the effect that in his police statement he had not attributed any weapons to the three accused. A further contradiction has been brought out to the effect that the witness had not stated that his children were hacked by the mob. The trial court has made a note that before the police, the witness had stated that the three accused had set his children ablaze. Therefore, while in the examination-in-chief no specific role has been attributed to the three accused and even qua the mob, he has stated that they had hacked his children, in his police statement a direct and different role had been attributed to the three accused. Of course what was stated in the police statement cannot be looked into and cannot be considered to be part of the evidence, the fact remains that the witness has named the three accused as being part of the mob which assaulted and killed his children. The presence of the accused in the mob, therefore, stands established. Insofar as the contention that the witness has stated that Afsana had told him that her sisters and brothers were killed and his having asked his wife about his four children and her having told him that she did not know, cannot be attributed too much

significance when the witness has clearly deposed regarding the incident and has been consistent as regards the presence of the accused right from the inception.

46.34 In paragraph 28 of his cross-examination, the witness has stated that Guddu has not met him. Bhavanisingh has not met him. The witness has voluntarily stated that none of them have met him. The witness has stated that he had no financial relations with Guddu, Bhavani or Suresh and had no relations of visiting them. He has admitted that he had heard their names and has voluntarily stated that he had seen them. On reading this part of his testimony, it appears that when the witness says he has not met any of the three accused, he means he has not personally met them in the normal sense, when one meets and interacts with persons. But he has clearly stated that he had seen them and had also heard their names prior to the incident. The witness in his cross-examination has categorically stated in paragraph 77, that he had seen all three of them at around 6:00 to 7:00 in the evening at Jawannagar-ni-Chali where his three children were killed. He has stated that his children were killed at the corner of Jawannagar, on the spot where the boundaries of Jawannagar and Gangotri Society meet.

46.35 Therefore, the testimony of this witness deserves to be accepted to the extent he has referred to the presence of the three accused at the scene of offence. Thus, through the testimony of this witness, the prosecution has established the presence of Bhavanisingh (deceased), Guddu Chhara (deceased) and Suresh Langda (A-22) in the evening in

the mob that killed his children.

47. **PW-137-Rafikanbanu Rahemanbhai Saiyed**, aged 45 years, has been examined at Exhibit-915. This witness has deposed that in the year 2002, she was residing at *Jawannagar, Naroda Patiya*. At the relevant time, her family was comprised of her husband Rahemanbhai, daughter Afsanabanu, son Aasmahammad, son Iqbal, daughter Zarinabanu, son Samsad and daughter Ruksanabanu, all of them were residing together. Her husband used to sell electronic items on the footpath at Kalupur.

47.1 The incident took place on 28th day in the year 2002. There was a call for bandh on 28.2.2002.

47.2 On 28.2.2002, she was at home. On that day, her daughter Zarina had gone to Noorani Masjid at around 10:00 in the morning. At that time, there was an attack there. Zarina returned to her home and told her that "*They are burning and hacking there*". In view of the information given by Zarina, they were frightened and went to the S.R.P. Quarters for protection, however, they did not get any help there. The police resorted to lathi-charge there. They (the witnesses) told them that even if they do not let them go inside, they should at least let their innocent children go inside. However, they told them that today they had to die. Thereafter, they had gone towards Gangotri Society. There, Bhavanisingh made them sit in a place like a big hall. He then closed the shutter and told them to sit there and said that nothing would happen there. Inside, there were around 400 to 500 people.

Bhavanisingh told them to bring a vessel so that he would cook food for them. They did not have any vessel. Bhavanisingh told Majid to bring a vessel. Bhavani had told that they would make kadhi and khichdi. So, Majid said that in their community, they eat kadhi and khichdi after somebody is buried.

47.3 Thereafter, Bhavani, Guddu, Suresh (accused No.22), Tiniyo (accused No.55) and Sahejad (accused No.26) had sent them towards Teesra Kuva.

47.4 There was a huge mob at Teesra Kuva armed with weapons like guptis, swords and kerosene cans. They were showing them the newspapers about the Godhra incident and assaulting them. When they were driven away from there also, out of fear, they went to Gangotri Society.

47.5 There, upon Bhavani gesturing, Suresh, Guddu, Sahejad and Tiniyo and the people in the mob, had beaten them. Guddu Chhara had given her a gupti blow on her thigh. They asked Bhavani to give them water to drink. However, instead of water, Bhavani had given her son a glass filled with petrol. Upon the petrol affecting her son's throat, she put her finger in his mouth and made him vomit the petrol.

47.6 Iqbal, Samsad and Aasmahammad were with her at that time and the other children were with her husband. They were separated in this manner. Thereafter, the children who were with her husband also got separated from him. Bhavani had taken off her son Samsad's pant and threw him in the fire. Her son was burning from head to toe. He (her son) told her to run away saying that these people would kill them. Her son

was burnt in front of her eyes.

47.7 Her three daughters, Rukshana, Zarina and Afsana were with her. Bhavani's daughters – Ramila (Accused No.61) and Geeta(Accused No.56) had set her daughter Afsana on fire. Her daughter Afsana was saved, whereas her son Samsad and daughters Ruksana and Zarina, all the three, died in this incident. All her three children had breathed their last in her presence. Ramila and Geeta had thrown petrol and diesel soaked quilts on her daughter Afsana's waist and set her ablaze.

47.8 Rukshana and Zarina were burnt and killed by Guddu, Suresh, Bhavani and Tiniya on that day.

47.9 The house in which they were residing was a rented house. When her daughters Rukshana and Zarina were burnt, she had seen Kausarbibi, who is the daughter of Khalid Noormahammad. Thereafter, she had gone and hidden under the sheets on the top of Gopinath Gangotri Society and was hiding there. Till her children were burnt, she kept hiding there. Thereafter, at about 2 o'clock at night, a police vehicle came to take them and they went in the vehicle to the Shah Alam camp.

47.10 At the camp, she met her husband as well as both her children Iqbal and Aasmahammad. Thereafter, after eight days, she met Afsana, whom someone had admitted in the Civil Hospital. In respect of the injuries sustained by her, she had availed treatment at the Shah Alam relief camp. She had got twenty eight stitches on her thigh. The incident of

Zarina, Ruksana and Samsad had occurred at around 6:00 to 6:30 in the evening on the day of the incident.

47.11 She had sustained a loss of around rupees ninety thousand in connection with the incident of her house. The police as well as the SIT, Gandhinagar had recorded her statement.

47.12 The witness has stated that as far as she knows, Bhavanisingh and Guddu Chhara have passed away. She has stated that she can identify Ramila, Gita, Tiniya, Sahejad and Suresh Langdo. The witness has thereafter identified Ramila (accused No.61), Suresh (accused No.22), Tiniyo (accused No.55). However, instead of accused No.26, she has wrongly identified accused No.25. Therefore, the witness has not identified accused No.26 Sahejad correctly. Accused No.56 had filed an exemption application and hence, is deemed to have been identified.

47.13 CROSS EXAMINATION: In the cross-examination of this witness, it has been elicited that she was residing in Jawannagar since ten years prior to the incident. She was residing in the area, which is known as Jawannagar Khada. The witness has admitted that in the year 2002, Zarina was twelve years old. The witness has stated that she is totally illiterate, however, they get a Hindi daily newspaper at home and it has been subscribed since they have come to reside.

47.14 In the cross examination of the witness, she has stated that the distance between her house and the S.R.P. Quarters must be about 25 feet. She has stated that on that

day there were around four hundred to four hundred and fifty people with her near the S.R.P. Quarters. There was no barbed wire outside the S.R.P. Quarters, instead, there was a compound wall. On that day, the police were standing towards their side. The witness has admitted while the policemen were standing on one side, they were standing on the other side of the wall. At the time of the incident, the height of the S.R.P. Quarters compound wall was not very much. It was around four to five feet. However, now the height of the wall has been increased. The witness has stated that at that time, the mob had not reached the S.R.P. Quarters. She has admitted that they and three hundred and fifty to four hundred other people were standing near the S.R.P. Quarters and except for the police beating them no other incident had taken place. The witness has stated that Teesra Kuva is far from the S.R.P. Quarters. The witness has denied that prior to sending them towards Teesra Kuva, Bhavanisingh, Guddu, Suresh, Tiniya and Sahejad had not caused them any injury. The witness has admitted that till they were hiding inside the shutter, no one had attacked them. It has further come out in the cross-examination of this witness that they had remained inside the shutter till around 5:00 to 5:30 in the evening. They had stayed inside for a little while till around 4:00 to 4:30. They had stood near the S.R.P. compound wall for about half an hour.

47.15 When they went to the S.R.P Quarters, at that time, it must have been around 9:00 to 9:30 in the morning. Before going to the shutter, they had moved hither and thither for one to one and a half hour. At that time it must have been around 11 o'clock. From 11:30, they were roaming around the lanes. The witness has admitted that till 11:30, the mobs had

not attacked them and has voluntarily stated that at that time, the mobs were at Noorani Masjid and Hussainnagar and had not reached them. From 11:30 to 4:00 the mob had reached only till Hussainnagar.

47.16 The witness has stated that the shutter and Majid's house are far from each other. The witness has admitted that for the one to one and a half hours that they stayed inside the shutter, the mob had not come to the shutter. Her entire family was inside the shutter. The witness has admitted that after they came out of the shutter, her husband Rehmanbhai and children Iqbal and Aasmahammad got separated from her. After coming out of the shutter, as soon as they saw the mob, they had got separated from each other. Some children were with her and some were with her husband. She does not know in which direction her husband had gone. The witness has admitted that apart from Zarina, Rukshana and Samshad, there were around four hundred other people but she does not know as to who and how and where they were killed. The witness has voluntarily stated that they were throwing kerosene and petrol and burning them. The witness has denied that she has not stated the fact regarding killing of Zarina, Rukshana and Samshad before the police and has voluntarily stated that they were killed near the water tank and that she had stated all these facts to the police but they were not writing them down and were not reading the statement to them. The witness has, thereafter, been cross-examined with regard to the facilities and conditions at the camp and as regards media people, policemen and other organizations visiting the camp.

47.17 In her cross-examination, it has come out that she had lodged a complaint at the Shah Alam police chowky, which is adjoining Shah Alam Dargah. She had given the complaint within fifteen to twenty days of going to the camp. The witness has admitted that when she went to lodge the complaint, her husband Rehmanbhai was with her. They had gone to the police through the organisers of the camp. However, Naeembhai and Raisbhai had taken them to the police. The witness has stated that she does not know whether Raisbhai is an advocate and that she came to know that the concerned person was Raisbhai only when he took her to Delhi. The witness has admitted that Raiskhan and Naeembhai had informed the police the facts regarding the incident that had occurred with her. However, the witness has thereafter voluntarily stated that she is the one who has suffered the loss, it is her children, who have died, then it would be she who would be giving the statement and how could they have done it.

47.18 The witness has thereafter been cross-examined with regard to her acquaintance with Nazirbhai, Teesta Setalvad, etc. In her cross-examination, it has further come out that she had stayed at the relief camp for about six months. She had made an application to the SIT. The witness has denied that she is falsely deposing before the court at the instance of some organisation. The witness has admitted that no test identification parade of the accused whom she has identified before the court has been carried out by the police. The witness has denied that Ramila, Gita, Sahejad, Suresh, Tiniyo, Guddu and Bhavanisingh were not present at the spot and that they had not caused anyone any kind of injury.

47.19 The witness has stated that on the day of the incident, she had seen the accused identified by her namely, Geeta, Bhavanisingh and Guddu for the first time at Jawannagar at Bhavanisingh's house. The witness has stated that when she saw them at Bhavanisingh's house, it must be around 8:00 to 8:30 in the morning while she was going to answer nature's call. The witness has admitted that Bhavanisingh's house is situated in Gangotri Society. The witness has thereafter been cross-examined with regard to the topography of the area. The witness has stated that on the day of the incident till around 5:00 to 5:30 in the evening, she was at home but had subsequently stated that she was at home till around 1 o'clock in the afternoon. The witness has admitted that on the day of the incident, till she was at home, her husband and children were all with her. The witness has denied that the accused named by her before the court had not come to her house in the morning on the day of the incident and has voluntarily stated that Guddu and Tiniyo had come to her house on a motorbike and told them that nothing would happen and that they should not move from there. The witness has admitted that after saying this, Guddu and Tiniyo had gone away on the motorbike, which fact had been stated by her before the SIT, Gandhinagar; however, they had not paid any attention to it.

47.20 The witness has stated that she has seen Teesta Setalvad once when she had gone to Delhi. The witness is cross-examined with regard to the affidavit which was prepared for submitting before the Supreme Court and it has come out that she had a talk with Teesta Setalvad about it on

the telephone. The witness has admitted that the incident wherein she was given a gupti (dagger) blow took place at 10 o'clock in the morning at her home. The witness has admitted that she was given the gupti blow inside her house. The witness has denied that thereafter during the entire day of the incident nobody had inflicted any gupti blow on her. The witness has stated that she was inflicted a blow with a gupti on the same wound, due to which, she was required to take 28 stitches. The witness has admitted that when she was given a blow, she was bleeding and her clothes had become bloodstained and the blood had spilled on the floor. The witness has admitted that she has stated all these facts to Teesta Setalvad. The witness has stated that after she was injured by the gupti, she has not asked anyone to take her to the hospital, for the reason that they were all concerned with trying to save their lives. After she was injured with the gupti, she had not stayed at home for even half an hour. The witness has denied that at that time, her husband was inflicted a blow with a sword and that she had not seen any such thing.

47.21 The witness has stated that she was given the second gupti blow near the water tank, which was also on her thigh. Both the wounds were near each other and the second blow was inflicted in the evening at 6:00 to 6:30. She had gone to the camp at 2 o'clock at night and prior thereto, she had not received any treatment on both the wounds. The witness has admitted that she was given treatment by the doctor at the camp and she does not know who the doctor was.

47.22 The witness has admitted that no one had given Samshad a glass of petrol and that she had not informed

Teesta Setalvad that someone had given her son a glass of petrol to drink and that she had also not stated any such fact before the S.I.T. officers. The witness has thereafter been cross-examined with regard to the contents of the affidavit made by her before the Supreme Court and the manner in which it was made. The affidavit is exhibited at Exhibit-920. The witness has stated that she has never told Teesta Setalvad that she does not want her case to be conducted in Gujarat. Certain extracts of the witness's statement dated 13.9.2008 are put to the witness, however, these facts are not brought on record with a view to contradict any part of the primary evidence of the witness and are, therefore, inadmissible in evidence. The witness has admitted that she has not stated the facts regarding Ramila and Geeta to Teestaben and has voluntarily stated that in all the wailing she had forgotten to say so. The witness has admitted that she has not stated these facts even before the officers of the SIT. The witness has stated that she had left her house at around 1:00 to 1:30 in the afternoon and two of her children were with her and four children were with her husband. After they came out of their house, there were disturbances and they got separated. When there were riots at her house, there were huge mobs but she had not seen the people in the mob but had seen her neighbours. She had stated that the rioters had entered from Natraj Hotel and that she had not identified anyone in the mob. They were wearing white shorts, undershirts and were wearing saffron bands and hence, she could not identify them.

47.23 The witness has denied that the mob which had come from Jawannagar had followed her. The witness has admitted that no person from this mob had come to her house.

The witness has admitted that after seeing this mob, they all left their house and while leaving their house, they had not locked it and had left their house open. After leaving their house, she had gone straight to the S.R.P. Quarters. She had not gone to Gangotri Society. The witness has admitted that she had gone near the S.R.P. Quarters compound wall. She has admitted that she had gone from near the Hindu houses towards the S.R.P. compound wall.

47.24 The witness has stated that she reached the S.R.P. Quarters at 2:30 in the afternoon and admitted that she must have stayed there for about half an hour to an hour. The witness has admitted that at that time, there were other Muslim women, men and children with her. The witness has admitted that while she was standing near the S.R.P. compound wall, she could see the entire Jawannagar. The witness has admitted that no mayhem had taken place at Jawannagar till then and has voluntarily stated that people were running helter skelter. The witness has further stated that from the S.R.P. Quarters she went to Gangotri at around 3:00 to 3:30. At Gangotri Society, they had gone to a shuttered building wherein there were around 400 to 450 people with her. At around 4:30 all of them were driven out of the shuttered place and that they had stayed in the shuttered building for about an hour. She has admitted that the shutter was one which could be pulled up to open it and pulled down to close it and that the shutter was fully closed. The shutter was an iron shutter. The witness has stated that the building had only one shutter and there were no windows or doors. The witness has admitted that after they were driven out of the shuttered building, she had gone to Gangotri Society and that

she was going in the small lanes of Gangotri Society.

47.25 In the cross-examination of the witness, it has further come out that when they came out of the shutter and reached the open ground, it must have been around 5:00 to 5:30 in the evening. The witness has admitted that when they reached there, there were big mobs there. The witness has admitted that upon seeing the mob, they had come towards Gopinathnagar. The witness has denied that the mob which came from the direction of Teesra Kuva had surrounded them from all four sides and had attacked them. The witness has admitted that by the time she reached the water tank place, everyone had been burnt to ashes. Upon seeing this, she stood close to the wall. They had remained on the spot till 2 o'clock at night. The witness has denied that after reaching the water tank, she had not seen any incident. The witness has voluntarily stated that she had seen the incident. The witness has stated that she knows **Raju Marathi** and that he is called **Tiniyo** by everyone.

47.26 The witness is cross-examined with regard to various questions put by the SIT to her as recorded in her statement dated 30.5.2008, all of which is inadmissible in evidence as the same have not been brought on record with a view to contradict any part of the testimony of the witness.

47.27 The witness has denied that the incident of assault had taken place in the dark and has voluntarily stated that the incident took place in day light. The witness has admitted that when the incidents of assault had taken place, it was around 6:00 to 6:30 in the evening.

47.28 The witness has stated that when she was coming from Teesra Kuva and people had surrounded her, there were other people in the mob with her and all of them had been surrounded by the mobs. The mobs which had surrounded them were all armed and the people in the mobs had used their weapons to assault them. The witness has voluntarily stated that several people among them were felled and thrown in the well. She was at a distance of about 5 feet from the mob. From the mob, **Guddu** had injured her at around 6:00 to 6:30 in the evening. The witness has stated that except for Guddu no one had assaulted her in the evening. The witness has stated that the mob which surrounded them must have been comprised of around 800 to 900 people. The witness has admitted that no one from the mob had tried to sprinkle kerosene on her but has voluntarily stated that her child's pant was taken off and he was thrown into the burning fire. The witness has been extensively cross-examined with regard to the topography of the area, the contents of the affidavit, meeting with Teesta Setalvad, Raiskhan, etc.

47.29 The attention of the witness is drawn to the second and third line of paragraph 4 of her examination-in-chief to the effect that she has not stated such facts in her statement recorded by the SIT. In the opinion of this court, the fact regarding Zarina having gone to Noorani Masjid in the morning of the incident can hardly be said to be a material fact so as to be said to be an omission amounting to a contradiction. The attention of the witness is drawn to the fourth and fifth lines of paragraph 4 of her examination-in-

chief, which also cannot be said to be an omission amounting to a contradiction. The attention of the witness is drawn to the contents of paragraph 4 of her examination-in-chief wherein she has stated that there **Bhavanisingh** had made them sit in a big hall like place and had closed the shutter and had told them nothing would happen there and that they should sit there, to the effect that she has not stated these facts in either of the statements recorded by the SIT.

47.30 The contents of first five lines of paragraph 8 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in her statement recorded by the SIT. The last three lines of the same paragraph are shown to the witness to the effect that she has not stated such facts in the statement recorded by the SIT.

47.31 The contents of paragraph 9 of her examination-in-chief are read over to the witness wherein she has stated that her three daughters Rukshana, Zarina and Afsana were with her and Bhavanisingh's daughters **Ramila** and **Geeta** had burnt her daughter Afsana, to the effect that she has not stated such facts in the statement recorded by the SIT. The witness has denied that she had given the names of Ramila and Geeta for the first time before the court and prior thereto, she had not stated their names anywhere. The witness has voluntarily stated that she had given the names but they were not written down.

47.32 In her cross-examination, it has further come out that the accused whom she has identified before the court, did not visit her house and had no social or financial relations

with her. The witness has stated that except for the persons whom she has identified before the court, she does not know the names of any Hindus residing in their area. The witness has admitted that no test identification parade of the accused identified by her had been carried out before the police and that she had identified the accused for the first time before the court.

47.33 The witness has denied that she has not seen any incident as described by her and that she had not seen the accused named by her on the day of the incident. The witness has denied that she had named the accused before the court at the instance of and as tutored by the people of her community and leaders of their Jamaat.

47.34 To prove the omissions and contradictions in the testimony of this witness as to the statement recorded by him, the defence has cross-examined PW-327 Shri V.V.Chaudhary, the Investigating Officer (SIT), who, in his cross-examination has admitted that he has recorded the statements of this witness on 30.5.2008 and 13.9.2008. Certain extracts of paragraph 125 of the testimony of the witness are read over to the Investigating Officer, wherein she has stated that on that day at around 10 o'clock her daughter Zarina had gone to the Noorani Masjid. The Investigating Officer has admitted that the witness has not stated such facts in the statement recorded by him but has stated that her daughter Zarina had gone out. Insofar as this part of the testimony of the witness is concerned, the fact regarding her daughter Zarina having gone to the Noorani Masjid has been elicited during the course of her cross-examination and hence,

the question of contradicting the witness as to her statement recorded under section 161 would not arise.

47.35 The Investigating Officer has admitted that the witness has not mentioned the words “kill” “hack” as stated by her in paragraph 4 of her examination in chief. However, the witness has stated that they were burning, pelting stones and damaging. Certain extracts of paragraph 4 of the examination in chief of the witness wherein she has stated that Bhavanisingh had seated them in a big hall like space and had closed the shutter saying that nobody would come there and that they should sit there. The Investigating Officer has admitted that such facts have not been stated by the witness in the statement recorded by him but the witness has stated that Bhavanisingh had made them sit down in a house. Extracts of paragraph 8 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that Iqbal, Samsad and Aasmahammad were with her and the other children were with her husband, they had got separated in this manner. Thereafter, the children who were with her husband, they also got separated from her husband, that is, from their father. The Investigating Officer has denied that the witness has not stated such facts in the statement recorded by him and has explained that the witness has stated that while trying to flee, she got separated from her husband. The contents of paragraph 9 of the examination in chief of the witness are read over to the Investigating Officer, who has admitted that the witness had not given the names of Ramila and Geeta and had also not attributed any role to them in the statement recorded by him and that she had not stated the facts regarding the injuries sustained by her daughter

Afsana and that in her statement she has stated that her daughter Ruksana and Zarina had been burnt and killed by Guddu, Suresh, Bhavani and Tiniya.

47.36 The contents of paragraph 11 of the examination in chief of the witness are read over to the Investigating Officer wherein she has stated that she had hidden under the sheets on the top of Gopinath Gangotri Society. The Investigating Officer has admitted that this witness has not used such words in her statement and has stated that at night, to escape from the mob she had fled and was sitting on the terrace of Gangotri Society.

47.37 SUBMISSIONS: The learned counsel for the appellants-accused submitted that in the case of this witness, no police statement has been recorded and her statement has only been recorded by the SIT. The attention was invited to the contents of paragraph-9 of her examination-in-chief to submit that the contents of the entire paragraph are not stated in the statement before the SIT. It was submitted that there are material omissions in the evidence of the witness as to her statement recorded by the SIT and that implication of Ramila and Geeta is coming for the first time before the court, not even before the SIT. It was pointed out that there are material contradictions between the testimony of this witness and her husband on material points. It was submitted that according to this witness, she had given a complaint at Shah Alam police chowky within 15 to 20 days of going to the relief camp. Her husband was with her when she went to give the complaint. They were taken to the police by Naeembhai and Raiskhan. It was submitted that if at all such a complaint had been given as

both the witnesses have stated, the complaint should have come on record as to what are the allegations and against whom. It was submitted that if the prosecution does not bring it on record, then adverse inference has to be drawn against the prosecution that true facts are being withheld. It was submitted that if at all no such complaint has been filed then the witnesses have not come forth with the true version before the court. It was submitted that the witness has admitted that they were all taken to the police by two persons, including Raiskhan who was a lawyer by profession and was assisting Teesta Setalvad and at whose instance, the affidavits were filed.

47.38 It was submitted that the witness has mentioned about a gupti attack on her at 10:00 a.m. in her house, whereas her husband is totally silent about such gupti attack. No bloodstained clothes have been seized or produced, nor is the place where she received injury stated. It was submitted that her subsequent conduct is not possible if she had sustained the gupti injury. It was submitted that in the absence of a medical certificate, her entire version does not inspire confidence. It was submitted that according to this witness, a second gupti blow was inflicted on her at 6:30 p.m. near the water tank.

47.39 It was submitted that the witness has not stated anything about her son being given a glass of petrol before the SIT, but has stated so in her deposition to bring in consonance with her affidavit which is a result of tutoring. Referring to the last two lines of paragraph 80 of her cross-examination, it was pointed out that the witness has not even informed Teesta

Setalvad or the SIT about the involvement of Ramila and Geeta and the allegations made against them.

47.40 It was submitted that in seven accused are named by this witness out of whom, Guddu and Bhavani have passed away. Geeta (A-56) and Ramila (A-61) though identified and named in the complaint, are not named in the statement. It was submitted that Sahejad (A-26) is not correctly identified though named and accused No.25 has wrongly been identified as accused No.26. It was submitted that accused No.22 Suresh and accused No.55 Tiniyo both of whom are named in the deposition and identified, have been named in the statement before the SIT. It was urged that no police statement of this witness has been recorded at the relevant time when the incident took place. It was submitted that during six and a half years, she had ample opportunities and even according to her own admission, she had not brought these facts anywhere and for the first time before the SIT on 30.5.2008, she has named some of the accused. Therefore, her testimony, which runs contrary to the testimony of her husband (PW-114), is not trustworthy and reliable.

47.41 Referring to the contents of paragraph 5 of her examination-in-chief, it was submitted that there is a variance in the version given by this witness about the person who told them to go to Teesra Kuva from the hall. It was submitted that the accused Bhavani is common, whereas other accused are different.

47.42 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that as per the version given by this

witness, Bhavani, Guddu, Suresh, Tiniya and Sahejad sent them towards Teesra Kuva. Bhavani, Suresh and Guddu are common in the statements given by both husband and wife. Referring to paragraph 12 of her deposition, it was submitted that the time of the incident stated by the witness, viz., 6:00 to 6:30 coincides with the version given by her husband. It was submitted that the witness is a natural witness and an eyewitness. After about eight years, she has deposed before the court and she being rustic, may not remember everything. It was submitted that the witness has stated three major things. Firstly, in the morning at around 10 o'clock, her daughter Zarina informed her about the incident near Noorani; secondly, they went to S.R.P. Quarters and since the S.R.P. did not allow them to enter, they returned to Gopinath – Gangotri Society. Thereafter, they were driven out of the place where they were sitting and they were sent to Teesra Kuva where a huge mob armed with weapons was present. While returning, her three daughters were burnt, Afsana was saved, but she was injured. The witness has also identified the accused. It was submitted that in her cross-examination in paragraph 21, she has given details about Zarina going on a bicycle. It was submitted that what is stated in her examination-in-chief, is reconfirmed in her cross-examination. It was submitted that she has stated that at 1:30 in the afternoon, she left her house with her husband and children after which, they got separated. She has stated that between 6:00 to 6:30, the mob surrounded them and chased them, which is exactly what she has stated before the SIT. As regards the affidavit filed by the witness, it was submitted that the contents of the affidavit are not proved. It was submitted that insofar as the facts regarding killing the children is concerned, both the witnesses are

consistent in their evidence. Reliance was placed upon the decision of the Supreme Court in the case of **C. Muniappan & others vs. State of Tamil Nadu**, AIR 2010 SC 3718.

47.43 ANALYSIS: This witness has not given any statement before the police at the relevant time when the incident took place, and the first version has come up only before the SIT, after a period of more than six and a half years. As per the facts deposed by her in her examination-in-chief, they went from their house to the S.R.P. Quarters and then to Gangotri Society in the shuttered hall, from which they were sent by the named accused to Teesra Kuva. At this time they got separated and her sons were with her and the other children were with her husband. A huge mob came from the direction of Teesra Kuva and had assaulted them. The named accused persons were in the mob. She was inflicted a blow with a gupti by **Guddu Chhara** and **Bhavani** had given her son a glass of petrol and had taken off his pant and thrown in him the fire. She also says that her three daughters were with her and speaks about **Ramila** and **Geeta** having set her daughter Afsana on fire by throwing kerosene soaked quilts on her. The witness claims that while Afsana had escaped, she had seen all her three children viz. Samsad, Rukshana and Zarina dying in front of her eyes. In her cross-examination, the witness has stated that she was given a gupti blow on her thigh in her house in the morning and thereafter **Guddu** inflicted another gupti blow on the same wound once again at around 6:00 to 6:30 in the evening at the passage of the water tank. Furthermore, she was required to get twenty eight stitches for the injury sustained by her. In her cross-examination she also states that when she was coming from Teesra Kuva, she was

surrounded by an armed mob and several people were felled by the mob and thrown into the well. In her cross-examination, it has been elicited that she had not stated that her three daughters were with her and the Ramila and Geeta had burnt her daughter Afsana.

47.44 On a perusal of the testimony of this witness, there appear to be too many contradictions in it. While on the one hand she says that when they got separated, her three sons were with her, subsequently she says that her three daughters were with her. She says she saw the incident of all her three children dying as well as Afsana being burnt. The version given by the witness that Guddu inflicted her blows with a gupti on her thigh firstly in the morning in her house, and one again in the evening near the water tank, that too, on the same wound, is to say the least, incredible. She has named accused Ramila and Geeta for the first time before the court. Thus, apart from the fact that the version given by the witness has come up for the first time at a highly belated stage, even such version is full of contradictions and material omissions and the credibility of the witness has been fully dented during the course of cross-examination by the defence.

47.45 This witness has made an affidavit for the purpose of filing it before the Supreme Court with the assistance of Teesta Setalvad and the NGO Citizens for Justice and Peace. From the cross-examination of this witness, it appears that she had met Teesta Setalvad and had also visited Delhi in connection with this case. During the course of the cross-examination of this witness, it has been elicited that

Raiskhan and Naembhai had taken her to the police. Thus, the witness appears to be under the influence of outside agencies and considering the nature of her testimony, the fact regarding her being tutored by them, cannot be ruled out.

47.46 The witness has named **Bhavani, Guddu** (both deceased), **Suresh** (A-22), **Tiniyo** (A-55) and **Sahejad** (A-26) in her statement recorded by the SIT, and has named **Ramila** (A-61) and **Geeta**(A-56) for the first time before the court. Considering the overall testimony of this witness, she does not come across as a credible and truthful witness and it would be very hazardous to base a conviction on such evidence. The evidence of this witness, therefore, would not help the prosecution in establishing the charge against the accused named by her.

48. **PW-141 Kaiyumkhan Rasidkhan Pathan**, aged 32 years, has been examined at Exhibit-956. This witness has deposed that at present, he is working as security man with Paragreen Securities, Navrangpura. In the year 2002, he was residing at *Jawannagar, Khada, Naroda Patiya*, and was working as a casual labourer. At that time, his family was comprised of his wife Naseembanu, his daughter Yasminbanu and his son Aftab.

48.1 The witness has deposed that the incident took place on 28.2.2002 when there was a call for bandh. The bandh had been declared in connection with the burning of a train at Godhra on 27.2.2002. On that day in the morning, he was at home and had woken up at 8 o'clock in the morning to

go for his job. His wife had told him not to go for his job as there was a call for bandh. Hence, he had not gone to his work place. His wife had gone to fetch water. Upon returning home, she informed him that as the mobs had gathered there, she had returned without filling water. She had returned at around 7.30 to 8:00 in the morning.

48.2 The witness has stated that upon looking from the Jawannagar Khada, he had seen mobs of people being formed and coming towards their chawls. The mobs were shouting "kill", "cut" and were screaming. Thereafter, he took his wife and children and with a view to save their lives, went towards the rear side to the S.R.P Quarters compound wall. To protect his wife and children, he kept them in a closed house, and thereafter, went near the S.R.P. Quarters compound wall and saw that the police standing there were not permitting anyone to go inside and were saying that, today was the day they were to die, whereupon, he (the witness) had said that Allah would help them.

48.3 Thereafter, he had seen the people in the mob resorting to vandalism and causing damage. **Guddu Chhara** and **Jaybhavani**, along with others, were in the mob. Some people were talking that **Suresh Langdo** (accused No.22) was also there. The witness has stated that he does not know Suresh Langdo by face. The witness has stated that when he saw the people in the mob from far, they were assaulting people and driving them away.

48.4 The people in the mob had swords, trishuls and other weapons in their hands. On that day, in the afternoon at

around 6 o'clock, when he went near the S.R.P. wall with his wife and children, there were about twenty to twenty five people with them, but they were not permitted to go inside the S.R.P. Quarters, and hence, they had stood outside. In the evening at around 7:30, a mob passed by the wall, however, they had kept on hiding and the mob had not seen them. Subsequently, they had learnt that vehicles had come to rescue and take the people who had escaped; therefore, at 11 o'clock at night, he had gone in a police vehicle with his wife and children as well as other twenty to twenty five people, to the Shah Alam camp. In this incident, he sustained a stone injury on his leg, but he had not availed of any treatment.

48.5 The witness has stated that two and half months after the incident, the police came to the camp to record his statement. Thereafter, his statement was recorded at Gandhinagar. Thereafter, the police had also recorded his statement at the place where he is serving at Navrangpura. The witness has stated that he has come to know that at present, Guddu Chhara and Jaybhavani are dead and that he does not know Suresh Langda and cannot identify him.

48.6 CROSS EXAMINATION: This witness, in his cross-examination, has stated that he had stayed at the Shah Alam camp for about five months. The witness has stated that during these five months, he did not go out anywhere to earn his livelihood and has voluntarily stated that the camp people used to provide them with food and drinks. The witness has stated that he felt the necessity to lodge a complaint in connection with what he had seen in the incident and has voluntarily stated that many N.G.O.s as well as television

people used to come to the camp and at times, they used to tell them their facts. After they went to the camp, the police also used to keep visiting. The witness has admitted that arrangement was made in case anybody wanted to lodge a complaint at the camp and has voluntarily stated that there was a small room wherein the police used to come and record the complaints.

48.7 The witness has admitted that there was an office at Shahpur where also, the task of recording the complaints was undertaken. The witness has stated that the office at Shahpur, where the complaints were taken, did not belong to any social organization. He has stated that he does not know whether it was an advocate's office and has stated that he does not know exactly whether the office at Shahpur was the office of an advocate by the name of Raiskhan.

48.8 The witness has denied that except for his police statement, he has not given any complaint or FIR. The witness has stated that he has given a complaint at Shahpur, wherein he has made an affidavit. He has stated that he was not called to Shahpur to make affidavit by anyone and that he had gone on his own. The witness has admitted that he is referring to this affidavit as his complaint and no other complaint of his has been registered.

48.9 The witness has stated that he came to know about the fact that he could go to Shahpur office from the T.V. and newspapers. The witness has admitted that about five to six people had together gone to the office. He has stated that on the first occasion when they went to the office, they had

informed them about what difficulties they had and at that time, they (office people) had instructed them as to what they are required to do. Thereafter, they had gone to the Mirzapur Court and had obtained a stamp paper from Bhadra court. He has stated that he does not know Raiskhan, but since the people were talking, he came to know that this was Raiskhan's office. The witness has stated that he is totally illiterate and does not know how to read and write.

48.10 The witness has stated that he had gone to the office for the second time for the reason that he had felt that here in Gujarat, no one would listen to them. When he went for the second time, he had full conversation with that person. The witness has admitted that the affidavit was made on the second occasion. The witness has stated that the writing on the affidavit was done at the Shahpur office. The witness has admitted that whatever was to be written in the affidavit was taken by him in writing in Gujarati language. His writing, as well as the writing of those who were with him, were different. This writing was got done at Bhadrakali court. He has stated that he is illiterate, but he was explained the contents of the writing. The witness has denied that he was explained as to what he should state and has voluntarily stated that he had written as per his desire. They had taken this writing and gone to Mirzapur to some officer who had informed them that their writing was in Gujarati, but when it goes to the Supreme Court, it has to be in English. At Mirzapur, what was written in Gujarati was translated into English. The witness has stated that prior to making the affidavit, it was read over to him. The witness has admitted that his statement was recorded at the relief camp on 12.5.2002. The contents of his

police statement dated 12.5.2002 are read over to the witness, wherein he is alleged to have stated that he was at home with his children, in the meanwhile at around 9:00 to 9:30, from Naroda Patiya and Krushnanagar, the mobs of people shouting “kill, cut” were coming towards their chawl with weapons like pipes, swords and sticks etc. in their hands. They, as well as the people of their chawl, out of fear, went to Gangotri Society where Hindus were residing and in that society, a landlord by the name of **Jaybhavani** was residing and many people belonging to the Muslim community had hidden there. At that time, he had told them to sit there and that he would make arrangements for their meals. Thereafter, he had made arrangements for the meals; however, all the Muslims had not eaten there. This part of the statement has been admitted by the witness. The witness however has denied having stated that till 3 o’clock, they had stayed there and thereafter at around 5 o’clock, upon the police vehicle coming, he together with his children sat in the vehicle and came to Shah Alam. The witness has voluntarily stated that the police vehicles came at around 11 o’clock at night after which, they had gone to the camp. The witness has admitted that in this very statement, he had stated that after they came to Shah Alam, they had not gone to his house and he is not aware as to what happened to his house. No one in his family is injured. Since the statement of the witness has not been put to him to contradict any part of his primary statement, the same ought not to have been brought on record and is inadmissible in evidence.

48.11 The witness has admitted that in his statement, he has stated that he was at Jaybhavani’s house till 3 ’clock in the afternoon on the day of the incident. He has stated that from

Jaybhavani's house, he had gone to the S.R.P. Quarters and had sat in the police vehicle from the S.R.P. Quarters. The witness has admitted that in his statement recorded by the police, he had stated that he does not know any of the accused and cannot even identify them if he sees them. In his cross-examination, it has come out that he had seen Guddu and Bhavani at Jawannagar on the day of the incident and except that, he had not seen them anywhere. The witness does not remember as to at what time he had seen them at Jawannagar. The witness has admitted that since he had not seen Guddu and Bhavani on the road, he has not stated such facts in his affidavit. The witness has stated that he does not know Teesta Setalvad and has voluntarily stated that he had a talk with her only on the phone. The affidavit made by the witness for submitting the same before the Supreme Court is produced with purshis Exhibit-739. The affidavit is exhibited at Exhibit-960. The witness has admitted that his statement was recorded by the SIT on 25.7.2008, as stated by him. Certain extracts of his statement recorded by the SIT are put to the witness; however, the same have not been put to the witness with a view to contradict any part of his primary evidence and hence, is not admissible in evidence.

48.12 The contents of paragraph 5 of his examination-in-chief from the fifth line to the last line, are read over to the witness to the effect that he has not stated such facts in his statement dated 12.5.2002. The contents of paragraph 6 of his examination-in-chief, first two lines and from the fourth line to the last line, are read over to the witness to the effect that he has not stated such facts in his statement dated 12.5.2002. The contents of paragraphs 7, 9 and 10 of his examination-in-

chief, are read over to the witness to the effect that he has not stated such facts in his statement dated 12.5.2002. The contents of the last four lines paragraph 9 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in his statement dated 19.5.2008 recorded by the SIT.

48.13 The witness has admitted that he has not stated any facts not witnessed by him in his affidavit Exhibit-960. The witness has admitted that he has not stated to anyone to write down even the facts which he had not seen in the affidavit and has voluntarily stated that the facts stated in the affidavit are correct.

48.14 To prove the omissions and contradictions in the testimony of the witness as to the statements recorded by the concerned assignee officer/Investigating Officer, the defence has cross-examined the assignee officer/Investigating Officer who had recorded such statement.

48.15 PW-278 Shri R.B. Joshi, the assignee officer, has admitted that this witness in the statement recorded by him had stated that he does not know who took away the goods. He does not know any one and that he cannot identify any one even if he sees them. The assignee officer has admitted that this witness has not named any accused in the statement recorded by him.

48.16 PW-279 Shri B. J. Sadavрати, the assignee officer, has admitted that he has recorded the statement of this witness on 12.5.2002. He has stated that since he had no

instructions to carry out test identification parade of any accused, he had not done so. The assignee officer has admitted that this witness had stated before him that till 3 o'clock, they had stayed there and thereafter, at around 5 o'clock, upon the police vehicle coming, he, his wife and children together went in the vehicle and came to the Shah Alam camp. He has further admitted that this witness has stated before him that no person in his family was injured. He has also admitted that this witness had not named any accused in the statement recorded by him.

48.17 The contents of paragraph 5 from the first line to the last line of the examination-in-chief of the witness are read over to the assignee officer who has denied that all the facts have not been stated by the witness before him. He has stated that the witness had told him that on that day, he had not gone for labour work; however, the rest of the facts have not been stated by him.

48.18 The contents of first two lines of paragraph 6 of the examination-in-chief of the witness as well as from the fourth line till the last line of the said paragraph are read over to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him. The contents of paragraphs 7 and 9 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that all the facts stated therein have not been stated by the witness in his statement recorded by him.

48.19 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT), has, in his cross-examination, admitted that he

has recorded the statement of this witness on 19.5.2008. Certain extracts of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that at around 7:30 in the evening, a mob passed by near the wall but they had kept hiding and the mob did not see them. The Investigating Officer has admitted that the witness has not stated such facts before him.

48.20 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness has not stated as to from which side, the mob was coming. No details have been given about what time and at what place and whether the accused had any weapons. It was submitted that he has not witnessed any incident where anyone is killed. It was submitted that this witness in paragraph-62 of his cross-examination has admitted the contents of his affidavits as being true. It was pointed out that this witness has named these accused only for the first time before the SIT. It was submitted that this witness has not named any accused in his statement dated 12.5.2002 and the omission has been duly proved through the testimony of PW-279.

48.21 Mr. Prashant Desai, learned Special Public Prosecutor, has submitted that this witness is a natural witness. He is an eyewitness and his presence at the scene of occurrence is proved beyond doubt. It was submitted that as regards all the four statements given by this witness, the defence has failed to establish that whatever he has stated in his evidence is not stated in any of this statements. It was submitted that in the cross-examination of this witness, there is a reference to only tow statements of 2002 and there is no

question in respect of two statements of 2008. Therefore, it is not correct to say that there is a contradiction. It was submitted that there is no change in the story given by this witness, which materially affects his credibility. It, therefore, cannot be said that this witness is not creditworthy.

48.22 ANALYSIS: From the cross-examination of this witness, the defence has brought out omissions in the statements dated 12.5.2002 and 26.6.2002 recorded by the police to the effect that the witness had not named any accused in his statements recorded by them. Such omission amounting to a contradiction has been proved through the testimonies of the PW 279 Shri B.J. Sadavrati, the assignee officer who recorded his statement dated 12.5.2002 and PW 278 Shri R.B. Joshi, the assignee officer who recorded his statement dated 26.6.2002.

48.23 Even if the contradictions as to his police statements are not considered, and the evidence of the witness is taken at its face value, this witness has named three accused in his examination in chief, out of whom two viz. **Guddu Chhara** and **Jay Bhavani** are dead. Insofar as accused No.22 **Suresh Chhara** is concerned, the witness has stated that he does not know him by his face, but that people were talking that Suresh Chhara was also there. Therefore, insofar as Suresh Chhara is concerned, the evidence of the witness is based on hearsay. Moreover, he has stated that he does not know him and cannot identify him in the dock.

48.24 Besides even qua the two deceased accused, in his

cross-examination it has come out that he had only seen them at Jawannagar on the day of the incident and that he does not remember the time when he had seen them. From the evidence of the witnesses it has come on record that both the above deceased accused were residents of the chawls and Gangotri Society, therefore, their mere presence at the scene of offence, without anything more, would not attract any culpability on their part.

48.25 Considering the overall testimony of this witness, nothing much turns upon it as no part of his testimony supports either the prosecution case or the case of the defence.

49. **PW-147 Reshmabanu Nadeembhai Saiyed**, aged 40 years, has been examined at Exhibit-1013.

49.1 The witness has deposed that she is residing at 6, *Citizennagar, Ahmedabad* since last six years. Prior thereto, she was residing in a rented house at *Imambibi-ni-Chali, Naroda Patiya* with her husband and children. The owner of the house was one Salambhai, who was working in the S.T. Workshop.

49.2 The witness has stated that she is totally illiterate, but knows how to sign.

49.3 The Godhra incident took place on 27.2.2002 and the incident took place on 28.2.2002. On 27.2.2002, she was at her in-law's house as her brother-in-law was getting married on

5th March and they had gone to sit there. They had gone at around 8 o'clock at night to her in-law's house and thereafter, stayed there overnight.

49.4 On 27.2.2002, they had learnt that there was a call for Gujarat Bandh on 28.2.2002. On that day, she also learnt that one mattress shop had been burnt at Krushnanagar.

49.5 On the day of the incident, she had returned home from her mother-in-law's house in Kashiram Mama-ni Chali at around 7 o'clock in the morning and then, she had gone to fill drinking water from the municipal tap. She was alone at home. She had put a bucket in the line for her turn to come at the municipal tap and thereafter, had gone to call her family members. Thereafter, she and her husband were returning home from her mother-in-law's house and her children had stayed at her mother-in-law's house. Thereafter, her youngest son had stayed at her mother-in-law's house and the rest of the children had returned home.

49.6 In their chawl, the water from the municipal tap comes at around 7:00 to 8:00 in the morning. She went to the road to see whether the water had come or not, when she saw two trucks going from the direction of Krushnanagar to Kubernagar. There were people in the trucks who had trishuls, swords, etc. in their hands and they were wearing white coloured clothes and had tied saffron coloured bands around their necks. She had seen that the mob of people had gathered near Natraj Hotel and Krushnanagar and upon seeing all this, she was frightened and went home and asked her husband as to why so many people had gathered outside, despite the fact

that there is a bandh call so many people have gathered outside. Thereafter, she came out on the road with her husband.

49.7 When she came out with her husband on the road, she saw that the people in the mob had burnt tyres, etc. near Natraj and were advancing forward. The mob was pelting stones and was throwing some chemical on the Noorani Masjid. They were also throwing glass bottles and burning rags on the masjid. The mob was comprised of Chharas from Chharanagar and Sindhis.

49.8 At that time, the Imam Saheb of their masjid, Abdulsalam was also injured with a stone. There was *inter se* stone pelting. At this time, she had asked her husband to bring her younger son from her mother-in-law's house. She and her husband went to her mother-in-law's house to bring her son and had thereafter come in front of the S.T. Workshop from the front of Imambibi-ni-Chali.

49.9 At the S.T. Workshop, she saw that there was a firing, where Khalid was injured with a bullet. At this time, a bullet had also hit Abid. The firing was from the side of the persons who were rioting. Abid died on the spot, whereas Khalid was injured by a bullet on his waist and is still alive.

49.10 At this time, she had seen **Guddu Chhara**, **Suresh Langdo** (A-22) and **Bhavanisingh** in the mob. They were calling the persons in the mob towards their chawl. At this time, **Guddu Chhara** and **Suresh Langda** had swords in their hands, **Bhavanisingh** had a trishul. At this time, it must

have been between 9:00 to 10:00 in the morning. Upon seeing all this, she went towards her home. On returning to her chawl, she apprised the people there about the injuries sustained by the Imam Saheb, Khalid and Abid as well as the attack on Noorani Masjid and advised them to leave the chawl and go towards Jawannagar. Together with her, she was accompanied by her four children and Shahenazbanu, Sairabanu and Faridabanu of her chawl and their children. They all went towards Jawannagar. While they were going, four other children from their mohalla were standing on the road and crying. So she also took them along with them.

49.11 At Jawannagar, they went to Shahenazbanu's mother's house. Shahenazbanu's mother's name is Kherunisha. Since the children were crying, Kherunisha had told them to make the children sit there and feed them. At this time, her husband had not come and hence, she had left her children at Kherunishabibi's house. She had told her to keep her children there and she will be back after searching her husband. Leaving her children in her custody in this manner, she went near the wall of the S.T. Workshop in search of her husband. There, many houses were burning and there were sounds of gas cylinders bursting. The people in the mob were shouting "Shree Ram, Shree Ram". On seeing this, she got frightened and did not go further and returned to Kherunishabibi's house, where her children were.

49.12 When she returned, she told Kherunishabibi about what she had seen. Kherunishabibi suggested that her daughter lives in the S.R.P. Quarters so she would leave her, her children and those who had come with her, there. At this

time, it must have been around 1:30 in the afternoon. Thereafter, all of them had gone to the S.R.P. Quarters, where the other four children, whom she had found crying, met their parents and she handed them over to them.

49.13 She once again, at around 2 o'clock in the afternoon, tried to search for her husband after making her children sit at the S.R.P. Quarters. She set off from the S.R.P. Quarters to Jawannagar, when she met a woman named Taherabanu from their mohalla, who told her that her husband had been hacked by the mob. Upon hearing this, she got very frightened and returned to her children at the S.R.P. Quarters.

49.14 At this time, she had requested Kherunisha's daughter to give her a gown which she would wear and go outside to look for her husband. She wore the gown and came to the S.R.P. Quarters compound wall. She was walking parallel to the road, when she could hear shouts of "hack, kill" from the mob outside. At this time, she was roaming around near the wall, when near the S.R.P. point, her brother-in-law Asif was telling the S.R.P. people that at least let the women and children enter inside the compound wall. She does not remember exactly what the time was. At this time, the S.R.P. people had beaten her brother-in-law Asif.

49.15 At this time, another person whose name she does not remember at present, had taken the women and children who were standing outside the compound wall to the Teesra Kuva, which is situated near the compound wall. From there, he got all the women and children to jump over the wall and enter the S.R.P. Quarters. She had seen all this from inside

the S.R.P. Quarters.

49.16 The witness has further deposed that she was near the tank in the S.R.P. Quarters, which is towards the Gangotri Society and Gayatri Society and thereafter, she had gone to the second floor of the S.R.P. Quarters. At this time, it must have been around 5:00 to 5:30 in the evening. She saw from there that sounds of “Maro Kapo” were coming and the houses were burning.

49.17 At this time, **Guddu Chhara, Bhavanisingh** and **Suresh Langdo** and their friends brought her friend Kausharbanu by pulling her. She was screaming “let me go, let me go”. At this time, Kausharbanu was struck with a sword on her stomach and the foetus was taken out of her womb. At this time, Kausharbanu fell down there. The foetus was thrown on Kausharbanu and they were set ablaze there, where they were burnt.

49.18 She had stayed at Kherunisha’s daughter’s house at the S.R.P. Quarters with her children for four days. While they were at the S.R.P. Quarters, they had heard that Kausharbanu and Majidbhai’s entire family had been killed.

49.19 Thereafter, she had gone to Dariyakhan Ghummat relief camp, where she had stayed with her children for four days. Her husband’s friend Aadil had come to this camp and when he saw her he asked her “*You are alive! Someone has told your husband Nadeem that you and the children are dead*”. So, she told him to tell her husband that they were in this camp. She had learnt that her husband was

at the Shah Alam camp. Her husband's friend Aadil had informed her husband at the Shah Alam camp that she and her children were alive, whereupon her husband told Aadil, to bring his wife and children there.

49.20 Thereafter, Aadilbhai came to Dariyakhan Ghummat camp and took them in a rickshaw to the Shah Alam camp, where her entire family was united.

49.21 The witness has stated that no one in her family had sustained any injury except for her elder daughter Venus who got hit on her head by a stone.

49.22 The people in the mob had looted and burnt her residence in this incident.

49.23 They had stayed at the relief camp for eight months. While they were at the Shah Alam relief camp, around one or two months thereafter, the police had come and recorded her statement. Thereafter, her statement was recorded by the SIT, firstly at Gandhinagar and thereafter, at her house at Citizennagar. The witness has stated that as per her knowledge, Guddu Chhara and Bhavanisingh are dead and she can identify Suresh Langda (A-22). The witness has accordingly identified Suresh Langda (A-22) correctly.

49.24 CROSS EXAMINATION: In the cross-examination of this witness it has come out that she can speak and understand Gujarati, but cannot read and write in it. However, she can sign in Gujarati. In her cross-examination it has

further come out that at the time of the incident she was residing at Imambibi-ni -Chali and was staying there since her birth. The witness has denied that she knows the names of Muslims in neighbouring societies and has voluntarily stated that since they belong to the Saiyed community, women do not go out and that she was born in Masjid-ni-Chali and after her marriage she was acquainted with Imambibi-ni-Chali. The witness has been cross-examined with regard to the topography of the area.

49.25 The witness has admitted that her statement came to be recorded by the SIT on 19.5.2008. She has admitted that her statement dated 14.4.2002 had been read over to her by the SIT and has voluntarily stated that whatever was incorporated therein was clarified by her in this statement. The witness has denied that in her statement dated 19.5.2008 she has stated that the statement dated 14.5.2002 recorded by the police is read over to her and it is found to be as dictated by her and is correct and proper.

49.26 The witness has admitted that her statement was recorded at Shah Alam Camp on 14.4.2002 about two months after the incident. She has admitted that during these two months, she has not stated the fact regarding the incident at any Government office or before the police. She has admitted that in two months after the incident she has not lodged any complaint and has voluntarily stated that after two months the complaint was lodged. She does not remember as to at which police chowky she has lodged the complaint and as far as she remembers the police had recorded her complaint in the masjid at Shah Alam camp. She does not remember

whether her complaint bears her thumb impression or signature.

49.27 The witness has stated that her mother-in-law knows English and has studied up till B.Com. She has admitted that in her statement she had put thumb impression whereas her mother-in-law had signed it.

49.28 The end part of her statement dated 14.4.2002 is shown to the witness, who has identified her thumb impression below the same. She has also identified her mother-in-law's signature below it. The witness has identified her thumb impression and her mother-in-law's signature on the margin of the documents. The thumb impressions and the signatures are given mark 'Y'. The witness has denied that on the day of the incident there was police firing near Pandit-ni-Chali. She has admitted that Abid and Khalid were injured in police firing at around 10 o'clock in the morning.

49.29 The witness has stated that she had gone near S.T. Workshop Gate; however, she was standing towards their chawl at a distance of about fifty steps from the S.T. Workshop Gate. Abid and Khalid were at a little distance from her but they too were standing towards their chawl. She has admitted that youth from the Muslim Jamaat had gathered at this spot. She has denied that at least 400-500 Muslims had gathered there. She has voluntarily stated that maximum fifty youths must have been there. She has admitted that, at that time, there was a Hindu mob on the opposite side near S.T. Workshop. She has admitted that both these mobs had pelted stones at each other and at that time the police had resorted

to firing.

49.30 She has admitted that she had seen the place where Abid had fallen down. She has admitted that Abid was lying on national highway after he was injured by bullet. She has admitted that Abid was lying outside on the road where he was injured by bullet. She has stated that she has seen Abid, but not stayed there for a long time. She has further stated that after Abid was injured, Khalid was injured and after seeing that she had left the place and immediately went away. The witness has voluntarily stated that after the incident of Abid and Khalid, she had stayed there for around 10 minutes and had seen that all the three accused were calling the people in the mob to come nearer to them and therefore, she had gone from there. She had admitted that she does not know what happened to Abid thereafter.

49.31 The witness has stated that she knows Abid's wife and had not seen her on that day. The witness has stated that she has not seen Abid's wife taking Abid's dead body and leaving it in a scrap dealer's house. The witness has voluntarily stated that she has heard about it but has not seen it.

49.32 Certain facts stated by the witness in her statement dated 14.4.2002 are brought out in paragraph 52 of her cross-examination. However, this part of her deposition is not admissible in evidence as the same is not put to the witness to contradict any part of her evidence.

49.33 The witness has stated that she has not gone

to any terrace of the S.R.P. Quarters and has voluntarily stated that she had gone on second floor. She has admitted that she has not seen any incident from the terrace of S.R.P. Quarters and has voluntarily stated that she had seen the incident from second floor of the S.R.P. Quarters. The witness is confronted with her statement dated 14.4.2002 to the effect that she had stated therein that when she went to the S.R.P. Quarters, at that time on the day when the riots took place, she had climbed on to the terrace of the S.R.P. Quarters in the afternoon and had seen. This part of the deposition of the witness is not admissible evidence inasmuch as the witness is sought to be confronted with a fact which has been brought out in her cross-examination.

49.34 The witness has denied that she had seen the incident of a pregnant woman's stomach being slit near Gangotri Society after climbing on the terrace and has voluntarily stated that she has seen it from second floor. She had denied that in her statement dated 14.4.2002; she has stated that she does not know the name of the persons who had played role in the incident of the pregnant woman.

49.35 The witness is confronted with her statement dated 14.4.2002, to the effect that she had stated therein that she had climbed on the terrace and seen that near Gangotri Society a pregnant woman's stomach was cut and the foetus was taken out and thrown in the fire, which she had seen with her own eyes. She does not know the name of the persons who committed this act and that out of them, one or two persons were wearing white pants and the people who committed such act were the people belonging to the Sindhi and Chhara

communities. The witness has admitted that nobody had stopped her from going her inside the S.R.P. Quarters on that day and has voluntarily stated that the house of the lady who was with her was inside the S.R.P. Quarters and therefore, they were not stopped by any one.

49.36 The witness is cross-examined with regard to the application-Mark 644/31 made to the SIT. The witness has identified the signature at the bottom of the application. The witness has stated that she has never gone to Naroda Police Station and does not know Mysorewala or M.S. Chudasama. She has stated that till the time she went for recording her statement before the SIT, no one had ever threatened her and no accused had threatened her. The witness has stated that the person who has written the application had read it over to her. The application has been exhibited as Exhibit 1016. The witness is cross-examined with regard to the manner in which the application was prepared. The witness has admitted that she was not aware as to whether Police Inspector K.K. Mysorewala and Shri M.S. Chudasama were investigating into the offence. The contents of paragraph 5 of the application were read over to her and the witness has stated that she has not stated such fact.

49.37 The witness has stated that she knows Tahirabibi who resides in the second lane of Imambibi-ni-Chali. The witness has stated that Tahirabibi had informed her that her husband has been killed near S.R.P. Quarters near Jawannagar at around 12 o'clock in the afternoon. After she received such information she had gone outside S.R.P. Quarters to Kherunishabibi's house at Jawannagar. After

hearing such news, for a little while she was afraid and sat down there and thereafter she had returned to S.R.P. Quarters. She has stated that Kherunishabibi's house is in third lane of Jawannagar. She had denied that till she reached Kherunishabibi's house she had not seen any incident. She has denied that the incident which she had seen did not take place in the lane of Jawannagar, but outside.

49.38 The witness has stated that when she went to Kherunishabibi's house, she was sitting inside her house. She has admitted that while she was sitting in her house she felt that she should go to S.R.P. Quarters and hence she had gone. The witness has stated that she had come out of Kherunishabibi's house for the purpose of providing meals to her children and she had come out of her house for half an hour. At this stage, the witness has voluntarily stated that at the Municipal toilet, near S.T. Workshop, she had seen an incident where a person named Kadir Rana was hacked which she has remembered and therefore, she is stating about it. In her cross-examination it has further come out that from Kherunishabibi's house she has gone to the S.R.P. Quarters.

49.39 The witness has stated that the incident of Kadir Rana must have been taken place between 11 to 12 o'clock. The witness has denied that in her statement dated 14.4.2002 she had not stated any such fact and has voluntarily stated that she has stated such fact, however, they might not have written it down.

49.40 The witness is confronted with certain facts stated by her in her statement dated 5.7.2008, recorded by

SIT, wherein certain explanations were sought for. In the opinion of this court, these facts stated by the witness before the SIT cannot be brought on record unless the same are put to the witness to contradict any fact stated by her in her evidence. Under the circumstances, the contents of statement of the witness as brought on record in paragraphs 80, 82 and 83 of her deposition are inadmissible in evidence.

49.41 The witness is, thereafter, cross-examined with regard to the affidavit made by the witness for the purpose of submitting the same in certain proceedings before the Supreme Court. In her cross-examination it has come out that at the time when she was stating the facts about the incident, Teesta Madam was not present. She has stated that she had narrated all the facts to her on telephone. The witness has stated that a person who was sitting, namely, Raiskhan had taken down the facts as stated by her in affidavit. The affidavit was typed at Mirzapur. The witness has stated that the person had written down the affidavit in English and had read it over and explained it to her. It was explained to her in Hindi and she had understood it. What was written therein was stated by her. The witness is shown her affidavit and she has stated that she has made this affidavit and has also admitted her signature thereon. The affidavit is exhibited at Exhibit 1017. The witness is thereafter cross-examined with regard to the contents of the affidavit. The witness has stated that as per her knowledge, she had not stated anything to the person who was typing the affidavit that a truck filled with diesel was driven into the masjid and the compound wall was broken and the masjid was set on fire and the entire masjid was destroyed.

49.42 The witness has further stated that she does not remember as to whether she had instructed the person writing the affidavit that a youth, named, Abid, aged 30 years had come out to protect the masjid; however, in private firing from that direction he was injured. The witness has stated that she has not given any such instructions while drafting the affidavit as she did not know as to whether Abid was injured in police firing or private firing. The witness has further admitted that certain facts written in the affidavit were not stated by her.

49.43 The witness has stated that she might have possibly told the person writing the affidavit that “Bhavanisingh had inflicted a sword blow on her stomach and had taken foetus out of her womb” and has voluntarily stated that it was Guddu Chhara, but by mistake she has given the name of Bhavanisingh. The witness is thereafter cross-examined with regard to the manner in which the affidavit was prepared as to the purchase of stamp paper, as to what was done with the affidavit and whether any one has given authority to file it before the Supreme Court, etc.

49.44 The witness has admitted that the house in which she is presently residing has been given to her by an organization of their community. She has also admitted that she did not have to pay any consideration for this house and that she had got the house free of cost. The witness has denied that at the instance of leaders of her community she was falsely deposing before the court and on the day of incident she was not at home, she had not gone to fetch water and she had not seen any incident and that at the time of the

incident she was not residing at Imambibi-ni Chali and only at the instance of the people of her community she was falsely deposing before the court. The witness has further denied that she has not seen the incidents of Kausarbanu, Abid, Khalid, Peeru, etc. and falsely deposing before the court.

49.45 The witness is further confronted with her statement dated 14.4.2002, to the effect that she has not given name of any accused in such statement.

49.46 The witness has stated that she had no social or other relations with three accused named by her in her deposition. The witness has further stated that she had talking relations with them and has voluntarily stated that since they reside in the same area she had occasion to talk with them. The witness has admitted that Suresh Langda used to come to their house for Holi, Dhuleti and used to demand money forcibly. She has denied that since Suresh Langda has got enmity with her brother in law who used to come to take money at her house she was falsely implicating him.

49.47 The Investigating Officer or the assignee of the Investigating Officer have been cross examined by the defence to prove the omissions and contradictions in the testimony of witness as to her statement recorded by him.

49.48 PW-277 Shri M. T. Rana has admitted that he had recorded the statement of this witness and that after recording the statement he had read over the statement to her and upon her admitting the contents thereof, he had obtained her thumb impression thereon. He had also obtained the signature of one

Akbaribegum on such statement.

49.49 The assignee officer has admitted that this witness had stated before him that Mahammadbhai and Pirubhai had sustained bullet injuries on their hand and leg respectively but both had survived and at that time they were residing at the Shah Alam camp. Upon them being injured by bullets, she had gone towards Jawannagar and while going there, firstly she had taken four small children who could walk along with her, wherein there were two girls and two boys. Thereafter going further, two girls and a boy of the same age were alone on the road and she had taken them too with her. In all, she had taken eight children with her inside the S.R.P. camp. She does not know as to who were the parents of these children. There they had gone to Kherunnisha's house, whose husband was serving in the S.R.P. The assignee officer has further admitted that this witness in her statement had stated that she had stayed at Kherunnisha's house whose husband plays a band in the S.R.P. He has further admitted that this witness has stated that while she was in the S.R.P. camp, at that time, the riots took place which she had seen in the afternoon by climbing on the terrace of the S.R.P. Quarters. He has further admitted that this witness had stated before him that upon climbing on the terrace she had seen with her own eyes that near Gangotri Society a pregnant woman's stomach was cut and the foetus was taken out and she was thrown in the fire. That she does not know the name of the persons who had committed such act and that out of those people one of the two persons were wearing white pants and that the people belonging to the Sindhi and Chhara communities were

amongst the people committing such acts. He has further admitted that this witness had given her address as Pandit-ni Chali beyond the Noorani Masjid, at present, Shah Alam camp. The assignee officer has further admitted that this witness had stated before him that she had gone to call her husband from her mother-in-law's house. Thereafter, her husband had come and that he was with her outside her house. He has further admitted that this witness had not stated any facts regarding the incident of Kadir Rana. The assignee officer has further admitted that this witness has not stated before him that on 28.2.2002, while he was filling water at the tap, she had seen two trucks with youth having swords and trishuls who were wearing white shirts and undershorts and had tied saffron bands on their heads, PW-277 has further admitted that this witness had not named any accused in the statement recorded by him but had referred to people belonging to Sindhi and Chhara communities.

49.50 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statements of this witness on 19.5.2008, 5.7.2008 and 18.7.2008. He has admitted that on 19.5.2008, this witness had stated before him that on 14.4.2002, the police had recorded her statement which was read over to her and as stated by her was correct and proper. He has admitted that the witness had stated before him that in her statement dated 5.7.2008, that thereafter there was stone pelting and after that there was an attack on the Noorani Masjid and the masjid was damaged and set on fire which she had see with her own eyes. She could not recognise any one. The

Investigating Officer has admitted that the statement dated 7.5.2008 was for clarification of issues shown in the affidavit made before the Supreme Court. He has admitted that this witness has explained Issue No.4 in the affidavit in the statement dated 5.7.2008 recorded by him, wherein she has stated that on 28.2.2002 when she was filling water under the water tap, she had seen two trucks bringing young men with swords and trishuls who were wearing shorts and undershirts and had tied saffron bands on their faces. The Investigating Officer has admitted that the witness had not stated such facts in her statement dated 19.5.2008. He has stated that her statement dated 19.5.2008 the witness had stated that when she had gone to see whether the Municipality water is coming at 8 o'clock at that time, Hindu mobs of people had gathered towards Natraj Hotel as well as Krushnanagar. In the mob, they were saying Shri Ram and had tied saffron bands around their neck.

49.51 SUBMISSIONS: The learned counsel for the appellants-accused submitted that the initial statement of this witness was recorded after one and a half years, wherein she has not named any of the accused persons and for the first time on 19.5.2008, she has made allegations against three accused out of whom, two are no more and one accused No.22 who is named and identified before the court.

49.52 It was submitted that the witness has filed an affidavit before the Supreme Court, wherein various facts and allegations were made which she did not instruct the person who got it prepared to be incorporated. Thus, the motivated role of an NGO or an individual is found prominent for some ill-

motive.

49.53 It was submitted that in her police statement, she did not name Kausarbanu, but narrated the fact about a pregnant lady having been killed by Guddu, whereas in the affidavit sworn by her, she attributes the role to Bhavanisingh. (In her cross-examination, an explanation has been brought out where she has denied having stated so in her affidavit.).

49.54 It was submitted that in the affidavit, two accused persons were sought to be brought in for the first time after about twenty months of the incident though they were not named by the witness in her first statement dated 14.5.2002. It was submitted that this attempt indicates that false implication of persons at a belated stage.

49.55 It was submitted that this witness in paragraph-22 of her cross-examination, does not state from where Kausarbanu was brought and who had done it. It was submitted that this witness was on the second floor of the S.R.P. Quarters and that considering the topography of the area; it would not be possible for the witness to see any incident taking place either at Jawannagar, the passage of the water tank, S.T. Workshop and Jawannagar pit.

49.56 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is a natural witness and her presence at the scene of offence is established. She has identified accused No.22 in the court. She has implicated three accused. She saw the incident from the second floor of the S.R.P. Quarters. It was submitted that no question has been

asked to this witness in her cross-examination that she has not seen the incident. There is no contradiction brought out qua the pregnant lady and all that is asked is as to whether she saw the incident from the second floor or the terrace. As regards the involvement of the accused, the witness is contradicted only qua her statement recorded in the year 2002. It was submitted that if all the statements are read together, no contradiction is proved as regards the names of the accused. It was submitted that if she does not name them in her 2002 statement and names them in her subsequent statement, it cannot be said to be a contradiction. Therefore, so far as these three accused are concerned, name of Suresh is in the 2008 statement, named in the examination-in-chief and identified and therefore, it cannot be said that she cannot be believed because she did not know him in the year 2002. It was further submitted that the investigation has been carried out to see that the truth comes out. It was submitted that there are no major contradictions in the testimony of the witness and there is no reason not to believe the witness. It was submitted that insofar as the incident is concerned, the witness is consistent in her version.

49.57 ANALYSIS: From the cross-examination of this witness, it emerges that no omissions and contradictions are put to the witness regarding the facts stated by her in the examination-in-chief and the facts stated by her in her police statement. The witness has merely been confronted with her police statement without seeking to contradict any part of her evidence, which is not permissible in law. It is settled legal position that in view the proviso to sub-section (1) of section 162 of the Code, a statement under section 161 of the Code

can be used to contradict a witness in the manner provided under section 145 of the Evidence Act. Under section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be proved. The idea behind this provision is to enable the witness to explain his statement in the deposition which is to be contradicted by his previous statement. The parts of the police statement to which attention is so drawn can now be proved and read in evidence. A part of police statement can thus be used for the purpose of contradicting the witness deposing at the trial. While recording the deposition of a witness, it, therefore, becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. This necessarily would entail referring to the police statement for the purpose of drawing the attention of the witness to that part of the police statement with which he is to be contradicted. The process of bringing such part of the police statement to the attention of the witness would involve correctly identifying that part from the police statement. The attention of witness has to be drawn to that part, and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and it will be read while appreciating the evidence. If he refuses to have made that part of the statement, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that

statement. (See ***Chandrasinh v. State of Gujarat, 2002 (2) GLR 960***).

49.58 On a perusal of the testimony of the witness, while she has been confronted with her police statement, she is not sought to be contradicted with any part of her deposition. Therefore, the provisions of section 162 of the Code read with section 145 of the Evidence Act have not been complied with insofar as the cross-examination of this witness is concerned. Therefore, the averments made by her before the court in her examination-in-chief go uncontroverted except to the extent of her not having named any of the accused in her police statement.

49.59 Therefore, the facts stated by this witness regarding she having come on the road in the morning and having witnessed Noorani Masjid being attacked by Sindhis and Chharas from their area; regarding Abid and Khalid being injured in firing near the S.T. Workshop wherein Abid died on the spot and Khalid was injured on the waist; she having gone to Shahenazbanus' mother Kherunissa's house at Jawannagar with Shahenazbanu, Sairabanu, Faridabanu and their children; and then having gone to Kherunissa's daughter's house at the S.R.P. Quarters, etc. and other facts stated by her in her examination-in-chief have not been dislodged by the prosecution, inasmuch as, there is no cross-examination of this witness qua any part of her examination-in-chief. It appears that in their zest to confront the witness with the contents of the affidavit, the learned advocates appearing for the accused have forgotten to cross-examine the witness to bring out the

omissions and contradictions, if any, in her examination-in-chief. It may be noted that through the testimony of the Investigating Officer the omissions and contradictions in the evidence of the witnesses are sought to be proved. However, unless the witness is first cross-examined in accordance with law as to the omissions and contradictions in her police statement, the question of proving such omissions and contradictions through the testimony of the Investigating Officer would not arise.

49.60 It may be noted that at various places during the course of her cross-examination, the witness has been put questions and after eliciting her response, reference has been made to her police statement to contradict her. In the opinion of this court, it is not permissible to bring on record any part of the police statement through the process of cross-examination, except to contradict any part of the primary statement of the witness. As held by the Supreme Court in **Tahsildar Singh v. State of U.P.**, AIR 1959 SC 1012, "*The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all: only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement.*"

49.61 From the testimony of this witness, taking it at face value, without considering non-compliance of the

provisions of section 162 of the Code read with section 145 of the Evidence Act, it emerges that before the police while she had narrated the incident of a pregnant woman's stomach being slit with a sword and the foetus being taken out and the woman being thrown in the fire, she had not named the woman or the perpetrators of the offence and had merely referred to them as belonging to the Sindhi and Chhara communities. [However, in her affidavit dated 17th November, 2003, the witness has stated that the woman's name was Kausarbanu and has also named all the three persons named by her in her examination-in-chief. She has stated therein that Bhavani Singh killed her by prodding the sword in her stomach and taking out her foetus.] In her examination-in-chief the witness has not named the person who had inflicted the sword blow, but in her cross-examination it has been brought out that in her affidavit while such role is attributed to Bhavani Singh, in fact, it was Guddu Chhara whom she had named. Since the name of Guddu Chhara has been elicited in her cross-examination, it cannot be said that the witness has improved her version, though there is a material omission insofar as naming the victim is concerned. It may be noted that though the name of the victim is not mentioned in the police statement, the witness has named her soon thereafter, in her affidavit dated 17th November, 2003. In any case, to the extent the witness has stated that a pregnant woman's stomach was slit and the foetus was taken out, she is consistent throughout.

49.62 It has been contended on behalf of the accused that the witness claims to have seen the incident from the second floor of the S.R.P. Quarters and that considering the

topography of the area, it was not possible for her to have witnessed the incident. Apart from the fact that this part of the testimony of the witness has gone unchallenged in her cross-examination, it may be noted that the S.R.P. Quarters are situated after the compound wall between the S.R.P. Quarters and Gangotri Society and Jawannagar. The incident of Kausarbanu is stated to have taken place on the road outside the passage of the water tank. Between the road and the S.R.P. Quarters there are no tall buildings, under the circumstances, there is no reason to disbelieve the version of the witness regarding her having seen a pregnant woman being assaulted and her stomach being slit with a sword and her foetus being taken out and she being thrown into the fire, which is a consistent version given by the witness right from the beginning. Since the names of the accused find place for the first time in the affidavit before the Supreme Court and have not been named in her first available police statement, one would look for corroboration from the evidence of other witnesses insofar as the complicity of the accused in the incident narrated by the witness is concerned. However, the witness cannot be disbelieved as regards the accused named by her.

49.63 From the cross-examination of the witness, it becomes evident that in the affidavit affirmed by her, facts have been averred which have in fact not been stated by the witness. Evidently therefore, the person who has drafted the affidavit has introduced certain facts, which in fact, have not been stated by the witness. It appears that the concerned NGO through which such affidavits were prepared, in its quest to

gain the sympathy of the Supreme Court has gone overboard and has introduced facts not stated by the witnesses. While the intention of the NGO be may noble, viz., to ensure that justice is done to the victims, the method and manner adopted towards this end is not proper. On account of stating facts not stated by the witnesses and getting them to affirm such facts, the NGO has only succeeded in weakening their cases and denting the credibility of the witnesses. It is evident that the witnesses being by and large illiterate people are not fully aware of the contents of the affidavits affirmed by them as the same are in English. Nonetheless, these are facts stated on oath by the witnesses relating to the incident, which carry their own weight and cannot be completely overlooked.

49.64 Another disturbing aspect of the case is that from the evidence of PW-277 the assignee officer, it emerges that he had obtained the thumb impression of the witness as well as the signature of some other person on the statement recorded by him. This conduct on the part of the concerned police officer is in blatant violation of the provisions of sub-section (1) of section 162 of the Code which ordains that no statement made by any person to a police officer in the course of an investigation under that Chapter, shall, if reduced to writing, be signed by the person making it, and therefore, needs to be deprecated in the strictest terms. The learned Special Public Prosecutor has submitted that since the witnesses were making grievances that their statements were not being recorded as stated by them, to be on the safer side, the signatures of the witnesses were taken on their statements. In the opinion of this court, merely because of fear of allegations being made against them, it is not permissible

for the police to record statements in flagrant breach of the provisions of law. If the problem was genuine, the concerned police officers should have seen to it that the statements of the witnesses are recorded under section 164 of the Code. However, there can be no excuse for deliberately flouting the provisions of section 162 of the Code. What is more disturbing is that not only the police, but even the SIT has obtained signatures of witnesses and more particularly of the police witnesses. The reason given therefor is that it would facilitate any departmental inquiry that may be conducted against them. In the opinion of this court, such casual approach even on the part of the SIT while recording the statements of witnesses cannot be countenanced even for a moment. When the Supreme Court has reposed faith in the SIT to carry out the further investigation in the case, the officers of the SIT are expected to act strictly in accordance with law, and no matter what, they ought not to have taken signatures on the statements recorded under section 161 of the Code. What is more worrisome is that signatures of even of high ranking officers of the State Police have been obtained on their statements, in blatant disregard of the provisions of section 162 of the Code, and no one appears to have objected to such course of action being adopted.

49.65 Be that as it may, the testimony of this witness can be relied upon for the purpose of proving the involvement of Suresh Langdo (A-22) in the morning incident as well as the evening incident, if the same is corroborated by the testimony of some other witness.

50. **PW-156 Abdulmajid Mohammadusman Shaikh**, aged 53 years, has been examined at Exhibit-1072. The witness has deposed that his previous wife's name was Lalbi. From 1972 to 2002, he was residing at *Jawannagar in Naroda Patiya* and prior to 1972, he was residing at *Chharanagar*.

50.1 The witness has deposed that he used to reside at Jawannagar together with his wife Lalbi and their ten children.

50.2 When he was residing at Jawannagar, he used to perform different tasks, such as, running a snack stall, provision store, digging graves and making biers.

50.3 The incident took place on 28.2.2002. On that day, there was a call for Ahmedabad bandh. In the morning, he had gone to the Noorani Masjid for namaz and from there he had gone to a tea stall. While sitting at the tea stall, he learnt that there was a call for bandh on that day. In view of the bandh call, he told his children to stay at home and told them that he was going to Kubernagar to buy goods.

50.4 On the day of the incident, at around 8 o'clock, he went to Kubernagar to buy pan-masala, bidi, etc. for his shop. At that time, many shops at Kubernagar were closed and many were open. He had purchased goods from Kanubhai's shop and had returned home and had asked his wife to make some tea. Before he could have tea, two youths from the next chawl came and told him that a huge mob had come from Kubernagar. Hence, he was surprised because just a little while ago, he had purchased goods from Kubernagar and had come home.

50.5 Upon hearing this, he went outside to the gate of the S.T. Workshop at the entrance of their chawl. After coming outside, he saw a mob of twenty to thirty thousand people coming from the direction of Kubernagar. The mob was shouting slogans of "*Jay Shri Ram*" and all of them had tied saffron bands around their foreheads. They had belts around their waist; wherein there were packets of snacks, liquor and water. The members of the mob had weapons in their hands, wherein some had swords, some had *kudgals* (a weapon like dharia), some had pipes and some had sticks in their hands.

50.6 He saw that at that time, another mob was coming from the direction of Krushnanagar. The witness has stated that he had not seen the watch, but presumably it must have been approximately 9 o'clock in the morning.

50.7 The witness has further deposed that both these two mobs merged with each other and attacked the Noorani Masjid. They had set Noorani Masjid on fire. The witness has deposed that outside the Noorani Masjid, on the foot-path, there was a cart filled with kerosene belonging to Rajesh Kerosenewala. Another cart belonging to a person named Vadageri Badshah was there, which also contained kerosene. Both these carts which were fully stocked with kerosene, were thrust upon the Noorani Masjid and gas cylinders were also thrown inside it and it had been set ablaze.

50.8 At this time, two police vehicles came to the S.T. Workshop, from which three black coloured trunks were taken down. Thereafter, a white car arrived. At that time, everyone

started taking the name of Mayaben Kodnani. Mayaben Kodnani alighted from this car. She had said "*Maro salaone*". Thereafter, the mob attacked them because of which, all of them started running towards the rear side of their chawl.

50.9 Since Bakri Eid was coming soon, a police point had been kept near their chawl. They told the people sitting at the police point to stop in the mob. However, they told them to go away, otherwise, they would also beat them.

50.10 Thereafter, the mob had attacked them and the police had also resorted to firing and bursting tear gas shells. In the police firing, one Hasan Qureshi was wounded on his head by a bullet and he fell down on the spot and they (the witness) had gone ahead.

50.11 Thereafter, in the same firing, a youth named Abid was injured on his private parts and he too fell down on the spot. Thereafter, they had moved further towards the rear side. Thereafter, a rickshaw driver by the name of Khadir was assaulted near the toilets situated in the line of their chawls and was set ablaze there. After this, he had gone home.

50.12 When he reached home, his daughter Sufiyabanu was reading the Quran and he told her that the mob was setting the houses on fire and hence, they should go away from there.

50.13 At the time of the incident, his daughters Saira and Nafisa were at Surat and except for them, his eight children, he and his wife, in all ten persons, were there.

50.14 At that time, on that day, all ten of them had left their house and gone. He does not remember the exact time. However, thereafter they had gone to a terrace of Gangotri Society in the afternoon. From the terrace of Gangotri Society, he saw that Guddu Chhara, Guddu Chhara's two brothers, Tiniyo and others were present. All of them had swords, sticks and kerosene cans in their hands. They had attacked Ayub, Allabux's son. They had put him in a rickshaw near the compound wall of the S.R.P. Quarters and near Abeda's house in the last lane of Jawannagar, and had burnt him. He himself had seen that Guddu Chhara had a sword in his hand. One of Guddu Chhara's brothers had a can of kerosene and his other brother had a stick in his hand. Five to six other Marathi youths were also there. He has stated that Tiniyo is Kadam's son.

50.15 The witness has stated that since there was a lot of violence, they were thinking of getting down from the terrace of Gangotri and all ten of them had gotten down from the terrace of Gangotri, where they met Jaybhavani and Jaybhavani's brother-in-law Dalpat. They told them to sit in a hall near the temple in Gangotri Society. Thereafter, he had made his wife and children sit in the hall where there were many other people from their chawl. There were about fifty women from their chawl and thereafter, he went to the terrace of Gangotri Society.

50.16 Thereafter, Jaybhavani came to the terrace where he was, and told him to give a big cauldron in which they used to cook gram so that he could make kadhi-khichdi for them. The witness told Jaybhavani that in their community, khichdi is

given after somebody dies, whereupon, he told him that now he would not escape. He told him that, "*Mullaji, none of you will escape*". To which, he replied, "*Allah is great*". At this time, it was almost evening.

50.17 At this time, his sister-in-law Raziyanu came burning with her twenty day old son Shoaib in her arms. He too was burning. Upon asking Raziya about his wife and children, she has told him that "*my mother as well as your wife and children are also burning*". Therefore, he went to the passage near Gangotri Society, where they were burning.

50.18 He saw that his wife was burning and his daughter Supriya was being pulled by some people, namely, Jaybhavani, his son (A-40), Tiniyo (A-30), Suresh (A-22) and two to four other people. Upon seeing his daughter being pulled in this way, he remembered Allah and said, "*Nar E Takbir Allah Akbar*". At this time, somebody attacked him on his head from the back and he fell down there. His head was bleeding and he was unconscious for about half an hour. By that time, it was around 7 o'clock in the evening. After about half an hour, he regained consciousness.

50.19 Upon becoming conscious, he saw that his daughter Supriya was being dragged and taken away and his wife Lalbi and Afreenbanu and Sahinbanu, son Mahammadhussain, son Khwajahussain and daughter Sufiyabanu were burning. Upon regaining consciousness, he thought as to what might have happened to the rest of his children and he started shouting the names of his other children Chand, Yasin and Maheboob.

50.20 At that time, he had met Maheboob, the husband of a woman named Bibibanu, who was in a burnt condition. Thereafter, he heard his son Yasin's voice calling him "*Abba*". His son Yasin was also in a burnt condition. On account of the burning sensation due to being burnt, his son Yasin was sitting in a tank there. The witness told him not to sit in the water because his skin would get swollen and took him out of the tank.

50.21 Together with Maheboob, his two children were also burnt. He, together with his son Yasin, Maheboob and his two children, went to the terrace of Gangotri Society. While they were on the terrace, many people were lying down, and many of them were crying. It must have been about 9 o'clock at night when the police arrived. The policemen said, "*Come down, we have come to take you.*" However, they were afraid that the police would beat them, and hence, they refused to come down. The police came back after half an hour and told them that they had come from Shah Alam and that they would drop them there. Two to three police vehicles had come. Thereafter, they thought that now they should go, and hence, they climbed down from the terrace.

50.22 Upon coming out of the lane, the police vehicle was there and all of them sat in it. They were taken to the Shah Alam camp. He was treated for the injury which he had sustained on his head. His son Yasin was severely burnt, and hence, his burn injuries were dressed. The doctor had told him that Yasin would have to be taken to the V. S. Hospital; hence, he took his son Yasin and went to the V. S. Hospital. They reached the V. S. Hospital at around 12 o'clock at night. When

they took his son Yasin for treatment, he had looked at the watch and it was around 2:25 at night. Yasin was given treatment and all the money that he had was spent in providing treatment to Yasin.

50.23 On 3.3.2002, Smt. Sonia Gandhi came to the V.S. Hospital. He and his son both started crying before her. She had expressed sympathy and told them that they would not have to incur expenses for the treatment. She had assured them that arrangement would be made for them, for everything right from food and water. He had also requested her that his daughter Supriya was in the Civil Hospital, she may also be brought to the V.S. Hospital, so that his both children would be near him and that she may make arrangements for the same. She had written a letter in that behalf.

50.24 On the next day after the incident, two persons had come and informed him that his daughter Supriya was under treatment at the Civil Hospital and that is how he came to know about it.

50.25 He took Sonia Gandhi's letter and went to the Civil Hospital. On inquiring through the nurse, he found Supriya. When he met Supriya, she informed him about all that she had gone through. She had informed him that she could not escape; her chastity also could not be protected. He told her that when they were taking her, he had seen her, but since he was also attacked, he could not save her and he could not see what had happened to her. Supriya had informed him that she was raped and that there were four to five persons involved in

the act. She informed him that Guddu Chhara, Jaybhavani's son and Jaybhavani had raped her. She had further told him that Harijan Manubhai (A-25) was also there.

50.26 The witness has further deposed that Supriya had informed him that Manu had taken off her clothes. On the same day, he had tried to take Supriya to the V.S. Hospital. Supriya too was asking her to take her with him. Since the doctor was not present there, he could not take her. Therefore, after talking with her, he had returned to the V.S. Hospital leaving her there.

50.27 The witness has further deposed that after he left his daughter in this manner and reached the V.S. Hospital, his son informed him that two persons had come there and told him that his wife and daughters have been taken to the Shahpur Kabrastan and that he was required to go there. The witness has deposed that for him, it was more important to look after his two living and ailing children and, hence, he had gone to Juhapura camp and requested his sister Kudratbibi and his brother-in-law Jabbar to go to the kabrastan and identify the dead bodies of his wife and children, as it was not possible for him to go, as both his children were ailing and were in different hospitals. Moreover, on that day, his son Yasin required dressing, and hence, he had not gone to the kabrastan and his brother-in-law Jabbar had gone and identified the dead bodies of his family members.

50.28 His brother-in-law Jabbar came and informed him that he had gone and identified the dead bodies; however, his son Chand was not amongst them. Thereafter, he found his

son Chand at the Shahibaug relief camp. His brother-in-law Jabbar told him that his two year old daughter Afreenbanu was being by his wife Lalbi on her hip and they had been burnt in the same position.

50.29 On the next day, he had gone to the Civil Hospital and found that his daughter was not there on the cot. Therefore, he inquired from the nurse and a doctor and learnt that his daughter had died on the previous night, that is, on 3.3.2002.

50.30 Thereafter, upon his request to see the dead body of his daughter, he was informed that it was sent to the postmortem room. Hence, he had gone there and seen his daughter's dead body. Upon making enquiry through the ward boy about the doctor concerned, and came to know that his name was Dr. Satapara. He also learnt that his daughter had sustained 80% burns.

50.31 He went and met Dr. Satapara, who told him that for the purpose of getting his daughter's dead body, he should call the police from the police station to draw a panchnama. He had gone to the Naroda Police Station and called the police. At that time, he, his brother-in-law Ayubbhai and his paternal uncle's son Afsarhussain were together. Thereafter, they came to the Civil Hospital from Naroda in a police jeep and his daughter Supriya's dead body was handed over to him.

50.32 They had taken the dead body of his daughter to Gunjshahid Kabrastan, where they had performed the burial ceremony. Thereafter they had gone to the V.S. Hospital. Yasin

was treated at the V.S. Hospital for around six months. The police had come to record his statement. However, they did not read it over to him after recording it. The witness has deposed that in this way the police must have come five to six times.

50.33 Thereafter, the SIT people had called him, whereupon he had gone to the SIT, Gandhinagar along with the protection given to him. He had narrated all the incidents that had taken place to the SIT, who had recorded all the facts of the incident.

50.34 Prior thereto, a panchnama of his house was drawn at which point of time, photographs of his house were also taken, all of which, he had given at the SIT office. In all, two statements of his were recorded by the SIT.

50.35 The SIT had called him for the second time in connection with the affidavit submitted by him before the Supreme Court. The witness has stated that he does not know as to whether, except for recording his statement and obtaining his explanation as regards the affidavit, the SIT had called him on any other occasion or not.

50.36 The witness has deposed that moreover, the SIT people had called him to identify the accused in the court. He had been called to the Gheekanta Court, where he had identified Nilam Marathi (A-54) whom he had seen in the mob and had thereafter seen in the court also.

50.37 The witness has further deposed that out of the

accused that he had seen on the day of the incident, Guddu Chhara, Dalpat Chhara and Jaybhavani have died. Out of the other accused whom he had seen on the day of the incident, he can identify Mayaben, Guddu's two brothers, Tiniyo, Manu, Suresh Langdo and Jaybhavani's son and Nilam Marathi.

50.38 The witness has thereafter identified Mayaben Kodnani (A-37), Guddu's brother (A-10), Suresh Langdo (A-22), Manu Harijan (A-28) and Neelam (A-54).

50.39 The witness has stated that Kadam's son Tiniyo and one of the Guddu's brothers are not present. It appears that accused No.1 Naresh alias Nariyo, who is Guddu's brother, had given an exemption application on that day and therefore, he is deemed to be identified.

50.40 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that his house is the tenth house after the S.R.P. compound wall. The witness has stated that he cannot say with certainty that from his house, towards the S.R.P. compound wall, Gauriapa's house is the fourth house. The witness has voluntarily stated that she resides there, but he does not know as to what is the number of her house. The witness has admitted that Manu Harijan resides behind the wall of his house. He has admitted that he knows certain people who were residing in Gangotri Society at the time of the incident. The witness has denied that the suggestion that his house has a cement sheet roof and has voluntarily stated that it has a steel sheet roof. He has admitted that the house behind his house had a concrete slab.

50.41 In his cross-examination, it has come out that there are three lanes in Jawannagar. He has stated that prior to the incident, he had no occasion to go to Gangotri Society or Gopinathnagar and that he does not know whether there was water-tank between Gangotri Society and Gopinathnagar. The witness has stated that he has not seen the gate of Gangotri Society. The witness has been cross-examined with regard to the Masjid trust and his acquaintance with Nazir Master, etc. The witness has stated that as per his information, if a person wants to come from Hussainnagar to Jawannagar, he would come from the S.T. Workshop road. The witness has voluntarily stated that he does not know of any other way and only knows of this road.

50.42 The witness has stated that upon the Krushnanagar mob reaching the S.R.P. Quarters, he came to know about it. He has stated that out of the Krushnanagar and Kubernagar mobs, the Kubernagar mob was near him. The witness has denied that the mob from Kubernagar had not tried to assault them and has voluntarily stated that therefore, they were required to retreat to their mohalla.

50.43 The witness has denied that the police had fired bullets only on the highway, and has stated that bullets were also fired in their lane. One bullet had come from near the Maulvi's house next to the S.T. Workshop, where there is a flour mill. The other bullet wounded someone at Hussainnagar. The third bullet also was directed somewhere near Hussainnagar. The witness has stated that he had not taken shelter at any house in Hussainnagar or Jawannagar. The witness is cross-examined with regard to topography of the

area.

50.44 In the cross-examination of the witness, it has come out that he had left his home after noon. He has stated that Gauriapa had a staircase for carrying mutton and they had gone from there. They had crossed the terrace and gone to Gangotri Society. He has admitted that there was no other house with a concrete slab at the relevant time. Gauriapa's terrace had a cement staircase. There were many families on that terrace on that day. He has stated that he had not noticed as to whether there was anyone whom he knew on the terrace. The witness has voluntarily stated that he noticed his own sister-in-law only after she was burnt. He has stated that it was not possible to recognize those who were not burnt at the relevant time and has voluntarily stated that they were under immense tension at that time. The witness has stated that the house on the terrace of which he has climbed was closed at that time. He cannot say whether the terrace was full and has voluntarily stated that they did not even have enough sense to take care of themselves. He has stated he knows that whatever he has seen with his eyes and whomsoever he has seen burning anything. He has stated that the mob which he had seen from the terrace was not very large, but the accused and other people were there. The witness has admitted that when they were sitting on the terrace, the mob had not come there and done anything to them. He has stated that they were on the terrace since about 4 o'clock in the afternoon. He has stated that when he went to see his wife and children at Gangotri Society, he had made one round there and has voluntarily stated that thereafter, he too was injured. The witness has admitted that he was calling out the names of his

children within the hearing of other people. At that time, he was alone. He has admitted that prior to his being hit on the head and falling down, no person from the mob had caught him. He has admitted that after he was hit on the head, no petrol was thrown on him. He has admitted that after he became conscious, no one had attempted to set him ablaze.

50.45 The witness has admitted that after he went on the terrace and came down again, his son Yasin was with him. The witness has admitted that second time when they got down from the terrace, Raziabanu was with them and her twenty day old son Shoaib was also with her. The witness has admitted that if one leaves two to three houses behind his house, there is a temple.

50.46 The witness has admitted that the hall in which he had put his wife and children was a shuttered hall. The witness has stated that he had not noticed as to how many shutters were there in the hall and did not know as to how long his family members were sitting in the hall. He has admitted that Raziabanu was also in the hall and has voluntarily stated that all these facts relate to the time prior to his family members being burnt. The witness has admitted that at that time, nobody had come to the hall and caused any injury to any person. The witness has stated that he does not know as to who took them out of the hall and has voluntarily stated that when his sister-in-law Raziabanu came to the terrace in a burnt condition, he came to know that they were taken out of the shuttered hall.

50.47 In his further cross-examination, the witness has

stated that when they were taken to the camp at night, as far as he remembers, out of his acquaintances, Gauriapa's sister-in-law was there in the vehicle. There were many people in the vehicle. The people were crying. Gauriapa's sister-in-law was sitting with the women in the bus. At that time, two police vehicles had come and they were straight away taken to the Shah Alam camp.

50.48 The witness has denied that after they went to the camp, the first thing they had done was to get a card prepared. He has further stated that firstly, they availed of treatment. He does not remember whether he had said anything before the doctor at that time and as to whether he had given the case history. The witness has voluntarily stated that they had firstly taken treatment. The witness has deposed that his entire family was finished. Out of his ten children, only one had survived and hence, there was a lot of pain in his heart. He had availed of treatment and had done everything that was necessary. However, for months together, he was not in his senses.

50.49 In his cross-examination, it has come out that his son Yasin was splashing water from the tank because of the burning sensation. He does not know as to whose house it was, but it was some Muslim's house. He has stated that he and Yasin were alone at the V.S. Hospital and that they were taken in the ambulance from the camp to the V.S. Hospital. He has stated that arrangement for the ambulance must have been made by the Shah Alam people and that when they reached V.S. Hospital, upon looking at Yasin's condition, the hospital staff had immediately taken him for treatment. The witness

has voluntarily stated that he does not know anything as regards who took out the case papers, who got anything written down, etc. The witness has admitted that he was in the hospital when Yasin was admitted. He has stated that he was sitting with Yasin throughout the night and when somebody from the hospital asked as to who was taking care of Yasin, he would introduce himself as his father. He has stated that Yasin was not fully conscious and was screaming on account of the burns. He has stated that for the six months during which they stayed at the hospital, different people were helping them with their meals. The witness has stated that at the Shah Alam camp he was told that his son Chand is at the Dariyakhan Ghummat camp, and hence, he had gone there. He has stated that at the Shah Alam camp, he had informed that one of his sons was missing. When he started looking for his son Chand, he came to know that he was at Dariyakhan Ghummat camp. The witness has stated that he had found his son with his brother-in-law Jabbarbhai at the Juhapura camp, where after he had brought his son with him. He has stated that when he went to take Chand from Jabbarbhai, he had informed him about the incident.

50.50 The witness has stated that no identification of the accused was carried out through him prior to the SIT and that the test identification parade was carried out after the SIT came into the picture. He has stated that the Crime Branch people had come for the purpose of the identification procedure. The witness has thereafter been cross-examined with regard to the manner and method of the test identification parade.

50.51 The witness has denied the suggestion that he used to give illegal electricity connections at Jawannagar, which was opposed by accused Manu and Neelam. He has voluntarily stated that he had not given any electricity connection in this manner. The witness has denied that because of this, he had enmity with these two persons. The witness is confronted with his statement dated 8.5.2002, wherein he had stated that at that time, it was 5 o'clock in the evening which was one hour after Jaybhavani had gone, Keshabhai Harijan's son had come to them to the house on the terrace of which they were hiding, and had told them to go away from there as the people in the mob were about to come there. Therefore, out of fear, all of them had got down from there. The witness has stated that he knows Manu from the time when he had vacated the hutments and came to reside in the bungalow. He has admitted that he works as a sweeper and that he also cleans the gutters. He has admitted that he used to come to their house in the evening to collect the leftovers. He has denied that Manu is a very ordinary kind of person. He has stated that he is not aware that he used to carry on any occupation other than a sweeper. He has admitted that he has no enmity with anyone and that he has no enmity with Manu and when he called him, he would come and do the cleaning. The witness has denied that Neelam, Manu or any of the accused named by him in his examination-in-chief, were not there at the time of the incident and that he was deposing as tutored to him. He has voluntarily stated that Manu had compelled his children to drink his urine and he cannot forget that they had to drink it. He has admitted that what he has voluntarily stated before the court regarding his children being made to drink urine, has not been stated by him prior thereto before the SIT or anywhere else. He has

voluntarily stated that the fact is of such a nature that he cannot state it anywhere. If he says such a thing, it would reflect badly upon him amongst the people of his religion and they would cut off relations with him. Hence, he could not talk about it, however, what he had stated before the court was true.

50.52 The witness is cross-examined with regard to his daily routine, etc. He has admitted that from where he was standing, he could not identify anyone standing in the mob near the Noorani Masjid. He has stated that he had not seen any police woman near the Noorani Masjid and has voluntarily stated that he had met only policemen. He has admitted that from the spot where he was standing he had not seen any woman in police uniform and that he had not seen any truck standing near the Noorani Masjid. He has admitted that he is also known as Abdul Majid Langda in Jawannagar. He has denied that all his family members were burnt by somebody in his own house. He has admitted that after going home, he had gone with his entire family to Gangotri Society and that he had stayed at Gangotri Society till his sister-in-law Raziabanu came there in the evening after she was burnt. The witness has stated that he does not know as to whether the Gopinathnagar Society people had thrown any petrol or kerosene on his family from the terrace of Gopinathnagar and has voluntarily stated that he had only seen them burning. The witness has admitted that at the time when he saw his family members burning, it was around 7 o'clock in the evening. He has stated that he had seen the incident of Ayub in their area in a small part of the Jawannagar pit. He does not know as to where the rickshaw in which Ayub was at the time of the incident in Jawannagar was

fully burnt.

50.53 The witness has stated that he does not know the exact time of the incident of Khadir. The witness has denied that Khadir's incident took place near the first lane of Jawannagar and has voluntarily stated that the incident took place opposite where the toilets are constructed. The witness has stated that after the toilets end, the first lane of Jawannagar starts. The witness has denied that he had seen Khadir's incident from the terrace of Gangotri Society. He has stated that he had seen the incident after he came out. The witness has denied that from the terrace of Gangotri Society, the Khadir incident cannot be seen. The witness has admitted that the incident of Ayub took place in the third lane of Jawannagar.

50.54 In the cross-examination of the witness, it has come out that after he saw the two police vehicles; he had not gone from there. He has stated that he does not know that at what time he had seen these two vehicles. He has stated that he does not know as to whom the trunks were given after they were taken down from the vehicles. The witness has denied that after the trunks were taken down, the police had gone away. He has admitted that after alighting from the vehicles, the police were standing there. The witness has stated that after the vehicle came, Mayaben Kodnani had come and till then, he was standing there. However, when their people were attacked, they started retreating. He has stated that he cannot say as to after how much time after the police vehicle came, Mayaben had come there. The witness has stated that he does not know from which road Mayaben's white car had come.

50.55 The witness has stated that the S.T. Workshop mob was not pelting stones at them at that time and has voluntarily stated that after Mayaben came and told them "*Salao ne maro*", the mob became active. The witness has stated that he does not know whether the other people with him had also heard Mayaben's utterances and has voluntarily stated that he can only speak for himself. The witness has asserted that he had heard the utterances.

50.56 The witness has admitted that till then, he did not know Mayaben and has voluntarily stated that he had seen her personally only on that day. He has admitted that till date, he had no occasion to talk with Mayaben and that he does not know as to with whom she had talked on that day. The witness has admitted that he had not seen Mayaben coming walking on that day.

50.57 The witness has denied the suggestion that his family members had got separated from him when his sons Chand and Yasin got burnt in his house or Jawannagar. The witness has denied that while he was hiding at Jawannagar, the police vehicle had come and taken him to the relief camp. The witness has denied that as and when he came to know any fact, he used to state such facts in his police statement and before the SIT officers. The witness has voluntarily stated that the facts stated by him before the SIT had been stated by him in his previous statements.

50.58 The witness is thereafter cross-examined with regard to the affidavit made by him for the purpose of filing it

before the Supreme Court. He has admitted that in the Supreme Court affidavit he had only stated those facts which were within his knowledge. He has voluntarily stated that he had stated certain facts and he had not stated certain facts. He has asserted that he had stated everything that he knew in his Supreme Court affidavit.

50.59 The witness is confronted with his statement dated 13.9.2008 recorded by the SIT wherein he had stated that what he had stated in his statement dated 8.5.2002 was correct and thereafter, his statement recorded in the context of the affidavit is also correct and the names of the persons given in the statement are correct and true. On the day of the incident, in all, seven members of his family having died, he had not named the accused in his other statements; however, upon his mental health improving, he had given the names in his statements recorded from time to time which are correct.

50.60 The witness has denied that at the time when he made the affidavit before the Supreme Court, he did not know the names of the accused as deposed by him in his examination-in-chief. The witness has denied that in his statement dated 13.9.2008, he had stated before the SIT that at the time when he made the Supreme Court affidavit, he did not know the names of the accused and had not given their names; however, he had given the names of those accused which he knew. He has admitted that in his statement dated 13.9.2008 recorded by the SIT, he had stated that he was residing at Jawannagar for the last fifteen years, and he knew the persons in the mob by their faces and could identify them if he sees them; however, he does not know them by their

names. However, afterwards he came to know about their names and thereafter, he had given the names of those persons before the police.

50.61 The witness is confronted with his statement dated 6.3.2002 wherein he had stated before the police that on 28.2.2002, as there was a call for Gujarat Bandh on account of the incident that had taken place in Godhra city, he was present at home and his family members were also at home. At that time, a huge mob of several people came from Saijpur Patiya and the people in the mob started shouting and pelting stones and the police had released tear gas and had also resorted to firing to disperse the mob, but the mob had not dispersed and had started pelting stones and damaging the houses and setting them ablaze and that upon seeing the people in the mob, they had started fleeing; however, the people came from all four sides; they were surrounded and the people in the mob pelted stones at them, sprinkled kerosene and set them ablaze, wherein his son Yasin, who was eight years old, had sustained burns in varying degrees on his hands and legs as well as body and he (the witness) was injured on head with a stone and the people from the chawl had also sustained burn injuries and in the stampede, his family members got separated from him somewhere and he had hidden himself in the chawls to protect his life and upon the police coming at night, they had dropped him and his son and other people in a police vehicle at Shah Alam camp. The witness has admitted that his son Chand was not with him on the day of the incident and that he was at Juhapura with his sister and brother-in-law Jabbarbhai.

50.62 The witness has admitted that in his statement dated 6.3.2002, he had stated that he does not know who the people in the mob were, from where they had come and did not know anyone. The witness has stated that he had not given the names of the people in the mob because he actually did not know them.

50.63 Insofar as the statement dated 6.3.2002 recorded by PW PW-276 Shri P.U. Solanki at the V.S. Hospital, is concerned, it may be noted that this officer has also recorded statements of PW-145 Shahnawazkhan Abbaskhan Pathan, PW-152 Parveenbanu Salambhai Qureshi, PW-154 Ahemadbadshah Mehboobhussain (para 71), PW-167 Mohammed Hussain Kayumbhai Shaikh (para 94) and PW-205 Zarinabanu Naeemuddin Shaikh. During the cross examination of the officer, the police statement of each of the above witnesses, as recorded by this officer, has been brought on record. On a conjoint reading of the statements of all the above witnesses, it is found that the statements are identically worded, except the names, addresses and particulars of family members as well as names of family members, who are injured or who have died in the incident and injuries sustained by the witnesses. The main part of statements of each witness is absolutely identically worded. Evidently, therefore, this officer appears to have written down the statements as per his own whims and has not written down what is stated by the witnesses. Such statements, therefore, cannot be said to be statements of the concerned witnesses and no part of such statements can therefore, be used to contradict the witnesses.

50.64 The witness is confronted with his statement dated

8.5.2002, wherein he had stated that on 28.2.2002, there was a call for Gujarat Bandh; they were present with their families at home, on 28.2.2002, in front of their chawl, opposite the S.T. Workshop, from Krushnanagar till the road, mobs of people belonging to the Hindu community had gathered and were shouting. It was around 9 o'clock in the morning and the people in the mob were pelting stones in which he was injured on the right ear and left hand, whereupon he had fled to his house, when a stick struck him on his buttock; whereafter, he had gone home and in the meanwhile, the people in the mob had entered the anterior side of their chawls; when he was injured by the stone, the police had arrived and were beating the people in the mob and driving them away and he had also heard the sounds of firing to drive the people in the mob away; the mob that had gathered there was comprised of about 25,000 to 40,000 people; when they were at home, the mob had come to the chawls on the anterior side of their chawl, namely, Dilip-ni-Chali, Pandit-ni-Chali, Hukamsing-ni-Chali, etc. and were damaging and looting the goods and articles inside their houses and were torching them and the residents of those chawls were coming towards their chawl to escape with their lives, and upon coming to know from them, they closed their houses and shops at 1:00 to 1:30 in the afternoon, together with his family, he went to a terrace of the adjoining Gangotri Society and hid there to protect their lives; and at that time, the mob had come till their chawl and had entered and damaged the household articles and torched them, which they had seen with their own eyes. However, he does not know anyone in the mob and if they are shown to him, he cannot identify them.

50.65 (The trial court has put a note below that in the very same statement, the witness has named the persons whom he had seen in the incident and the role played by them.)

50.66 The witness has admitted that he had stated the fact regarding Bhavanisingh having come to him when he was on the terrace of Gangotri Society and had asked him for a cauldron to prepare khichdi-kadhi, in his statement dated 8.5.2002. He has admitted that Jaybhavani had told him that they would cook food for them and has voluntarily stated that the menu suggested by the accused was such which they normally eat after someone dies. The witness has denied that when Jaybhavani came to tell him about khichdi – kadhi, it must have been around 5 o'clock in the evening. The witness has stated that it must have been around 4 o'clock in the evening. The witness has denied that after Jaybhavani went, he had remained on the terrace for an hour and has voluntarily stated that he had immediately come down.

50.67 The witness has denied that in his statement dated 8.5.2002, he has stated that they were getting down from the terrace turn by turn and till 7 o'clock in the evening, all of them had proceeded from Gangotri Society and Gopinath Society to the road going towards Naroda, when from the opposite side, a mob of around five thousand people came. The witness has deposed that before the police he had stated facts as narrated by him in his examination-in-chief. The witness has admitted that in his statement dated 8.5.2002, he had stated before the police that when they were pelting stones at them, they had all run towards Gangotri Society and in the stampede, his family members had got separated from

him and were left behind and the mob had poured kerosene and petrol on his wife Lalbi, Maheboob, Hussain and Khwajahussain and had started burning them and at this time, the residents of Gopinath Society were throwing kerosene, petrol etc. from the terrace on the residents of their chawl, who were running to save their lives; the people who were throwing petrol and kerosene had covered their faces with the cloth and hence, he could not recognize them.

50.68 The witness has admitted that he had found his son Yasin, Khurshid Master's son Maheboob and his (Maheboob's) son Bablu and daughter Shabbo, from Munavarbhai's house. The witness has denied that after he found these four persons, all of them had gone to Chetandas-ni-Chali, from where the police had taken them.

50.69 The witness is confronted with his statement dated 8.5.2002 to the effect that he had stated therein that he had taken all four of them and had gone to Naroda road in front of Chetandas-ni-Chali and in the meanwhile, they had seen several houses as well as scooters, rickshaws, etc. were being damaged and burnt, and all of them had gone under the police protection to the relief camp. In the opinion of this court, this part of the testimony of the witness, wherein the statement under section 161 of the Code is brought on record to contradict something elicited in the cross-examination of the witness, is not admissible in evidence.

50.70 The witness has admitted that he had stayed with Supriya for one and a half hours and during the entire period, he had talked with her. When he went to Supriya, she had told

him that she had stated everything that she wanted to say before the police. She had not told him about having stated anything before any Government Officer or Executive Magistrate except the police. The witness has stated that he knows Nazir Rahimkhan Pathan, who resides in his mohalla and that he knows him to that limited extent. The witness has stated that he can identify his (the witness's) signature. The witness is shown his signature on every page of his statement dated 15.4.2002 as well as at the end of the document, and he has admitted that all the signatures are his. To the extent of the signatures, the statement has been given Mark A/1. The witness has admitted that after obtaining his signature on the statement dated 15.4.2002, Nazirbhai's signature was also taken thereon.

50.71 The witness has denied that he had seen the incident of Ayubhai and Khadirbhai from the terrace of Gangotri Society at 3 o'clock in the afternoon. He has stated that he had seen Ayubhai's incident from the terrace of Gangotri Society, however, it must have been around 4 o'clock.

50.72 The witness has admitted that before the police, he had stated that at this time, at around 7 o'clock in the evening, the people in the mob had inflicted blows with pipes and rods on his wife Lalbi, his sons Maheboob, Mahammadhussain and Khwajahussain as well as his daughters Shahinbanu and Afreenbanu, and had caused injuries to them and they had fallen down and at that time, the people in the mob had poured petrol, kerosene as well as oil on them and had set them ablaze. His daughter Sufiyabanu was also injured by this

mob and burnt. The witness has admitted that all the facts stated in his statement had been seen by him with his own eyes. The witness has admitted that before the police, he had stated that he had not seen anyone being raped and except for this, he does not know the names of the other people in the mob.

50.73 (The trial court has made a note that there are names of other accused in his statement to whom roles have been attributed by the witness and that the witness has stated that except for these accused, he does not know who the other people are.).

50.74 The witness is confronted with his statement dated 9.5.2002 wherein he has stated that in his statement before the DCB Police Sub-Inspector Shri R.B. Joshi, he had given the names of Neelam Marathi and Tiniyo Berge. However, he had come to know about the names of these persons from the Shah Alam camp relief camp and hence, he had given the names at the relevant time. In actual fact, he does not know these people, and as to where they live and what business they do. The witness has voluntarily stated that he has said that he knew those people. The witness has denied that in his statement, he has stated that Tiniyo Berge is Tiniyo Marathi and has voluntarily stated that apart from these words, he has also said Kadam's son, but the police had not written it down.

50.75 The witness is shown the affidavit made by him for submitting before the Supreme Court which is given Exhibit-1094. The witness has admitted that prior to making the affidavit, Exhibit-1094, he had not met Teestaben. He had no

occasion to talk with Teestaben prior to making the affidavit. He had talked with her regarding the affidavit on the telephone. She had told him that if he wants to file a case before the Supreme Court, he has to make an affidavit. He has stated that Teestaben had not told him on the telephone as to which rights they would get from the Supreme Court. However, she had told him that they would get their rights and had made an affidavit regarding his sufferings and proceedings were undertaken before a Notary and she had informed him about it on telephone. The witness has stated that he had believed that by way of rights, the persons who had committed the offence and who had harassed them, they should be punished in accordance with law. The witness has admitted that he did not want anything else. He has stated that he does not know as to whether the narration of what he had undergone stated by him to Teestaben on the telephone was written down by her and/or Raiskhan had written it down. He has stated that he does not know that after his talk with Teestaben, as to whether she had talked with Raiskhan. He has stated that he has not informed Raiskhan about his talk with Teestaben. He has stated that Raiskhan himself was writing it down and therefore, there was nothing left to say to him.

50.76 In the cross-examination of the witness, it has come out that prior to making the affidavit, he had received compensation of Rs.50,000/- per family member for three family members, and in all, he had received Rs.1,50,000/- by way of compensation. The witness has voluntarily stated that at that time, His Excellency, the President of India Shri Abdul Kalamji had come and he had narrated all the facts to him, whereafter he had got the money. In all, he had received

rupees thirty five lakh by way of compensation. He had received rupees five lakh per family member. The witness has admitted that the people from his community had come and helped him and has voluntarily stated that Hindus and Sardarjis had also helped him. The witness has admitted that he had gone to purchase the stamp at the instance of Teestaben Setalvad and has voluntarily stated that she had told him that if he wants to file a case before the Supreme Court, he would have to bring a stamp. The witness has admitted that when he had a talk with Teestaben, Raiskhan had written it down and the papers were given to him at the time when he was going to the court to get it typed. He has stated that Raiskhan had got the facts written in Gujarati or Hindi and it was typed in English in the court. The witness has admitted that both he and Raiskhan were listening together the telephonic conversation between him and Teesta Madam. He has admitted that when he went to Raiskhan's place with the typed stamp paper and the letter written by Raiskhan, there was a Notary who had put a red seal thereon. The witness has denied that he does not know what is written in the affidavit and has voluntarily stated that they were to file a case before the Supreme Court, his wife and children had died and that they had written down the details about their rights in connection with the incident. He has admitted that when he talked to Teesta Madam, he had made the telephone call from Raiskhan's office. He has further admitted that he had talked about all the sufferings that he had undergone with Teestaben on phone. The witness has denied that when he talked to Teesta Madam, no facts remained to be stated. The witness has voluntarily stated that whatever he felt necessary, he had told Teesta Madam.

50.77 The contents of the affidavit, Exhibit-1094 are read over to the witness. The witness has admitted that the affidavit has been read over to him in a language that he understands.

50.78 The witness has stated that on the date of the incident, he had not gone to Naroda Gam and he does not know anything about Naroda Gam. He has stated that in the affidavit, he has not stated that he had seen his daughter Sufiya being raped. The witness has voluntarily stated that he had only stated such facts which Sufiya had told him. He has stated that he had not given any deposition before the Nanavati Shah Commission. He has further stated that he might have said that he had made a complaint before the police. The witness is extensively cross-examined with regard to the affidavit. He has admitted that in his affidavit Exhibit-1094, he has not stated the fact regarding the police vehicle having come and three black trunks having been taken out.

50.79 The witness has denied that in his affidavit, Exhibit-1094, he has stated that on the day of the incident, at around 2:30, a huge mob had come and had in a barbaric manner, pelted stones wherein two persons had died on the spot. He has admitted that when the affidavit was read over to him, no such facts were read over to him. He has denied that he has not stated anything with regard to the facts relating to Supriya. The witness has denied that he had stated that in the affidavit he had himself seen the incident of his daughter Supriya being raped. The witness has denied that in his affidavit, he had stated that the Gujarat police, the administration and the then prevailing political situation in the Gujarat would not let them

get justice and would not let their case be solved. The witness has denied that in his affidavit, he has stated that earlier he had met Teestaben Setalvad on several occasions and that she had taken the victims to Delhi for a hearing in April, 2002 and there also, he had met her once. He has stated that he had not stated any such facts in his affidavit, that they felt that the organisation by the name of Citizens for Justice and Peace would help them in securing justice. He has stated that he had given the affidavit to Raiskhan for the purpose of delivering it to Teesta Madam. He has stated that he had not given any authority letter to either Raiskhan or Teestaben to present the affidavit on his behalf before the Supreme Court, but had given the affidavit of Raiskhan.

50.80 Thereafter, the witness is cross-examined with regard to the application Mark 633/24. The witness is shown the signature at the bottom of the application which he had admitted to be his. The witness is cross-examined with regard to the manner and method of making such application. The witness has admitted that he had made this application to the SIT authorities on 4.11.2009. The witness has admitted that prior to 4.11.2009, when he had made the application, there was no incident of threat. The application is given Exhibit No.1095. The application made by the witness to the SIT is read over to the witness and he has admitted the contents thereof. It is given Exhibit No.1096.

50.81 The witness has denied that he had no talking relations with the accused whom he has identified before the court and has voluntarily stated that he had relations of speaking and exchanging greetings with them. He has stated

that prior to the incident and more particularly, prior to the Godhra incident, they were living harmoniously.

50.82 The witness has denied that the accused whom he had identified before the court were not present anywhere on the day of the incident and more particularly, at the scene of incident and that at the instance of the organisation by the name of Citizens for Justice and Peace as well as the people of his community, he was falsely deposing before the court and though these accused are not involved in the offence, he was falsely implicating them.

50.83 The witness has admitted that there was a mob of Muslims between the S.T. Workshop to Jawannagar,. The witness is thereafter cross-examined with regard to the topography of the area. He has admitted that in the morning from 9:00 to 1:30, the Muslims had also pelted stones. He has admitted that when the incident took place, he was under shock. The witness has stated that on account of the tension, he had suffered from shock.

50.84 The witness has admitted that when they went to the terrace, it was afternoon time. He has admitted that till then, no damage was caused to his house. The witness has voluntarily stated that due to fear his children were crying. He has stated that he had climbed on the staircase which falls next to his house and had gone to the terrace. The witness has admitted that after climbing the staircase and going to the terrace, they had remained on the terrace. This staircase was Gauri Apa's staircase. The witness has stated that he cannot say as to how long he remained on the terrace after reaching

there. He said that they were facing immense difficulties and that he might have been there till about 9 to 10 o'clock. The witness has denied that till they climbed the terrace, there was a mob of twenty five thousand to thirty thousand people on the road. The witness has voluntarily stated that by the time they climbed on the terrace, the mob of twenty five thousand to thirty thousand people had entered their chawl. The witness has stated that there were so many people in the mob that there was no place to put even a foot on the road. The witness has voluntarily stated that he is illiterate and that he is stating that there were around twenty five thousand people in the mob only by way of estimation. He has stated that he had seen the people in the mob while he was standing and has voluntarily stated that even if he sat down, the people in the mob could be seen. The witness has admitted that all the Muslims had gone to the terrace to protect themselves. The witness has denied that when Ayub was attacked, the mob was at the spot where he was attacked. The witness has voluntarily stated that the attack on Ayub took place near the third lane when the mob was in the mohalla in front and had not reached their lane. The witness has admitted that he has not seen any incident other than Ayub's in his lane. He has admitted that he has not seen anyone burning his house, but had seen his house burning. He stated that he cannot say the exact time when he saw his house burning. The witness has stated that after the incident of Ayub, the incident in which he was injured on his head had taken place. He has admitted that after he was injured on the head, he had become unconscious.

50.85 The witness has admitted that at the relevant time he did not know the names of Guddu's brothers. He has stated

that at that time he was called to the Gheekanta Court. He has admitted that he could identify only one accused there. The witness has denied that thereafter, as and when the people from their area started coming and talking, he started giving the names. The witness has denied that he cannot say with certainty that Haresh Chhara was in the mob on that day that he only knew that he was Guddu's brother. The witness has voluntarily stated that he was there and that he only needed to know his name.

50.86 The witness has denied that when Jaybhavani and his brother-in-law Dalpat had met him, they had told him to keep his wife and children in the hall near the temple at Gangotri Society to save them from being killed. The witness has stated that if that was so, his family would have been alive. He has admitted that Jaybhavani, Dalpat, Keshubhai Harijan and his son Manu had met him and had told him, as stated by him in his statement dated 20.5.2007 that "*Uncle, keep all of them here, no one will come here.*". The witness has admitted that he had kept them there only for this reason and he alone had gone on the terrace to watch. He has admitted that after leaving his family in this manner, he alone had gone on the terrace. Fifteen minutes after he had gone on the terrace, Jaybhavani had come there. He has denied that when he went to the terrace, Jaybhavani had come along with him. He has admitted that when Jaybhavani came on the terrace, at that time he had asked for a cauldron to cook and at that time, it must have been around 4:00 to 4:30 in the evening.

50.87 The witness has admitted that in his statement

dated 20.5.2008, he had stated that when his son Yasin was under treatment at V.S. Hospital, at that time, Mehboob, who was also under treatment at Vadilal Hospital, had informed him that he had received information to the effect that his wife (Mehboob's wife Bibibanu) and the witness's daughter Sufiyabanu were at the Civil Hospital and that he should go there and bring them. Hence, he had informed the doctors that Mehboob's wife Bibibanu and his daughter Sufiyabanu are at Civil Hospital and he wants to go there to bring them, pursuant to which the doctor had given him in writing that he can go and bring them. Thereafter, on 3.3.2002, he had gone to the Civil Hospital alone. On that day, the riots were continuing. The witness has further admitted that in his statement dated 20.5.2008, he has stated that he had seen Neelam Marathi, Raju Manek, Sitaram Manek and Kishan Manek in the mob. Upon being asked as to whether he has stated so, he says that he had heard about this during the conversation with each other at the Shah Alam camp and he had given their names in his statement dated 8.5.2002. The witness does not remember that he had stated before the SIT that he was mourning and under shock and at that time, he had not given the names of these people, but now he was giving the names of these people who were in the mob. The witness does not remember that in his statement dated 10.7.2008, he had stated that Tiniyo Marathi and Tiniyo Berge were different persons.

50.88 The witness has stated that he cannot remember exactly how many minutes it took him to reach there that after his sister-in-law came to the terrace and told him about his wife and children burning. The witness has admitted that the passage between Gangotri and Gopinath Society comes after

Gangotri Society ends. He has admitted that from the terrace where he was, the passage cannot be seen. The witness has admitted that there is a water tank in this passage. He has stated that he cannot say whether or not, the water tank can be seen from the terrace.

50.89 The second to the last line of paragraph 6, the contents of paragraph 7 and the third to the last line of paragraph 8 of the examination-in-chief of the witness, are read over to him, to the effect that he has not stated such facts in his statements dated 6.3.2002, 14.5.2008 and 8.5.2002.

50.90 The contents of the first two lines of paragraph 9 of the examination-in-chief of the witness, wherein he has stated that at that time he had seen that another mob was coming from Krushnanagar, are read over to him, to the effect that he has not stated such facts in his statements dated 6.3.2002 and 14.5.2002. The contents of paragraph 9, from the second line to the last line of the examination-in-chief of the witness, are read over to the witness, to the effect that he has not stated such facts in his statements dated 6.3.2002 and 8.5.2002. The contents of paragraph 9, from the third line to the last line, of the examination-in-chief of the witness, are read over to him, to the effect that he has not stated such facts in his statement dated 15.4.2002. The contents of paragraphs 10 and 11 of the examination-in-chief of the witness, are read over to the witness, to the effect that he has not stated such facts in his statements dated 6.3.2002, 15.4.2002 and 8.5.2002. The contents of paragraph 12 of the examination-in-chief of the witness are read over to the witness to the effect that he has

not stated such facts in his statements dated 6.3.2002 and 8.5.2002. The contents of the last two lines of paragraph 12 of the examination-in-chief of the witness are read over to him to the effect that he has not stated these facts in his statement dated 15.4.2002. The contents of paragraph 13 of the examination-in-chief of the witness are read over to him to the effect that he has not stated such facts in his statements dated 6.3.2002 and 8.5.2002. The contents of paragraph 13 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated these facts in his statement dated 15.4.2002. (It appears that in his statement dated 15.4.2002, the witness has not mentioned regarding the incident of Abid, but has mentioned the incident of Khadir and has stated the spot where the incident took place.).

50.91 The contents of first four lines of paragraph 14 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated such facts in his statement dated 8.5.2002. In this regard, it may be noted that the witness has only been contradicted with regard to the contents of paragraph 14 of his statement dated 8.5.2002, but not as to his statement dated 6.3.2002, which means that such facts have been stated by him in his statement dated 6.3.2002. Since the statement dated 8.5.2002 is only a further statement, any omission to state all facts which is already stated in a previous statement, cannot be said to be an omission.

50.92 The contents of paragraph 15 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated such facts in his statement dated

6.3.2002. The contents of paragraph 15 of the examination-in-chief of the witness, from the second line to the last line, are read over to the witness, to the effect that he has not stated such facts in his statement dated 15.4.2002.

50.93 The contents of paragraph 16 of the examination-in-chief of the witness are read over to him to the effect that he has not stated such facts in his statements dated 6.3.2002, 15.4.2002 and 8.5.2002. The contents of paragraph 17 of the examination-in-chief of the witness, from fourth line to the last line, are read over to the witness, to the effect that he has not stated such facts in his statement dated 8.5.2002.

50.94 The contents of paragraphs 18, 19, 20, 21, 22, 25, 26 and 29 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated such facts in his statements dated 6.3.2002, 15.4.2002 and 8.5.2002.

50.95 The contents of paragraphs 27 and 28 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated these facts in his statements dated 6.3.2002 and 8.5.2002. The contents of paragraph 27 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated such facts in his statement dated 15.4.2002. (It appears that in this statement, there is reference to Bhavanisingh and his son who is an advocate having committed rape on his daughter Sufiyabanu and thereafter, burning her. However, the names of Guddu Chhara and Harijan Manu are not there and the other facts in the paragraph have not been stated in that

statement.).

50.96 The contents of paragraph 28 of the examination-in-chief of the witness are read over to the witness to the effect that he has not stated such facts in his statements dated 6.3.2002 and 8.5.2002. The contents of paragraph 28 of the examination-in-chief of the witness except last three lines are read over to the witness, to the effect that he has not stated such facts in his statement dated 15.4.2002. In respect of the contents of his examination-in-chief with which the witness has been confronted, the response of the witness is that he had stated such facts before the police but they may not have recorded them.

50.97 The witness is sought to be contradicted with the contents of paragraph 10 of the examination-in-chief of the witness, wherein he has stated that at that time, everyone started taking Mayaben Kodnani's name, to the effect that these facts and the facts stated at page 5, have not been stated by him in his statements dated 20.5.2008, 10.7.2008 and 13.9.2008 recorded by the SIT. The contents of paragraph 11 of the examination-in-chief of the witness, from third line to the last line, are read over to the witness to the effect that he has not stated such facts in any of his statements recorded by the SIT. The last line of paragraph 12 of his examination-in-chief is read over to the witness, to the effect that he had not stated such facts in any of his statements recorded by the SIT. The contents of paragraph 13 of the examination-in-chief of the witness are read over to the witness, wherein he has stated that the incident of Khadir took place near the toilets in the line of the chawl, to the effect that he has not mentioned

the spot where Khadir's incident took place in any of his statements recorded by the SIT, which the witness has denied.

50.98 The contents of paragraph 15 of the examination-in-chief of the witness are read over to the witness, wherein he has mentioned that the site of Ayub's incident was the last lane of Jawannagar near Abeda's house as well as near the S.R.P. Quarters, to the effect that in none of his statements before the SIT, he has stated the spot where Ayub's incident took place. The contents of the last four lines of paragraph 21 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts in any of his statements recorded by the SIT. The witness has deposed that he had stated such facts, but they may not have been recorded.

50.99 Certain omissions are sought to be brought out as regards the contents of paragraphs 25 and 27 of the examination-in-chief of the witness, wherein there is a reference to his meeting with Sonia Gandhi. In the opinion of this court, reference to the meeting with Sonia Gandhi, which is an event that has taken place after the incident, cannot be said to be a material omission so as to amount to a contradiction. The contents of paragraphs 9 to 33 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts in his statement dated 13.9.2008, which the witness has denied.

50.100 The witness has denied that in his affidavit made before the Supreme Court, he has not mentioned any fact regarding Mayaben's incident, Ayub's and Abid's incidents

and the incident regarding there being three black trunks in two police vehicles.

50.101 The witness has admitted that Faizal Park, where he is presently residing, is populated by Muslims. He had gone to reside at Faizal Park six months after the incident. He has admitted that the Relief Committee had given him this house.

50.102 PW-276 Shri P.U. Solanki, the assignee officer has admitted that he had recorded the statement of this witness on 6.3.2002 in terms of what was stated by the witness. PW-276 has further stated that it has not happened that he has not himself recorded the statement or that he had written down the facts not stated by him or not stated the facts as stated by him.

50.103 The assignee officer has admitted that in his statement dated 6.3.2002, the witness had stated that on the previous day, that is, on 28.2.2002, in connection with the incident that had taken place at Godhra city, there was a call for Gujarat bandh and he was present at home with his family members. At that time, a very huge mob of people had come from Saijpur Patiya and the people in the mob started shouting and pelting stones and the police had released tear gas and resorted to firing to disperse the mob, but the mob had not dispersed and had pelted stones and damaged the houses and had started setting them on fire. Upon seeing the mob, they started running, however, the people having come from all four sides, they were surrounded and they pelted stones and sprinkled petrol and started burning, wherein his son Yasin,

aged 8 years had sustained burn injuries in varying degrees on both his hands and legs, and he too was injured on his head with a stone and the people from the chawl were also set ablaze and the people were running helter skelter, wherein his family members got separated and with a view to protect his life, he hid in the chawl and upon the policemen coming at night, he and his son and other people were dropped at the Shah Alam in a police vehicle.

50.104 As noted earlier, the contents of the statement of PW-156 are more or less identical to the contents of the statement of PW-154 recorded by this assignee officer. Therefore, it appears that the grievance voiced by the witnesses that the police had recorded their statements on their own appears to be justified and hence, such statement cannot be used for contradicting the witness. Therefore, it is not necessary to refer to the omissions and contradictions as to the statement dated 6.3.2002 recorded by PW-276.

50.105 PW-277 Shri M.T. Rana, the assignee officer, has, in his cross-examination, admitted that he had recorded the statement of this witness on 15.4.2002 and below the statement he had taken the signature of Abdul Majid as well as one Nazirkhan Rahimkhan Pathan. He has further admitted that he had recorded the statement, as stated by this witness, and had read over the statement to him and that the witness has stated that the same was correct and proper, whereafter he had made a note with regard to the correctness of the facts stated in the statement. The assignee officer has further stated in the statement dated 15.4.2002 there are three signatures of Nazirkhan as well as three signatures of Abdul Majid, which are

taken in his presence at the bottom of every page. This statement had been recorded by him at the Shah Alam camp. Nazirkhan Pathan had come with this witness. Till the entire statement was recorded, Nazirkhan was present there. The witness has admitted that this statement which he had recorded was an inquiry made by him, due to which as per instructions of Shri Tandon, on every page at the bottom of the statement, he had obtained signatures of the concerned person as well as of a witness. He has admitted that this witness has not given any complaint before him.

50.106 The assignee officer has admitted that in his statement dated 15.4.2002, this witness has stated that all the members of his family were present and at about 9:30 in the morning, from all four sides, mobs of Hindus, who were armed with weapons and were shouting entered Noorani Masjid which is opposite their chawl. The witness has further stated before him that upon the people of this mob becoming violent and setting the houses of Muslims on fire as well as burning people alive and coming towards their Jawaharnagar, out of fear, at about 3 o' clock in the afternoon he had taken his children and climbed on the terrace of a closed house in Gopinath Society behind their chawl. They had seen from the terrace that Ayubhai of their chawl, who used to do tailoring work, was hacked down by the mob and Khadirbai, who used to drive a rickshaw, too was killed by the mob. Both of them were burnt in front of their eyes and upon the Hindu mob coming to attack them, they too had pelted stones in retaliation. At this time the police had released two teargas shells. The contents of paragraph 6 of the examination-in-chief of this witness from the second line till the last line and the entire contents of

paragraph 7 are read over to the assignee officer and he has admitted that this witness has not stated these facts in the statement recorded by him. In his cross-examination, the assignee officer has denied that all the contents of paragraph 8, from the third line to the last line, wherein the witness has stated that a mob of twenty five thousand to thirty thousand people was coming from Kubernagar, and was chanting slogans of "Jai Shri Ram" and all of them had tied saffron bands on their foreheads, they had tied belts on their waist wherein there were packets of snacks and pouches of liquor and water. The people in this mob had weapon in their hands wherein some had swords, some had kudgal which is weapon like a dharia in their hands, and some had pipes and sticks in their hands etc. have not been stated by this witness in the statement recorded by him. The assignee officer has voluntarily stated that this witness has stated before him that from all four sides mobs of people belonging to the Hindu community shouting and armed with weapons in their hands entered Noorani Masjid, which is situated opposite their chawl, He has admitted that this witness has not stated before him that he had seen that another mob was also coming from Krushnanagar. The contents of paragraph 9 of the examination-in-chief of this witness from the third line to the last line are put to the assignee officer, who has admitted that such facts have not been stated by this witness in these very words. The assignee officer has stated that the witness had stated that at around 9:00 to 9:30 a mob had damaged Noorani Masjid and set it ablaze.

50.107 The assignee officer has admitted that the facts stated by this witness in paragraphs 10 and 11 of his

examination-in-chief, wherein he has stated that at that time two police vehicles had come to the S.T. Workshop from which three black coloured trunks were taken down. Thereafter, a white car had come; at that time, everyone started taking the name of Mayaben Kodnani; Mayaben Kodnani had alighted from this car; Mayaben had shouted "*kill the salaas*"; thereafter, the mob started attacking them, due to which all of them started moving towards the rear side of their chawl; at that time, since Bakri Eid had been celebrated in the recent past, a police point was there near their chawl; they had told the police sitting at the point to stop the people in the mob; however, they had told them "*Chale jao nahitar tumhare ko bhi padegi*"; have not been stated by this witness in the statement recorded by him.

50.108 The contents of the last two lines of paragraph 12 of the examination in chief of this witness have been put to the assignee officer, wherein the witness has deposed that the bullet shot by the police had injured Hasan Qureshi on the head, who fell down there and they had gone ahead, have not been stated by this witness in his statement. However, the witness had stated the fact regarding tear gas shells having been lobbed.

50.109 The contents of paragraph 13 of the examination-in-chief of this witness have been put to the assignee officer who has admitted that these facts have not been stated verbatim by this witness; however, the facts regarding the incident of Khadir are there in the statement. He has admitted that the witness has not stated as to where this incident had taken place. The contents of paragraph 15 of the

examination-in-chief of this witness from the second line to the last line are put to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him. The contents of paragraphs 16 and 17 of the examination-in-chief of this witness have been put to the assignee officer in his cross-examination and he has admitted that such facts have not been stated by this witness in the statement recorded by him.

50.110 The contents of paragraphs 18, 19, 20, 21, 22, 25, 26 and 29 are put to the assignee officer who has admitted that such facts have not been stated by this witness in the statement recorded by him. The contents of paragraph 27 of the examination in chief of this witness are put to the assignee officer who has denied that all the facts stated in this paragraph have not been stated by the witness. He has stated that before him the witness has stated that he had gone to the Civil Hospital on 4.3.2002, where his daughter Supriya was under treatment and he had met her. Supriya had told him that Bhavanisingh and his son, who is an advocate, had raped her and had thereafter burnt her. He has admitted that this witness in the statement before him had not mentioned the names of Guddu Chhara and Harijan Manubhai in the context of this incident, but their names as well as other names have been revealed as being in the mob.

50.111 The contents of paragraph 28 except the last three lines are put to the assignee officer, who has admitted that the witness has not stated such facts in his statement dated 15.4.2002. He has further admitted that the witness has not stated before him that his daughter Supriyabanu died on

3.3.2002 and had stated that he had gone to meet his daughter at the hospital on 4.3.2002.

50.112 The contents of paragraphs 31 and 32 of the examination-in-chief of this witness are put to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. He has admitted that he has also recorded the statement dated 22.4.2002 of this witness and that on 22.4.2002, he had read over the statement dated 5.4.2002 to the witness, who had admitted that the contents are proper and correct and that he had also shown the statement dated 22.4.2002 to the witness and obtained his signature thereon.

50.113 PW-278 Shri R. B. Joshi, the assignee officer in his cross-examination has stated that he had recorded the statement of this witness on 8.5.2002. He has admitted that before him this witness has stated that the time was about 5 o'clock in the evening which was around one hour after Bhavanisingh had gone, Keshubhai Harijan's son who was the owner of the house on the terrace of which they were hiding, came near them and told them to go away from there as the people of the mob were about to come there and hence, out of fear, all of them had got down. He has also admitted that this witness had stated before him that in the context of these riots, the police had recorded his statement at Vadilal Sarabhai Hospital on 2.3.2002 and that he had also lodged a complaint before the Assistant Police Commissioner Shri M.T. Rana regarding the death of his family members. In his statement, the witness had also stated that on 28.2.2002 there was a call for Gujarat bandh. They were present at home with their family

members. On 28.2.2002, in front of their chawl, opposite S.T. Workshop from Naroda Patiya till Krushnanagar mobs of people belonging to the Hindu community had gathered and were shouting. At this time, it was about 9 o'clock in the morning and the people in the mob were pelting stones wherein he was injured on his right ear and left hand and upon being injured by stones, he ran towards his house and while he was running, a stick was thrown, which injured him on the hips. Thereafter he had gone home and in the meanwhile, the people in the mob had entered the front side of their chawl and when he was injured by stones, at that time, the police had come and were beating the people in the mob and driving them away and for the purpose of driving away the people in the mob, and he had also heard sounds of firing to drive away the mob. There were around twenty five thousand to forty thousand people in the mob which had gathered there and while they were at some, the people in the mob came to the chawls on the anterior side of their chawl, Dilip-ni-Chali, Pandit-ni-Chali, Hukamsing-ni-Chali etc. and entered the houses and damaged and looted them and started torching the goods and houses, and from the direction of those chawls, the residents with a view to protect their lives, came towards their chawl and upon coming to know from them, they closed their houses and shops and in the afternoon at around 1:30, he, together with his family, went to the terrace of Gangotri Society and hid there to save their lives, and at that time, the people in the mob came to their chawl and were entering their houses, damaging them and torching them, which he had seen with his own eyes, however, he did not know anyone in the mob and if they are shown to him, he cannot identify them.

50.114 The witness has also stated in his statement that all of them were in turn, were slowly getting down from the terrace at around 7 o'clock in the evening, and were going from Gangotri, Gopinath Societies to the road which goes towards Naroda, when from the opposite side they saw a mob of around five thousand people. The assignee officer has admitted that this witness has further stated before him that taking all four of them, he had brought them to Naroda road in front of Chetandas-ni-Chali and, in the meanwhile, several houses of their chawl as well as the goods lying outside and rickshaws, scooters and other vehicles were damaged and they had seen them burning, after which, all of them were taken under police protection to the relief camp. The assignee officer has further admitted that this witness has stated before him that on 3.3.2002, he came to know that his daughter Sufiyabanu was admitted to the Civil Hospital for treatment as she had sustained burns and hence, on 4.3.2002, he had gone to inquire about her health, when, while talking with her, he had also inquired about his family members, who had got separated from him. The assignee officer has admitted that this witness has not stated before him that on 3.3.2002, he had met Smt. Sonia Gandhi and had got her to write a note for him. The assignee officer has further admitted that he did not write down a little and then drive them away. The assignee officer has admitted that this witness in his presence has not stated any facts regarding the presence of Mayaben, as well as incidents of Hasan Qureshi, Abid, Kadir and Ayub, which have been stated by the witness in paragraphs 10, 12, 13, 15 and 19 of his examination-in-chief. The assignee officer has denied that this witness has not stated any facts regarding the incident of Sufiyabanu, as deposed by him in paragraph 27 of

his testimony. The assignee officer has stated that the witness had informed him about Sufiyabanu having sustained burns and having been admitted to the Civil Hospital for treatment; however, the other facts have not been stated by him.

50.115 The contents of paragraph 6 of this witness from the second line to the last line are read over to the assignee officer and he has admitted that such facts have not been stated by this witness before him. The contents of paragraph 6 from the second line to the last line as well as the contents of paragraph 7 of the examination in chief of the witness, are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. A perusal of the contents of the examination-in-chief of the witness which are put to the assignee officer reveals that the facts stated therein are more or less an elaboration of the events that had taken place on the day of the incident and cannot be said to be an omission which are so material as to amount to contradiction and as such, this part of the deposition of the witness ought not to have been permitted to be contradicted. The contents of paragraph 8 of the examination-in-chief are read over to the assignee officer who has admitted that this witness has not stated these facts before him, but had stated that while he was going towards Naroda, at that time, from the opposite side, a mob of five thousand people was coming wherein several accused were present.

50.116 The contents of paragraph 9 from the third line to the last line of page 5 of the deposition of the witness are read over to the assignee officer, who has admitted that

such facts have not been stated by the witness before him. The facts stated in paragraph 9 of the examination-in-chief of this witness relate to the kerosene carts belonging to Rajesh Kerosenewala and Vadgeri Badshah having been placed in the Noorani Masjid for the purpose of setting it on fire. The contents of paragraphs 10 to 13 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that such facts have not been stated before him. In paragraph 10 of his deposition, the witness has referred to police vehicles arriving and three black trunks being unloaded from them, whereafter a white car came, from which Mayaben Kodnani had alighted; Mayaben had instigated the crowd, whereafter the mob attacked them, due to which they moved towards the rear side of their chawls. In paragraph 11, the witness has stated that on account of Bakri Eid there was a police point near their chawl, they told the people sitting at the police point to stop the mob, however, they told them to go away, or else they would be beaten. In paragraph 12, the witness has referred to the mob attacking them and the police also firing and lobbing of teargas shell, wherein one Hasan Qureshi was injured on the head by a bullet. In paragraph 13 the witness has referred to one Abid being injured on the private parts by a bullet in the firing as well as to an incident of one Khadir, who was a rickshaw driver, being assaulted with a sword near the toilets and being set ablaze.

50.117 The contents of the first four lines of paragraph 14 of the examination in chief are read over to the assignee officer, but it appears that due to inadvertence what is stated by the assignee officer with reference thereto has not been recorded in the testimony. However, considering the

nature of the contents of the first four lines of paragraph 14, wherein the witness has referred to his daughter Sufiyabanu reading the Quran when he reached home and he apprising her that the mobs were setting houses on fire and hence, they should go away, the same can hardly be said to be an omission so material so as to amount to contradiction.

50.118 The contents of paragraphs 16, 18, 19, 20, 21, 25, 27, 28 and 31 of the testimony of this witness are read over to the assignee officer, who has admitted that all these facts have not been stated by the witness in the statement recorded by him. In paragraph 16, the witness has referred to Jaybhavani and his brother-in-law Dalpat having met them and told them to sit in a hall near the temple in Gangotri Society and that the witness had thereafter left his wife and children in the hall and gone to the terrace of Gangotri Society. In paragraph 18, the witness has referred to his sister-in-law Raziabanu who was still burning coming with her twenty day old child Shoaib, who was also burning and upon asking her about his wife and children she had told him that his wife and children were also burning, and hence, he had gone to the passage of Gangotri Society and seen them burning. In paragraph 19, the witness has referred to his wife burning and Jaybhavani, his son, Tiniyo, Suresh Langdo and two to four other people pulling his daughter Supriya and taking her away. At this time, he being assaulted on his head from the back and falling down and becoming unconscious.

50.119 In paragraph 20, the witness has stated that prior to his gaining consciousness, he had seen his daughter Supriya being dragged and his wife Lalbi and Afreenbanu and

Shahinbanu, sons Mohamadhussain and Khwajahussain and daughter Sufiyabanu burning there. Upon gaining consciousness, he wondered what had happened to his other children and started shouting the names of his remaining children, Chand, Yasin and Mehboob.

50.120 In paragraph 21, the witness has stated regarding meeting one Mehboob husband of Bibibanu in a burning condition, whereafter he heard his son Yasin calling out to him and found his son Yasin in a burning condition. On account of the burns, Yasin was sitting in a water tank.

50.121 In paragraph 25, the witness has referred to Sonia Gandhi coming to the V.S. Hospital on 3.3.2002 and the events that transpired thereafter. In paragraph 27, the witness has stated regarding going to the Civil Hospital to meet Supriya who told him that she could not protect her chastity and that she was raped by four people, namely, Guddu Chhara, Jaybhavani's son and Jaybhavani had raped her and that Harijan Manubhai was also amongst them. Supriya had told him that Manu had taken off her clothes. In paragraph 28, the witness has referred to the certain events that had taken place after he went back to the V.S. Hospital and in paragraph 31, he has referred to going to the PM room and seeing the dead body of his son.

50.122 In the opinion of this court, insofar as the contents of paragraphs 25, 28 and 31 are concerned, the same relate to events which happened after the incident and have no direct connection with the offence in question. Under the circumstances, the same cannot be said to be omissions and,

therefore, ought not to have been permitted to be put to the witness or to the assignee officer.

50.123 The contents of paragraph 17 of the examination-in-chief of the witness from the fourth line to the last line are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The assignee officer has further admitted that the witness had not stated before him that his brother in law Jabbar had identified the dead bodies of his family members. In the opinion of this court, as to who had identified the dead bodies of the family members of the witness has got no connection with the incident in question and hence, cannot be termed to be an omission at all. The trial court, therefore, ought not to have permitted such questions to be put to the assignee officer.

50.124 PW-307, Shri S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 5.9.2002, which was a further statement of this witness. The original statement of the witness was dated 6.3.2002.

50.125 The Investigating Officer has admitted that this witness had stated before him that he was read over the statements dated 15.4.2002 and 22.4.2002 recorded by Shri M.T. Rana, Assistant Police Commissioner, "G" Division and the statement dated 8.5.2002 recorded by P.I. Shri R. B. Joshi, DCB, Ahmedabad and upon being examined in connection therewith, he has stated that he had given the name of Neelam Marathi and Tiniyo in the statement recorded by Shri

R. B. Joshi, however, he had come to know about the names of these persons from the people at the Shah Alam relief camp and had accordingly given such names in his statement. In fact, he does not know these persons and where they are staying and what business they do. That Tiniyo Berge is Tiniyo Marathi.

50.126 PW-327, Shri V. V. Chaudhari, the Investigating Officer (SIT), has, in his cross-examination, admitted that he has recorded the statements of this witness on 20.5.2008, 10.7.2008 and 13.9.2008. He has admitted that this witness in his statement dated 20.5.2008 has stated that in connection with the investigation into this offence, his earlier statements dated 6.3.2002, 14.5.2002, 22.4.2002, 8.5.2002 and 9.5.2002 had been read over to him, which were as stated by him and are correct and proper. In the opinion of this court, this part of the cross-examination of the Investigating Officer has been made to prove a certain part of the statement of the witness recorded under section 161 of the Code without seeking to contradict the witness in connection with any statement made by the witness in his examination-in-chief. Therefore, this part of the testimony of the Investigating Officer is inadmissible in evidence.

50.127 The Investigating Officer (SIT) has further admitted that the witness in his statement dated 10.7.2008 had stated that the statements dated 6.3.2002, 15.4.2002, 22.4.2002, 8.5.2002, 9.5.2002, 20.8.2002, which were recorded at the SIT office, have been read over to him and the same are correct and proper, as stated by him.

50.128 Considering the fact that a more or less identical statement had already been recorded in the statement dated 20.5.2008, there was no necessity of recording the same in this statement also. Evidently therefore, this appears to be a mere formality on the part of the SIT, wherein while recording the statements of the witnesses, they mechanically record that the earlier statements have been read over to the witness who have stated that they are correct and proper. Similarly, the Investigating Officer has admitted that this witness in his statement dated 13.9.2002 had stated that his earlier statements dated 13.9.2002, 15.4.2002, 22.4.2002, 8.5.2002, 9.5.2002 as well as earlier statement dated 20.5.2008 have been read over to him and are correct and proper, and that the witness has also stated that his statement dated 8.5.2002 as well as his statement recorded in connection with his affidavit are also proper and that the names of the individuals given in that statement are correct and proper. On the day of the incident, as in all seven members of his family had died, in his other statements, he had not given the names of the accused, however, upon regaining his mental health, he had given the names in his statements recorded from time to time which are absolutely correct. That when he made the affidavit to the Supreme Court, at that time also, since he did not know the names of those accused, he had not given their names, but he had given the names of those whom he knew in the affidavit.

50.129 The Investigating Officer has further admitted that this witness in his statement dated 20.5.2008 had stated that this mob was pelting stones at them and hence, the Muslims of their chawl had started cross stone pelting; that at

that time, Jaybhavani had come with them and had told him; and that he came to the passage of Gopinath where he was watching his wife Lalbi, his sons Chand, Mahammadhussain, Khwajahussain and daughters Afreenbanu, Shahinbanu and others were burning; he was overcome with grief and shock and at that time, he had not given the names of these people, but now in his presence, he was giving the names of those persons who were in the mob.

50.130 The Investigating Officer (SIT) has further admitted that this witness in his statement dated 10.7.2008 had stated that Tiniyo Marathi and Tiniyo Barge are different persons. The Investigating Officer has admitted that this witness in his statement dated 20.5.2008 had not stated any fact to the effect that he was sitting at the tea shop. He has also admitted that this witness had said to him that when Mayaben Kodnani came, the people in the mob had shouted "Mayaben has come", which has only been stated by him in his statement dated 20.5.2008. The Investigating Officer has clarified that he had recorded the main statement of this witness on 20.5.2008, thereafter the statement dated 10.7.2008 was in the context of the affidavit made before the Supreme Court and the statement dated 13.9.2008 was for asking for a clarification from the witness as to why he had given the names of the accused whom he had seen in the mob, at a later stage.

50.131 Certain extracts of paragraphs 11 and 12 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he had stated that they had told the people sitting at the police point to stop these people,

namely, the people in the mob, however, they had told "*Chale jao nahitar tumko bhi padegi*"; that he was lying there and they went ahead. The Investigating Officer has admitted that these facts have not been stated by the witness in any of the statements recorded by him.

50.132 The contents of paragraph 13 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that the witness had not stated any fact regarding the incident of Khadir having taken place in the toilets in line of the chawls in the statement recorded by him. The Investigating Officer has admitted that this witness in none of his statements has stated the place where the incident of Khadir took place. The Investigating Officer has admitted that none of the facts stated by the witness in paragraphs 17, 21 and 25 of his deposition, have been stated by him in any of the statements recorded by him.

50.133 The Investigating Officer has admitted that this witness in none of the statements recorded by him has stated that he had taken a note given by Sonia Gandhi and gone to the Civil Hospital and upon inquiry through the nurse, he had found Supriya. In the opinion of this court, the fact regarding the witness having gone to the Civil Hospital with the note given by Smt.Sonia Gandhi can hardly be said to be a relevant fact insofar as the offence in question is concerned. Hence, non-mentioning these facts in the statement recorded by the SIT or the police can hardly be said to be an omission, leave alone a material omission, amounting to a contradiction. The trial court, therefore, ought not to have permitted such questions to be asked to the witness and to be proved through

the Investigating Officer.

50.134 The Investigating Officer has also admitted that the facts stated in the thirteenth line of paragraph 27 of the examination-in-chief of the witness, wherein he had said that Supriya had informed him that Manu (A-28) had taken off her clothes have not been stated by the witness in his statements dated 10.7.2008 and 13.9.2008. The Investigating Officer has clarified that as stated by him earlier, neither of these two statements is the main statement of the witness and these statements were recorded for the limited purpose of clarification and that the witness has in his statement dated 20.5.2008 had stated that she had told him regarding her being disrobed and that the accused Jaybhavani, his advocate son, Manu, Guddu Chhara and his two brothers and Suresh Langda had together committed the offence.

50.135 The Investigating Officer has admitted that the facts stated in paragraphs 9 to 33 of his examination-in-chief have not been stated by the witness in his statement dated 13.9.2008. The Investigating Officer has clarified that the reason is, because the said statement was merely a clarificatory statement and hence, all the facts were not required to be reiterated therein.

50.136 The Investigating Officer has admitted that this witness in his statement dated 13.9.2008 has stated that when he was looking from the terrace of Gangotri, at that time from the terrace, he had seen these people in the open ground.

50.137 SUBMISSIONS: The learned counsel for the appellants submitted that several statements of this witness have been recorded, both by the police as well as by the SIT. It was submitted that out of the accused named by this witness, Guddu has passed away and Tiniyo has not been identified. Insofar as Tiniyo is concerned, the witness has stated that Tiniyo Marathi and Tiniyo Berge are different and he has seen the son of Kadam. It was submitted that there are two persons called Tiniyo, viz. A-30 and A-55 and neither of them is a son of Kadam. It was submitted that it is not brought on record that the name of the father of either of the Tiniyas is Kadam. It was submitted that there is no evidence qua Tiniyo.

50.138 It was contended that insofar as Guddu Chhara's two brothers are concerned, unless it had been brought on record that Guddu has only two brothers, it cannot be said that both the brothers are brought on record. It was submitted that no test identification parade of Guddu Chhara's brothers has been carried for the purpose of establishing their identify. It was submitted that on 6th March, the witness has not made any allegation against anybody and as admitted by him, as and when he came to know the names of the accused, he was giving them. Therefore, as to whether it was accused No.1 and accused No.10, is a doubtful proposition.

50.139 It was submitted that insofar as his daughter being dragged from the scene of incident is concerned, such version has come up for the first time before the SIT. Out of the four persons against whom the allegation is made, Jaybhavani is no more. The name of Jaybhavani's son was not given even after six years as to who he is. Accused No.40

incidentally happens to be the son of Jaybhavani. It was submitted that it is not proved by the prosecution that he is the only son of Jaybhavani who is referred to by this witness. It was submitted that in any case, accused No.40 has not been identified before the court. It was submitted that insofar as accused No.40 is concerned, no test identification parade has been carried out, nor has he been identified by the witness before the court. It was submitted that this cannot be taken as an oral dying declaration before the father which can be used as a piece of evidence against Accused No.40 when identity is not specifically established by name. It was submitted that insofar as Suresh Langda (A-22) is concerned, since in none of the three police statements, the incident of dragging Supriya has been referred to, and for the first time, this allegation has surfaced before the SIT, this part of the story cannot be said to be reliable and trustworthy.

50.140 It was submitted that none of the medical case papers relating to Supriya's treatment, including the history stated by her, have not been brought on record. The prosecution has to explain this and secondly, in the light of the dying declaration which has been proved by the Executive Magistrate, which does not indicate anything about rape, etc. and the name of the accused, would give occasion to draw an adverse inference against the prosecution qua the medical case papers. It was submitted that Supriya herself did not say anything about the rape and molestation. She herself had stated that she did not know the assailants. It was submitted that when after a few days of recording her dying declaration, her father names someone, he should not be believed. It was submitted that it has not been established beyond doubt that

in fact, any such incident of rape on Supriya took place and that Supriya had told her father about the incident and the names which her father has stated after forty five days and then before the SIT, he has named two more accused with a view to implicate them.

50.141 In conclusion, it was submitted that this witness does not say anything about any incident or accused at the first available opportunity on 6.3.2002. He has admitted in his deposition that he did not know the accused, but subsequently when he came to know their names, he has given their names. On 15.4.2002, for the first time, he had named Guddu and his two brothers and Tiniyo qua the incident relating to Ayub, but without any allegation that he was thrown in a rickshaw and as far as Supriya is concerned, on 15.4.2002, the witness has brought in Jaybhavani and his vakil son. On 8.5.2002, he did not name anyone else and for the first time, he named Manu and Suresh in the statement before the SIT. Before the SIT, he also brought in name of Mayaben for the first time, but only to the extent that he had heard someone in the mob saying that Mayaben had come and for the first time in the court he has brought in a story of three black trunks being taken out from two police vehicles and Mayaben uttering the words "*maro*" etc.

50.142 It was submitted that Ayub's incident as well as the fact regarding Supriya being dragged has also brought in for the first time before the SIT. Insofar as the police vehicle and three trunks incident is concerned, it was stated for the first time before the court. It was submitted that the witness talked about Ayub being attacked by four persons, viz., Guddu,

his two brothers and Tiniyo and before the SIT for the first time, he said that he was thrown in a rickshaw and burnt. It was submitted that it is not the case of the prosecution that Ayub's dead body was found from any rickshaw. Only one panchnama has been prepared qua the burnt rickshaw of one Shakurbhai Tajbhai (Exhibit-950, Volume-97). It was submitted that the panchnama which came to be drawn on 8.5.2002 and the prosecution is absolutely silent as to whether they had any material with them to point out that Ayub's dead body was found in a rickshaw in a burnt condition, where the rickshaw is also burnt.

50.143 Reference was made to the contents of paragraph 12 of his examination-in-chief, wherein the witness has referred to Hasan Qureshi sustaining an injury in police firing, to submit that this is not stated at all in the statement before the police and has been stated for the first time before the SIT. The fact regarding Abid having sustained injury in police firing has not been stated before the police and has come out for the first time before the SIT. There are no allegations made against the police in any of the statements and have been made for the first time before the court. It was submitted that the allegation of Ayub being attacked has not been made in the two police statements dated 6.3.2002 and 8.5.2002, but has been made in the statement dated 15.4.2002, which is introduced for the first time after forty five days. However, Ayub being burnt alive by throwing him in a rickshaw has not been stated in any of his police statements including his statement dated 15.4.2002 and has been brought in for the first time in the statement before the SIT.

50.144 It was submitted that the allegation of Supriya being dragged is not found in any of the three police statements and has been stated for the first time before the SIT. It was submitted that the allegation about the injury to himself has also not been stated in any of the police statements and has been stated for the first time before the SIT. Moreover, no injury certificate has been produced. Referring to paragraph 20 of his examination-in-chief, it was submitted that the fact that while Supriya was being dragged, the witness saw his wife and five children burning, is not found in all his three police statements and has been stated for the first time before the SIT. The fact regarding hearing his son Yasin, who is sitting in the water tank as stated by the witness in paragraph 21 of his deposition, has also not been stated either before the police or the SIT. It was submitted that the witness has admitted in paragraph 155 that Yasin was ultimately found from the house of one Munavarkhan, which shows that even the story of Yasin is self contradictory.

50.145 It was submitted that the whole story regarding Sonia Gandhi has not been stated by the witness either before the police or before the SIT and has been stated for the first time before the court. It was submitted that the fact regarding his daughter Supriya having told him about her being raped is not there in his two police statements dated 6.3.2002 and 8.5.2002. In his statement dated 15.4.2002, there is a reference to only two persons, namely, Jaybhavani and his son, and not to four persons. Insofar as the other names are concerned, there is no reference in either of the two police statements.

50.146 It was submitted that in the entire examination-in-chief of the witness, there is no allegation against Neelam Marathi and there is only identification, but while identifying him, he has said that he had identified him in the test identification parade as a member of the mob, though his being part of the mob has not been alleged in the examination-in-chief. It was submitted that the contents of paragraph 173 of the cross-examination of this witness very eloquently indicates the presence of Nazir Master whose signature is taken on the statement dated 15.4.2002. Nazir Master has come into picture at that stage and the story is improved thereafter and implication has started.

50.147 Referring to paragraphs 85 and 86 of his cross-examination, it was submitted that the witness has admitted that he was in the hospital for six months. However, while he was in the hospital or at the camp, he has not disclosed anything to the doctors or to the camp administration. It was submitted that the witness admits that he went to the Naroda Police Station on 4th March, but did not disclose anything to the police. He had seen the police at the camp, but has not disclosed anything to them. It was submitted that the affidavits speak eloquently of the reply of the N.G.O. It was submitted that the contrary facts stated in the affidavit were not stated by the witness, but still they find place in the affidavit, which shows that he did not tell these facts to the person who prepared it. Therefore, inclusion of these facts is a figment of the imagination of those persons who were instrumental in getting the affidavits made for getting favourable orders. It was submitted that right from the first stage, the witness has changed his story from time to

time. It was submitted that this witness has contradicted himself on many important aspects and it transpires from his deposition that he has no respect for the truth. Referring to the contents of paragraph 147, it was pointed out that the witness has admitted that he did not know any member of the mob, which clearly shows that he has not given the correct names and later on, when he came to know the names from other persons, he has started giving such names. It was submitted that the evidence of this witness does not inspire confidence and cannot be relied upon looking to the serious charges and the punishment provided for the same.

50.148 It was submitted that this witness in paragraph 10 of his evidence has deposed that at around 9:30 a.m., two police vehicles came to the gate of the S.T. Workshop and three black trunks were unloaded which has not been stated by any other witness. It was pointed out that in paragraph 13 of his examination-in-chief, the witness has stated that he was going home from the highway at around 12:00 noon, when a rickshaw driver Abdulkadir was injured by sword and was burning, whereas PW-246 Nurjahan Abdulkadir Shaikh, who is Abdulkadir's wife has testified that the incident of Abdulkadir took place at about 2:00 p.m., which fact is also corroborated by PW-149 Faridabibi Abdulkadar Khalifa, who, in paragraph 12 of her deposition, has stated that when she was coming from Jawannagar to Hussainnagar where her house is situated, at 2:00 p.m. she saw Maiyuddin burning on the road, but she has not seen Kadir burning near the public toilets.

50.149 It was submitted that this witness in paragraph-15 of his deposition, has stated that he was on the

terrace of a house in Gangotri Society when he saw Guddu, his two brothers Naresh (A-1) and Haresh (A-10) and Tiniyo Marathi (A-55) amidst the mob which was attacking Ayub at around 2:30 p.m. at lane No.4 of Jawannagar and thereafter, Ayub was put in a rickshaw near Abeda's house and the S.R.P. Quarters compound wall and burnt in the rickshaw; whereas PW-231 Zulekhabibi Mahammad Ayub Shaikh, Ayub's wife has stated that Ayub fell down from the terrace of their house in Lane No.1 of Jawannagar. PW-143 Dildar Umrao Saiyed has stated that Ayub jumped from the terrace of Gauri Apa's house in Lane No.4 of Jawannagar at around 5:30 p.m. and Guddu, Dataniya, Bipin and Murli lifted Ayub and put him in a rickshaw and thereafter, kerosene was sprinkled from a plastic can carried by Tiniyo (A-55) and he was burnt in the rickshaw. It was submitted that though this witness claims in his evidence that he saw the incident at the passage of the water tank, his presence at that spot is not mentioned by prosecution witness 191, 209, 212, 106, 158, 198, 152, 153, 154, 155 etc., some of whom were residents of Jawannagar where this witness was residing.

50.150 It was further submitted that this witness has deposed that his sister-in-law Raziabanu Mahammad Ayub Shaikh (PW-151) had informed him on the terrace of a house in Gangotri that his family members were burning in the passage, whereas PW-151 in her deposition is silent in this regard. It was submitted that this witness has implicated Bhavani, Tiniyo, Suresh (A-22) and Mukesh (A-40), whereas prosecution witnesses 74, 90, 92, 151, 152, 153, 154, 155, 159, 160, 161, 163, 164, 206 and 205, have not implicated any accused including the local residents in this incident.

50.151 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has no reason to state incorrect facts as he has lost his family members. It was submitted that insofar as the date of Sufiyabanu's death is concerned, it is merely a loss of memory insofar as the date of death is concerned. It was submitted that Nazir Master was the only educated person who was helping everybody and the people there would not have faith in anyone except a member of their community and that the victim could repose faith in him. It was submitted that this witness is a natural witness who is a victim and an affected person. His presence at the site has been proved beyond doubt. He himself is an injured witness and he has lost eight children and his wife in the incident. He was extensively cross-examined, but he stuck to the version given by him in his examination-in-chief. The omissions in the statement 8.5.2002 statement and the affidavit filed before the Supreme Court, would not amount to omissions amounting to contradictions as per section 145 of the Evidence Act. It was submitted that the defence has failed to dislodge the prosecution case which was propounded through this witness. It was submitted that it cannot be even thought that the witness has given some other version only to misguide the court. Any omission or contradiction which does not go to the root of the matter, therefore, is no ground to disbelieve this witness.

50.152 ANALYSIS: In brief, the witness has deposed that at the relevant time, he had ten children. At the time of the incident, two of his daughters were out of station, and therefore, including him and his wife, ten members of his

family were present at home on the day of the incident. According to the witness, the mobs started coming at 9:00 a.m. Two police vehicles came near the S.T. Workshop and unloaded two black trunks. Thereafter, a white car came and everyone started taking Mayaben Kodnani's name. She got down from the car and said "*Maro Salao Ne*" (kill the salas). The witness has stated that thereafter, the mob had attacked them, whereupon they had asked the police to help, but were told to go away, else they would also get beaten. The mob attacked them, and the police also fired and lobbed tear gas shells. Hasan Qureshi was injured on the head by a bullet and Abid was also injured and fell down there. The witness has also deposed that a rickshaw driver Khadir was wounded with a sword and set ablaze near the public toilets.

50.153 As per the version given by the witness, all the ten family members went to a terrace of Gangotri Society in the afternoon. From the terrace, he saw Guddu and his two brothers and Tiniya with swords, sticks and kerosene cans. Thereafter, at the instance of Jaybhavani and Dalpat, he took his wife and children to a big hall in Gangotri Society and left them there and went back to the terrace. Jaybhavani asked him to give him the big cauldron used by him to cook grams to enable him to make kadhi khichdi for them. His sister-in-law Raziabanu came in a burning condition with her twenty day old son Shoaib in her arms. Upon inquiring about his family members from her, she told him that they too were burning. Therefore, he went to the passage of the water tank and saw his wife burning and saw people pulling his daughter Supriya and taking her away, wherein, he saw Jaybhavani, his son, Tiniyo and Suresh Langda. At this time, someone attacked him

from behind and he fell down and was unconscious for about half an hour. He regained consciousness after about half an hour. At the time when he saw them take Supriya away, he had also seen his wife Lalbi, daughters Afreenbanu and Sahinbanu, sons Mahammadhussain and Khwajahussain and daughter Sufiyabanu, burning. Thereafter, the witness had shouted for his remaining sons and found Yasin. The witness has further deposed regarding having met Mehboob, the husband of a woman named Bibibanu. Mehboob had sustained burn injuries and his two sisters were also burnt.

50.154 In the cross-examination of the witness, it has been elicited that they had gone to Gangotri through Gauri Apa's staircase. A test identification parade had been carried out through him, wherein he had identified one of the accused as Guddu's brother.

50.155 In his cross-examination, it has further come out that accused No.28 Manu had forced them to drink his urine. In his cross-examination, it has come out that from where he was standing, he could not identify anyone from the mob at Noorani. It has also come out that it was around 7 o'clock in the evening when he saw his family members burning. The witness has been cross-examined with regard to Ayub's incident and he has stated that he does not remember the exact time, but it was approximately around 4 o'clock. The witness has also been cross-examined with regard to Khadir incident and has stated that he does not remember the exact time and has also stated that the incident took place in front of the place where the public toilets have been constructed. The witness has stated that he had not seen Khadir's incident from

the terrace of Gangotri Society and that he had seen it when he had come outside.

50.156 In his cross-examination (paragraph 180), the contents of his police statement are sought to be brought on record wherein it has been recorded that he had seen his wife Lalbi, his sons Maheboob, Mahammadhussain and Khwajahussain and daughters Shahinbanu and Afreenbanu being assaulted with pipes and rods by the mob and being injured and upon their falling down, the mob poured petrol, kerosene and oil on them and burnt them alive and this mob had also caused injuries to his daughter Sufiyabanu and burnt her.

50.157 In paragraph 181, the witness has admitted that he had seen all these facts with his own eyes. In paragraph 182, the contents of his police statement (probably dated 15.4.2002) are brought on record wherein there is a reference to the Ayub incident as well as Khadir incident.

50.158 The witness is confronted with his statement dated 9.5.2002 to the effect that he had given the names of Neelam Marathi and Tiniya Berge etc. before the DCB Police Sub Inspector Shri R.B. Joshi, but he had come to know of the names of these persons from other people at the Shah Alam Camp and he had, therefore, given their names. Actually, he does not know these people, where they are staying and their occupation. The witness, however, has denied such facts and has stated that he knew them and had, therefore, given their names. The witness has denied that in his statement before the police, he had stated that Tiniya Berge is Tiniya Marathi

and has voluntarily stated that he had also stated that he was Kadam's son, but the police had not written it down.

50.159 The witness has been cross-examined with regard to the contents of his affidavit wherein he has denied having stated certain facts stated therein.

50.160 After considering the omissions and contradictions brought out in the testimony of this witness, what remains is that the witness had come out on the road and had seen that mobs had gathered there and were attacking Noorani Masjid and setting it on fire. Thereafter, the mob had attacked them and the police had fired bullets and lobbed tear gas shells. The witness had seen the incident of Khadir. They left their house and went to a terrace of Gangotri Society from where the witness had seen Guddu Chhara and both his brothers and others armed with swords, sticks, kerosene cans, etc. They had attacked Allabax's son Ayub. Bhavanisingh and his son had raped his daughter Sufiyabanu and thereafter, set her ablaze. (The names of Guddu Chhara and Harijan Manubhai are not stated in the statement dated 15.4.2002). The other omissions sought to be brought on record are not material omissions and have no direct relation with the offence in question. While the witness has named Bhavanisingh and his son having raped his daughter Sufiya, he has failed to identify Bhavanisingh's son accused No.40.

50.161 Insofar as the omissions and contradictions as to the police statements of this witness are concerned, the first statement has been recorded on 6.3.2002 by PW-276, Shri P.U. Solanki, who was the assignee officer of Shri K.K. Mysorewala,

then Investigating Officer. A perusal of the deposition of the assignee officer shows that on 6.3.2002, he had recorded the statements of about six witnesses, the contents whereof have been brought on record by the defence in his cross-examination. On a conjoint reading of all such statements, it is shocking to note that the statements of the witnesses are identically worded except the names of witnesses and the relatives and the injuries sustained by them. The witnesses are, therefore, wholly justified in saying that their statements were not recorded as stated by them and that only their names and addresses had been taken down. Considering the manner in which the statements have been recorded, these cannot be said to be the statements of the witnesses as stated by them, and hence, the omissions and contradictions as to the statements dated 6.3.2002 of such witnesses are required to be disregarded.

50.162 Insofar as the reference to the presence of Mayaben Kodnani on the national highway in the morning is concerned, such version has come up for the first time in the year 2008 in the statement recorded by the SIT. Prior thereto, the witness has not named Mayaben before the investigating agency despite the fact that several statements of his were recorded by different Investigating Officers. A grievance has been voiced that at the relevant time, considering the fact that Mayaben was an influential person, the police were not ready to record her name in the array of accused. However, in the case of this witness, in the year 2003, he had made an affidavit for the purpose of filing the same before the Supreme Court in petitions for further investigation and transfer of investigation from the State of Gujarat. In the said affidavit the

witness has named several accused viz. Jaybhavani, Guddu Chhara, Guddu Chhara's two brothers, Jaybhavani's son, Suresh Langda, Kadam his neighbour's younger son Tiniya, Ganpat Chhara and Manu Harijan, but he has not named Mayaben Kodnani nor referred to any incident involving her. In the opinion of this court, at the time of making the affidavit, the witness was assisted by legal minds and nothing prevented him from stating the name of Mayaben Kodnani in the affidavit. In fact, recording the name of Mayaben as an accused would have been one of the main points in the affidavit made by the witness; however, the affidavit is totally silent as regards the involvement of Mayaben in the incident in question. Under the circumstances, considering the fact that the witness has named other accused in his previous statements and the police have recorded the names of such accused and more particularly when in his affidavit filed before the Supreme Court, the witness has not named Mayaben (accused No.37), it would be hazardous to rely upon the testimony of this witness against accused No.37, when her involvement has been brought on record only in the year 2008, after a period of more than six years. Thus, insofar as the involvement of the accused named by this witness is concerned, the testimony of this witness would have some bearing only qua the accused No.10 and accused No.1. Insofar as the accused No.54 is concerned, in the light of what has been stated by the witness regarding having named him on the basis of what was stated by the other people at the camp, it is evident that he has been named on the basis of hear-say.

50.163 While several omissions and contradictions in the testimony of this witness as to his police statements have

been brought out, to the extent the witness has stated as above, he is consistent right from the beginning. Therefore, to that extent, the version given by the witness, subject to any contradictions with the version given by other witnesses qua the same incidents, can be believed. This witness is an eyewitness, who has lost eight members of his family in the incident. His presence at the scene of offence has been established beyond reasonable doubt.

50.164 The witness has named Mayaben Kodnani (A-37), Guddu Chhara (deceased), Guddu Chhara's two brothers (A-1) and (A-10), Tiniyo Kadam's son (A-30), Jaybhavani (deceased), Dalpat (deceased), Jaybhavani's son (A-40), Manu Harijan (A-28), Neelam Marathi (A-54) and Suresh (A-22) in his deposition before the court. Out of these accused, the witness has identified accused No.37, 10, 22, 28 and 54 whereas accused No.1 having filed an exemption application is deemed to have been identified. The witness has consistently named Guddu Chhara and his two brothers (A-1) and (A-10), Jaybhavani and his son (A-40) in his police statements, statements before the SIT and in his deposition before the court. Insofar as the other accused are concerned, their names have been given at a subsequent stage, and hence, it would be hazardous to rely upon the testimony of this witness to prove the charge against those accused as their false implication cannot be ruled out. Out of the accused consistently named by him, the witness has failed to identify Jaybhavani's son accused No.40. Therefore, out of the living accused named by this witness, his testimony would support the prosecution in establishing the charge against only two of the accused viz. Guddu Chhara's brothers -

accused No.1 and 10.

51. **PW-162 Rafiq Kallubhai Shaikh**, aged 41 years, has been examined at Exhibit-1149. The witness has deposed that he was residing in *Lane No.2, Jawannagar, Naroda Patiya*, since the year 1985 and that in the year 2002, he used to do the work of spray painting scooters. He has stated that he has studied up till the sixth standard in Hindi medium.

51.1 In the year 2002, he was residing with his family at *Jawannagar*, which was comprised of his wife Amina, his mother Jannatbibi, his father Kallubhai, his sons Hussein, Tahir and his daughters Reshma, Mumtaz, Sabina, Yasmin, his younger brother's wife Parveen, his younger brother Jumman, his brother Jumman's son Shahin and his younger sister Parveen, all of them were residing together. The house, in which they were residing at *Jawannagar*, was of their ownership.

51.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh. The call had been given by the Vishwa Hindu Parishad. On the date of the incident, he was with his family, when between 9 to 10 o'clock in the morning, a mob of Hindu people started gathering near *Jawannagar* pit. The people in the mob were wearing saffron head-bands and they were armed with dharias, swords, pipes as well as cans of kerosene. The mobs were shouting, "*Kill the Miyas! Kill the Miyas!*"

51.3 At this time, the workmen in the S.T. Workshop,

which was next to their chawls, started pelting stones. A lot of public gathered on the side of Jawannagar pit. The stone pelting started from the S.T. Workshop side as well as from the pit of their chawls. The people in the chawls had gathered together and he heard that the leader of riotous Hindu mob was one Jaydeep Patel.

51.4 At that time, the police had fired at the Muslims. In the firing, two to three Muslims were injured by bullets. He had learnt that a person named Abid was injured by a bullet. He does not know the names of the other persons who were injured.

51.5 In the incident, his brother Jumman had sustained an injury on his cheek. Upon the incident occurring, he was very frightened and therefore, he, his parents, brother, son, etc. went towards the S.R.P. Quarters. At that time, it must have been around 4 o'clock in the evening.

51.6 While they were going towards the S.R.P. Quarters, he had seen that some people in the mob had taken gas cylinders from the nearby Uday Gas Agency and were throwing them in the houses of the Muslims. When they reached the S.R.P. Quarters, they requested the S.R.P. personnel who were standing there, to let them enter the S.R.P. Quarters, but the S.R.P. people refused to let them enter and told them that there were no orders from their superiors and hence, they would not let them enter. They once again requested them to at least let their women and children go inside, whereupon they threatened them and told them to sit down and did not let them go inside.

51.7 The witness has stated that he believes that if on that day they were allowed to go inside the S.R.P. Quarters, not a single person would have died in the incident. They sat there outside the S.R.P. Quarters till 7 o'clock in the evening.

51.8 While they were sitting outside the S.R.P. Quarters, tear gas shells were lobbed to drive them away. On that day, they were around four hundred to five hundred Muslims at that place and on account of bursting the tear gas shells, they had fled from there. After going from the S.R.P. Quarters, they had gone to Gangotri Society, to the house of an S.R.P. person, to save their lives and had hidden there. On that day and at that time, the house in which they were hiding was empty. On that day, an S.R.P. man came and told them that the mobs had gone and that they should all get out one by one. At this time, in fact, the mob was standing in front. Bhavanisingh, Guddu Chhara and Suresh Langda were present in this mob, and they were wielding weapons like dharias, swords, etc. There were also other people in the mob, who had kerosene and petrol cans in their hands.

51.9 When he saw the mob, he told the S.R.P. that the mob is standing right in front, at that time, an S.R.P. man gestured to the mob with both hands to make space for them. The witness has stated that in his opinion, the man had gestured to the mob with his two hands to move, but he had, in fact, told them that they should for the time being move from there and hide, so that they could not be seen and thereafter, they could do whatever they wanted.

51.10 On seeing all this, he remained at the S.R.P. Quarters. However, some of the people from amongst them started going towards Naroda. Those people who went in this manner were attacked with dharias, swords, pipes, etc. by the mob. From where he was standing, he could hear the screams of the people who had got separated from them, who were screaming "help, help".

51.11 He had also heard people who had separated from them screaming, "*Protect the modesty of women*". Women and children were cut and burnt alive at this place, which he had heard. This incident must have taken place at around 7:30 in the evening.

51.12 The witness has deposed that in this manner, those Muslims who had got separated from them did not return. Amongst those people were his maternal uncle's son Sharif, maternal aunt's son Siddiq and both of them died in the incident on that day.

51.13 The witness has further deposed that they remained on the terrace of Gangotri Society till 11 o'clock at night. Thereafter, the police vehicles came and took those who had remained alive in the incident to the Shah Alam camp. They too were taken at the Shah Alam camp, where they stayed for six months.

51.14 While they were at the relief camp, the police had not recorded their statements; however, the Crime Branch had drawn a panchnama of their house. The Crime Branch had recorded his statement with regard to the panchnama of his

house. His house was burnt in the incident.

51.15 Thereafter, the SIT people had sent him summons and they had recorded his statement in connection with the incident. The SIT people called him twice, once at Gandhinagar and on the other occasion at Naroda Patiya.

51.16 The witness has stated that Bhavanisingh, Guddu Chhara and Suresh Langda were in the mob, out of whom, Bhavanisingh and Guddu Chhara were dead. That he knew all of them and was in a position to identify Suresh Langda. The witness has thereafter identified accused No.22 Suresh Langda correctly.

51.17 CROSS EXAMINATION: This witness has initially been cross-examined with regard to the topography of the area. In his cross examination it has been elicited that on the day of the incident he had climbed on the terrace of his house to watch the mob. The roof of his house was made of sheets. On that day he climbed on the neighbouring terrace and had seen Jawannagar Khada. The witness has admitted that on that day he had not climbed on roof of the house. In his cross examination it has further come out that in the morning between 9:00 to 10:00 he had gone to the neighbouring terrace and had stayed there for around five to ten minutes. The witness has denied that at that time he had seen the mobs only in Khada and has voluntarily sated that at that time there were mobs near S.T. Workshop also. However, the mob was not comprised of many people. The witness has admitted that the people in the mob were thousands in number. The witness has denied that at that time at the S.T. Workshop as well as in

Khada, at both the places, there were thousands of people in the mob. The witness has denied that he could not see the interior part of the S.T. Workshop and has voluntarily stated that the people from the fencing side, from inside of the S.T. Workshop were pelting stones and they (the witness) could see them. The witness has admitted that on 8.5.2002, Shri R.B. Joshi, PSI, DCB, Ahmedabad City had drawn Panchnama of his house in his presence and thereafter recorded his statement. The witness is confronted with the statement dated 8.5.2002 to the effect that the facts stated by the witness in paragraph 3 of his examination in chief have not been stated by him in his statement dated 8.5.2002. In the opinion of this court all that the witness has stated in paragraph 3 of his examination-in-chief is about members of his family who were residing with him at the relevant time and hence in mentioning such facts in the statement recorded by the police cannot be, by any stretch of imagination, said to be an omission amounting to contradiction. The witness is confronted with his statement dated 8.5.2002 to the effect that he has stated therein that at around 9:00 to 9:30, mobs of Hindu people started gathering on Saijpur-Patiya Road and upon the people in the mob coming towards them, to protect their lives, they had started going towards the S.R.P. camp with their children. However, upon S.R.P. people refusing to let them enter, they had gone to the terrace of Gauri Apa's house on the rear side near S.R.P. Camp compound wall and were sitting there and that at 7 o'clock in the evening they had gone to Gangotri Society, but they did not let them sit there; upon being driven away from there and told to go further. He does not know the names of the persons whom he had seen in the mob, but can identify them. However, he sees them. The witness has stated that he has

stated the facts stated by him in his examination in chief.

51.18 The witness has admitted that in his statement dated 8.5.2002 he had not given names of Bhavanisingh, Guddu and Suresh Langda before the Police and has voluntarily stated that the police were not taking any interest in their case and on that day they were saying that this was the statement only with regard to panchnama of their house. The witness has admitted that prior to 8.5.2002 he had not lodged any complaint with regard to the incident and that on 8.5.2008 he has lodged complaint. The witness is cross examined with regard to the topography of the area as well as his acquaintance with Jaideep Patel.

51.19 The contents of the panchnama dated 8.5.2002 are read over to the witness, who has admitted the contents thereof. The panchnama is exhibited at Exhibit-1151. The witness has admitted that in connection with loss caused to him due to the incident, he had received compensation from the Government.

51.20 The contents of paragraphs 4 and 8 of his examination-in-chief are read over to the witness, wherein the witness has stated that a mob of Hindus had gathered in Jawannagar Khada and they had tied saffron bands on their heads and armed with weapons and where he had stated that the people were obtaining gas cylinders from Uday Gas Agency and were putting them in the houses of Muslims, have not been stated by him in his statement dated 8.5.2002, which the witness has denied. The witness has been cross-examined with regard to his acquaintance with Raeeskhan Pathan. The

witness has admitted that he was informed by someone that they were required to make an affidavit before the Supreme Court. The witness has admitted that Teestaben had told him that if they wanted justice they would have to go to the Supreme Court and that as part of the action which they were required to take he would have to make an affidavit. The witness has admitted that till he has made affidavit he had not lodged complaint anywhere. The witness has admitted that they had not gone to any court to lodge complaint with regard to the incident. The witness has admitted his signature at the end of the affidavit, which is given Exhibit No.1152. In the cross-examination of the witness it has been brought out that he has met Teestaben's Secretary and had talked to her on telephone. Teestaben used to ask him questions in connection with the incident and he used to answer them and that during the course of his talk he has stated all the facts that he knew regarding the incident, to her. The witness has admitted that except for the facts about the incident that he knew, he has not stated any other fact to Teestaben. The witness is thereafter, cross examined with regard to the manner, where and how the affidavit had been prepared.

51.21 In the cross examination of this witness it has come out that it has not happened that prior to his going to make affidavit, he had gone to lodge complaint anywhere and such complaint was not registered. It has further come out that prior to his making affidavit Exhibit 1152; he had not felt any distrust towards any authority. The witness has stated that he had no occasion to visit Narodagam on the day of the incident. The witness has stated that he is aware of the fact that it is an offence to state the facts other than the true facts in an

affidavit presented before the court. The witness has stated that he was not clearly aware as to whether he has given name of Sahejad Chara in his statement dated 8.5.2002 and he might not have stated to. The witness has stated that it is true that except for the facts stated by him in the affidavit Exhibit 1152, no other facts had taken place.

51.22 The witness has stated that he had informed Madam Teesta Setalvad that he had seen Dr. Jaideep Patel leading the mob and that other persons were acting under his instructions, which he had seen. He had also informed Teestaben that the police were not investigating Naroda Gam case properly. He has also informed her that the police were not investigating the Naroda Patiya case properly. The witness has stated that prior to making the affidavit Exhibit 1152 he had not inquired from any police station as regards the status of investigation and at which stage it was pending.

51.23 The witness has admitted that in his affidavit Exhibit 1152, he had instructed Teesta Madam to state that the police were not properly investigating the offence and that no progress had taken place in the case and the in the trial. He has further stated that he has also instructed Teesta Madam that Naroda Gam and Naroda Patiya cases are required to be transferred to outside Gujarat. He has also admitted that he has informed Teestaben that in the affidavit, to state that it is necessary to transfer cases to outside Gujarat, because attempts are being made to suppress the facts during the investigation and to conceal the evidence. The witness has voluntarily stated that he has reason to state such facts because while making panchnama of his house the police were

not writing down everything. The witness is confronted with his statement dated 12.7.2008 recorded by the SIT, part of which is not admissible in evidence as the same is not put to the witness to contradict any part of his statement. The witness has further admitted that in his statement before the SIT he had stated that in the mob of Chharas he has not seen Sahejad Chhara, he did not know which weapon was in the hands of Jaideep Patel and he has only seen Jaideep Patel leading the mob. The witness has further admitted that he has stated that he did not know which weapon Jaideep Patel had and that he had learnt that Jaideep Patel was leading the mob, but he had not witnessed himself. The witness has admitted that he has not seen the incident of Abid and other Muslims being injured with his own eyes.

51.24 The contents of first four lines of paragraph 8 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statement dated 8.5.2002. The contents of first five lines of paragraph 9 of his examination in chief at page 6 are read over to the witness to the effect that he has not stated such facts in his statement dated 8.5.2002 as well as in his statement recorded by the SIT.

51.25 The contents of paragraph 10 of examination in chief are read over to the witness to the effect that he has not stated these facts in his statement dated 8.5.2002 as well as in his statement recorded by SIT.

51.26 The witness has admitted that he cannot say as to which weapon was wielded by which person in the mob.

51.27 The witness has admitted that the public which had gathered in the Khada was from outside, neighbouring areas. Till 4:30 in the evening, all of them, with their family members, had hidden in their houses in an attempt to protect themselves. The witness has admitted that he has stated these facts in his statement dated 20.5.2008 recorded by SIT.

51.28 In his cross-examination it has further come out that in his affidavit Exhibit 1152, he had himself stated the facts regarding Jaideep Patel; however, the correct facts are such that he has heard about the leadership of Jaideep Patel as well as other facts from other persons. The witness has denied that in his affidavit Exhibit 1152, he had informed that he had personally seen Jaideepbhai. The witness has admitted that he has not told Teestaben that the case should be conducted outside Gujarat. The witness has voluntarily stated that he had told her that whether the case is conducted in Gujarat or outside Gujarat they should get justice and that he had told Teestaben that they will not get justice in Gujarat. The witness has admitted that on the date of the incident he had not seen any incident involving death of any person in Khada.

51.29 PW-278 Shri R.B. Joshi in his cross-examination has admitted that he has recorded the statement of this witness on 8.5.2002. The assignee officer has admitted that this witness had stated before him that he was residing with his wife Amina, four daughters and two sons and had not stated regarding the other persons named in paragraph 3 of his deposition before him. In paragraph 3 of his examination in chief, the witness has stated that he was residing with his wife Ameena, his mother Jannatbibi, is father Kallubhai, his sons

Hussain, Tahir and his daughters Reshma, Mumtaz, Sabina, Yasmin his younger brother's wife Parveen, his younger brother Jumman, his brother Jumman's son Shaheen and his younger sister Parveen. In the opinion of this court, non-mentioning of the other persons who were residing with him at the relevant time in the statement, can hardly be said to be an omission so material amounting to a contradiction.

51.30 In paragraph 37 of the cross-examination of this witness, the contents of her statement dated 8.5.2002 have been put to the witness, who has denied the same. These very same contents of the statement dated 8.5.2002 are read over to the assignee officer, who has admitted that this witness has stated such facts in the statement recorded by him. A perusal of the manner in which the trial court has recorded the evidence gives the impression that these are the facts stated by the witness in the examination-in-chief and not facts stated in her statement recorded by the assignee officer, which he has actually denied in paragraph 37 of his deposition. The assignee officer has admitted that this witness has not given any complaint before him on 8.5.2002, and that on 8.5.2002, he had gone to the house of the witness to draw a panchnama. The assignee officer has further admitted that this witness had not stated before him that a Hindu mob had gathered near Jawannagar pit and those people had tied saffron bands on their heads and were armed with weapons and that people had obtained gas cylinders from Uday Gas Agency and were putting them in the house of the Muslims, have not been stated by the witness in his statement recorded by him. The assignee officer has further admitted that this witness has not given the name of Sahejad Chhara in his statement.

51.31 The contents of the last four lines of paragraph 8 as well as the contents of paragraph 10 of this witness are read over to the assignee officer wherein the witness has stated that if on that day, they were permitted to enter S.R.P. Quarters, then there would not have been a single death in the incident. That they were sitting outside S.R.P. Quarters till 7 o'clock in the evening. When he saw the mob, he had told the S.R.P. people that the mob was standing right in front. At that time, the S.R.P. people had gestured to the mob to give way. That the witness has stated that as per his opinion, the S.R.P. people had gestured the mob to move away and by such gesture, informed them to go and hide so that they could not be seen by people and thereafter they should do whatever they wanted to do. The assignee officer has admitted that such facts have not been stated by the witness in the statement recorded by him.

51.32 As can be seen from the cross-examination of the assignee officer as regards the statement of this witness recorded by him, the only omission which is sought to be brought out is regarding the contents of the statement of this witness as recorded by him. It is a settled position of law that a statement recorded under section 161 of the Code can be used only for the purpose of contradicting a witness as laid down by section 162 of the Code, in the manner provided under section 145 of the Evidence Act. Putting the entire statement of the witness is not the proper manner of contradicting a witness and when the contradiction is not properly put, the question of proving such contradiction through the testimony of the Investigating Officer would not arise. The manner in which the

evidence has been recorded by the trial court, therefore, leaves a lot to be desired.

51.33 PW-327 Shri V. V. Chaudhari, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statements of this witness on 20.5.2008 and 12.7.2008. The Investigating Officer has admitted that this witness in his statement dated 20.5.2008 has stated that no person from his family has been injured in the incident. The incident in the passage between Gangotri Society and Gopinath Society had taken place in the evening. In this incident, a person named Abid was injured by a bullet.

51.34 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness has seen the occurrence and has identified Suresh Langdo. It was submitted that this witness's statement was initially recorded by the Crime Branch on 8.5.2002, wherein he has not implicated anyone, which fact has been admitted by him in paragraph 38 of his cross-examination. It was submitted that for the first time on 20.5.2008, when his statement came to be recorded by the SIT, the witness has made allegations against two deceased persons, namely, Jaybhavani and Guddu Chhara as well as Suresh (A-22). It was submitted that according to this witness, all his family members including his wife and children as well as parents, brother, brother's wife, brother's son were staying together and that they left their home for the S.R.P. Quarters at about 4:00 p.m. and till 7:00 p.m., his parents Kallubhai and Zannatbibi were with him. It was submitted that this witness has deposed that between 9:00 to 10:00 in the morning, the Hindu mobs had gathered in the Jawannagar pit

which has not been stated by any other witness. It was submitted that this witness has referred to stone pelting from the S.T. Workshop as well as from the Jawannagar pit towards their chawl and has also referred to Jaydeep Patel as leading the Hindu mob. It was submitted that these facts are stated only by this witness and are not corroborated by the testimony of any other witness. It was submitted that this witness is, therefore, not a credible witness and no reliance can be placed upon the testimony of this witness for the purpose of proving the charge against the accused.

51.35 The learned counsel for the appellants submitted that except for this witness, no other witness has stated that there was any mob in the Khada at 10.00 a.m. in the morning. It was submitted that this witness has referred to stone pelting from the Khada and from the side of the S.T. Workshop and has named Jaideep Patel, however, the testimony of the mother of this witness, does not support the version given by him. It was submitted that from the cross-examination of this witness an admission has been brought out that he has not witnessed any incident and that he had mentioned the name of Jaideep Patel on the basis of what was stated by other people.

51.36 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is an eyewitness and has seen the occurrence. He has named and identified Suresh and has named Suresh, Bhavani and Guddu before the SIT and that the witness has not stated that he had seen any of the major incidents. He has stated that since the police were not taking any interest, he has not given the names of accused at the relevant time. It was submitted that there is no ground for

disbelieving the witness and nothing in the nature of contradiction has been brought out by the defence which would go to the root of the matter and would affect the credibility of the witness.

51.37 ANALYSIS: This witness is the son of PW 142 Zannatbibi Kallubhai Shaikh. According to this witness, at about 9:00 to 10:00 a.m. in the morning, mobs had gathered in the Jawannagar Khada. There was stone pelting on their chawls from the S.T. Workshop as well as from the Khada. The police had fired upon the Muslims wherein, Abid and others were injured by bullets. Abid died due to the bullet injury. At about 4 o'clock in the evening, they started going towards the S.R.P. Quarters but the S.R.P. people did not let them enter inside. They sat outside the S.R.P. Quarters till 7:00 in the evening, when tear gas shells were lobbed to drive them away from there. They were around four hundred to five hundred Muslims. They went to Gangotri Society and hid in an empty house. An S.R.P. man came and told them that the mob had gone away and they should go out one by one. When they came out, the mob, in fact was standing in front. Bhavanisingh, Guddu Chhara and Suresh Langda were amongst the people in the mob and they were armed with weapons. The witness had remained near the S.R.P. Quarters, but those who went away from there were attacked by the mob.

51.38 The witness, in his cross-examination (paragraph 38), has admitted that he had not given the names of the three accused in his statement dated 8.5.2002.

51.39 Thus, this witness has deposed regarding seeing mobs in the Jawannagar Khada in the morning, which has not been stated by any other witness. From his evidence it emerges that they had gone to the S.R.P. Quarters to seek shelter but were not permitted to enter and about four hundred to five hundred Muslims were sitting outside the S.R.P. Quarters. At around 7:00 p.m., tear gas shells were lobbed to disperse the Muslims and they were forced to go away and the witness took shelter in a house at Gangotri. From there they were told by an S.R.P. person to come out as it was safe, and escape from there, but there was a mob outside wherein he had seen Bhavanisingh, Guddu Chhara and Suresh Langda, who were amongst the people in the mob and were armed with weapons. The witness has stated that he did not go in the direction in which they were told to go but remained near the S.R.P. Quarters but others who went there were attacked and he heard the screams of the victims. His mother was with him till 7:00 p.m.

51.40 Therefore, the witness has not seen the actual attack. While he has mentioned the names of the three accused in the mob, he has admitted that he had not given their names in his first available police statement dated 8.5.2002 and appears to have named them for the first time before the SIT, after more than six years. Under these circumstances, it would be hazardous to rely upon the testimony of this witness for the purpose of convicting the named accused. The testimony of this witness can be relied upon only as regards the sequence of events narrated by him to the extent the same corroborates the version given by other

witnesses.

52. The learned counsel for the appellants, have also referred to two other witnesses, viz. PW 160 Afsana Rahemanbhai Saiyed who is the daughter of PW 114 and PW 137 and PW 142 Zannatbibi who is the mother of PW 162 together with this set of witnesses.

53. **PW-160 Afsanabanu Rahemanbhai Saiyed**, aged 28 years, has been examined at Exhibit-1144. The witness has deposed that in the year 2002, she was residing at *Jawannagar, Gali No.1, Naroda Patiya*. At the relevant time, she was not married, though presently she is married.

53.1 In the year 2002, she was residing with her parents, three brothers and three sisters, out of whom she was the eldest; younger to her was Ruksana, then Zarina, thereafter her brothers – Samsad, Iqbal and Aashmammad.

53.2 The incident took place on 28.2.2002. On that day, she was at home with her family members. On that day, they had heard sounds of a fight on the road outside at around 7 o'clock in the morning. There was a stampede on the day of the incident and nobody was listening to them. The people in the mob who were there on the road had later on entered their houses. The people in the mob had driven them out of their homes. They had left their homes in the morning. Till 6 o'clock in the evening, they had stayed in the house of a Hindu at Gangotri Society. The witness does not know as to whether the person whose house it was, was at home or not, but they had

gone there and had stayed there to save themselves.

53.3 When they were inside the house at Gangotri Society, then, at around 6 o'clock in the evening, a mob had come and driven them out of the house. The mob was huge and upon being driven out, they came out of the house at Gangotri Society when the mob encircled them from both sides near the water tank. The people in the mob had set her ablaze when her brother Samsad was holding her hand and walking. The people in the mob snatched him from her hands and set him ablaze. Her brother was burnt and died on the spot. Thereafter they did not get her brother Samsad's dead body.

53.4 The witness has deposed that in the stampede, her family members got separated from her. The mob badly beat her up at the spot and she became unconscious and was lying there. In the incident, her left hand and entire part of her back was burnt. She had also sustained burn injuries to a certain extent on her other hand also. After she became unconscious at the site, she does not know who came and took her from there. When she regained consciousness, she was at the Civil Hospital and was being given treatment. She had stayed at the Civil Hospital for about one month. During the course of her treatment, the police had recorded her statement; however, she does not know what the police had written down.

53.5 The witness has stated that her mother's name is Rafikanbanu and that her mother was also beaten up in the incident and had taken treatment at the Shah Alam camp.

53.6 CROSS EXAMINATION: The witness has been

confronted with her previous statement dated 3.3.2002 as regards the contents thereof, which she had denied. The witness has voluntarily stated that she has sustained burn injuries on her hands, leg and chest, however, as stated in her examination-in-chief, the incident had taken place at the spot and as deposed by her, and facts recorded in her police statement are not correct and that she did not state such facts before the police. (In the opinion of this court, the witness could not have been confronted with the contents of her previous statement without first contradicting her with any part of the contents of her examination-in-chief.)

53.7 In the cross-examination of the witness, it has been elicited that her house was in Lane No.1, Jawannagar, which was towards the ground. The witness is examined with regard to the topography of the area. The witness has stated that she has not gone towards Jawannagar pit on the date of the incident. The witness has denied that the sequence of events was not as stated by her in her examination-in-chief and that, she was not a victim of any incident and that she has not narrated any such facts to the police. The witness is shown her dying declaration Exhibit-847 and has identified her thumb mark thereon. She has stated that she is not educated and cannot sign, but puts her thumb mark.

53.8 In her cross-examination, it has come out that from the relief camp, they had straightaway gone to reside at Faizal Park. She is married to someone at Aligarh in Uttar Pradesh and that she has come to her father's house at Faizal Park since one month only. Her marriage took place approximately eight years ago, after the incident. The witness has been re-

examined by the Special Public Prosecutor and she has stated that she does not remember as to whether she has stated her surname to be Saiyed. May be, she might have stated her surname as Shaikh, though their real surname is Saiyed.

53.9 It may be noted that in her entire cross-examination the witness has not been confronted with her police statement qua any part of her examination-in-chief. Evidently therefore, no contradictions have been brought out as to her previous statement recorded by the police, despite which the concerned assignee officer PW-296 Shri J. V. Surela has been cross-examined as regards her statement dated 3.3.2002. The assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. The assignee officer has admitted that the witness has not given the name of any accused before him. [It may be noted that the witness has not named any accused in her examination-in-chief, despite which such question is permitted to be put to the assignee officer.] The assignee officer has admitted that the witness had stated before him that on 28.2.2002, on *jhumme raat*, after 6 o'clock in the evening, a mob of around five hundred people with weapons like petrol, kerosene, pipes, entered their chawl and at that time, there was a stampede in their chawl and petrol and kerosene was poured on their houses and they were torched. In the meanwhile, she got separated from her family and the people in the mob had poured petrol and kerosene on the people of the chawl as well as on her and her brothers and sisters and torched them. In the meanwhile, upon the police coming, the people in the mob fled from there and she had sustained burns on her hands, legs and chest. Since, no contradiction qua her police statement

has been brought out in the cross-examination of the witness, the entire cross-examination of the assignee officer is not admissible in evidence and hence, it was not necessary for this court to refer to it. Reference to the same is made only to demonstrate the manner in which the proceedings have been conducted before the trial court. Moreover, it has also been noticed that the statements of witnesses recorded at the hospitals, be it the Civil Hospital or the V.S. Hospital, read almost alike. It may be noticed that in the police statement referred to in the cross-examination of the assignee officer, it has been recorded that upon the police coming, the people in the mob fled from there, which is not the case of any of the witnesses or even the prosecution, despite which such a fact has been recorded, presumable to show that it was the police who came to the rescue of the victims. This assignee officer has also recorded the statements of PW 106 Farzanabanu Ayubkhan Pathan, PW 158 Naemuddin Ibrahimhai Shaikh, PW 163 Usmanbhai Valibhai Mansuri, PW 164 Yasin Usmanbhai Mansuri, PW 191 Mahammadmaharroof Abdulrauf Pathan and PW 214 Saberabanu Abdulaziz Shaikh on 3.3.2002. A perusal of all such statements recorded by the assignee officer as brought on record in his cross-examination shows that all such statements are more or less identically worded ending with the police coming and the mob fleeing, which lends credence to the grievance of the witnesses that their statements were not recorded as stated by them, but that only their names and addresses etc. were inquired from them. In the opinion of this court, such statements recorded under section 161 of the Code cannot be used to bring out omissions and contradictions in the testimonies of the witnesses for the reason that they have not been properly recorded and the assignee officer has

written down the facts as per his own whims.

53.10 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness is the daughter of PW-114 and PW-137. It was submitted that the witness has stated that the members of the mob had come and chased them from their house. They went to the house of a Hindu in Gangotri Society and were there till 6:00 in the evening. The witness does not involve any accused and has denied that they were at home till 6:00 p.m., which is contrary to what her father has stated in his deposition. It was submitted that the dying declaration of this witness was recorded at Exhibit-847. It was pointed out that the witness does not involve accused Ramila and accused Geeta, hence, the version given by her mother PW-137 is not corroborated. It was submitted that this witness does not name the person who burned Samsad as well as the members of the mob. It was submitted that at the time when her dying declaration was recorded, she has not stated anything about rape being committed on her. Reference was made to her injury certificates Exhibits-342 and 343, to submit that the same do not suggest that she was a victim of rape. It was submitted that none of the three witnesses, namely, PW-114, PW-137 and this witness inspire confidence. It was submitted that there is a variance between the stories narrated by each of them before the court and therefore, it is not possible to determine who is saying the truth out of the three. Therefore, the evidence is not acceptable for any purpose.

53.11 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has clearly stated

about the incident, about herself and her brother. It was submitted that this witness is an eye witness and is a natural witness and there is no reason to disbelieve her. It was submitted that there is no discrepancy between her evidence and the evidence of her parents to the effect that the incident took place between 6:00 to 7:00 in the evening; that the incident took place near the passage; that her brother was dragged and burnt, which fact is also stated by her mother, whereas her father says that he was hacked to death; she says that they were out of the house from the morning itself. It was submitted that PW-114 has named three accused, whereas PW-137 has named two more accused. It was submitted that there is no inconsistency about the factum of the incident, how it happened and the involvement of the mob. It was submitted that all the three of the witnesses are, therefore, independent, believable and natural witnesses and there is nothing to persuade the court to discard their entire evidence.

53.12 ANALYSIS: This witness is an injured eye witness, who has sustained burn injuries. The witness has not stated anything about the incident in detail, but has stated that they had taken shelter in a house at Gangotri and at around 6 o'clock they were driven out of the house and the mob had surrounded them from all sides near the water tank. Her brother Samsad was holding her hand. The mob pulled him away and set him ablaze. She was badly beaten by the mob and she had become unconscious. She had also sustained burn injuries. When she regained consciousness, she was in the Civil Hospital. The witness has not named any accused.

53.13 Insofar as the discrepancies with the testimony of her mother PW 137 are concerned, as per the version given by this witness, she was badly beaten and had become unconscious, evidently therefore, she would not be in a position to depose anything more about the incident. Insofar as the medical certificates not indicating any rape having been committed are concerned, it is nobody's case that this witness was raped during the incident. The deposition of this witness has a ring of truth in it and the witness comes across as a truthful and credible witness. Insofar as a small discrepancy with regard to the time when they had left their homes is concerned, having regard to the lapse of time between the incident and the recording of her testimony, and the fact that in the interregnum the witness had got married and was residing in Uttar Pradesh, such small discrepancies are natural, and when they have no direct connection with the main incident, much significance cannot be attached to them.

54. **PW-142 Zannatbibi Kallubhai Shaikh**, age 50 years, has been examined at Exhibit-961. This witness has deposed that she is residing at *Lane No.2, Jawannagar, Naroda Patiya*, since the last twenty to twenty five years. The incident took place on 28.2.2002. When the incident took place in the year 2002, her family was comprised of the witness, her husband and her daughter Parveen, all of whom were residing together. At the relevant time, her son Rafiq and his wife Aminabibi, were residing separately. They too were residing at Naroda Patiya in the line in front of their house. Her son Jumman and his wife Parveenbanu and their children, Sahil, Sohail and Shoeb were residing separately in the neighbourhood.

54.1 In the year 2002, her husband used to drive a rickshaw and she used to sell fruits by displaying them on a cot in front of her house. Her son Rafiq used to do his own work by the name 'A-One Bhatthi Colour Kam' situated at Saijpur in the Ambawadi area. Her other son Jumman used to drive a rickshaw.

54.2 The witness has deposed that she is totally illiterate and does not know how to sign. She puts her thumb mark. Her husband used to drive a passenger auto rickshaw bearing registration No.9064, which was of their ownership.

54.3 On 28.2.2002, there was a call for Gujarat Bandh. On that day, she, her husband and her children, all were at home. At around 9 o'clock in the morning, the children were running around and had come and said to her that there was stone pelting at the Noorani Masjid. Hence she had gone to leave her daughters-in-law Aminabanu and Parveenbanu and her daughter Parveenbanu and their children, etc. to the S.R.P. Quarters. After leaving them at the S.R.P. Quarters she had returned home.

54.4 At that time, youths were coming running and the people from their chawl were bringing a youth named, Ahmed, who was injured by a bullet in the incident. When she went to the front side of her lane, stone pelting was going on from the S.T. Workshop. At this time, **Bhavanisingh** was standing in front of his house with an aged person. At this time, Bhavani came near them and told them "*go home, nothing will happen*" and hence, they had gone home.

54.5 Thereafter, at around 11:00 to 11:30 in the morning, **Bhavanisingh** and an old man came to their chawl and Bhavanisingh told them to give him a cauldron and he would make *kadhi-khichdi* for them. She has replied that they were worried for their lives and he was talking about a cauldron and from where would she bring a cauldron for him. At that time, Bhavanisingh told, "You can eat *kadhi* and *khichdi* and sleep in peace". Thereafter, Bhavanisingh had told them that they have to die and no one would escape, and saying this, he hurled abuses and went away.

54.6 While he was going, he had gestured, due to which the mob had come. In this mob, **Suresh Chhara** (A-22), **Guddu Chhara** (deceased), **Sahejad Chhara** (A-26), **Bipin Panchal** (A-44), were present. Suresh, Guddu and Sahejad had swords and Guddu was shouting at Bipin and telling him to shoot. **Bipin** had a pistol in his hand. All these four persons were in the forefront of the mob.

54.7 Thereafter, they had fled from there towards the S.R.P. compound wall. It must have been around 2:00 to 2:30 in the afternoon. At that time, they were four persons, viz., she, her husband, her two sons, Jumman and Rafiq. When they reached the S.R.P. compound wall, there were many policemen there and they had requested them to let them go inside, whereupon they told them "*Now you have to die. How will you go inside?*" They showed them the newspaper and told them "*See how our people had been killed at Godhra. Today none of you are going to escape. See if your Allah saves you.*" Thereafter, they had fled from there also.

54.8 They had released teargas on them. Thereafter, they had climbed on the terrace of a lady called Gauri, where there were a lot of people. From Gauri's terrace, they had climbed down to the Gangotri Society. There was no one in Gangotri Society and it was empty. There was one huge house which was open, so they had gone inside and sat there. Thereafter, two to three persons came there and told them to get out as otherwise their society would also be set on fire and told them to go to Naroda. They (the witness and others) had pleaded with them that Naroda was very far and how would they go there as those people would kill them on the road. Whereupon, those people started beating them and told them that today, they were to die. Thereafter, they had come out of the said house of Gangotri.

54.9 Thereafter, they had gone to Gopinathnagar. Gopinathnagar and Gangotri Societies are situated near each other. They were running from a lane of Gopinath Society, when the youths from the society started beating her sons Jumman and Rafiq with hockey sticks and pipes and told them to run away from there and go to Naroda.

54.10 While they were still in the society, they had met Maharufbhai and Nurubhai. They had said to her "*What shall we do? There are no chances of escaping.*" The people of the society started driving them out of the society and in the process, she did not know where her children had gone and around fifty to sixty people had come out of the society. She started looking for her children in Gopinathnagar itself. The fifty people, who had left in front of her eyes, did not return

back. However, she does not know as to what happened thereafter and as to whether they were killed or not.

54.11 While she was in a passage between the Gopinathnagar and Gangotri Society, she saw that clothes of girls were being torn and they were being set ablaze. At this time, two mobs came from the side of Parshwanathnagar as well as from the opposite side. **Bhavanisingh, Guddu Chhara, Suresh Chhara, Bhavanisingh's son and Bhavanisingh's elder daughter** were there in this mob. The elder daughter of Bhavanisingh was giving petrol and kerosene filled in white cans to the persons in the mob. Bhavanisingh, Guddu Chhara, Suresh, Bhavanisingh's son who is an advocate and his elder daughter were in the mob which came from the opposite side.

54.12 The girls whose clothes were being torn and who were being burnt were Kherunisha, Nasimbanu, Sufiyabanu, Nargisbanu and one another lady. It was around 4.00 to 4:30 in the evening.

54.13 Thereafter, after a little while, Bhavanisingh caught and brought Kausarbanu there. She was shouting "*I am in the last stage of my pregnancy, for the sake of Allah, please spare me.*" However, they did not spare her and at that time, **Babu Bajrangi** came and struck her with a sword on her stomach and took out her foetus and thrust the sword into it and lifted it and told her "*Look, before it could come into the world, your child has been killed.*" Thereafter, Bhavanisingh's daughter brought some kerosene for him and Kausarbanu and her child were burnt on the spot.

54.14 At the time of this incident, she was in the passage of Gangotri Gopinathnagar Society. Thereafter, at 5:30 to 6:00, upon it becoming slightly dark, she took support against the wall and went to Gangotri Society.

54.15 Thereafter, she went and sat on the terrace of the Gangotri Society, where many other people were also sitting. All of them were sitting on the terrace till 11 o'clock at night when the police came and took them in a vehicle to the Shah Alam camp.

54.16 In the incident, immense damage was caused to her house. Her daughter was to get married after about eight days and her trousseau was ready and all the household articles which she had collected throughout her life, worth about rupees one and half to two lakh, including her ornaments were all burnt and looted. Her son Jumman's house was totally looted and set on fire. The witness has stated that she has stated all the above facts in her statement before the SIT at Gandhinagar.

54.17 The witness has stated that she had stayed at the Shah Alam Camp for about seven months. While she was at the relief camp the police had recorded her statements in the month of April and May, 2002. Her third statement was also recorded. In all three statements of hers had been recorded while she was at the relief camp.

54.18 The witness has further deposed that they were always apprehensive as to whether they would get justice and

in the meanwhile, their elders had informed that a SIT team had come to Gandhinagar and she had also given an application there and had received summons from the SIT. The SIT read over her previous statements to her. However, various facts stated by her were not there in her statements and hence she had given a detailed statement before the SIT. The SIT had recorded her second statement at Naroda Patiya in a school.

54.19 The witness has stated that as per her information, Guddu Chhara and Jaybhavani have passed away and that she would be in a position to identify Suresh, Sahejad, Bipin Panchal, Jaybhavani's son, who is an advocate, Jaybhavani's daughters and others and has, accordingly, correctly identified all the said accused.

54.20 CROSS EXAMINATION: In the cross examination of this witness it has come out that she was residing at Jawannagar since twenty to twenty two years. The witness has been cross-examined with regard to the topography of the area. She has denied the suggestion that she goes to impart religious education at a madressa. She has admitted that she had heard commotion at 9 o'clock, but had not gone on the road. The witness has denied that she heard that mobs have come from all the four sides and has voluntarily stated that the mobs had come to her chawl which she herself had seen. The witness has stated that when she went to leave her family members near the S.R.P. compound wall in the morning, at that time the mobs had not come, and hence the mobs had not stopped her. The S.R.P. people had also not stopped them. At that time they were permitting people to go inside.

54.21 The witness has admitted that after leaving her family near the S.R.P. compound wall in the morning, she had once again gone to the S.R.P. Quarters at around 2.30. She has denied that when she went to the S.R.P. Quarters at 2.30 nobody stopped her. She has voluntarily stated that at that time the police were there. She could not go inside the S.R.P. Quarters in the afternoon because there was police point and they did not permit her to go inside. The witness has admitted that there are four lanes in their mohalla, viz. Jawannagar and the mob which came to Jawannagar was comprised about two thousand to three thousand people. The witness has denied that from 9 o'clock in the morning to 2:30 in the afternoon, the people in the mob had not attacked Jawannagar and had not caused injury to anyone. She has admitted that from 9:00 to 2:30, no person in her family was injured. She has denied that she met Nurubhai and Maharufbhai for the first time after 3 o'clock and that she had not met them prior thereto. She has stated that Nurubhai and Maharufbhai met her at 4.00 in the afternoon, which was the first time she met them on that day.

54.22 In her cross-examination, it has come out that when she went to leave her family members at the S.R.P. Quarters in the morning, the mobs had not come and hence they had not stopped her and the S.R.P. people had not stopped them because at that time they were permitting people to go inside. It has further come out that when she went to the S.R.P. Quarters at around 2:30 in the afternoon, she could not go in as there was a police point and they did not permit her to enter.

54.23 In her cross-examination, it has further come out

that Gauri whom she has referred to, is also known as Gauri Aapa and that there were about two hundred to three hundred people on her terrace. The people were climbing down to Gangotri Society from the terrace. It has further been elicited that the girls whose clothes were torn and burnt were from Jawannagar and that she knew their parents. She had taken shelter on a terrace of Gangotri at around 7:00 in the evening.

54.24 She knew Maharufbhai since three to four years prior to the incident. He was residing in a house which was one house away from her house. She has admitted that Nurubhai and Maharufbhai were residing in lane No.2 of Jawannagar at the time of the incident.

54.25 She had gone to Shah Alam Chowky for recording her statement on 13.4.2002.

54.26 The witness has admitted that she has not received any threat from any accused and that from the incident till date, she is able to do all her routine work. No one has ever stopped her on the road and she has never told anyone to not to involve Shri Chudasama and Shri Mysorewala in the investigation. The witness is shown the document Mark 644/1 and has stated that she has not made any such application and that she has not made any application to any authority or to the SIT.

54.27 In her cross-examination, it has come out that she has not gone inside the S.R.P. Quarters on the day of the incident and that she had gone to the S.R.P. Quarters compound wall once to leave her children and a second time at

2 o'clock, but on either occasion she had not entered the S.R.P. Quarters. In her cross-examination it has come out that the house in which they went was open and that it was situated near a temple. She has admitted that there were around one hundred fifty to two hundred people in the house. She has stated that she had stayed there for about half an hour and that the doors of the house were open.

54.28 In her cross-examination it has come out that she had seen the mob which came from the side of the fields and that is why she ran back. She has admitted that the people in the mob were armed. She had seen the mob from a distance and it was coming from the direction of Parshwanathnagar. When they returned from the end of the field, they were assaulted at Gopinathnagar. It was around 6:30 in the evening and it had become dark. She has admitted that she had remained hiding at Gopinathnagar for three hours and had gone to the terrace of a Harijan in Gangotri through the internal roads.

54.29 She has admitted that the police cars came to Gangotri Society after which they had left and were taken to the camp. Certain questions have been put regarding the witness's acquaintance with Bhavani and his daughters and she had said that she knew them because they used to come to purchase vegetables, but did not know their names. The witness had denied the suggestion that her son was beaten with sticks by people from outside and has asserted that the Gopinathnagar youths had come from the direction of the S.R.P. She has admitted that she was not physically assaulted nor had any person commit any wrong or dirty act with her.

She has also not seen any person commit any wrong or dirty act with any other woman.

54.30 The witness had denied that she has not seen any incident at Gopinath and has categorically stated that she has seen the incident in the passage between Gopinathnagar and Gangotri Society and that the incident had taken place between 5:00 to 5:30. She has admitted that she has seen the incident from the passage.

54.31 In her cross-examination it has come out that she knew Guddu since he was young. It has further come out that Kausarbanu was caught and brought there. She has stated that upon seeing Kausarbanu's incident she had not shouted for help because if she shouted they would kill her too. She has stated that the sword blow inflicted on Kausarbanu was on her stomach. She has denied that when Kausarbanu fell the foetus fell out of her womb. She has stated that the foetus was taken on a sword. She has admitted that after taking out the foetus on the sword, it was lifted up and twirled. She has stated that the foetus was then burnt with its mother. She has admitted that both Kausarbanu and the foetus were fully burnt in the incident on the spot. In her cross-examination she has categorically stated that she had seen Bhavanisingh's daughter's in both the incidents and that they were handing over kerosene cans to the mob. It has further been elicited that she knew Babubhai since prior to the incident.

54.32 The witness has been crossed examined as to her previous statement dated 28.5.2008 recorded by the SIT to the effect that she had stated that Kausarbanu was inflicted a

sword blow by Guddu who had taken out the foetus on the sword. She, however, has voluntarily stated that she had given Babu Bajrangi's name.

54.33 The witness is sought to be cross-examined as to her previous statements recorded by the police to the effect that she had not stated that she had gone to leave her daughter-in-laws, daughter and their children to the S.R.P. Quarters and had returned home. In the opinion of this court, this omission cannot be said to be so material or omission so as to amount to a contradiction as envisaged in the proviso to section 162 of the Code.

54.34 Similarly the contradictions sought to be brought out as to her previous statements recorded by the police as regards the contents of paragraph 7, viz. non reference to the youths running and coming with a youth named Ahmed who was injured by a bullet, and reference to Bhavanisingh standing in front of his house with an aged man, also cannot be said to be material omissions so as to amount to contradictions. The omission to state certain facts in paragraph 8 of the deposition in his previous statements recorded by the police, viz. "Thereafter in the morning at around 11:00 to 11:30 Bhavanisingh and an aged person came to their chawl" [the omission limited to the presence of aged person] and "hurled abuses and went away" also cannot be said to be material omissions so as to amount to contradictions. Similarly, not mentioning that the four were foremost in the mob in the previous statements would not amount to a material omission amounting to a contradiction. Such questions therefore, should not have been permitted to be put to the witness.

54.35 The witness is also sought to be contradicted as to her previous statements recorded by the police as well as the SIT, to the effect that she had not stated the contents of paragraph 10 of her examination-in-chief before them. However, it appears that except for the last part of the paragraph, wherein she has deposed that there was saying the they had to die, how could they go inside and were showing them the newspaper, etc. the facts preceding such facts in the paragraph have been expressed in other words in the statements, therefore, there is not omission qua that part. The contradictions sought to be brought out qua the previous statements recorded by the police in paragraph 11 and 12 of the deposition are narrative in nature and non-mentioning of such facts which have no direct relation with the offence in question cannot be said to be a material omission amounting to a contradiction. The contradiction sought to be brought out as to the previous statements recorded by the police as regards certain portions of paragraph 13 of her deposition can be said to be a material omission to the extent the witness had not referred to Bhavanisingh's elder daughter and her role in the incident. Similarly, reference to Bhavanisingh having caught and brought Kausarbanu and reference to Babu Bajrangi in paragraph 15 of the deposition can be said to be material omissions amounting to contradictions.

54.36 In the cross-examination of this witness it has been elicited that she had seen Bipin Auto Garage. The witness has admitted that she knew Bipinbhai from prior to the incident. The witness has denied that she had not seen Bipinbhai anywhere during the day of the incident and that she was

falsely giving his name at the instance of the social workers at the camp.

54.37 Four statements of this witness have been recorded during the course of the investigation. The defence has cross examined the concerned Investigating Officer or the concerned assignee officer of the then Investigating Officer who had recorded the statement of the witness.

54.38 PW-277 Shri M.T. Rana, an assignee officer, has admitted that he had recorded the statement of this witness on 13.4.2002. He has admitted that he had recorded the statement of this witness in the presence of one Nazirkhan Rahimkhan Pathan and has voluntarily stated that at that time allegations were being made against the police, and hence, Shri Tandon had issued orders that they should take signatures on the statements and, therefore, he had taken the thumb impression of the witness and had recorded her statement in the presence of one Nazirkhan.

54.39 The assignee officer has stated that he does not remember as to where he had recorded the statement of this witness but has stated that it must be at the Shah Alam camp. The witness has denied that Shri Tandon had also told him to record the statements in the presence of an educated, intelligent leader of the Muslim community. He has stated that he had only told him to record the statement in the presence of one person. The assignee officer has further stated that Nazirkhan's signature had been taken on the statement together with this witness. He has admitted that from the beginning till the end of recording of the statement, Nazirkhan

was present and after the statement was read over in the presence of Nazirkhan, the witness has stated that the same was proper and correct. It is quite disturbing to note that on account of allegations being made against the police, the police has flagrantly violated the provisions of section 162 of the Code, which expressly ordains that no statement made by any person to a police officer in the course of an investigation under that Chapter, shall, if reduced in writing, be signed by the person making it. It is a matter of concern, that higher officers have issued instructions to the subordinates to follow a procedure contrary to law.

54.40 The assignee officer has further admitted that this witness in the statement recorded by him had not given the name of Babu Bajrangi nor had she attributed any role or act to him. The assignee officer has further admitted that in her statement, the witness has not stated that at that time Hindu Muslims were pelting stones against each other. (It may be noted that insofar as cross pelting of stones between Hindus and Muslims is concerned, such question has been put to the witness in her cross-examination and, therefore, there was no question of proving the same through the testimony of the Investigating Officer. The trial court, therefore, should have disallowed such question.)

54.41 The assignee officer has further admitted that this witness in her statement recorded by him had stated that about one thousand Muslims had taken shelter at Gauri Apa Qureshi's house and has further admitted that the witness had stated that on that day in the afternoon at around 1 or 2 o'clock, she had seen a mob of around fifteen to twenty

thousand Hindus coming from the direction of Uday Gas Agency. He has further admitted that this witness had stated before him that the mob had broken the compound wall towards their chawl with hammers and had attacked their chawl. He has also admitted that this witness had stated that from the terrace of the house where they had taken shelter, they had come over Gangotri Society to Gopinath Society and from the terrace of the house they had seen that Muslims were being burnt alive by the Hindus. He has further admitted that the witness has stated before him that Zarinabanu and her daughter Nasimbanu from their mohalla Jawannagar were burnt by sprinkling kerosene upon them, which she had seen with her own eyes, and kerosene was sprinkled upon Kherunbanu and her mother Bilkisbanu who were residents of Jawannagar, and they were burnt alive by the mob. Also Sharifbhai Iqbalbhai Shaikh, a resident of Jawannagar who is her brother's son and her nephew's son Siddiqbhai Salimbhai Shaikh were also burnt alive, which she had seen and the atmosphere was so bloodcurdling that they were all terrified.

54.42 The assignee officer has further admitted that this witness has stated before him that they had not caused any harm to them. However, people from Gopinath Society and outsiders, who had come in the mob had assaulted them with sticks and she too was beaten with lathis on her hands and waist and when they were at the Gangotri Society at that time, a sword had been struck on the abdomen of a pregnant Muslim woman, whose name she does not know, and upon the foetus coming out, it was taken on the tip of the sword and swirled and thereafter kerosene was sprinkled on the woman and she was burnt. She does not know the name of the person who

killed the woman and that they were people who were wearing shorts and bundies and they had tied saffron bands on their heads. That much she had seen. At that time, she had seen that her husband was not with her and he was sitting down. The assignee officer has further admitted that this witness has stated before him that together with them many Muslims as well as people from Gopinath Society had also seen the incident. He has further admitted that this witness had stated before him that she had not seen any other Muslim woman being raped with her own eyes and not heard about it and that thereafter, at around 11:00 to 12:00 at night, the police came, where they were near the houses of Bhangis and they were taken through their area on foot and from Natraj Patiya they were taken in police vehicles to the Shah Alam relief camp. The assignee officer has admitted that this witness has not named Babu Bajrangi and Bhawani's elder daughter in the statement recorded by him.

54.43 [Once again this part of the statement of the witness has not been put to contradict any part of her evidence, and therefore, it was not permissible to bring the same on record.]

54.44 The assignee officer has admitted that this witness has not named Babu Bajrangi and Bhavani's elder daughter in the statement recorded by him. It appears that due to inadvertence it has not been properly brought out in the cross-examination of PW 277 as to whether the facts stated by this witness in line No.5 to the last line to the paragraph 6 of her deposition have not been stated by this witness.

54.45 The assignee officer has admitted that this witness has not stated the facts stated in the first three lines of paragraph 7 of her deposition, wherein she has stated that at this time youths were running and coming and a youth named Ahemad was injured by a bullet in the incident and the people of their chawl were bringing Ahemad. He has further stated that this witness has also not stated before him that at that time, there was stone pelting from the S.T. Workshop. The assignee officer has also admitted that this witness has not stated before him that there was an old man with Bhavanisingh. He has admitted that the witness has not stated what is stated by her in the first three lines of paragraph 8 of her deposition, wherein she has stated that thereafter at around 11:00 to 11:30 in the morning, Bhavanisingh was there in the chawl and he came with an old man, in her statement recorded by him. He has further admitted that the witness has not stated the facts stated by her regarding the conversation between her and Bhavanisingh regarding Bhavanisingh asking her to bring vessels and prepare *kadhi khichdi*, before him. He has also admitted that this witness in her statement recorded by him has not stated that these four persons were in the forefront of the mob. He has further stated that the witness in her statement has referred to accused Sahejad, Guddu and Suresh Chhara and has also referred to Bipin Autowala and that they were leading the mob. The assignee officer has voluntarily stated that this witness has named all the four accused before him.

54.46 The assignee officer has denied that the witness has not stated all the facts stated by her in paragraph 10 of her examination-in-chief and has stated that except for two

lines, wherein the witness has stated that they had also told them that they have to die today, how will they go inside and that they had also shown them the newspaper, all other facts had been stated by the witness. The assignee officer has admitted that this witness has not stated before him that there was no one in Gangotri Society and the Society was empty. A huge house was which was open and they had gone and sat in the house. Two or three people came there and told them to go away from there, otherwise their Society would also be set on fire. They told them to go away to Naroda. That they had beseeched them that Naroda was very far, how would they go there as people would kill them on the way? At that time, these persons started beating them and told them that today they have to die. Thereafter they had come out of the house in Gangotri Society.

54.47 The assignee officer has denied that this witness has not stated all the facts stated by her in paragraph 12 of her deposition wherein she has stated that they were running in the lanes of Gopinath Society, at that time, youths from the society had started beating her sons Jumman and Rafiq with hockey sticks, sticks and told them to go away from there to Naroda. The assignee officer has voluntarily stated that the witness has stated all the facts in her statement, except that there is no mention of Rafiq or Jumman.

54.48 The assignee officer has admitted that this witness in her statement recorded by him, had not stated the facts stated in paragraph 12 of her deposition regarding her meeting Maharufbhai and Nurubhai; the people of the society driving them out of the society; her not knowing where her children

had gone; and that she was searching for her children at Gopinathnagar, etc., have not been stated by her before him. He has further admitted that this witness has not stated that she was in the passage.

54.49 The assignee officer has denied that this witness has not stated all the facts stated by her in paragraph 13 of her deposition and has stated that she has deposed that she had seen that they were tearing off the clothes of the girls and burning them and at that time from Parshawanathnagar as well as from the opposite side two mobs had come. The assignee officer has stated that only the fact regarding the clothes being torn off and being burnt have not been stated, the rest of the facts have been stated by her. The assignee officer has further admitted that this witness has not given the name of Bhavani's elder daughter nor has she attributed any role to her. He has further admitted that the witness has not stated the facts stated by her in paragraph 15 of her examination-in-chief, regarding Bhavanisingh catching and bringing Kausarbanu there; Kausarbanu shouting; Babu Bajrangi inflicting a sword blow on her stomach and taking out the foetus at the tip of the sword, etc.; thereafter Bhavanisingh's daughter bringing kerosene which was poured over Kausarbanu and her foetus; and they being burnt, have not been stated by her in her statement recorded by him. The assignee officer has further stated that this witness had narrated the incident of Kausarbanu before him; however, she had not named Babu Bajrangi in her statement and had referred to a Muslim woman, but had not given the name of the assailant. She had told him that they were wearing shorts and undershirts and had tied saffron bands. The assignee

officer has further admitted that this witness had not stated the facts regarding "Bipin firing a bullet" as stated by her in paragraph 9 of her deposition.

54.50 PW-291, M.B. Raj, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 25.6.2002. The assignee officer has admitted that this witness had stated before him that on that day, she, her husband and two sons were all present at home and on that day, at around 9:30 in the morning, a mob of around fifteen to twenty thousand people gathered at Naroda Patiya and attacked the chawls of their community and she and her family, to protect their lives, fled to the S.R.P. Quarters and took shelter there and on that day, upon the police vehicles coming at around 12 o'clock at night, they were taken in their vehicle to the Shah Alam relief camp. The assignee officer has admitted that this witness had not given the name of any accused before him, nor had she stated that any of the accused had assaulted, burnt or committed rape. He has further clarified that the witness had stated that the people in the mob had set the houses on fire and that the witness's son Jumman's house was burnt. The assignee officer has admitted that this witness had not given the name of Babu Bajrangi before him.

54.51 The contents of paragraph 6 as well as the contents of first three lines and the fifth line to the last line of paragraph 7 of the examination-in-chief of this witness, are read over to the assignee officer who has admitted that the witness had not stated such facts before him. The contents of paragraph 8 as well as the contents of last line of paragraph 9 of the

examination-in-chief of this witness are read over to the Assignee Officer who has admitted that the witness had not stated such facts before him. The contents of paragraph 10 at page 5 of the deposition of this witness are read over to the assignee officer, who has admitted that the witness had stated before him that to protect their lives, they had gone to the S.R.P. Quarters and had taken shelter there and except for that, the other facts have not been stated before him by the witness.

54.52 The contents of paragraph 12 from the third to the sixth line, the contents of the sub-paragraph of paragraph 12 at page 7, the contents of paragraph 13 as reproduced in paragraph 37 of the deposition of the witness and the contents of paragraph 9 of the deposition of the witness, wherein she has stated that Guddu was shouting at Bipin and was telling him *"Bipin, fire the bullet"*, are read over to the assignee officer, who has admitted that the witness has not stated such facts before him. The contents of paragraph-15 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that the witness has not stated such facts before him.

54.53 PW-307, S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 19.5.2002. He has voluntarily stated that her main statement was recorded by Shri M. T. Rana on 13.4.2002. The Investigating Officer has admitted that after recording the statement, he had read it over to the witness and she had put her thumb impression on it in the presence of her husband Kallubhai and that Kallubhai had put his signature at the end of

the statement. The Investigating Officer has denied that the reason for taking the thumb mark and the signature was to ensure that there is no difficulty in case if the witness becomes hostile in future. He has stated that the reason for taking the signature and the thumb impression of the witness is that the representations were being made to Smt. Sonia Gandhi at the Gandhi Ashram and since in the context of the representation, further statement was being recorded, by way of abundant caution, the signature and thumb impression were taken. It is lamentable that once again the provisions of section 162 of the Code have been completely disregarded for extraneous reasons.

54.54 The Investigating Officer has admitted that this witness had not stated any facts regarding or attributed any role to accused No.18 Babu Bajrangi in the statement recorded by him. The Investigating Officer has admitted that this witness had not given the name of any accused, nor had she stated any facts involving the accused in any criminal acts. He has voluntarily stated that in the statement facts regarding criminal acts committed by the people in the mob have been stated.

54.55 Certain extracts of paragraph 6 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The first three lines and the seventh line of paragraph 7; the first three lines of paragraph 8 and the last but sixth line till the end of paragraph 8; the last line of paragraph 9 and certain extracts of paragraph 10 and the facts stated in paragraph 11 of the

examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

54.56 The contents of the third to the sixth line of paragraph 12 as well as the facts stated in the sub-paragraph of that paragraph at page 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The contents of the first two lines of paragraph 13 of the examination-in-chief of the witness, wherein she has stated that she was in the passage between Gopinathnagar and Gangotri Society, are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

54.57 The contents of the second line to the fourth line of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that thereafter, she saw that clothes of girls were being torn off and they were being set on fire; at that time, from Parshwanathnagar as well as from the opposite side, two mobs had come. The Investigating Officer has denied that the witness had not stated such facts before him and has stated that in the statement, it has been stated that the girls were raped and they were killed. However, the other facts have not been stated before him.

54.58 The Investigating Officer has admitted that this

witness has not named Bhavanisingh's elder daughter nor has she attributed any role to her.

54.59 The contents of the first two lines of paragraph-15 and the fourth line and the fifth line of paragraph 9 of the examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

54.60 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT), in his cross-examination, has admitted that he has recorded the statements of this witness on 28.5.2008 and 14.9.2008. He has admitted that this witness had stated before him that, moreover at around 5 to 6 o'clock between Gangotri Society and Gopinath Society, Guddu Chhara inflicted a blow with a sword on the stomach of a woman named Kausarbanu, who had a foetus in her stomach and took out the foetus and lifted it on the tip of the sword and told Kausarbanu that he had killed her son before he came into the world. At that time, Kausarbanu stood up and fell down. Thereafter, Bhavanisingh sprinkled kerosene over her and burnt her and the foetus together. The Investigating Officer has admitted that this witness had not mentioned any act or role played by Babu Bajrangi in both her statements and had not named him.

54.61 The Investigating Officer has admitted that this witness had not stated that Bhavanisingh had pulled and brought Kausarbanu and that Bhavanisingh's daughter had brought cans of kerosene and handed them over to

Bhavanisingh. The Investigating Officer has deposed that the witness had stated before him that thereafter another mob had come wherein Bhavanisingh, Guddu Chhara, Suresh Chhara, Bhavanisingh's son who is an advocate and Bhavanisingh's daughter were there. Another mob had also come and was tearing the clothes of five girls, viz. Bilkisbanu, Sofiyabanu, Nasimbanu, Kherunnisha and another girl whose name she does not know and burning them and was sprinkling kerosene on their heads and setting them ablaze. Jaybhavani's daughter was there and she had a white coloured can in her hand wherein there was something like petrol or kerosene, which she was giving to the mob. The Investigating Officer has admitted that the witness had stated before him that in the previous statement, the facts as stated by her and the names of the accused as given by her had not been recorded by the police.

54.62 The Investigating Officer has admitted that the witness had stated before him that since they were behind the wall, the mob could not see them (paragraph 459). The Investigating Officer has admitted that the witness has stated before him that at that time, no one was there in the house of this Bhangi, and therefore, there was no one in the Bhangi's chawl, they had gone to the terrace of the Bhangi and about seven hundred to eight hundred people were sitting there. Then, it became time to put on the lights.

54.63 Certain extracts of paragraph 6 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that she had left her daughter-in-law Aminabanu, Parveenbanu, daughter Parveenbanu, and

their children, etc. at the S.R.P. Quarters. After leaving them at the S.R.P. Quarters, she had returned home. The Investigating Officer has admitted that this witness has not stated such facts in her statement dated 14.9.2008. He, however, has clarified that in her main statement dated 28.5.2008, the witness has stated these facts. However, the statement dated 14.9.2008 was recorded only for the purpose of clarifying as regards which daughter of Jaybhavani. Therefore, such facts would not find place in this statement.

54.64 The contents of paragraph 7 of the examination in chief of the witness are read over to the Investigating Officer, who has admitted that the witness has not stated these facts in her statement dated 14.9.2008. He, however, has clarified that in the main statement dated 28.5.2008, these facts have been stated and since the statement dated 14.9.2008 was for the limited purpose of clarification, the facts stated in the main statement would not find place therein.

54.65 The Investigating Officer has admitted that in both the statements recorded by him, the witness has not stated any fact regarding an old man having accompanied Bhavanisingh.

54.66 The first three lines of paragraph 8 of the examination-in-chief of the witness were read over to the Investigating Officer who admitted that the witness has not mentioned any aged man in her statement. However, he has clarified that the witness had used a synonym of the word aged and had stated the same facts. Certain extracts of paragraph 8 of the examination-in-chief of the witness are read

over to the Investigating Officer, who has admitted that such facts have not been stated by the witness but that instead of aged man she has stated that there was an old man with Bhavanisingh.

54.67 The last line of paragraph 9 of the examination-in-chief of the witness wherein she has stated that these four people were in front of the mob have been read over to the Investigating Officer who has admitted that this witness has not stated these facts before him. He, however, has clarified that this statement is a statement of further investigation and that in her original statement, the witness has stated that accused Sahejad, Guddu, Suresh Chhara and Bipin Auto were leading the mob. Certain parts of paragraph 10 of the examination-in-chief of the witness were read over to the Investigating Officer who admitted that such facts have not been stated by the witness in her statement dated 14.9.2008. He, however, has clarified that such facts find place in the statement dated 28.5.2008. Reference has been made to the facts stated in several paragraphs of the examination-in-chief of the witness to the effect that such facts have not been stated by the witness in her statement dated 14.9.2008. The Investigating Officer has voluntarily stated that as stated by him, all these facts find place in the main statement dated 28.5.2008 and that the statement dated 14.9.2008 was recorded for a limited purpose.

54.68 The contents of the third line and fourth line of paragraph 12 of the examination-in-chief of the witness are read over to the Investigating Officer wherein she has stated that the people of the society were driving them out. The

Investigating Officer has admitted that such facts have not been stated by the witness in her statement dated 28.5.2008. He, however, has voluntarily stated that at this time, the people from the society had come and told them to get out of the house.

54.69 The contents of the sub-paragraph of paragraph 12 from the fourth line to the last line are read over to the Investigating Officer wherein the witness has stated that she did not know as to where her children had gone and that about forty to fifty people had come out of the society; she came out to search for her children; she went to search for them at Gopinath society; the fifty people who went in front of her eyes did not return; however, she does not know as to what happened to them and as to whether they were killed. The Investigating Officer has admitted that the witness has not stated these facts regarding her having gone in search of her children to Gopinathnagar have not been stated before him. He, however, has clarified that the witness has stated that she was alone with her children at Gopinathnagar and that her children were killed there.

54.70 SUBMISSIONS: The learned counsel for the appellants/ accused invited the attention of the court to the omissions and contradictions in the evidence of the witness as to the statements recorded by the investigating agencies, which have been extensively referred to hereinabove. It submitted that the deposition of this witness, who is the mother of PW 162 Rafiq Kallubhai, is on all material facts contrary to what is deposed by her son. Elaborating upon such submission, the learned counsel submitted that this witness

has indicated three incidents in which she has involved the accused. In the first incident she claims to have seen the accused in the mob at about 11:00 to 11:15 in the morning at Jawannagar lane No.2 with weapons, in which she implicates Suresh Chhara (A-22), Guddu (deceased), Sahejad Chhara (A-26) and Bipin Panchal (A-44). All these accused have been named by the witness in the first police statement dated 13.4.2002, that is, 42 days after the incident and prior thereto, though she had ample opportunity to disclose the facts and the names of the accused, she has not disclosed them. It was pointed out that all the three living accused have been identified before the court. She has also named them before the SIT and the court.

54.71 In the second incident she claims to have seen Jai Bhavani, Guddu, Suresh, Jai Bhavani's elder daughter and Jai Bhavani's son at about 4:00 to 4:30 in the afternoon near Gopinath and Gangotri Society. It was submitted that out of these accused, the witness has not named Jai Bhavani's elder daughter (A-61) in the statement dated 13.4.2002. Insofar as Jai Bhavani's son (A-40) is concerned, except for stating that she had seen him, no overt act is attributed to him nor is his name mentioned anywhere and there is no test identification parade of both these accused. Insofar as Jai Bhavani's elder daughter is concerned, her role is not mentioned nor is she named anywhere.

54.72 The third incident referred to by the witness is the Kausarbanu incident which took place at about 5:00 pm. It was submitted that before the SIT, the witness had named Jai Bhavani for the first time, and Babubhai's name was not

mentioned before any investigating agency and is mentioned for the first time only before the court. It was submitted that when her statement came to be recorded on 13.5.2002, she did not mention the name of any assailant and on the contrary made a positive statement that she does not know the person who caused injury to the pregnant Muslim woman. The name of Kausarbanu was also missing in the police statement. It was also submitted that the witness, in her previous statements has not stated that she was in the passage therefore, her entire deposition regarding having seen the incidents is not correct.

54.73 The learned counsel further submitted that this witness has not given the name of accused No.18 Babu Bajrangi in either of her police statements or statement before the SIT. It was submitted that this witness has involved accused Babu Bajrangi in the offence with regard to the incident of Kausarbanu and that such version implicating the accused in this incident has come up for the first time before the court. In none of her police statements dated 13.4.2002, 19.5.2002 and 25.6.2002, the witness has named accused No.18 and for the first time during the court of her deposition before the court, she has named this accused. It was submitted that even in her cross-examination, she has stated that she had no prior acquaintance with accused No.18 and therefore, the fact regarding she having identified accused No.18 Babu Bajrangi is doubtful. It was submitted that the witness has stated about Babu Bajrangi having given a sword blow to Kausarbanu and she is the only witness to have said this.

54.74 It was submitted that from the cross-examination of the witness, it has come out that there were tables to lodge complaints at the camp and the members of social organizations, media as well as police were visiting the relief camp, however, she has given her statement for the first time before the police at a belated stage only on 13.4.2002 at the Shah Alam Police Chowky.

54.75 It was submitted that the conduct of this witness is unnatural and on a close scrutiny of the evidence of this witness, her presence at the scene of offence is doubtful. It was submitted that in her examination-in-chief, she has stated that when the incidents started, she took her daughter-in-law's Aminabanu and Parveenbanu as well as their children to the S.R.P. Quarters and after leaving them at the S.R.P. Quarters, she had come back to the place of incident for no apparent reason. In her cross-examination, the witness has admitted that the S.R.P. personnel were permitting them to enter the S.R.P. Quarters and that on two occasions, she had gone inside, despite which she was moving around the scene of offence throughout the day though she had all chances to save herself. It was submitted that the entire version given by this witness as regards her presence at the place of incident is rendered highly doubtful.

54.76 It was submitted that insofar as the role of accused No.61 is concerned, this witness has given different versions in her testimony before the court and in her statement recorded by the SIT, and hence, even the trial court has found that the participation of accused No.61 in the offence is doubtful. It was submitted that as regards the role attributed to the accused

No.40, no overt act has been attributed to him and that even the trial court has found the participation of accused No.40 to be doubtful.

54.77 It was pointed out that insofar as accused No.26 Sahejad Chhara is concerned, the witness has admitted that she had no prior acquaintance with him and has also admitted that no test identification parade had been carried out to identify those accused whom she had identified in the court. It was submitted that therefore, such identification for the first time before the court should not be believed.

54.78 It was submitted that this witness has given different versions in her testimony before the court and in the statements recorded by the investigating agency regarding the participation of accused No.22 Suresh Langda, accused No.26 Sahejad Chhara and accused No.44 Bipin Panchal in the mob. It was submitted that in none of her police statements, the witness has stated that she was standing on the road between Gopinath and Gangotri Society and that she had witnessed the incident from there. The version of this witness of being present there and having visualized the incident is, therefore, doubtful. It was submitted that the version given by this witness that Guddu was asking Bipin to fire, has not been stated by her in any of her police statements, nor does she allege that Bipin Panchal (A-44) had fired from the pistol. Therefore, the presence and participation of accused No.44 is doubtful.

54.79 It was submitted that considering the overall evidence of the witness, the testimony of this witness is not

credible and trustworthy and cannot be made the basis for implicating the accused persons in such a serious offence.

54.80 It was submitted that in the above backdrop, the credibility of the witness is shaken and it would be very hazardous to rely upon any part of her evidence as she has a clear tendency to improve the facts and to implicate one accused after the other. It was further submitted that the conduct of the witness of leaving the female members of the family and children at the compound wall of the S.R.P. Quarters and then moving around and going to three different houses is not only unnatural and in contradiction to her police version and also contradictory to the version given by her son Rafiqbhai, which would make her unreliable.

54.81 It was submitted that similar to the case of PW 156 Abdulmajid, the first police statement of the witness was recorded in the presence of Nasirkhan and his signature and her thumb impression was taken on the statement. It was submitted that therefore, the possibility of the witness stating facts and incidents showing the involvement of the accused at the instance of Nasirkhan cannot be ruled out.

54.82 Mr. Prashant Desai, learned Special Public Prosecutor submitted that this witness is a natural witness and her version before the court is not an exaggerated version and she has only stated what she had seen. It was submitted that the presence of this witness at the scene of offence has been established beyond reasonable doubt. It was submitted that this witness has referred to two incidents. The first incident is regarding burning five girls and the second incident is about

burning Kausarbanu. It was submitted that the fact regarding Guddu shouting to Bipin may not have been stated in the year 2002, but the witness has stated so in her examination-in-chief and she has not been asked whether or not in her statement recorded in 2008, she has stated so. It was submitted that there is no ground to disbelieve this witness and through her deposition, the prosecution has established that five girls were burnt at the spot and one pregnant lady was killed with a sword at the scene of incident. It was submitted that this is a consistent story stated by this witness since the year 2002. It was submitted that the fact regarding Bhavani's daughter having given kerosene has also been stated by her in her statement recorded in 2008. It was submitted that there is no ground for disbelieving this witness as she was present there and there is no reason for her to give any evidence to misguide the court.

54.83 ANALYSIS: This witness was a resident of Jawannagar since about twenty to twenty-five years prior to recording her testimony. Various omissions and contradictions as discussed hereinabove have been brought on record. Considering the testimony of the witness, after omitting the part in respect of which omissions and contradictions have been proved, it emerges that the consistent case of the witness is that in the morning on the day of the incident, children were running around and had come and told them that stones were being pelted at the Noorani Masjid, whereupon she left the women and children of her family at the S.R.P. Quarters and returned home. She went in front of her lane and saw Bhavanisingh standing in front of his house.

Bhavanisingh came near them and told them to go home, saying that nothing would happen. Thereafter, Bhavanisingh had asked her to give him a cauldron saying that he would make kadhi khichdi for them. While going, he gestured, due to which the mob came. Suresh Chhara (A-22), Guddu Chhara (deceased), Sahejad Chhara (A-26) and Bipin Panchal (A-44) were in the mob, wherein Suresh, Guddu and Sahejad had swords and Bipin Panchal had a pistol in his hand. She saw the four accused persons in the mob after 11:00 and they [she, her husband and two sons, Rafiq and Jumman] fled towards the S.R.P. Quarters compound wall at around 2:30 in the afternoon. There were many policemen there. They did not let them go inside. They (the police) released tear gas at them and they climbed on Gauri Apa's terrace and climbed down into Gangotri Society and took shelter in a big house which was open. They were driven away from there and told to go towards Naroda.

54.84 They went to Gopinathnagar and were fleeing from the lane of Gopinathnagar, when the youth from the society had started assaulting them and had driven them away. She was between Gopinathnagar and Gangotri, when she saw the people in the mob setting girls ablaze. In the mob she saw Bhavanisingh, Guddu Chhara, Suresh Chhara and Bhavani Singh's son. Thereafter, a pregnant woman was caught and brought there; she was shouting that she was at the last stage of her pregnancy and to let her go for the sake of Allah. However, they did not let her go and a blow was inflicted on her stomach and the foetus was taken out on the tip of a sword and they were thrown in the fire. At the time of this incident

she was in a passage between Gopinath and Gangotri and after 5:30 to 6:00, upon it becoming slightly dark, she took cover against the wall and went to Gangotri Society and sat on a terrace there. It has been submitted on behalf of the appellants that a contradiction has been brought out that before the police the witness had not stated that she was in the passage, viz., the passage of the water tank. However, from the cross-examination of the witness [paragraphs 108 and 109] it has been elicited that this passage is not the passage of the water tank but is a lane for going inside Gopinathnagar and Gangotri. She was standing alone in that passage. It has further come out that this passage is near the curve of S.T.

54.85 Insofar as acquaintance with the accused named and identified by the witness is concerned, the same has clearly been brought out in the cross-examination.

54.86 Insofar as the contradictions and omissions in the testimony of this witness as to her previous statements recorded by the police, the same have been reproduced and discussed hereinabove, and the above referred version remains after ignoring the part in respect of which omissions and contradictions have been proved.

54.87 In the opinion of this court, despite the fact that this witness has been subjected to lengthy and tiring cross-examination, she has withstood the same. Except for the contradictions referred to hereinabove, the defence has failed to dent the credibility of the witness, who appears to be a

truthful witness and her version of the incident inspires confidence. It may be noted that the witness has deposed around eight years after the incident, and as such, it would be too much to expect the witness to remember the minute details of the incident and the places where they went to. One has to remember that the witness and others were running to save their lives from a blood thirsty mob and their first and primary object would be to save themselves. Therefore, while they were running from one place to another, it is too much to expect the witnesses to remember in sequence, the places where they hid and the time when they went to each place. Similarly a witness cannot be expected to remember the description of the places where he or she was hiding and it would all depend upon the observation powers of an individual witness.

54.88 Insofar as non-reference to the name of Kausarbanu in her police statement is concerned, it may be that the witness may not be aware of her name at that time but may have subsequently heard that the pregnant woman who was killed at the passage of the water tank was Kausarbanu. Not naming Kausarbanu would not detract from the fact that the witness, at the first point of time, has referred to a pregnant woman whose womb was slit with a sword and the foetus was taken out on the tip of the sword and swirled around. There is a discrepancy in naming the accused person to whom this role is attributed. Before the police she had named Guddu, before the SIT she had named Jai Bhavani and before the court she had named Babu Bajrangi. Thus, while there is no discrepancy in narrating the incident, there is a discrepancy in naming the accused. Therefore, to the extent the witness has improved

upon her original statement recorded by the police and named other accused persons, the evidence of the witness cannot be said to be consistent, so as to rely upon the same to incriminate those accused.

54.89 Insofar as the discrepancies between the testimony of this witness and the testimony of her son PW 162 Rafiq Kallubhai are concerned, by and large the versions given by both of them match with each other, except for the timings. PW 162 has stated that they were sitting near the S.R.P. Quarters and at around 7:00 p.m., tear gas shells were lobbed to disperse the Muslims and they were forced to go away and the witness took shelter in a house at Gangotri. From there they were told to come out as it was safe and escape, but there was a mob outside wherein he had seen the named accused. The witness has stated that he did not go in the direction in which they were told to go but remained near the S.R.P. Quarters but others who went there were attacked and he heard screams of the victims. His mother was with him till 7:00 p.m. While considering the testimonies of the witnesses as a whole, it appears that the timings stated by this witness, viz. PW 142 are closer to the truth, and the timings stated by PW 162 do not appear to be correct as all the incidents had taken place prior to 7:00 pm. Otherwise, the sequence of events is the same, viz. they went to the S.R.P. Quarters, then took shelter in a house at Gangotri and were driven out from there. It appears that at this stage they had got separated.

54.90 It is noteworthy that this is not a case where a single incident has taken place and there are discrepancies in

the testimonies of witnesses in respect of such incident. In this case, the events unfolded from the morning when the residents of the chawl started moving towards the rear side for safety. Throughout the day, the residents were under immense tension and fear and were running here and there for safety. Considering the class to which majority of the witnesses belong, hardly any of them may be wearing watches. Besides, in the atmosphere of terror and fear, one can hardly expect them to note the time when a particular incident took place. This was not a normal day when they were required to go about their routine work, in which case, they might be concerned with the time. Here, all they were concerned was about saving their lives and as to what time of the day it was, was hardly material at that time. Therefore, by and large the witnesses would have given the time on the basis of estimate, and it is quite possible that there may be variations in the time stated by different witnesses given the circumstances prevailing on that day, when they must hardly be in a position to think clearly. In these circumstances, much significance cannot be attached to discrepancies in the time stated by the witnesses if all other facts stated by them are more or less similar. Thus, in the opinion of this court, there are no serious discrepancies in the testimonies of the witness and her son, so as to impeach the credibility of this witness. Her version except to the extent noted hereinabove, therefore, deserves to be accepted.

54.91 Through the testimony of this witness the prosecution has proved the presence of Suresh Chhara, Guddu Chhara, Sahejad Chhara and Bipin Panchal in the mob in the

chawls in the afternoon after 11 o'clock as well as the presence of Suresh Chhara (A-22), Guddu Chhara (deceased), Bhavanisingh (deceased) and Bhavanisingh's son (A-40) in the mob near the passage of the water tank in the evening. Insofar as the presence of Babu Bajrangi is concerned, there is an inconsistency between the previous statement of this witness recorded by the police and her testimony before the court. Therefore, the testimony of this witness cannot be relied upon to prove the charge against Babu Bajrangi (A-18).

XIII OTHER WITNESSES:

55. **PW 37 Salimbhai Roshanali Shaikh** who has been examined at Exhibit-256, has deposed that he is residing at Jawannagar, Next to S.T. Workshop, Naroda Patiya since the last ten years. In the year 2002, he was driving a rickshaw. His family, including his wife, is comprised of fourteen persons and he is residing with them. He has five sons and two daughters. His elder son Siddique died in the riots on 28.2.2002. His sons' names are Siddique, Sabbir, Ayub, Sheru and Jamil and his daughters' names are Afsanabanu and Salimbanu. At the relevant time, he had an auto-rickshaw of his ownership, which he used to ply. His son also used to ply his rickshaw.

55.1 The incident took place on 28.2.2002. Prior thereto, he had gone for his work on 27.2.2002, when he came to know that a train of Hindus had been burnt at Godhra, due to which there was tension and hence, he had come home. On 28.2.2002, there was a call for Gujarat Bandh. On 28.2.2002, he woke up early in the morning at 5 o'clock and had gone to

perform namaz at Noorani Masjid. After namaz, he was sitting at a tea stall for approximately two to three hours, that is, uptill around 09:30. He was sitting at the tea stall so as to ascertain the situation in connection with the bandh. Other Muslims were also sitting with him at the tea stall.

55.2 At round 9:30, Police Inspector Shri Mysorewala came near the Noorani Masjid. At that time, he was at the Naroda Police Station. When he came, they informed him that a mob had gathered near Natraj Hotel and asked him to do something, whereupon he told them that nothing would happen to them and that they should go home. At this time, P.I. Shri Mysorewala joined the mob, and as he had also gone with the mob, the mob started coming towards the Noorani Masjid. The mob was comprised of Hindus and they were throwing burning rags at the Noorani Masjid and resorted to stone pelting, therefore, he felt that there was risk to his life. He and others who were standing near the masjid, thought it appropriate to resort to stone throwing to save the masjid, however, despite doing that, they could not save the masjid and the mob caused damage to the masjid. At that time, they had gone to the corner of the wall of the S. T. Workshop, near the Noorani Masjid when Shri Mysorewala ordered firing, pursuant to which there was firing on their mob and one person died, whose name was Javed @ Khalid. At this time, they were standing at the entrance of Dilip-ni-Chali, near the corner of the S.T. Workshop when the mob of Hindus started increasing and there were people who were wearing khakhi shorts, saffron bands and white undershirts. The members of the mob were armed with dharias (scythes), swords, kerosene, sticks, pipes, kerosene tins, kerosene cans, etc. The mob was

led by Guddu Chhara, Suresh Langado, who is also a Chhara, a person named Darbar, Bipin Autowala, Pintu and Pintu's father Dalpat. In this mob, Guddu had a sword in his hand, Suresh Langado had a dharia, Darbar had a dharia in his hand, Bipin Autowala had a pipe in his hand and Pintu and Dalpat had also pipes in their hands. He has stated that since he was residing at Naroda Patiya since the last ten years, he was able to identify the above named persons in the mob.

55.3 At this time, it must have been around 11 o'clock in the morning and they, namely the Muslims, started moving from Dilip-ni-Chali, Pandit-ni-Chali towards Hussainnagar, when the people in the mob started damaging the houses of Muslims and started advancing forward. Therefore, he went to his family and along with his family members, climbed on the terrace from where they went from one terrace to other. He had felt that now there was no scope of being saved. The Hindu mob had entered their lanes and was assaulting Muslims. When they went near the S.R.P. gate which was a small gate and told the S.R.P. people that the riotous mob was coming forward and requested them to let their women and children stay there, the S.R.P. watchman told them that they had to die there and that they should see what has happened in the Godhra incident. He has stated that the incident near the S.R.P. gate took place at around 4:30.

55.4 The witness has further deposed that upon receiving such a reply from the S.R.P., he along with his family, climbed on Gauri Apa's terrace where there were other Muslims with them and they all climbed down to Gangotri Society, where Bhavanisingh and Dalpat had told them to bring

a cauldron and said that they would cook food for them, whereupon they had told them that they did not want to eat and that they should let them protect their lives.

55.5 The witness has further deposed that they were all trying to return to their houses through Gangotri Society via Gopinath Society, when near the gate of Jawannagar Gangotri Society, a huge Hindu mob had come, and hence, they started climbing over the terrace, when some Muslims were left below and some could climb. At that time, the mob had grown larger and it must have been around 6:00 to 6:30 in the evening and there did not appear to be any hope of escaping and when the police had released tear gas shells, his son Siddique had got separated from him. When he was coming down from the terrace, the aforesaid six persons named by him, viz. Guddu, Suresh, Darbar, Bipin Autovala, Pintu, Dalpat, etc. were there. They pulled his son Siddique into the mob, namely, the mob comprised of Hindus.

55.6 Near the water tank of Gopinath Society, Guddu had inflicted a pipe blow on his son Siddique's head and Darbar had inflicted a blow with a dharia on his stomach and had felled Siddique and Bipin and three others pulled him and poured kerosene and placed mattresses etc. on him and poured inflammable substance on him and set him ablaze. He had seen this. His son Siddique had died. When he saw his son Siddique being killed in this manner, a scream escaped from his mouth, whereupon someone in the mob said, "*See here is a miya*". Somebody from the mob said, "catch, catch, here is a miya". Upon their saying so, he ran towards Gangotri Society and hid himself.

55.7 In the incident which had taken place near the water tank near Gopinath Society, his maternal uncle's son Sharif was also killed in a manner similar to the manner in which his son Siddique was killed. At this time, it was around 6:30 to 6:45 in the evening.

55.8 At this time, all the Muslims had hidden on the terrace of Gangotri Society and had thought that they would all die together and hence, they had gathered and were sitting together. At that time, the police came and informed them that they would be taken to a safe place, however, they could not trust them, hence, they continued to sit there, whereupon one Samsubhai, who belonged to the Muslim community, came and said that the police vehicle had come, which would take them to a safe place, whereafter they all climbed down and sat in the police car. The vehicle took them to the Shah Alam relief camp, where they stayed for six months.

55.9 The witness has further deposed that the riotous mob had ransacked his house and caused damage to it and had committed loot and taken away their goods. His rickshaw GJ-1-W-689 was also damaged. The rickshaw was insured; however, he did not receive the insurance money and also did not receive any aid from the Government. His statement was recorded by the police at the Shah Alam camp. He had gone for recording his statement at Naroda Police Station; however, they were not recording the statements as given by them. He had received rupees five lakhs from the Government towards compensation for the death of his son Siddique, whereafter they had remained silent. However, he had learnt from the

newspapers that an SIT was coming. He had also made an application to the SIT, whereafter the SIT people had called him to Gandhinagar and recorded his statement. He has admitted the contents of the application made by him to the SIT and his signature thereon and the same is exhibited as Exhibit-258. He has further deposed that he had received a letter from the SIT to come and give his statement, whereupon he and two-three others had gone to Gandhinagar for recording their statements. After they had gone to Gandhinagar for recording their statements, the SIT people had come to their house. The SIT people had asked if the statement was proper and it was about their last reply before the SIT and he had stated before the SIT that the statement was proper.

55.10 He has deposed that he can identify Suresh Langdo, Darbar, Bipin Autowala, Dalpat, Pintu and Guddu. He has further stated that as per his information, Guddu Chhara has expired. He has further deposed that since the incident has taken place more than seven years ago, he could go to the place where the accused are sitting and identify them because due to lapse of time, there are minor and major changes in their external appearance.

55.11 At this stage, the learned advocate for the defence had raised an objection that when the witness had seen the accused in the mob, he should be able to identify him from the far and that the witness cannot be permitted to go where the accused is sitting.

55.12 In connection with the said object, the court

recorded a finding that the trial is going on in a very huge room where the witness are standing and the accused are sitting and there is a big distance between them. Moreover, since there are 62 accused, if the witness identifies the accused from far by pointing his finger or by the colour of the clothes of the accused, there would be likelihood of unnecessary suspicion and misunderstanding and keeping in view such fact, when a serious trial is going on, the court was of the confirmed view that in such circumstances, it would be more convenient if the witness is permitted to go to the place where the accused are sitting and identify them so that when the witness identifies an accused, there is no question of any doubt in the mind of the court. The court has recorded that this procedure is adopted keeping in view the sitting arrangement, the arrangement in the court room and other parameters of justice and with a view to avoid any doubts with regard to identification and with a view to see that there is a clear record.

55.13 The witness has further deposed that he cannot identify the accused from the box since a long time has elapsed. The witness has firstly identified Suresh Langdo by name. Thereafter, he has identified Bipin Autowala and has stated that he also identifies Pintu. The witness has identified Suresh Langdo (Accused No.22) and Bipin Autowala (Accused No.44) correctly. However, upon asking the person whom the witness has identified as Pintu, it turned out that he was accused No.34, Laxmanbhai alias Lakho. Thus, the witness has identified two of the accused, namely, Suresh Langdo (Accused No.22) and Bipin Autowala (Accused No.44) correctly, and could not correctly identify Pintu (Accused No.22).

55.14 CROSS EXAMINATION: In the cross-examination of this witness, he has stated that he does not remember the date on which he had made the application, Exhibit-258, but it was made sometime in the year 2008. He has further stated that at present, he does not have the letter sent by the SIT summoning him, but remembers that he was called by the SIT approximately one and half years prior thereto. He has further deposed that when he went before the SIT, his aunt Zannatbanu, Rafikbhai, Shakurbhai, etc. had gone along with him. He has admitted that the application, Exhibit-258 was written by his son and that his name, address and mobile number on the right side had also been written in his son's handwriting. The witness has been examined with regard to the contents of the application as to whether part of it had been written by his son or by someone else, to which he says that he does not know. In his cross-examination, it has come out that prior to making the application he was not informed by anyone that he was required to go before the SIT to record his statement. He has further deposed that prior to his making the application, Exhibit-258, he had not made any application to the police that the accused were stopping him and threatening him and that there was risk to his life. In his cross-examination, it has further come out that he knows Shri Mysorewala since he came to the Naroda Division and Shri Chudasama when he came to the relief camp. He has admitted that he knows Shri Mysorewala and Shri Chudasama as police officers and not in any other manner. He has further deposed that prior to the incident he had no occasion to meet Shri Mysorewala or Shri Chudasama. He has admitted that on 28.5.2008, the SIT had recorded his statement. He has further

admitted that in his statement, he had not stated that any accused had threatened or pressurized him. In his cross-examination, he has admitted that in his statement dated 28.5.2008, he had stated that he had not received any threat from the accused of this offence or from any third person and that, he had not asked for any police protection due to which, no police protection had been granted to him. The witness has voluntarily stated that after his statement was recorded, he had asked for police protection.

55.15 [It may be noted that the statement dated 28.5.2008 is a statement recorded by the SIT, which is statement under section 161 of the Code. Under the circumstances, the above referred part of his statement recorded by the police could not have been put to the witness inasmuch as the witness is not sought to be in any manner contradicted in connection with any statement made by him in his examination-in-chief. Thus, the said part of his evidence with regard to the contents of his statement dated 28.5.2008 is not admissible in evidence.].

55.16 Various other questions have been put in the cross-examination of this witness in respect of the application Exhibit-258 made by him, for the purpose of showing that the applications were not made by the applicants on their own, but were at the instance of other persons. The witness has admitted that no complaint has been filed by him in respect of the death of his son Siddique and his maternal uncle's son Sharifbhai. The witness has further stated that he had filed a complaint with regard to his house being damaged at the Collector's office, but does not remember as to when such

complaint was made. The witness has further admitted that at the time when he made a complaint with regard to the damage caused to his house, he had not lodged any complaint with regard to the death of his son and his cousin. The witness has also admitted that at the time when he was in the relief camp, he had not lodged any complaint, but has voluntarily stated that when he had gone to the Collector's office, he was told to sit quietly and that everything would happen while they are sitting at home. The witness has admitted that he understands that when any such incident takes place, a complaint is required to be lodged with the police. The witness has denied that when they were at the relief camp, the members of the voluntary Muslim organizations had been placed there. He has also denied that non-government and voluntary organizations had also placed people at the relief camps. He has also denied that to deal with any such incident, the members of voluntary organizations and advocates used to come. He has denied that applications of applicants were made in the relief camp after making announcements on the mike. He has also denied that separate arrangements were made in the relief camp for recording the complaints of the victims. The witness does not remember as to when his statement was recorded for the first time by the police, but says that possibly the same could have been recorded on 11.04.2002. The witness does not remember as to which was the police officer who has recorded his statement, but says that prior to his statement being recorded by the SIT, which was his fourth statement, three statements had been recorded. The witness has admitted that at the time when his statement was recorded on 11.4.2002, there was no grievance in his mind. He has categorically stated that his statement dated 11.4.2002 was not recorded by either Shri

Chudasama or Shir Mysorewala. The witness has denied that his statement dated 11.4.2002 recorded by the police was correct, and has voluntarily stated that the police was not recording what they were saying. The witness has further voluntarily stated that the police was very dominating and used to tell them to sit quietly, used to beat them with sticks, and that the police had become an enemy of Muslims. The witness has further stated that his young son aged 27 years had died and the police was oppressing them.

55.17 The witness is sought to be contradicted as to his police statement to the effect that in his statement before the police, he has not stated that at about 9:30 in the morning, Police Inspector Shri Mysorewala had come to Noorani Masjid and that at that time, Shri Mysorewala had become part of the mob and that as he had gone with the mob, the mob started going towards Noorani Masjid. The mob was comprised of Hindus and they were throwing burning rags and stones at Noorani Masjid. The witness has admitted that on the date of the incident, he was with his Muslim brothers in protecting Noorani Masjid. He has denied that there was a mob of Muslims. He has denied that there was cross stone throwing between Hindus and Muslims. He has voluntarily stated that they had only tried to protect the masjid. He has admitted that he was also part of the mob which pelted stones to protect the masjid and that he too had pelted stones and tried to protect the masjid. The witness is sought to be contradicted to the effect that he has not stated in his statement before the police that upon Mysorewala ordering, they had gone to the corner of the wall near S.T. Workshop near Noorani Masjid, and that Shri Mysorewala had ordered firing and hence, there was firing at

their mob. He has denied that on the date of the incident, no persons by the name of Javed and Khalid had died. He has admitted that on the date, one person named Abid had died in the police firing and that Abid was with him in the mob at Noorani Masjid. He has admitted that at that time, a person named Pirubhai was also there. He has denied that in his statement, he had not stated that on that day, the members of the mob had cans and tins of kerosene in their hands.

55.18 The witness has denied that in his statement dated 11.4.2002 recorded by the police he has not stated that Guddu Chhara, Suresh Langdo, a person named Darbar, Bipin Autovala, Pintu and Pintu's father Dalpat had taken over the leadership of the mob. He also denied that in his statements dated 11.4.2002 and 25.6.2006; he has not stated what he has stated in the first six lines of paragraph 6 of his examination-in-chief. He has also denied that he has not stated what he has stated in paragraphs 8, 9, 10 and 11 of his examination-in-chief, in his statements dated 11.4.2002 and 25.6.2002. The witness is further sought to be contradicted to the effect that in his statements dated 11.4.2002, 25.6.2002, 14.9.2008 and 28.5.2008, he has not stated what he has stated in paragraph 12 of his examination-in-chief. The witness has denied the suggestion that till 11.4.2002, he did not know any of the accused and hence, till 25.6.2002, he did not know any of the accused. The witness has voluntarily stated that he had stated all facts when his statement came to be recorded by the police; however, the police was not recording the same. That the police were writing in their own manner and telling them that now they should let go and everything was over. The witness has denied that in his statement dated 11.4.2002 and

25.6.2002; he has not stated anything with regard to his knowing any of the accused or the weapons that were in their hands. The witness is sought to be contradicted with reference to his police statement dated 11.4.2002 to the effect that in his statement, he has stated that out of the persons in the riotous mob, he does not know anyone and he does not know their names or addresses. The witness has denied that in his statement dated 25.6.2002; he has not stated the fact with regard to the death of his son. He has denied the suggestion that after the incident, he had occasion to see and meet the accused. He has admitted that prior to the incident he had no relations of talking with the accused.

55.19 The witness has denied that he had seen the armed mob referred to in his examination-in-chief from a distance of 50 to 100 feet. The witness has voluntarily stated that the mob had come from near. The witness has admitted that the mob could approximately be of five thousand people. The witness has voluntarily stated that in fact, there could be more than five thousand people. The witness has stated that at this stage, he does not remember what kind of clothes were worn by the people in the mob and voluntarily states that he certainly remembers that they had orange bands on their head and they were wearing khakhi shorts and white banyans. He has admitted that all the members of the mob were wearing orange bands, white banyans and khakhi shorts.

55.20 In his cross-examination in connection with the damages sustained in respect of his auto rickshaw, he has stated that the police had only recorded that some damage was caused to his auto rickshaw GJ-1-W-689 at the entrance of

their chawl and that the hood was torn. The witness has stated that he had stated more before the police, however, the police had not recorded it. He has stated that he came to know that the police had not recorded the facts as stated by him immediately, namely, on 11.4.2002 itself. He has denied that the police had read over the statements dated 11.4.2002 and 25.6.2002. He has stated that he had come to know that the police were not recording the statement as he was dictating and has voluntarily stated that the police used to scold them and tell them to say whatever they wanted to be recorded and not talk about anything else and they also used to tell them that a little or more damage is always caused.

55.21 The witness has admitted that, ten days after the incident at the time when the panchnama of his house was drawn, he had come to know that the police was not recording the statements as stated by them. He has admitted that at the time when he made the application, Exhibit-258, he was aware that the police was not recording the statements as stated by them. He has further admitted that in his application, Exhibit-258, he has not stated that the police was not recording the statements as stated by them. He has further admitted that on 28.5.2008 when he had gone for recording of his statement by the SIT, he had informed them that the police was not recording the statement as stated by him. He has stated that at present, he does not remember as to whether in his statement recorded before the SIT, he has stated that at that time, the police was not writing what was stated by him. He has denied that in his statement dated 28.5.2008 recorded by the SIT, he had not stated that the police was threatening them and was telling them that a little or more damage would

be there. He has further admitted that whatever he has stated voluntarily in his cross-examination, has not been stated by him in his application, Exhibit-258 as well as in his statements dated 28.5.2008 and 14.9.2008 recorded by the SIT.

55.22 The witness has admitted that the facts stated in paragraph 6 at pages 3 and 4 of his examination-in-chief which are read over to him, have not been stated by him in his application, Exhibit-258 as well as in his statements dated 11.4.2002 and 25.6.2002. He has denied the suggestion that the facts stated in paragraph 6 of his examination-in-chief have not been stated in either of his statements recorded by the SIT. The witness has denied that he has not stated the facts stated in paragraph 7 of his examination-in-chief in his application, Exhibit-258, his statements dated 11.4.2002, 25.6.2002 as well as in his statement recorded by the SIT. He has further denied that the facts stated in paragraph 8 of his examination-in-chief have not been stated by him in any of his statements. He has admitted that he has not stated these facts in his application, Exhibit-258. The witness further states that he does not remember as to whether in any statement other than the statements made before the SIT, he has stated such facts. He has admitted that on the date of the incident, at 11:30, upon seeing the mob, they had left their house open and gone away. He has denied the suggestion that the mob had pulled his son and taken him away at 11:30 in the morning. He has denied the suggestion that on that day at 11:30, he has closed his house and left. The witness is confronted with his statement dated 11.4.2002 recorded by the police wherein he has stated that upon coming to know that the riot has increased, he together with his entire family

closed his house at around 11:00 to 11:30 and fled towards Gangotri Society to save their lives, at that time, it appeared a huge mob was coming from the side of canal and hence, they had run in the middle of the Gangotri Society towards the S.R.P. group when his son Siddique was caught by the members of the mob and the members of the mob had inflicted blows with sharp cutting weapons and killed him and burnt him, and at that time, tear gas was released from the S.R.P. group line, whereupon the mob ran away. The witness has denied that his son Siddique died at 11:30 in the morning and has stated that the incident of his son Siddique, as stated by him, took place in the evening between 6:30 to 6:45. He has admitted that the fact recorded in his earlier statement that the incident of his son Siddique had taken place at 11:30 in the morning, was false and such fact had not been stated by him in his application, Exhibit 258.

55.23 In his cross-examination, the witness has admitted that as the mobs of outsiders had gathered at 9:30, he had returned home. He has admitted that on that day, it had happened that around 10:30 on the road in Pandit-ni Chali, Hussain-ni-Chali as well as the Noorani Masjid and nearby the chawl on the road in front of them, stone pelting had started. He has denied that on that day, Hindus and Muslims had resorted to pelting stones on each other. He has admitted that at that time, Hindus alone were pelting stones. The witness has voluntarily stated that Muslims had tried to resort to stone throwing to protect the Noorani Masjid, however, they were not successful.

55.24 The witness has denied that the Hindus and Muslim

mobs were near Natraj Hotel and Noorani Masjid. The witness has voluntarily stated that Shri Mysorewala had come with the mob from the side of Natraj Hotel. The witness has admitted that the mob which came from the direction of Natraj Hotel and the mob from Noorani Masjid, both had gathered together near Noorani Masjid and at that time, Mysorewala had ordered firing. The witness has admitted that firing took place towards their chawl, opposite Noorani Masjid. He has admitted that there was no firing near Noorani Masjid. He has admitted that the firing took place near Natraj Hotel. The witness has voluntarily stated that the firing took place near the Muslim mob. The witness has stated that he is not aware as to whether there was any mob other than the mob from Natraj Hotel. He has admitted that except for Noorani Masjid, there was no other mob of Muslims. He has denied that when Abid was injured with a bullet, he was at Noorani Masjid. The witness has voluntarily stated that at that time, he was at the corner of S.T. Workshop and the time was approximately 9:30 to 9:45 in the morning.

55.25 The witness has denied that a mob of fifteen thousand to twenty thousand had come from the direction of Krushnanagar and has voluntarily stated that he has not seen such mob. He has admitted that from Krushnanagar, one can go to Gopinath society by crossing the canal. The witness has stated that he does not know where Javed alias Khalid was injured with bullet and whether they were injured. The witness has stated that he has understood as to on which part of the body, Javed alias Khalid had sustained a bullet injury. As regards in which area he had sustained such injury, he has stated that it was at the corner of the S.T. Workshop. The

witness has admitted that upon crossing the Noorani Masjid, there are chawls with Hindu names near the S.T. Workshop. He has admitted that in all these chawls, persons belonging to both the communities, viz., Hindu and Muslim are residing. He has admitted that in these chawls, some buildings are single storied and some are double storied. He has further admitted that if one is standing on the road of one chawl, he cannot see what is happening in the house of the other chawl. The witness has further stated that he is not aware as to whether Javed alias Khalid has been injured or not. He has stated that he does not know as to on which part of the body, Abid was injured. He has stated that after Abid sustained a bullet injury, he was lifted and carried to his house, but he does not remember the persons who took Abid to his house in this manner. The witness has stated that he has not seen that at time of the incident of his son, the mob had come from behind Gopinath Society. He has admitted that the incident of his son being pulled away and thereafter, took place around 6:30 in the evening. He has denied that the mob came from the side of the canal and was comprised of fifteen hundred to two thousand people and that the mob had pulled his son and that his son's incident had taken place by that mob. He has admitted that upon the members of the mob seeing him and saying that a Miya is standing here, he had fled. He has admitted that after the incident, till date, he has not seen his son. He has denied that he had not seen anyone killing his son and that he had not seen the death of his son. He has denied that his son's death was caused by a mob which had come from the direction of Gopinath Society in the morning at 10:30 and the said fact had been stated by him in his first statement and that in his statement before the SIT, at the instance of his

advocate and other organizations, he had stated the facts as stated herein. The witness has been cross-examined with regard to his statement dated 28.5.2008 recorded by the SIT and certain facts stated therein have been put to the witness in paragraph-75 of his testimony. It may be noted that the contents of his statement recorded by the SIT have been sought to be brought on record without seeking to contradict anything stated by him in his evidence which is not permissible in law in view of the provisions of section 162 of the Code. In his cross-examination, it has come out that after the incident, after staying at the Shah Alam Camp, he had stayed at Vatva for around six months. He has admitted that upon his finding it peaceful and there being no fear, he had returned to stay at his house at Naroda Patiya. He has admitted that after he returned to his house at Naroda Patiya, he has been working freely and meeting his relatives.

55.26 In his cross-examination, the witness has admitted that from the year 2002 to 2008, for a period of six years, various facts had remained to be stated in his statements dated 11.4.2002 and 25.6.2002 and in this regard, he had not felt that he is required to make any complaint to the Government, High Court or Magistrate through any advocate. The witness has voluntarily stated that the reason was that at that time there was a question as to firstly, with whom he should lodge the complaint and secondly because no one cared for them.

55.27 The witness has admitted that he had made application, Exhibit-258 as he had read the advertisement in the newspaper and that if he had not read it, he may not have

made such application. The witness has denied that in his statement dated 28.5.2008 recorded by the SIT, he has not stated that the six persons whom he has named in his examination-in-chief were not named by him in his police statement. The witness has stated that he had no intention to not disclosing names of six persons in the context of the incident relating to his son for the period from 2002 to 2008. The witness has voluntarily stated that he was stating such names; however, the police was not recording the same. He has further stated that in the six years, no media persons had met him.

55.28 The witness has denied that in the year 2008, after due deliberations, he has wrongly given the name of accused Suresh Langdo (accused No.22). The witness has denied that the fact stated by him in his statements dated 11.4.2002 and 25.6.2002 regarding his son Siddique being killed by the mob is correct and that is a true fact and that in his statement recorded by the SIT in 2008, he has wrongly given the names of the accused.

55.29 In his cross-examination, it has further come out that prior to the SIT recording his statement, the police had called him on three or four occasions. The witness has denied that during that period whenever the police called him, they used to put questions to him and used to record what he used to state. The witness has voluntarily stated that the police used to record as per their own whims and that the police used to write in their own manner and he used to sign where the police asked him to. He has stated that he used to sign on account of fear of the sticks wielded by the police. He has

stated that prior to the SIT, he has signed before the police on two or three occasions. The witness has admitted that there are many persons by the name of Pintu residing in the Naroda Patiya area and has voluntarily stated that he is talking about Pintu who resides near him and that he knows him because he resides next to him. He has denied that he does not know any person named Pintu and that he is falsely deposing before the court.

55.30 In his cross-examination, it has further come out that during the period between the incident of firing in the morning and the incident of assault on his son, he was not at home. He has denied that on the date of the incident from 9:30 to 6:30, no incident had taken place at their chawl. In none of his statements he has stated that the injuries sustained by his sons were sustained in the incident of this case. He has admitted that after he had seen his son lying in a bleeding condition, thereafter he had not seen him either dead or alive. He has stated that it had happened that the police had called him to identify his son's dead body; however, the face of the body was damaged to such an extent that he could not identify it. The witness has admitted that Pintubhai Dalpatbhai Chhara is his neighbour and he had seen him on many occasions and he knows him. The witness has admitted that he is a person who performs Namaz five times in a day. He has admitted that the Namaz of 5:00 a.m. in the morning lasts for around 20 minutes. He has denied that on the date of the incident, after performing namaz, they had gathered at Babubhai's tea stall. He has stated that on that day, after performing Namaz at Noorani Masjid, they offered *Salam* and hence, it must have been around 6 o'clock, whereafter around 25 of them were

sitting at the tea stall and the rest of the people had gone away. The witness has denied a suggestion that he has named Bipinbhai Autowala at the instance of his maternal aunt, Jannatbibi, who also lives in the Naroda Patiya area. He has denied that in his two statements recorded prior to the statement recorded by the SIT, he had not named Bipinbhai before the police. The witness has voluntarily stated that the police had not written down the name. The witness has admitted that in his application, Exhibit-258, he has not named Bipinbhai.

55.31 PW-178, Shri P. N. Barot, the Investigating Officer has admitted that the statement of this witness was recorded on 11.4.2002. He has admitted that he had not told any witness to sit quietly else they would beat them with batons. The Investigating Officer has stated that it has not happened that he has behaved with animosity towards this witness or that he has threatened him and taken his statement. Certain extracts of paragraph 43 of the deposition of the witness are read over to the Investigating officer, who has admitted that this witness has not stated before him that Guddu Chhara and Suresh Langdo, who is also a Chhara, a person named Darbar, Bipin Autowala, Pintoo and Pintoo's father Dalpat had taken the leadership of this mob. The contents of the statement of the witness are read over to the Investigating Officer who has stated that the witness has not stated the facts stated by him in the first six lines of paragraph 6 of his deposition, wherein the witness has stated that in the morning at around 9:30, Police Inspector Shri Mysorewala had come near Noorani Masjid. At the relevant time, he was at the Naroda Police Station, when he came, they had informed him that there was

a mob near Natraj Hotel and had asked him to do something, whereupon he had told them that nothing would happen to them, they should go home.

55.32 The contents of paragraphs 8, 10 and 11 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the facts stated therein have not been stated by the witness in the statement recorded by him.

55.33 The contents of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness has verbatim, not stated such facts before him, but had stated that upon the mobs of people starting to gather at around 9 o'clock in the morning, he had come home. At 10:00 to 10:30, stone pelting started on the chawls in front of their house, namely, Pandit-ni Chali, Hussain-ni-Chali as well as Noorani Masjid and the chawls nearby. There was a stampede amongst the people belonging to the Muslim community residing in Hussain-ni-Chali.

55.34 The contents of paragraph 12 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that the witness has not stated all the facts stated therein in the statement recorded by him. The Investigating Officer has stated that the witness had stated that he had gone near Gangotri Society and hidden there and while he was going towards Gangotri Society, at that time a mob came from the direction of the canal, whereupon the witness had fled between Gangotri Society towards the S.R.P. Group when his son Siddique was caught by the people in the

mob. The people in the mob inflicted blows with sharp edged weapons on him and set him ablaze and he had died. These facts had been stated by him and except for these facts, the other facts were not stated by him.

55.35 The Investigating Officer has admitted that the witness had stated before him that he could not recognize any person in the riotous mob and does not know the names and addresses of anyone.

55.36 The Investigating Officer has admitted that this witness had not given the name of any accused in the statement recorded by him and had not stated as to which weapon was in whose hands.

55.37 The contents of paragraph 7 of the examination-in-chief of the witness are read over to the Investigating Officer who has denied that the witness has not stated all those facts in the statement recorded by him. The Investigating Officer has stated that the witness had stated before him that he had gone on the road to have tea and at around 9 o'clock, mobs of people had gathered. Except for this, the other facts were not stated by him.

55.38 The contents of paragraph 13 and certain extracts of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness has not stated such facts before him. Certain parts of the statement of this witness are put to the Investigating Officer, however, since such extracts of the statement have not been used for the purpose of contradicting any part of the

primary statement of the witness, the same are not admissible in evidence.

55.39 The Investigating Officer has admitted that in the statement recorded by him, this witness has not named Bipinbhai Autowala.

55.40 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants-accused submitted that this witness in his deposition has narrated three incidents at three different points of time. At about 9:30 in the morning, six of the accused were leading the mob and causing damage to the Noorani Masjid. Reference was made to the contents of paragraph-8 of the examination-in-chief of the witness, to submit that the entire facts stated therein were not stated by the witness before the local police. Reference was made to the testimony of PW-178, Investigating Officer Shri P. N. Barot, wherein the Investigating Officer has admitted that this witness has not stated before him that Guddu Chhara, Suresh Langda, a person named Darbar, Bipin Autowala, Pintu and Pintu's father Dalpat had taken over the leadership of the mob. The Investigating Officer has further admitted that this witness has not stated before him that at around 9:30 in the morning, Police Inspector Shri Mysorewala had come near the Noorani Masjid. At that time, he was at the Naroda Police Station. When he came there, they had informed him that there was a mob near Natraj Hotel and asked him to do something about it, whereupon he had told them that nothing would happen to them and that they should go home, and more particularly paragraphs 73 and 74 thereof, to submit that the contradiction has been proved through the testimony of the said witness.

55.41 Next it was pointed out that Guddu and Jay Bhavani stating that they would make food for them between 4:00 to 4:30 in the afternoon, is also not there in the police statement. It was submitted that the witness has stated that his son Siddique and his maternal uncle's son Sharifbhai were killed by the very same six persons; however, the entire set of allegations made by him in paragraph 12 of his examination-in-chief, have not been stated by him in his police statement. Referring to paragraphs 77 to 79 of the testimony of PW-178, it was pointed out that the contradiction has been proved through the testimony of the said witness.

55.42 It was submitted that even though the statement by the police was recorded on 11.4.2002, after a period of more than 40 days, even at that point of time, no accused have been named by him. It was submitted that in his statement dated 25.6.2002 recorded by the Investigating Officer PW-292 regarding loss and damage analysis, the witness had an opportunity to disclose the facts about the incident and the accused as well as to narrate this at the camp where he was feeling safe. However, the witness has not made any allegations against anybody and on the contrary, on 11.4.2002, he has attributed the incident of his son Siddique to a mob from the canal side at 11:00 a.m. and not between 6:00 to 6:30 in the afternoon. Therefore, on the face of it, it appears that in the light of the fact that the witness has not made any grievance before the SIT about the improper recording of his statement or not recording what he has stated in his statement by the police. It was submitted that the witness in his deposition has improved the entire story which he apparently

was asked to state before the SIT to implicate the accused persons. Referring to the identification of the accused by the witness, it was pointed out that despite the fact that the witness has stated that he knew Pintu very well, he has wrongly identified another accused as Pintu and has been able to identify only two accused, Suresh and Bipin Autowala.

55.43 Mr. B. B. Naik, Senior Advocate, learned counsel for some of the accused has submitted that there are certain inherent improbabilities in the evidence of the witness, inasmuch as, he says that he went to the Noorani Masjid for namaz at 5:00 a.m., which takes about 20 minutes, however, he has further stated that till 9:30 a.m., he was at the tea stall. It was submitted that it is highly improbable that he was sitting at the tea stall for such a long time. Referring to paragraph 6 of the examination-in-chief of the witness, it was submitted that the witness has stated that Mysorewala came at 9:30, whereas the other witnesses have deposed that Mysorewala was standing at the gate of the S.T. Workshop. It was submitted that the distance between the Noorani Masjid and the S.T. Workshop Gate is about two hundred and fifty metres. It was submitted that the witness has stated that from the side of the Noorani Masjid, Mysorewala ordered firing, whereas most of the witnesses have stated that Mysorewala ordered firing at the S.T. Workshop gate. It was argued that nothing has come on record to show as to how the witness crossed the road from the Noorani Masjid to the S.T. Workshop Gate and neither Javed or Khalid have died, as stated in paragraph 6. Referring to the contents of paragraph 7 of the examination-in-chief of the witness together with the contents of paragraph 49 thereof, it was submitted that the witness has contradicted

himself as regards what the members of the mob were wearing.

55.44 Reference was made to the contents of paragraph 9 of the examination-in-chief of the witness, to submit that the witness lives in Jawannagar, where the terraces are made of tin sheets or asbestos sheets and hence, it is not possible for so many people to go from one terrace to another. It was submitted that the time stated by the witness as regards the incident in paragraph 11 of the examination-in-chief, is contrary to what is stated by the other witnesses. Referring to the contents of paragraph 12 of his testimony, it was pointed out that the witness has stated that while they were trying to go to their homes at Jawannagar from Gangotri Society via Gopinath Society, to submit that Gopinath Society is situated beyond Gangotri Society, and hence, there is no question of going from Gangotri Society to Jawannagar via Gopinath Society. It was submitted that it is apparent that the witness is lying and his version is contrary to the topography of the area. The witness has stated that he got separated from his son on account of tear gas shells being released; however, no tear gas shells were released at Gangotri Society. It was emphatically argued that the witness is totally silent as to from where he saw the incident of the water tank passage which shows that he was not there at all. It was submitted that the incident narrated by the witness in paragraph 12 of the examination-in-chief is not there in any of his police statements. Referring to paragraph 42 of the testimony of this witness, it was pointed out that the witness in his cross-examination has admitted that Abid died in police firing.

55.45 Next it was contended that when the witness did not have any relation with the accused, it is difficult to understand as to how he could have identified them after eight years of the incident. Referring to paragraph 51 of the testimony of the witness, it was submitted that in his cross-examination, the witness has admitted that when the police was writing down his statement, he had immediately come to know that they were not recording it as stated by him. It was submitted that despite the aforesaid position, the witness has not made any grievance before any forum with regard to the police not recording the statement as stated by him. It was submitted that from 11.4.2002, till he made application before the SIT in 2008, the witness has not stated that the police were not recording his statement as stated by him and no application was made by him to any authority. It was submitted that the evidence of this witness clearly indicates that he has not seen the incident or accused during the day and what is stated by him before the SIT is an afterthought and as per the information which he may have gathered at the camp or when he was subsequently residing at Naroda Patiya. In conclusion, it was urged that the evidence of this witness does not inspire any confidence and cannot be accepted as a truthful version.

55.46 ANALYSIS: From the testimony of this witness, it emerges that his first statement was recorded by the police on 11.4.2002 wherein he has not named any accused. It also appears that he had stated that his son was killed in the morning by a mob which came from the side of the canal. Assuming that there may be a mistake in mentioning the time, one striking fact which emerges is that he had not named any

accused in his statement recorded by the police. Of course, it is the case of the witness that he had named the accused but the police had not recorded the same. It appears that another statement of this witness was recorded on 25.6.2002, which was more or less in the nature of a loss damage analysis statement. Even at this stage the witness has not named any accused in his statement and for the first time that he has named the accused is before the SIT. While the witness has lodged a complaint in connection with the loss and damage caused to his properties in the incident, he has not lodged any complaint regarding the death of his son. In his cross-examination, it has been elicited that after they received compensation for the death of his son, they had remained silent and it was only when the SIT was constituted that he had come forth to get his statement recorded and had named the six accused referred to in his examination-in-chief. While it is true that considering the conduct of the police at the time of the incident, the witnesses would suffer from lack of faith insofar as the police authorities are concerned, however, even when the statement was recorded he has not named any accused and the version of the incident stated before the police does not tally with the version stated before the court.

55.47 This witness, therefore, does not appear to be a credible witness and no part of his evidence can be relied upon.

56. **PW-52 Aminaben Abbasbhai Belim** has been examined at Exhibit-425. She has deposed that she understands Gujarati, but cannot speak in Gujarati and hence,

would depose in Hindi.

56.1 The witness has stated that she has been residing behind Noorani Masjid, Opposite S.T. Workshop, at Naroda Patiya since the last thirty years and is residing with her family. In the year 2002, her two sons were staying with her, however, at present, on account of their jobs; both her sons are staying at Bhivandi, Maharashtra. Her elder son's name is Ayub and he is working as a driver and her second son's name is Naeem and he is working in a pearl factory. At the time of the incident, her son Ayub's age was 32 years and Naeem was around twelve to thirteen years old. In February, 2002, she and her elder son Ayub used to work at a Printing Press at Chiloda. She was engaged in security work and she used to check the women who came to work at the factory.

56.2 On 27.2.2002, she and her son had night duty, however, Shri Agrawal, who was their officer at the relevant time, had told them not to come. Their officer had informed them that the kar sevaks had been burnt at Godhra due to which there is tension; hence, they should not come for night duty. As her son was driving, she had gone along with him in the vehicle to drop the women who had come for their jobs to their homes. They had gone as per the instructions of their higher officer.

56.3 On that day, that is, in the evening of 27.2.2002, she along with her son had gone in their Press vehicle to drop the girls at an area beyond Krushnanagar in Naroda Patiya. After dropping the last girl, her son dropped her at the Naroda Patiya, Opposite Masjid and went to leave the vehicle which he

was driving at the Press. At that time, she had seen that two to three shops were burning.

56.4 The witness has deposed that the shops which were burning were near the house of the Vaghri, opposite the S.T. Workshop. Her son Ayub left the vehicle and returned home. All of them were all under great tension at home because in the office, they had heard that kar sevaks were burnt, and they had seen the shops being burnt and therefore they were constantly under the fear that something would happen.

56.5 On 28.2.2002 in the morning at around 7 o'clock, she and her son were ready to go for their job, however, she asked her son that as the Vishwa Hindu Parishad had given a call for bandh, how would they go for their job, whereupon her son said that he would go out and see as to whether the bandh was in force. When her son returned, he was very worried and had informed her that there were so many people from the S.T. Workshop till Natraj Hotel that the road was not visible and except people nothing could be seen. Her son also informed her that all these people in the mob were armed with weapons like sticks, swords, dharia and pipes.

56.6 On 28.2.2002, at around 9 o'clock in the morning, she herself went out to see in front of Noorani Masjid. The witness has deposed that she was wearing a khakhi coloured saree and blouse, which was given to her by the company by way of uniform and she had worn the same as she was ready to go to her office. When she went out to see, she herself saw that a mob was standing and as told by her son Ayub, the people in the mob were armed.

56.7 The witness has further deposed that at that time, from the middle of the mob, from the direction of Natraj Hotel, a white car came towards the Noorani Masjid. The white car came from the direction of the ice factory, which was on the left side of the Noorani Masjid and from there, it came towards the Noorani Masjid. The white car stopped near the masjid and **Mayaben** and her assistant got down.

56.8 Mayaben is known as Mayaben Kodnani and on that day, she had worn a white saree and after both of them got down from the car, Mayaben started talking with the people in the mob. Mayaben was standing near the masjid and the members of the mob were coming near the masjid where Mayaben was standing and she was gesturing with her hands to show the Muslim area. Within hearing distance, Mayaben told the mob that the masjid and the Muslim area should be destroyed. The witness has stated that as she was wearing khakhi clothes for the attending her job, nobody recognized her as a Muslim woman and thinking that she was a police personnel, were speaking in her presence.

56.9 Thereafter, the mob started pelting stones and vandalizing the houses. The people in the mob were wearing something like shorts, which were half pants and they had tied orange bands round their heads. All these people were raising slogans like, "Jay Shri Ram", and "the Godhra incident has to be avenged". The mob had started pelting stones near the Noorani Masjid and thereafter, the vandalizing escalated. There were police personnel near the masjid. The witness has further deposed that the police got up and released the tear

gas at them and were shooting. Thereafter, she had seen that Mayaben had something like a pistol in her hand and she also was firing. After firing, Mayaben told the mob that they should continue and thereafter, she returned in the same car in which she had come.

56.10 The witness has also deposed that at that time she had seen that a truck full of gas cylinders had come and that the members of the mob had kerosene cans in their hands. She had seen all these facts with her own eyes and heard with her own ears. She told the policemen that *"These are gas cylinders and cans of kerosene have come; therefore, you do something for us!"* Whereupon the policemen told them that *"We have a holiday and you have to die today!"* Such talk had taken place with the police near the Noorani Masjid. Since the police had refused to help, she went behind the masjid to get help from the police and to make a call to telephone No.100. She had made a phone call and a woman had replied that she was sending a police vehicle; however thereafter, no vehicle had come, and hence, she had once again called telephone No.100. Thereafter, she could not get any reply from telephone No.100, and hence, she called Naroda Police Station. When she called Naroda Police Station, Shri K. K. Mysorewala had replied. She had informed that *"Sir, there is no chance of our lives being saved!"*; however, he had casually replied like an intoxicated person, that *"Today, we have a holiday and you are sure to die today!"*. After the telephonic talk, she came out near the Noorani Masjid where there were policemen. In the meanwhile, two gas cylinders had already been burst at the Noorani Masjid and the mob had continued rioting. They were carrying out activities of looting the houses and hacking down

and killing people. Thereafter, she had gone and stood on the side of a lane in the corner of the Noorani Masjid.

56.11 At that time, vehicles had arrived carrying snacks and pouches of liquor for the people in the mob and the members of the mob sat on the divider in the middle of the national highway and consumed the liquor in the pouches and ate Samrat Namkeen (snacks).

56.12 The witness has stated that in this situation, she did not feel like returning home, and hence, she stood outside. Her younger son Naeem was caught in the firing at Jawannagar. During this time, at a little distance from the masjid, the youth from their mohalla were putting obstacles like tin sheets, iron, garbage and scrap, due to which, the members of the mob could not come towards them.

56.13 One Uday Gas Agency is situated in the lane beside Mahavir Hall opposite Noorani Masjid. From the Agency the road goes straight to Jawannagar and at this time there were mobs on both sides of the road, and the only road other than the one on which the youth of their mohalla had put obstacles, was the road from the lane beside Mahavir Hall. The mob had gone through that road and had continued with the hacking and killing there. Since her son Naeem had gone in the same direction, she kept looking and was under great tension.

56.14 The watchman of Mahavir Hall was a Muslim. The watchman along with his wife and children had gone inside Mahavir Hall to protect their lives. She had seen that the watchman, his wife and his children, in all four persons, were

killed by the mob on the road in front of her eyes. She herself had seen this incident. The mob had killed and cut all four and thrown them on the road and thereafter the mob had advanced a little.

56.15 There was a paan galla, opposite the Noorani Masjid, towards Mahavir Hall belonging to one Vermaji. Vermaji was standing near his paan cabin and the mobs under the impression that Vermaji was a Muslim, killed him in front of her eyes, which also she had seen with her own eyes.

56.16 The witness has also deposed that after leaving two shops, there is a house of one Yasinbhai. Initially, she was standing below Yasinbhai's house, however, as the members of the mob were cutting and killing, out of fear, she climbed on the terrace of Yasinbhai's house. Yasinbhai's house was under construction and there were pillars on the terrace and she was hiding behind the pillars and watching everything. There, the members of the mob had brought gas cylinders and had started entering their chawls, after which, she went into the house of Mohammad Hussain's daughter, next to Yasinbhai's house, where she stayed for about two hours.

56.17 Her house is behind this house and she had seen that her house, their scooter, everything, was being looted by the mob and their household goods, cash, money, jewellery, worth about three to four lakh rupees had been looted by the members of the mob.

56.18 Thereafter, she came out of the house of Mohammad Hussain's daughter and went into Masjid-ni-Chali,

which is situated behind the masjid, on the Dhanurdhari Mata Road and was standing on that road when she saw **Bipinbhai** shooting. Bipinbhai's garage is situated on the Bombay National Highway at Dhanurdhari Mata Na Road, on the front side. This Bipinbhai was shooting from the top of his garage and he was on the terrace. Thereafter, she felt tense and went to Jawannagar to look for her son Naeem.

56.19 When she was going to Jawannagar, she saw that the S.R.P. jawans were putting money and ornaments which were looted from the houses of Muslims in their pockets. The goats were lying there alone and were bleating when the Chharas were putting them in the rickshaws and taking them away. When she went a bit further, she saw a woman was lying in a burnt condition and the woman was crying "water ... water" and was asking for some water. Upon reaching Jawannagar, she could not find her son Naeem, and hence, she returned back. She returned to Masjid-ni-Chali. Thereafter, in the evening at around 4:00 or 5:00, a police vehicle had come and had taken them to the Shah Alam camp. On the way, near Kankaria Lake also, a mob had stopped the police vehicle and the police had said that it was enough, and had started the vehicle and dropped them at the Shah Alam camp. The witness has thereafter stated that, that night, she had stayed at Masjid-ni-Chali and that the police had come on the next day in the evening at about 4 to 5 o'clock, that is, on 1.3.2002 and had taken them to the Shah Alam relief camp, where she met her son Naeem.

56.20 She has thereafter deposed that other than this, in the riotous mob, Guddu and Suresh were also there and she

had herself seen all of them.

56.21 [The note below this part, together with the findings recorded by the trial court reveals that the what is deposed in the last two lines hereinabove, where the witness had named Guddu and Suresh, was pursuant to a query put by the Public Prosecutor as to who else was there in the mob, to which defence had raised an objection, however, such objection was turned down by the court on the ground that asking the witness as to who else was there in the mob cannot be said to be a leading question or a question whereby the memory of the witness is refreshed.]

56.22 The witness has further deposed that in connection with the damage caused on account of the incident, she had received a cheque for Rs.1,000/- and another cheque for Rs.2,000/-, and the cheque for Rs.2,000/- was in the name of her son Naeem. The witness has stated that during the course of riots, she had sustained a stone injury on her forehead above her left eye, in respect of which she had received compensation of Rs.1,25,000/-. She has stated that in connection with the damage caused to her house, she had not received any amount by way of compensation from the Government.

56.23 The witness has stated that the police has recorded her statement in connection with the incident. When she was at Bhiwandi, at that time she had received a phone call that her statement was to be recorded and hence, she should come to Ahmedabad. She had received such phone call on 30.5.2008. Thereafter, the witness has stated that she does

not remember on which date, she had received such phone call. However, she had come to Ahmedabad because of that and after returning to Ahmedabad, people residing in the neighbourhood were going to Gandhinagar, and hence, she went to Gandhinagar along with them. At Gandhinagar, in a room in the office, they were recording the statements and she had also given her statement. She does not remember as to on which date she was called to Gandhinagar and does not know what had happened prior to her statement being recorded. However, her statement had been recorded in Gujarati and she had signed thereon. She has stated that she does not know how to read Gujarati. That she had studied up to the seventh or eighth standard in Urdu and that she had studied in Urdu medium at Pune.

56.24 An application dated 17.4.2008 was shown to the witness and she has admitted the contents thereof and the same has been exhibited at Exhibit-427. The defence had raised an objection against exhibiting the said application only to the extent of the signature of the witness. However, the trial court, for the reasons recorded below paragraph 28 of the deposition of the witness, had turned down the objection.

56.25 The witness has stated that she would attempt to identify the persons named by her and has identified Mayaben Kodnani (Accused No.37). The witness has stated that she does not remember the name of the second person whom she has identified. The witness has thereafter identified the second person as Bipinbhai (Accused No.44) correctly. Thereafter, the witness has identified accused No.38 as Mayaben's assistant and stated that she does not know his name. However, she

could not identify the correct accused.

56.26 [It may be noted that this witness has described one accused as Mayaben's Assistant. The Investigating Officer has not carried out any test identification parade to fix the identity of the accused as to whom the witness is referring to as Mayaben's Assistant. The court has observed that the witness has not identified the correct accused, but apart from nonidentification in the court, even otherwise, from the evidence of the witness there is nothing to establish the identity of the accused.]

56.27 CROSS EXAMINATION: This witness has been extensively cross-examined by the learned advocates for the accused. In her cross-examination, it has come out that the printing press in which she was working was named Condition or something; however, thereafter, the board was taken down. She has stated that she had worked there for about one year and that she was aware of the fact that in case any woman employee took anything from the printing press, she was required to report the same to the manager. She has deposed that she used to travel to her work place either in a private vehicle or in the company vehicle and in case she was travelling in the company vehicle, the vehicle first used to drop the women employees and then drop her at Naroda Patiya. She says that she is not in a position to say as to how many girls were working in the Chiloda Press and voluntarily states that her work was to check the girls only. She has stated that about fifty women from Ahmedabad city were working in the press. In her further cross-examination, she has stated facts as regards from where women working in the press used to come.

She has admitted that on 27.2.2002, she was at her job and that it had not happened that her officer Shri Agrawal had told them not to come on the next day. She has admitted that the fact that there were many people on the road and that the road could not be seen, was told to her by her son and has stated that there was a stampede on the road and that other persons had also told her the same. That the vehicular traffic on the national highway had slowly stopped. She has stated that she knew Vermaji, who owned a paan galla as she was residing in the said area. She has stated that she is not in a position to say the exact time as to when she had come on the road wearing a khakhi dress on 28.2.2002; however, it must have been sometime after 7 o'clock in the morning. She has stated that after coming out of the house, she stood at one place only and had not gone to any other place because it was not possible to go anywhere at the time. She has stated that on that day, she had made a phone call to telephone No.100 from someone's house and not from any PCO. The house was of a tailor named Karimbhai, and that when she made a phone call on that day, she had not given her name but had given the address as behind Noorani Masjid and had told the police to send a vehicle. She had made three phone calls from Karimbhai Tailor's house. She has deposed that she does not remember as to whether prior to the incident, she had any occasion to visit the Naroda Police Station and that she does not remember the telephone number of Karimbhai Tailor. She has stated that on that day, some boy had dialed the number of the Naroda Police Station and that the said boy must be residing somewhere nearby. She has stated that while making the phone call to Naroda Police Station, she had only told them to send at Noorani Masjid, near Naroda Patiya.

56.28 She has also admitted that she has stayed at the Shah Alam relief camp for about four months and that there were many people at the camp. She has admitted that at the relevant time, there were discussions as regards what had transpired in different areas. However, she had said that there might be such talk, but she was not aware and that she did not know that leaders of the relief camp, political leaders and the leaders from different social organizations used to come to hear the sufferings of the people in the relief camp. She has admitted that she has not told any leader about the incident that she had witnessed and has voluntarily stated that at the time when she was at the relief camp, there was severe pain in her eyes in which she was injured, and, therefore, she did not say anything to anyone and she simply used to sit in one corner. She has stated that on the day of the incident, since she was wearing a khakhi dress and no one could recognize her, she had the courage to make a telephone call in an attempt to protect the masjid; however, the situation in the relief camp was different. She has admitted that there was no reason for her to be afraid in the relief camp, but has voluntarily stated that such a big incident had taken place which she had seen and that they were ruined and all this had a huge effect on her mind. She had also seen people dying due to which, her mind was not functioning. She has admitted that in this incident, she has not lost any relative or family member. She has admitted that in connection with the injury sustained by her, she had availed of treatment from the doctor at the relief camp. She has stated that she cannot say as to how long the effect of the incident was there in her mind and she cannot say whether in 2004 and in the year 2005 and 2007 also, there

was such effect on her mind. She has admitted that at the relief camp, she had not informed anyone about the articles that were looted from them and that it was true that if anything was looted from any person, they were giving complaints at the relief camp. She has also admitted that prior to the SIT recording her statement with regard to the incident, she had not given such information at an place.

56.29 The witness has stated that she does not know as to who had informed her when she first came for recording her statement before the SIT. She has stated that she herself had picked up the phone and all that was stated on the phone was that she should come; however, they had not told her as to which officer she was required to meet. She was not told as to where her statement was to be recorded nor was the address given at the time when the telephone call was made; however, after she returned home, the people residing in the neighbourhood were going, and hence, she also went along with them. She said that such phone call had been made by an acquaintance of her son and that after staying at Bhiwandi for a little while after the phone call was received, she had left.

56.30 In her cross-examination, it has further come out that prior to the SIT recording her statement, there was no occasion for her to visit the Mamlatdar's or the Collector's office. She has admitted that she has not submitted any certificate with regard to the injuries sustained by her anywhere. In her cross-examination, it has further come out that she could not name the persons with whom she had gone to Gandhinagar for the purpose of recording her statement and that along with others, she had gone to the office and had sat

where the others were sitting and upon her turn coming, she had gone to the officer, whose name she does not remember. She has stated that at the time of recording of her statement, she had spoken in Hindi; however, the police had recorded her statement in Gujarati and it was read over to her, which she remembers.

56.31 The witness has admitted that what was stated by her in the fifth line of paragraph 8 of her examination-in-chief, viz., *"Therefore, my son said that, I will go out and see as to whether everything is open"* and *"after my son inquired and returned, he was very worried"* and in the second line of paragraph 12, viz., *"The members of the mob were wearing something like shorts which were like half pants"* and in paragraph 13, viz., *"I had seen that at that time, a truck full of gas cylinders had come and there were kerosene cans in the hands of the mobs"*, and in paragraph 15, viz., *"The members of the mob were sitting in the middle of the divider on the national highway and were sitting and drinking liquor from the pouches and eating Samrat Namkeen"*, were not stated by her in her statement before the SIT. The witness has denied that Vermaji was killed by a Muslim mob. She has denied that on the day of the incident, she was not present at the scene of offence and that it was only at the instance of leaders of her community and organizations, that she had given a false statement before the SIT. The witness has denied that the incident with regard to the Muslim watchman of Mahavir Hall and his family members had not occurred and that it was only with a view to support the prosecution case that she was deposing falsely. Various facts have been brought out with regard to the security provided to the witness as well as the

fact regarding the places where she has travelled. In her cross-examination, it has come out that the witness is not aware that Navi Masjid (new masjid) is situated behind Noorani Masjid. The witness has denied that within an area of 2000 feet behind Noorani Masjid, new masjid is situated.

56.32 Various questions have been put to the witness with regard to the topography of the area and the deposition in this regard runs into several paragraphs. The witness has admitted that if she comes out of her house, she cannot see the open space behind Uday Gas Agency. The witness has admitted that if she comes out of her house and comes into the lane, she cannot see Bipin Auto Garage, but has voluntarily stated that if she crosses the road and goes to the other side, she can see it. She has admitted that if one stands at the door of the Noorani Masjid, one cannot see Bipin Auto Garage from there.

56.33 Various questions have been put to the witness regarding the salary she was being paid at that time, her appointment by the printing press and the uniform, which she had stated was given to her by the company. The witness has admitted that prior to making the application Exhibit-427; the SIT had not recorded her statement. The witness has admitted that before the SIT, she had stated what she had seen and what she had known and other than that, she had not stated anything else. However, thereafter, she has stated that other than the facts stated in her statement, there would be many other facts which she would have seen and known and that she has not stated everything that she had knew and heard in her statement before the SIT, because at that time all those facts did not come to her mind or she did not remember them. The

witness has admitted that the facts stated by her in her statement before the SIT had not been stated before anyone prior thereto. The witness has admitted that at the time when she made the application Exhibit-427, she was aware of the facts stated by her before the SIT. The witness has denied that she has not stated the facts which she had stated in her statement, in her application Exhibit-427. The witness has denied that in the application Exhibit-427 she has stated that while passing through the road, the accused in this case are stopping them and threatening them and that the applicants find that there is risk to their lives. The witness has admitted that the photograph shown at page 26 of the Combat magazine is her photograph, but does not remember as to when she had given the interview. Various questions have been put to her with regard to the security provided to her.

56.34 The witness has denied that on that day, there was a police point near the Noorani Masjid. She has admitted that her son had gone out to see what was happening and had returned home immediately and had informed her about the situation outside. She says that she does not remember as to whether she had gone out immediately and does not remember the exact time when she had gone out. The witness has stated that after she was ready, it must have taken her around 15 to 20 minutes to reach the water tap from her house. She has denied that the car came immediately thereafter. She has denied that at that time, three cars had come and has voluntarily stated that only one car had come and that she had not written down the number of the car that had come. She has admitted that the car had come from the direction of Natraj Hotel. She has denied that the car came

from the mob honking the horn. She has admitted that at that time, there was a mob of ten to fifteen thousand people near Natraj Hotel. She has stated that the car did not stop at the chowk of Natraj Hotel. She has denied that she had gone to the opposite side towards Natraj Hotel. She has stated that at that time, she had not gone towards the mob at Naroda Patiya and that she was standing at the water tap towards Narol where there was no mob. She has stated that she does not know as to how many persons were there in the car, but has voluntarily stated that two persons had alighted. She had not seen the persons who got down from the car from a close distance. She has denied that she must have seen them from a distance of about fifty (50) feet. She has denied that when they got down from the car, there was intense stone throwing.

56.35 The witness has admitted that she was at the water tap near the Noorani Masjid till 4 to 5 o'clock in the evening. She has stated that during this time, she has not seen any Hindu person being cut and killed and thrown near Noorani Masjid. She has admitted that at that time, she has not seen that any Hindu person had died near the Noorani Masjid. She has stated that she had not seen any Muslim driver taking a truck from near the Noorani Masjid towards Naroda, wherein two to three Hindu persons had sustained injuries. The witness said that she had moved around and after she had come back, she had heard that somebody had come with a truck. She has admitted that she has not seen any truck ramming into the Noorani Masjid.

56.36 In her cross-examination, the witness has denied that Mahavir Hall cannot be seen from the Noorani Masjid. She

has admitted that she had seen the watchman of Mahavir Hall and his family being cut and killed and thrown on the road. She has admitted that those persons had been cut, killed and were thrown on the road in a bleeding condition. She has voluntarily stated that the said incident had taken place a long time after the car came and went. She has admitted that except for killing and cutting them near Mahavir Hall, no other situation had arisen. She has stated that she does not know the names of the persons who have died; however, she knows that it was the watchman of Mahavir Hall. She has admitted that she does not know the persons who have killed them. She has denied that she had not seen them being killed, hacked and thrown, and she was deposing falsely. The witness has stated that it has not happened that from the terrace of her house she had seen anyone being raped and had informed anyone about such fact. She has stated that she does not remember that she had gone on the road going towards Kalupur behind her house on that day. She then says that even if she might have gone, then also she does not remember it. She has denied that one cannot see Vermaji's galla directly from the Noorani Masjid. She has denied that Vermaji's galla is situated on the road going inside from the Patiya and that on that road, Pandit-ni-Chali is situated. The witness states that she is not aware as to whether there was a board showing the name of Ashok Paan House or Ambika Paan House on Vermaji's galla. She has denied that Vermaji's galla's door was facing the road towards Narol. She has also denied that Vermaji's galla's door was facing the chawl. She has voluntarily stated that the door was on the Bombay National Highway road.

56.37 The witness has admitted that she has no talking

relations with Mayaben or Bipinbhai. She has denied that she has no talking relations with Suresh Richard and has voluntarily stated that Suresh once in a while used to pass near her house. She has admitted that at no point of time had any occasion arisen for her to sit and talk for five to ten minutes with any of these three persons. In her cross-examination, it has further come out that she has no talking relations with the person whom she had identified as Mayaben's assistant and has voluntarily stated that once when she had gone to get medicines, she had seen this person with Mayaben. She does not remember any other details about the person whom she identified as Mayaben's assistant as regards what he was wearing, etc. on the day of the incident. She has admitted that on that day, except for what is stated by her, she has not seen Mayaben's assistant at any other time during the entire day. She has voluntarily stated that thereafter, during the entire day, she had not gone anywhere.

56.38 The witness has stated that she understands the words gun, pistol and revolver. She has stated that she cannot clearly state as to whether a weapon can be said to be a revolver, pistol or gun, but can say that there was firing from such weapon. The witness states that she cannot say as to after seeing the mob, whether she (Mayaben) had gone to the car to get the revolver, or whether she had a revolver in her right hand which everyone could see when she got down from the car. The witness states that she does not know whether she had a revolver when she got down from the car, as to in which hand she was holding the revolver, but knows that she had resorted to firing. The witness says that she does not know as to whether she had hidden the revolver in the *pallu* of her

saree when she got down. The witness has denied that the persons whom she had identified before the court were not present on the date of the incident and that she was deposing falsely at the instance of their leaders,.

56.39 In the cross-examination of this witness, an omission is brought out to the effect that in her statement recorded by the SIT, she has not stated the fact with regard to Yasinbhai's house being on pillars and that she was standing behind the pillars and watching everything as stated by her in paragraph 11 of her cross-examination, which the witness has admitted. (The trial court has made a note to the effect that however, the witness has stated that she was hiding in the underconstruction house of Yasinbhai and was watching everything).

56.40 In her cross-examination, a further omission has been brought out that what is stated by her in paragraph 22 of her examination-in-chief, namely, "Bipinbhai was on the terrace and was shooting from the top of the terrace" is not stated by her in her statement recorded by the SIT, which the witness has admitted. (The trial court has made a note to the effect that the witness has stated that Bipinbhai Autowala was a member of the mob and he was firing at persons of the Muslim community, which she had seen.).

56.41 The witness has stated that she has never availed of any treatment at Dr. Mayaben's (accused No.37) hospital. She has further stated that she is not aware as to whether prior to the incident, she has seen Mayaben's photographs in the newspaper, hoardings or anywhere else. She has

voluntarily stated that she might have seen them, but does not remember. Various questions have been put to the witness with regard to her place of service and vouchers issued by her company. The witness has admitted that it is true that on the day of the incident, a lot of noise and commotion could be heard and has voluntarily stated that since the population of Muslims in the Jawannagar and Hussainnagar area is more, riots were very intense in that area. She has denied that the sounds of the mob were more intense in the Natraj and Naroda Patiya area. The witness has admitted that at the place where the present chowky is situated, opposite the Noorani Masjid, there were mobs on the day of the incident and that the chowky was not there at the relevant time. That on that day, from place to place there were mobs and that the mobs from Naroda Patiya, Natraj Hotel and from near the chowky were pelting stones at the Noorani Masjid, which she had seen. She has stated that she had seen that the mobs were pelting stones at Muslims and had denied that there was cross stone pelting by the Muslims. The witness has stated that she does not know as to how long the two persons who got down from the car had stayed there. She has denied that the car had passed through a Hindu mob and has voluntarily stated that the mob was only on one side. She has denied the suggestion that despite the fact that she had not seen the incident, she was falsely deposing at the instance of the people of her community.

56.42 In her further cross-examination at the instance of the learned advocates for the other accused, the witness has admitted that Chetandas-ni-Chali, Pandit-ni-Chali, Kashiram Mama-ni-Chali, Dhanushdhari Mata-ni-Chali, Jawannagar-ni-

Chali, all its three lanes, Khemchand-ni-Chali, Hussainnagar-ni-Chali, Kumbhaji-ni-Chali, Imambibi-ni-Chali, Hukamsing-ni-Chali, Jawaharnagar area, Badarsing-ni-Chali, Jikar Hasan-ni-Chali, the area around the fair price shop and the area around the Sardar Ice Factory, have only Muslim population. She has stated that she does not know as to whether, in all, there was a population of around five to six thousand Muslims in that area. She has denied the suggestion that her son Ayub was residing separately and has voluntarily stated that he was staying in the same house. Various facts stated by the witness in her statement before the SIT, have been brought out in paragraph 127 of her cross-examination. It may be noted that such facts have not been brought out to contradict any fact stated by the witness in her examination-in-chief. Under the circumstances, the facts stated in paragraph 127 are not admissible in evidence as the same would be hit by the bar contained in section 162 of the Code.

56.43 The witness has stated that after the incident, she has not gone to her place of service. She has admitted that on the 27th, when they had gone to drop the girls at their homes, their Sheth (employer), had told them that since there is a call for bandh on 28.2.2002, they should not come for their job. The witness has thereafter stated that their employer did not speak with them that much and that somebody has told them that on the next day, there was a call for Gujarat Bandh and therefore, they should not come. The witness has admitted that in the incident, her husband had sustained several injuries and even as on date, he is not in a position to work. The witness has voluntarily stated that her husband had sustained many injuries in the stone throwing and that he had not

received treatment at the relief camp. She has voluntarily stated that her husband had refused to avail of treatment and used to tell her that since she had sustained severe injuries in her eyes, she should take treatment first. She has stated that her sons Naeem and Ayub both had sustained injuries; however, they too had refused to take any treatment at the camp. She has denied that her son Ayub had received Rs.1,25,000/- by way of compensation. The witness has stated that she did not deem it fit to take her family to a safe place taking the benefit of the khakhi uniform that she was wearing on the day of the incident because other people in the chawl had told them not to.

56.44 The witness has admitted that the Muslim population is not towards the road going towards Kalupur, but on the side of the S.T. Workshop. The witness has denied that in her application, Exhibit-427, she has stated that Mysorewala and Chudasama were not carrying out any investigation in the case. She has denied that if such fact is stated in the application Exhibit-427, it is false. She has voluntarily stated that all facts stated in the application are true. The witness has further admitted that no policeman had recorded her statement prior to the SIT recording her statement. The witness has denied that early in the morning, there was a police point at the Noorani Masjid and Naroda Patiya and has voluntarily stated that they were not there in the morning, but had come thereafter. In her cross-examination, it has further come out that the witness is not in a position to say as to since how long she knew Bipin Autowala (accused No.44). The witness has admitted that the facts stated by her in paragraph-22 of her examination-in-chief to the effect that when

Bipinbhai was shooting, at that time he was on his terrace, which she has stated in her examination-in-chief, was not stated by her in her statement recorded by the SIT. (The trial court has made a note to the effect that she had stated that Bipinbhai was also there and he was firing at persons belonging to the Muslim community, which she had seen.). The witness has denied that before 30.5.2008, she had not told anyone that Bipinbhai was shooting in this manner. She has stated that she does not know as to whether or not she has given a written complaint with regard to Bipinbhai shooting. She has stated that she had heard that on the day of the incident, Bipinbhai's garage was burnt. She has denied the suggestion that she had seen Bipinbhai's garage being burnt and has said that she had heard about the same. She has admitted that in the entire day, she had not crossed the road. She has denied the suggestion that as Bipinbhai's manager had lodged a complaint regarding Bipin Auto Garage being burnt wherein thirty one Muslims had been named, to protect them, she was falsely deposing before the court. The witness has voluntarily stated that on the day of the incident, a lot of damage was caused to the masjid, whereas none of the temples which were situated nearby have been touched. She has stated that on that day, Muslim mobs were very few and the damage had been caused only to the masjid and no damage had been caused to the temples nearby. She has denied the suggestion that she had not seen Bipinbhai at the scene of the incident on that day and that she was falsely implicating him at the instance of persons of her community.

56.45 SUBMISSIONS: Mr. N.D. Nanavaty, learned counsel for accused No.37 Mayaben Kodnani submitted that what the

witness has stated in her examination-in-chief has been stated by her for the first time after six years and has admitted that before she gave her statement to the SIT in 2006, she never made any such allegations, or grievance or complaint. It was submitted that it is not the case of the witness the despite efforts, her statement was not being recorded. Referring to the deposition of the witness, it was pointed out that the witness was not aware of there being a police point at the Noorani Masjid, therefore, the fact regarding her having witnessed anything is doubtful. It was submitted that in any case, the evidence of the witness is not evidence of hatching of conspiracy, and, therefore, her testimony could not have been used by the trial court for basing conviction under section 120B read with other penal provisions of the Indian Penal Code.

56.46 Mr. Y. S. Lakhani, learned counsel for the appellants – accused submitted that no statement of this witness has been recorded by the police and her only statement has been recorded by the SIT. Referring to the contents of paragraph 11 of the testimony of this witness, wherein she had said that she had heard Mayaben telling the mob to destroy the masjid and the Muslim areas, it was submitted that as to whether the witness could have heard Mayaben saying so in the crowd with all hubbub, is doubtful. It was further submitted that except for this witness, no other witness had stated that Mayaben had a pistol with her and had fired from the same. It was submitted that when the police was firing upon the Muslim mob, there was no question of the witness being around accused No.37 Mayaben. It was pointed out that while this witness says that Mayaben came to the Noorani Masjid, the other witnesses have

stated that Mayaben came to the gate of the S.T. Workshop. Referring to the contents of paragraph 13 of the examination-in-chief of the witness, it was submitted that no other witness has stated that the truck with gas cylinders had come to the Noorani Masjid. It was pointed out that the witness in this paragraph has stated that when she saw the truck with the cylinders coming there, she had told the police to do something about it, whereupon the police had told her that it was their holiday and that they were to die. It was submitted that looking to the version stated in this paragraph, the say of the witness that she was not identified, falls to the ground. It was submitted that there is no evidence of any calls having been made by this witness to the control room or any other documentary or oral evidence to corroborate the version given by her.

56.47 Referring to paragraph 14 of the examination-in-chief of this witness, it was submitted that the prosecution case is that Shri Mysorewala was at the site at this time, and hence, there is an apparent contradiction, inasmuch as, this witness states that he (Mysorewala) was at the police station and had talked to her on the phone. It was further submitted that there is no evidence of any gas cylinder having been burst in the entire evidence. It was pointed out that the witness in paragraph 15 of her examination-in-chief has stated that the members of the mob were sitting on the divider of the national highway and consuming liquor and eating Samrat Namkeen, which is something which no other witness has stated. It was pointed out that the witness in paragraph 16 of her examination-in-chief has stated that in the above situation, she did not want to return to her house and had stood outside, to

submit that even this conduct of the witness is unnatural. It was submitted that the say of this witness that the boys from their mohalla had put up obstacles on the road, has not been stated by any other witnesses. With reference to the contents of paragraph 18 of the examination-in-chief of this witness, it was submitted that such incident of the watchman and his family members being done to death has never occurred and no person has been identified as watchman of Mahavir Hall who is a Muslim and no such incident had been reported and proved by the prosecution. As regards the say of the witness that the mob thought that Vermaji who was standing near his paan-galla was a Muslim, and killed him in front of her eyes, is also not true as it is not the case of the prosecution that Vermaji paanwala was killed by Hindus believing him to be a Muslim.

56.48 Referring to the examination-in-chief of this witness, it was pointed out that right from 9:30 a.m., the witness was moving around till 4:00 to 5:00 p.m., which was not possible according to the situation and circumstances prevailing at that time. It was submitted that according to this witness, she had received a phone call to come to Ahmedabad to record her statement; however, who had called her has not come on record, nor has it come on record as to how such person came to know her name. Referring to Exhibit-427, viz., the application dated 17.4.2008 made by the witness to the Chairman of the SIT, it was submitted that the same is identically worded to other applications and that the witness does not state that she made an application, but has admitted her signature upon being shown the application. Referring to the identification of the accused, it was pointed out that insofar

as accused No.4 Bipinbhai is concerned, the witness has just identified him without stating his name and hence, such identification is not a valid identification. It was further submitted that the witness has also not identified accused Suresh. Referring to paragraph 130 of the testimony of the witness, wherein in her cross-examination, she has admitted that on 27th, when they went to leave the girls at their homes, their employer had told them that there was a call for bandh on 28.2.2002, and hence, they should not come for their job and thereafter she has corrected herself and said that their employer did not talk so much with them and that somebody else had told them that, as there was Gujarat Bandh on the next day, they should not come, it was submitted that if this part of her testimony is correct, there was no need for the witness to wear her uniform and get ready for going to her workplace on 28.2.2002.

56.49 The learned counsel emphatically argued that no statement of this witness has been recorded by the police. Though she claims to be an eye witness of a serious incident which has taken place, this witness has not lodged any complaint, nor made any representation before any authority. It was submitted that her identity though as disclosed as per her examination-in-chief, it is very difficult to believe that she could safely move around various parts of this area right from 9:00 a.m. till 4:00 to 5:00 p.m. It was submitted that this witness narrates incidents which are neither stated by any witness nor is there any corroboration from any corner of the prosecution case. During the course of her deposition, the witness has referred to various persons with whom she had interacted, but she is unable to name any of them. According

to the learned counsel, the witness has come from Mumbai and she does not say that she had made any application before the SIT. However, the application, Exhibit-427 written in her name, about which she is ignorant, clearly indicates that it was prepared, drafted and sent to the SIT taking her signature without letting her know the contents thereof. Thus, the intervention of third persons or NGOs to move the case in the direction they wanted through the investigation by SIT cannot be ruled out. It was submitted that though not claiming in the examination-in-chief that she received serious injuries in her eyes, in the cross-examination, she claimed so, but no corroborative documentary evidence about her injury is brought on record. Similarly, her husband and two sons are also stated to be injured, but no supportive or corroborative evidence is produced and there are reasons to believe that she was not an eyewitness of the incident, but is apparently a got up witness, who suddenly surfaces from Mumbai to give her statement before the SIT.

56.50 It was submitted that other witnesses have been cross-examined as to whether they had seen a woman constable, but they have all denied having seen any such person. It was submitted that insofar as the accused No.37 Mayaben is concerned, the testimony of this witness is not believable as it is contrary to that of all other witnesses. It was submitted that insofar as accused No.62 Kirpalsingh is concerned, the witness has not named him in the examination-in-chief and when she was asked to identify Mayaben's assistant, she wrongly identified accused No.38, and hence, there is no identification qua accused No.62. It was submitted that accused No.44 – Bipinbhai Panchal is named after six and

a half years, but the evidence qua him regarding his firing from the roof is not stated by any of the other witnesses. In any case, having regard to the topography, it was not possible for her to see Bipinbhai Autowala. It was submitted that at the relevant time Bipin Auto did not have any pucca terrace and hence, it was not possible for anyone to climb on the roof and start firing. Moreover, the fact regarding private firing has not been proved on record by the prosecution.

56.51 It was submitted that the witness has not referred to the role of accused No.22 – Suresh in her examination-in-chief and it is only at the end of her examination-in-chief, upon the public prosecutor asking as to who was also in the mob, that the witness has named Guddu and Suresh. It was submitted that there is no identification of Suresh in the court. In conclusion, it was submitted that this witness is not a reliable and trustworthy witness and her entire deposition should be kept out of consideration.

56.52 Mr. B. B. Naik, learned counsel for the appellants, adopted the submissions advanced by Mr. Lakhani and submitted that reading the deposition of this witness as a whole, it clearly transpires that she has no respect for the truth. It was submitted that there is no evidence to corroborate the fact that she was working in the printing press. Besides, her son Ayub is also not examined. It was submitted that the story of her serving in a press and having a khakhi uniform seems to be totally false. Referring to paragraph 122 of the testimony of this witness, wherein she has admitted that on the day of the incident, there was a lot of noise and commotion, it was submitted that in this situation, it was not

possible for the witness to have heard what Mayaben had uttered. It was submitted that there is no corroboration to the say of this witness that she had called the police and that the prosecution could have easily produced the call register of the concerned police station to substantiate the version given by this witness. Referring to paragraph 39 of the testimony of this witness, wherein in her cross-examination, the witness has stated that from the morning since the time she left her home, she was standing at one place and had not gone anywhere as there was no place to go at that time, it was submitted that if the witness has not gone anywhere, how could she have made the phone calls. Referring to paragraph 104 of the testimony of this witness, it was pointed out that she has admitted that she was present at the water tap near the Noorani Masjid till 4 to 5 o'clock in the evening. It was submitted that though according to other witnesses Shri Mysorewala he was at the spot in the morning, this witness has stated that he was at the police station. It was pointed out that this witness, in paragraph 107 of her examination-in-chief, has stated that her son was stuck in the firing at Jawannagar, to submit that no firing has taken place at Jawannagar and that no other witness has stated about putting up of obstacles by the youth from their mohalla. It was submitted that the contents of paragraph 17 of the examination-in-chief are in the nature of a completely imaginary story put up by this witness. It was submitted that from near the Noorani Masjid, the witness could not have seen what was happening on the other side. It was submitted that the incident with regard to killing of the watchman of Mahavir Hall and his family members has never occurred and that the narration of a mob of Hindus killing Vermaji is also not true. It was submitted that except for this witness, no other witness

has stated that Bipinbhai Panchal was on the roof of the garage, much less shooting. Referring to paragraph 79 of the testimony of this witness, it was pointed out that in her cross-examination, it has come out that she does not even know the name of her factory where she was working. Referring to paragraph 84 of the deposition, it was submitted that this witness has not seen anything and has only stated what she came to know afterwards. Referring to paragraph 134 of her deposition, it was pointed out that the chawl of Juni Masjid is behind the Noorani Masjid and when she was sitting near the chawl of Juni Masjid, she could not possibly have seen the incident. It was submitted that the whole story propounded by her before the SIT is totally false. Various other discrepancies were sought to be pointed out in the testimony of this witness to submit that the entire evidence of this witness is totally false. It was submitted with this kind of evidence, this witness is one of the witnesses upon whom the trial court has heavily relied upon for convicting the accused.

56.53 ANALYSIS: From the testimony of this witness, it emerges that her statement was not recorded by the police at the relevant time in the year 2002. After the riots, the witness appears to have shifted to Maharashtra and it was only six years after the incident that the witness travelled from Bhiwandi in Maharashtra to Ahmedabad for giving her statement before the SIT. As to how she came to know that her statement is required to be recorded is also not very clear. In her testimony the witness has referred to various incidents, which do not find any corroboration from the evidence on record or support from the testimonies of other witnesses. This witness claims to be roaming around freely in the area where

throughout the day there was violence, ransacking and arson by Hindu mobs without being harmed, only because she was wearing a khaki uniform. The fact regarding her having put on a khaki uniform is also doubtful because whereas in her examination-in-chief she has stated that she had put on her uniform to go to her workplace, in her cross-examination it has been elicited that on the previous day, that is, 27th February, 2002 they were told that in view of the call for Gujarat Bandh they should not come on the 28th, and hence, as rightly submitted by the learned counsel for the appellants, there was no reason for her to put on her uniform.

56.54 It is the case of the witness that after Mayaben and her assistant got down from the car; Mayaben was talking with the people in the mob. Mayaben was standing near the masjid and upon the people in the mob coming near, she gestured with her hands and showed the Muslim area and that she had heard her telling the mob to destroy the masjid and the Muslim area. According to the witness as she was wearing a khaki saree and blouse she was not identified as a Muslim and was taken to be a police woman, and hence, she (Mayaben) spoke in her presence. Thereafter the mob resorted to violence. She has also stated that she saw Mayaben firing from a pistol. Firstly the fact regarding the witness being in a khaki dress is doubtful in view of the contradiction brought out in her cross-examination. Moreover, the witness has stated that she saw a truck full of gas cylinders being brought and cans of kerosene in the hands of the people in the mob and upon this being brought to the notice of the police by her, they had told her that it was their holiday and that they (the Muslims) had to die today. It may be noted that on the one hand, the witness says

that she being in a khaki uniform, people thought she was a policewoman and on the other hand she says that the police had told her that they had to die today, which clearly belies the version given by the witness regarding her being in a khaki dress. Thus, the testimony of the witness is self contradictory. The entire story that she could stand close to Mayaben because she was wearing a khaki dress, therefore, does not appear to be credible.

56.55 The witness has stated that she has seen the whole family of the watchman of Mahavir Hall, in all four persons, being done to death by the mob and cut into pieces and thrown on the road; however, there is no evidence to corroborate her say. From the evidence coming on record, there is nothing to suggest that any person was killed on the national highway in the Naroda Patiya area on the day of the incident. All incidents of killing are stated to have taken place inside the chawls, except in case of Abid where some witnesses say that he died due to bullet wounds in police firing and was burnt by the mob.

56.56 The witness also claims to have witnessed the killing of Vermaji Panwala. She also claims to have seen the mob looting her house. She further claims that Bipinbhai Autowala had climbed on his shop and was firing from there. Apart from the fact that this version does not find corroboration from any other witness, it is difficult to believe that Bipinbhai would fire from the terrace of Bipin Auto, inasmuch as from the testimonies of the witnesses it emerges that there were mobs of Hindus on both sides of the national highway, in which case it would be Hindus who would be

injured in such firing. Her version of having made telephone calls to the police also does not inspire confidence. The witness also claims to have gone to Jawannagar and having seen that in the houses that were looted, there were ornaments and money which the S.R.P. jawans were putting in their pockets. She further claims to have seen Chharas taking away goats in rickshaws. The fact regarding use of rickshaws is totally contrary to the evidence which has come on record. Furthermore, the witness also claims to have seen a woman lying in a burnt condition asking for water. Thus, the witness claims to have seen multiple incidents during the entire day; however, none of this was disclosed by her at the relevant time and after a period of six years she has come all the way from Maharashtra and has narrated the same before the SIT.

56.57 This witness has named accused No.37 Mayaben, her assistant (who as per the prosecution is accused No.62 Kirpalsingh), accused No.44 Bipinbhai, Guddu (deceased) and accused No.22 Suresh. Out of the accused named by her, she has identified accused No.37. She has identified accused No.44 Bipinbhai but has stated that she cannot remember his name at present. She has thereafter identified accused No.38 as Mayaben's assistant and has not identified accused No.22 at all. Thus, the witness could not identify accused No.62 and 22, and has identified accused No.44 by his face and not by his name. Thus, the only accused whom she has fully identified is Mayaben, who being a public figure, her photographs and posters would be easily accessible, moreover, in this case there is no other female accused of her age, and therefore, it is very easy for anyone to identify her. Insofar as accused No.62 Kirpalsingh is concerned, there is nothing on record to show as

to how he is sought to be implicated as the witness has only referred to a person who according to her was Mayaben's assistant as having accompanied her, but nothing has been brought on record to show that accused No.62 is in fact Mayaben's assistant, nor has any test identification parade carried out to establish his identity.

56.58 The witness, therefore, appears to have come up with a highly exaggerated version of the incident, that too, for the first time after six years. Considering the overall testimony of this witness she does not come across as a truthful or credible witness. Her entire testimony does not inspire any confidence, and, therefore, no part of her testimony can be relied upon to convict the accused named by her.

57. **PW-1 Mahemudbhai Abbasbhai Bagdadi**, aged 58 years, has been examined at Exhibit-141. The witness has deposed that he was residing at *Chetandas-ni-Chali, Opposite Noorani Masjid* since 1973 along with his family.

57.1 The witness has deposed that the incident had occurred on 28.2.2002. Pursuant to the incident of burning a train on 27.2.2002, there was a call for Ahmedabad Bandh. On that day, at around 9:00 to 9:30 in the morning, his wife had informed him that a mob had come behind his house towards the Noorani Masjid. Natraj Hotel and the S.R.P. Quarters are situated near his house. He told his wife to lock the house as it would not be possible to face the mob. The mob was comprised of about ten to fifteen thousand people. He took his two sons and two daughters with him and together with his

wife, they went towards Jawannagar Khada. He together with his children entered the S.R.P. Quarters, whereas his wife with the children who were with her, remained outside and it was declared that no one would be permitted to enter the S.R.P. Quarters. He stayed at the S.R.P. Quarters for two days. At 2 o'clock at night, he and his children were taken in a vehicle to Shahibaug camp. The witness has deposed that on the day of the incident, stones and bricks were being thrown from all four sides.

57.2 CROSS EXAMINATION: The witness has been cross-examined by the learned advocate for the defence mainly with regard to the topography of the scene of the incident. The witness has admitted that he could not identify any of the persons in the mob and that the police have not carried out any test identification parade.

57.3 PW-283, Jagdishsinh Temubha Chudasama, the assignee officer has, in his cross-examination, admitted that he had recorded the statement of this witness on 16.5.2002. The assignee officer has admitted that at the time of recording his statement, the witness had not given him any compliant and that no instructions have been given to him to record the statement of this witness in connection with such complaint. (The complaint of this witness is in the record of I-C.R. No.111/2002, Exhibit-142).

57.4 Upon the first information report Exhibit 142 being shown to the witness, the prosecution had raised an objection to exhibiting the same on the ground that all the different first

information reports had merged with the main FIR C.R. No.100/02 in connection with which the trial court recorded a finding to the effect that the prosecution has sent this document along with the charge-sheet which shows that the prosecution seeks to place reliance upon the said document, and hence, it would be in the interest of justice to give an exhibit number to the same. [It may be noted that the prosecution, though has placed a copy of this document with the charge-sheet papers, it has not sought to prove the same through the testimony of the witness, and rightly so, in view of the fact that since all the first information reports which were registered in connection with the incident that took place at Naroda Patiya formed part of the very same transaction and, hence, only one first information report could be registered in connection with the said incident. All the other first information reports would then be merely statements recorded by the police under section 161 and cannot be exhibited. The trial court was therefore not justified in exhibiting such documents. Exhibit 143 panchnama has been exhibited during the course of cross examination due to consent given by the learned advocate for the accused. This witness has been cross-examined extensively as regards the topography of the area. The complaint has been lodged on 7.3.2002 a week after the incident.

57.5 SUBMISSIONS: The learned counsel for the appellants has submitted that this witness has been residing at Chetandas-ni-Chali for around 29 years. He has seen the mob and therefore, would have recognized the local residents. He, however, does not name anyone. The witness has seen the

mob of ten to fifteen thousand people, but not identified any of the accused.

57.6 ANALYSIS: This witness does not implicate anyone and says that he did not recognise any member of the mob and police did not carry out any test identification parade. Nothing, therefore, turns upon his testimony.

58. **PW-2 Sumarmiya Mahammadmiya Makrani**, aged 35 years, has been examined at Exhibit-147. The witness has deposed that he was residing at *Imambibi-ni-Chali, Naroda Patiya, Ahmedabad*, since the last thirty years. The witness has stated that he runs a provision store by the name of Gulabsha Kirana Stores above which his house is situated. He has studied upto the 5th standard. The witness has deposed that he opens his shop at 6 o'clock in the morning and on the day of the incident, he had opened his shop at 6 o'clock in the morning. At 9:30 in the morning when his shop was open, people said that mobs are coming and hence he locked his shop and came out and went to the highway to watch. He saw a mob coming from Krushnanagar, which was comprised of about five to seven thousand people. The people were armed with pipes and sticks. The mob came near the Noorani Masjid where it set carts and stalls on fire. Gas cylinders were burst in the masjid. Thereafter the police had fired at the Muslims and a Muslim boy by the name of Abid was shot at with bullets by the police and he died on the spot due to bullet injuries. After Abid died his dead body was taken to his house and kept there. The people who had come had burnt his shop and the people in the mob had come till their houses. Upon the mob reaching

their home, he and his family went towards Hussainnagar. Thereafter the mob, burning houses after houses, reached Jawannagar and broke the wall, whereupon they felt that now there was no hope of escaping, and hence, he took his children and went through Gangotri Society to the S.R.P. Quarters where they sat in the open ground along with other people. They stayed there for about two days, whereafter a constable from their village took them in a police vehicle to Shahibaug, where they stayed in the camp.

58.2 The witness has further deposed that the mob had looted his shop as well as his house and had set his house on fire. In the stone pelting that took place he was injured on his leg.

58.3 CROSS EXAMINATION: In his cross-examination, a suggestion is put that the witness had sustained injury while fleeing from his house, which the witness has denied in respect of which he is contradicted by his statement dated 16.5.2002 recorded by the police wherein he had stated that he had sustained injury on the heel of his right leg while fleeing from his house. The witness had denied that except for stating that as the mobs were rioting in the Naroda Patiya area, he along with his family went to the S.R.P. Headquarters, none of the other facts stated in paragraph 3 of his deposition had been stated by him in his statement dated 16.5.2002. In paragraph 20 of his deposition, the witness has admitted that as and when he became aware of facts, he had stated the same in his statement recorded by the SIT. The witness has proved the first information report Exhibit 148, which is sought to be produced on record at the instance of the learned Assistant

Special Public Prosecutor. Thus, the prosecution, though it has initially objected to exhibiting the first information report in the case of PW1 has thereafter sought to produce the other first information reports on record.

58.4 The witness is cross examined as regards the topography of the area. It may be noted that this witness in his examination-in-chief, has not stated anything with regard to any tanker near the ice factory. However, in paragraph 23 of his cross-examination the witness has admitted that on the day of the incident he had seen a tanker near the ice factory and has stated that the tanker was empty and did not contain kerosene and has stated that he does not know as to in which condition the tanker was and whether it was pushed and brought there. The witness has also stated that he does not know as whether the tanker was brought near the Noorani Masjid and set on fire. The witness is then sought to be contradicted qua the above reply given by him in his cross-examination with his statement recorded by the SIT. Thus by a process of cross-examination, the defence has succeeded in bringing on record facts stated by the witness in his police statement though such facts have not been stated by him in his deposition, and despite the fact that in his examination-in-chief he has not stated anything contradictory. It is settled legal position as held by the Supreme Court in the case of **Tahsildar Singh** (supra) that a statement recorded under section 161 of the Code can only be used to contradict a witness and cannot be used for any other purpose. It has further been held that by a process of cross-examination, what is not stated by a witness in his examination-in-chief cannot be brought out in his cross-examination. The prosecution,

therefore, ought to have objected to this course of action and the trial court ought not to have permitted such question to be put to the witness which is contrary to the provisions of section 162 of the Code.

58.5 The witness has admitted that he was part of the Muslim mob which resorted to stone throwing and has voluntarily stated that he did so in self-defence.

58.6 PW-282, Shri K. S. Desai, the assignee officer has admitted that he has recorded the statement of this witness on 16.5.2002. The assignee officer has stated that when he went to record the statement of this witness, no complaint was given to him and no instructions were issued to him to record his statement in the context of such complaint. (The complaint of this witness dated 7.3.2002 is on the record at Exhibit-148). The assignee officer has admitted that this witness had not stated before him that he had seen his house and shops being looted and burnt with his own eyes.

58.7 The contents of paragraph 2 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that these facts have not been stated by the witness in the statement recorded by him. The contents of paragraph 3 of the examination-in-chief of the witness are read over to the assignee officer who has denied that all the facts stated therein have not been stated by the witness in the statement recorded by him. He has stated that the witness had stated before him that the mobs were rioting in the Naroda Patiya area and that the witness together with his family had gone to the S.R.P. Quarters nearby at around 10 o'clock in the

morning. Other than that, the facts stated in the said paragraph have not been stated by the witness. The assignee officer has further admitted that the witness had not stated before him that the people in the mob had tied saffron bands on their heads and were wielding sticks and pipes in their hands.

58.8 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness does not name any accused. In paragraph 2 of his examination-in-chief, the witness has stated that the police resorted to firing at the Muslims and a Muslim boy named Abid was shot by the police and he died due to the bullet injury. It was submitted that this fact stated by the witness runs contrary to the depositions of other witnesses as well as the documentary evidence. Reference was made to the inquest panchnama of Abid at Exhibit 662 to submit that he died at Jawaharnagar Chhapra behind the S.T. Workshop. Referring to the post mortem report Exhibit 393 together with the deposition of PW 47 Exhibit 392, viz. the doctor who performed the post mortem, it was submitted that the possibility of firearm injury is ruled out. As regards the say of the witness that gas cylinders were burst, it was submitted that the concerned Investigating Officer PW 296 Mr. Surela who has been examined at Exhibit 2035 has deposed that during the entire incident at Naroda Patiya, no bursting or blast of any gas cylinder has taken place. Referring to the panchnama of the scene of offence Exhibit 2036, it was submitted that it does not refer to any remnants of burst gas cylinders. It was further submitted that the witness has admitted that people of both the communities were pelting stones at each other (paragraph 24) and that he has also

admitted that he was a member of the mob which was pelting stones. It was argued that the witness has given a version which is contradictory to the evidence on record and that he has indulged in stone pelting and is not an innocent victim.

58.9 It was submitted that as per the prosecution case and the evidence, the first incident at the Noorani Masjid went on till 11:30 and thereafter, the mob started going towards the chawls. It was submitted that the witness does not name any accused though he saw the incident on the highway and thereafter inside. It was submitted that this witness is staying in the area since 22 years before the incident and he has seen the mob at various places, despite which, he does not name any of the accused, including the local residents. It was submitted that the accused Bhavani, Dalpat, Tiwari, Mukesh and two daughters of Bhavani are residing at Gangotri Society and Sahejad is residing at Hussainnagar, but this witness does not implicate any of those accused, which clearly raises a doubt about their participation in the incident.

58.10 ANALYSIS: This witness has not implicated any accused. The evidence of this witness regarding Abid having been taken home after he died is contrary to the testimony of the other witnesses. Nothing much turns upon the testimony of this witness.

59. **PW-38 Umedhasan Kalubhai Kureshi**, aged 50 years, has been examined at Exhibit-267. This witness has deposed that he is residing in Gujarat since the last fifteen years and his native place is *village Jalali, District Harduvaganj, Uttar*

Pradesh.

59.1 In the year 2002, he was residing at *Jawannagar, Naroda Patiya*. He had a scrap shop by the name of H. I. Scrap at Jawannagar and adjoining his shop was a house of his ownership.

59.2 On 27.2.2002, after he returned from his work, he learnt that a train had been burnt at Godhra, in the context of which, there was a call for bandh on 28.2.2002.

59.3 On 28.2.2002 in the morning at around 8:30, he went from his house on the road to have tea. While he was sitting at the tea stall, he saw a mob coming from the direction of Natraj and another mob coming from the direction of Krushnanagar. Since one of his legs has been operated, upon seeing the mob which had come till the Noorani Masjid, he was frightened. He thought that he might get caught in the mob, and hence, he immediately went home from the tea stall at the corner of Jawannagar.

59.4 After he reached home, he went and sat there with his family, and in the meanwhile, several times he heard shouts of "cut", "kill" and "help". After staying at home in this manner till 12 o'clock, he, together with his family, started going towards Gangotri Society, and while going, he saw that the Hindu houses were locked. Since these houses were locked, they went on the terrace of one of the houses of Gangotri Society and hid there and slowly other people from their community also started coming to the terrace of Gangotri Society.

59.5 He had seen the mobs armed with swords, sticks, dharias, etc. and they were tearing clothes of the girls. There, on one side, there were shouts of “kill, cut” and on other side, there were screams of “help, help”, and the persons in the mobs were assaulting people. He had seen fire burning there and while hiding, it became night, however, sounds of “kill”, “cut” and “help” kept on coming continuously.

59.6 At around 12 o'clock at night, four police jawans shouted from the ground and said “come down, we are police personnel”. However, since they were frightened, they did not believe that they were police personnel and all of them started crying and at that time, two policemen climbed on the terrace and told them that they were the policemen and that they should trust them, whereafter, they came down with their families. There were dead bodies lying below the terrace and passing through the dead bodies, they started walking forward with the policemen. It was dark at that time and the police vehicles were standing near the Noorani Masjid. He sat in the vehicle with his family members and ten to twenty other people. When the vehicle went ahead, near Saijpur Patiya, there was a mob which pelted stones to stop the vehicle. The people in the mob said, “*Make the Miyas in the vehicle get down*”, however, the policemen showed them a gun and proceeded forward. They were dropped at the Ghummat Camp at Shahibaug, where they stayed.

59.7 After about eight days, the police came there and recorded their statements. He had lodged his complaint. Around eight days after the complaint was lodged, the police

came there in a vehicle and took them to their house in the morning at around 11 o'clock and drew a panchnama. The witness has deposed that everything in his house was burnt.

59.8 The witness has further deposed that six years thereafter, there was a call from the SIT office, and his statement was recorded. The contents of the complaint lodged by the witness have been read over to him and he has identified his thumb mark there under and the same is exhibited as Exhibit-268.

59.9 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that some of the houses in Jawannagar, Hussainnagar, Hukamsing-ni-Chali, Pandit-ni-Chali, Chetandas-ni-Chali and other chawls, have either single storeys or two storeys. The witness has been cross-examined with regard to the contents of his statement recorded by the SIT. The witness has admitted that on the day of the incident, the mobs had come from all four sides and he had not recognized anyone. The witness has denied that from the terrace of Gangotri Society, one cannot see what is happening at Jawannagar and that one could merely hear the sounds. The witness has admitted that there is a two and a half to three feet high parapet wall on the terrace at Gangotri Society, behind which they were hiding.

59.10 The witness has proved the first information report Exhibit 268 and has admitted the contents thereof to be true. It may be noted that the first information report Exhibit 168 has been subsequently merged with the main first information report being Naroda Patiya Police Station I C.R. No.100/02 and

therefore, in is no longer in the nature of a first information report and at best can be said to be a previous statement of the witness.

59.11 Since several statements of this witness have been recorded, the concerned Investigating Officer or the assignee officer of the concerned Investigating Officer, who have recorded such statements have been cross examined to prove the omissions and contradictions in the evidence of the witness as to the previous statements recorded by them.

59.12 PW-282 Kalubhai Sartanbhai Desai, the assignee officer, in his cross-examination, has admitted that he had recorded the statement of this witness on 16.05.2002. The assignee officer has further admitted that he has not recorded the statement of this witness in connection with any complaint given by this witness to his officer.

59.13 The contents of paragraph 6 of the deposition of this witness from the first line to the ninth line are read over to the assignee officer, wherein the witness has stated that he went home and thereafter, in this situation, he had stayed at home with his family members, in the meanwhile, many times he had heard shouts of "kill, cut" and "help" and that till 12 o'clock at night, they stayed at home and thereafter, he took his family towards Gangotri Society and on the way he saw that the houses of Hindus were locked. Since the houses were locked at Gangotri Society, they climbed on the terrace of a house. The assignee officer has admitted that this witness has not stated these facts in the statement recorded by him.

59.14 The contents of paragraph 7 of the deposition of this witness are read over to the assignee officer, wherein the witness has stated that he saw that mobs of thousands of people with swords, sticks, dharias etc. and they were tearing the clothes of the girls. On one side, there were shouts of “kill, kill” and on the other side people were crying “help, help” and the people in the mob were assaulting the people there. The assignee officer admitted that this witness has not stated these facts in the statement recorded by him, but has clarified that the witness has stated that mobs of people had gathered there.

59.15 The contents of paragraph 9 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness has stated facts regarding the police coming at 12 o'clock at night and shouting out to them that they were policemen and that they should come down, but out of fear and because they did not believe that they were policemen, they were crying and that thereafter, two policemen came on the terrace and assured them that they were police, whereafter they came down with their family members and they saw corpses lying on the way and passing through the corpses, they started going forward with the police. That while they were going, near Saijpur, a mob pelted stones at the car and were saying that there are Miyas in the vehicle, make them get down, but the police showed them a gun and they went away. The assignee officer has admitted that the witness had not stated these facts before him. In the opinion of this court, not mentioning these facts which have taken place after the incident cannot be said to be an omission amounting to a contradiction within the meaning of such

expression as envisaged in section 162 of the Code.

59.16 The assignee officer has admitted that this witness had not stated before him that when he went to have tea, he had seen such mobs but has clarified that the witness had stated that at 9 o'clock, he had gone on the road and he saw the Hindu mobs having gathered there.

59.17 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination, admitted that he has recorded the statement of this witness on 5.6.2008. He has admitted that upon reading the statement of this witness, it does not appear that he has made an application to the SIT. He has admitted that this witness had stated before him that they were at home when at around 8 o'clock they came to know that mobs of Hindu from Natraj Hotel and Krushnanagar had gathered on the side of the Noorani Masjid. He had not left his house because he was earlier injured on his leg, due to which, he had difficulty in walking. Thereafter, at around 10 o'clock he came to know that the mobs were causing damage and pelting stones and burning the Noorani Masjid and the surrounding areas. The first nine lines of paragraph 6 of the examination-in-chief of this witness are read over to the Investigating Officer, who has denied that all these facts have not been stated by the witness in the statement recorded by him.

59.18 SUBMISSIONS: The learned counsel for the appellants submitted that the witness does not involve any of the accused. He has not made any allegation against the police or the manner and method of investigation. It was submitted that the witness has stated that (1) a mob of

thousands of people were tearing the clothes of girls, (2) when they got down from the terrace of Gangotri Society corpses were lying on the ground. It was submitted that these two facts are not corroborated by any evidence. It was submitted that the witness has admitted that the mob came from all four sides and he could not identify anybody.

59.19 It was further submitted that this witness is staying in the area since seven to seven and a half years. Though he has seen the mob, he has not implicated any accused, including the local accused.

59.20 ANALYSIS: From the testimony of this witness all that emerges is that in the morning of 28th February, 2002 mobs came on the high way and subsequently entered the chawls and started damaging and burning the houses. The witness has stated that upon the mobs entering the chawls, he and his family members fled from their house and took shelter on a terrace of Gangotri Society where they could hear shouts of “kill, cut” and cries for help throughout the evening till night and that from the terrace they could see the armed mobs were stripping girls and assaulting people. He has also said that when they came down from the terrace, they could see corpses lying on the ground. However, from the cross-examination of the assignee officer who had recorded his statement first in point of time, an omission in the nature of a contradiction is proved that the witness has not stated these facts in the statement recorded by him. Since this is the core of the testimony of this witness, not stating the same before the police at the first point of time, is a material contradiction affecting the credibility of the witness to the extent of the new

facts which have subsequently been deposed by him.

59.21 Insofar as the contention that considering the height of the parapet of the terrace, persons sitting inside could not see what was happening outside is concerned, in the opinion of this court even if people were sitting on the terrace behind the parapet it was always possible for them to peep out and see what was happening. When there are screams coming from people who are being burnt and assaulted, it cannot be gainsaid that a person would be tempted to look outside to see what is happening.

59.22 This witness has not implicated any accused, and hence, his testimony does not come to the aid of the prosecution in proving the charge against any of the accused.

60. **PW-40 Taufikbhai Akbarmiya Sumra**, aged 43 years, has been examined at Exhibit-290. The witness has deposed that he is residing at *Imambibi-ni-Chali*, Naroda for the last thirty to thirty five years. At the relevant time, he used to work in a garage and wash cars.

60.1 On 28.2.2002, there was a call for Gujarat Bandh and he was at home. In the morning at around 9:00 to 9:30, there were shouts and there was a lot of commotion outside, hence, he came out and he saw the mob coming from the side of Naroda Patiya.

60.2 The witness has deposed that this mob was shouting "kill" and "Jay Shri Ram". The mob was advancing

forward and had started pelting stones. While he was in the mob, his family members got frightened and left. Out of fear, he joined the mob. At around 12 o'clock in the afternoon, the people in the mob entered Hukamsing-ni-Chali, near the Naroda Workshop. The people in the mob were saying "Jay Shri Ram" and had started looting and burning the houses. They had started burning all the houses in the chawl. He ran off to Gangotri Society to protect his life. In the incident, he was injured on the left hand by a brick. He had learnt that his family had gone inside the S.R.P. Quarters and out of fear, he hid on a terrace of Gangotri Society, where, like him, there were three hundred to four hundred other people hiding there. Thereafter, at around 3 or 4 o'clock, two Marathi ladies were going to the S.R.P. Quarters and he also entered the S.R.P. Quarters with them, where he met his family. At around 2 o'clock at night, the police came and took him and his family. There were around three hundred to four hundred other people in the S.R.P. Quarters. The police took them to Dariyakhan Ghummat Relief Camp. Thereafter, the police had come to the camp and had recorded his complaint in which he had stated the damage sustained by him. The complaint has been exhibited at Exhibit-291.

60.3 CROSS EXAMINATION: The witness has been cross-examined by the learned advocates for the accused; however, nothing much turns upon the testimony of this witness. The witness does not involve any of the accused. He admits that there was a long queue of persons who wanted to file complaint. He admits that behind Gangotri Society there is a field and behind the field there is canal and that the road to the canal is about fifteen to twenty feet wide.

60.4 SUBMISSIONS: The learned counsel for the appellants-accused have submitted that though the medical certificate of the witness was available, the prosecution has not taken care to produce the same on record. It was further submitted that this witness has not named any accused though he knows people in the area, which gives reason to doubt the presence of the accused who are local residents of the area at the time of the incident.

60.5 ANALYSIS: From the testimony of this witness it emerges that the mob came at around 9:00 to 9:30 in the morning and at around 12 in the afternoon, the mobs started entering the chawls and looting and burning the houses. The witness like many other Muslims fled to Gangotri Society and took shelter on the terrace of a house. Subsequently, upon getting a chance, he entered the S.R.P. Quarters and later on was taken to the relief camp by the police. The witness has not named any accused or ascribed any particular role to any person. Nothing much, therefore, turns upon the testimony of this witness.

61. **PW-41 Alauddin Adambhai Mansuri**, aged 40 years, has been examined at Exhibit-322. The witness has deposed that he was residing at *Hussainnagar-ni-Chali, Near S.T. Workshop, Naroda Patiya* and was running his own garage named Jagrut Motor Garage, Near Naroda Railway Crossing.

61.1 The incident took place on 28.2.2002. On that day, at around 10 o'clock in the morning, he was at home with his

family members when his father-in-law whose name is also Adambhai (he does not remember his full name), came to their house, whereupon he learnt that stones were being pelted outside. He came out of his house and went to the main highway and saw that the mob was coming from the direction of Natraj Hotel and the people in the mob were throwing stones at the Noorani Masjid as well as the chawls and were pelting stones towards their Hussainnagar-ni-Chali. After a little while, he returned home. He stayed at home for some time, when from the rear side of the chawl, from the direction of Uday Gas, a mob came and started pelting stones. The mob was shouting, "cut and kill the Miyas". The people in the mob were armed with pipes, sticks and swords and were wearing saffron bands round their heads. The people in the mob had looted articles from their houses and had burnt their beds, etc. He had seen the mob carry out such looting at Hussainnagar-ni-Chali. Upon the mob coming in this manner, he, along with his family, went to Gangotri Society, where they went on a terrace where there were other people also. He and his family members stayed on the terrace till 4:00 to 5:00 p.m. After coming down from the terrace of Gangotri Society, they went to the S.R.P. Quarters. Since his wife was wearing a saree, the S.R.P. people told them, "*You are our people, come in*". They were not letting any other people come in. The witness has stated that they stayed at the S.R.P. Quarters throughout the night and in the morning at around 4:00 or 5:00, an S.R.P. vehicle went to drop them at the Shah Alam relief camp. They stayed at the camp for around three months. Thereafter, he returned to Naroda Patiya. However, since he was afraid, he rented a house at Vatva and stayed there for a month. Thereafter, the relief camp allotted a house to them and at

present, he is residing in the allotted house. In the incident, all his household goods had been burnt. Ten to fifteen days after the incident, he had made an application to the police in connection with the loss suffered by him, which he had made to the Naroda Police Station. The witness has stated that he had studied till the 4th Standard and can read Gujarati. His application is read over to him and he has admitted the contents thereof and the same is exhibited at Exhibit-323.

61.2 CROSS EXAMINATION: The witness has been cross-examined by the learned counsel for the defence mainly as regards the topography of the area.

61.3 SUBMISSIONS: The learned counsel for the appellants submitted that the witness has been residing since many years in the locality, and has seen the mob closely, but he does not involve any accused by name or identification. He has a garage in the same area since fifteen years, but he does not identify any resident of the area. It was submitted that no allegation has been made against the police in his statement recorded by the SIT nor has he stated so before the court. It was submitted that this witness has seen the mob coming from Natraj but does not say that it was raising slogans or that the people in the mob were armed with weapons. It was also submitted that this witness has gone to the S.R.P. Quarters after 5 o'clock and was permitted to go inside, which indicates that the people were not restrained from entering the S.R.P. Quarters.

61.4 ANALYSIS: This witness is a resident of the area and has seen the mob coming on the road, but has not named or

identified any accused. Insofar as entering the S.R.P. Quarters after 5 o'clock is concerned, the witness has stated that since his wife was wearing a saree, under the impression that they are Hindus, the S.R.P. personnel had let them enter the S.R.P. Quarters while other people were restrained from doing so. The contention that people were permitted to enter the S.R.P. Quarters even in the evening hours, therefore, does not merit acceptance. Since the witness has not implicated any accused, nothing much turns upon the testimony of this witness.

62. **PW-45 Sufiyabanu Yakubhai Shaikh**, aged 40 to 45 years, has been examined at Exhibit-380. The witness has deposed that she can understand Gujarati a lot, but she cannot speak in Gujarati and would prefer to speak in Hindi.

62.1 The witness has deposed that in the year 2002, she was residing at *Jawannagar, Naroda Patiya* with her family comprised of her two daughters and her son. Her husband had passed away about nine years prior thereto.

62.2 She has deposed that there were disturbances about seven years prior thereto when the incident had taken place and that there was a call for bandh.

62.3 At the relevant time, she was working in the plastic factory of Pappubhai Sindhi, which was situated near Railway Crossing, Kubernagar and the timings of her job was from 8:30 in the morning to 6:30 in the evening.

62.4 As per her routine, on the day of the bandh also,

she had set off for her job at 8:15 in the morning. When she went for her job, her three children were at home. On that day, during the lunch break, a worker named Ijubhai had gone out to wash his hands and he had seen that the mattress shop opposite the factory was burnt. Ijubhai had found out that Naroda Patiya had also been set on fire, and hence, she and Ijubhai had gone to the house of their employer who was residing in the Kubernagar area, behind their factory.

62.5 When they went to their employer's house and informed him about arson at the Patiya and the mattress shop being set on fire, he asked them to wait for a while and thereafter, she, Ijubhai and her employer went on his scooter and returned to the factory. Her employer had then closed the factory, locked it and thereafter, he dropped her and Ijubhai at Natraj Hotel, Patiya, on his scooter and she had told him that she wants to see as to what has happened to her children.

62.6 When they reached Natraj Hotel, a large number of people had gathered there. Scooters and rickshaws were being burnt. There, she had told her employer Pappubhai and Ijubhai to leave and that she would go home on her own. There was a mob of around one to two thousand people who were armed with weapons and pipes. People asked as to where she wanted to go and she said that she wanted to go to khada (pit), whereupon people asked her whether she wanted to go to die, Muslims are being cut inside. At that time, it was around one o'clock in the afternoon.

62.7 Since on that day, she was wearing a saree like she was wearing while deposing, the people there thought that she

was a Maharashtrian. The witness has deposed that she always wears her saree in *Dakshini* style; hence, people thought that she was a Maharashtrian and started advising her not to go towards the interior side. Therefore, she slowly went to the rear side of the Noorani Masjid. While she was going, she could hear the voices of people belonging to their Miya community. Sounds of “bachao, bachao” (“help ... help”) were coming and upon hearing sound of bullets as if there was firing, she got frightened and went behind the Noorani Masjid and stayed there till late at night. In the meanwhile, she did not get any news about her children. At around 1:30 at night, police vehicles came and the people were going to the Shah Alam relief camp. She was informed that these vehicles belonged to the Shah Alam Relief Camp. She was told to go in these vehicles, but she did not go as the whereabouts of her children were not known.

62.8 At night, she found all her three children at the place where presently Naroda Police Chowky is located when she came to the masjid road. Thereafter, she boarded the last police vehicle which was going to the relief camp as she had found her children.

62.9 They were taken to the Shah Alam relief camp. She has stayed at the Shah Alam relief camp with her children and the police came after five to six days and recorded her complaint. The witness has stated that she is not literate and puts her thumb impression.

62.10 The witness has admitted the contents of her complaint as well as her signature thereon, which is exhibited

as Exhibit-683. The witness has further stated that the police had recorded her statement and thereafter, after six years, she was also called to Gandhinagar for recording her statement. The witness has deposed that her house had been burnt in the incident and her household goods had been looted and set on fire.

62.11 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that she was residing at Jawannagar since the last thirty five to forty years. The witness has been cross examined as to whether she has seen the internal roads of the surrounding areas. The witness has admitted that when she set off for her job at 8:00 to 8:15 in the morning, the atmosphere was good; however, there was a call for bandh. The witness is cross-examined as regards the application Exhibit 383 and she has stated that she is not aware of who had written it for her.

62.12 In her cross-examination, it has been elicited that there was a crowd on the road opposite Natraj Hotel. The witness has stated that she is not aware as to whether the lane of her house was also crowded as people had stopped her outside. The witness has admitted that at that time, there was a crowd of Muslims near the Noorani Masjid. The witness has denied having seen the Muslim crowd pelting stones on the crowd near Natraj Hotel. She has admitted that the crowds near the Noorani Masjid and near Natraj Hotel were different. She has stated that she has not seen any scuffle between both these mobs.

62.13 The assignee officer of the concerned Investigating

Officer had recorded the statement of this witness. He has been cross-examined to prove the omissions and contradictions in the evidence of this witness.

62.13 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 20.3.2002. He has stated that he does not remember as to at which place he had recorded the statement and also does not remember as to whether at the time when he recorded her statement, he had a copy of her printed form complaint. The assignee officer has admitted that this witness has not named any accused in the statement recorded by him.

62.14 SUBMISSIONS: The learned counsel for the appellants-accused have submitted that this witness has not seen the incident and has not implicated any accused, nor has she made any allegations against the police officers. It was submitted that this witness in paragraph 17 of her testimony, has stated that when she left at 8:15 in the morning, the atmosphere was good, which is contrary to what has been stated by PW-52 Aminabibi.

62.15 ANALYSIS: This witness has seen mobs setting scooters and rickshaws on fire when she reached Natraj Hotel. At around one o'clock in the afternoon, she had seen a mob of one to two thousand people armed with weapons and pipes and when she told the people that she wanted to go to Jawannagar, she was asked if she wanted to die as they were cutting miyas inside. Thus, from her evidence it emerges that

by 1 o'clock in the afternoon the mobs had entered the chawls. The witness has not implicated any accused as she has not witnessed the main incidents that took place during the day.

63. **PW-53 Afzalbanu Liyakathussein Zalori**, aged 40 years, has been examined at Exhibit-434. The witness has deposed that she was residing at *Hussainnagar-ni-Chali, Opposite Noorani Masjid, Naroda Patiya* since the last twenty years and was doing the work of preparing wicks for Ashok Stoves at home. Her husband had passed away about fourteen to fifteen years ago. He was in the police department and was serving at the police headquarters.

63.1 The witness has stated that the incident took place on 28th day in the year 2002, but does not remember the month. On that day, in the morning at around 11 o'clock, a mob of around ten thousand people armed with swords, sticks, pipes, etc. had come from the direction of Natraj Hotel. The mob went towards the Noorani Masjid. She was at home and has not seen anything with her own eyes, but had heard from the people. The witness has stated that thereafter, she had taken her parents and come out of the house, and upon seeing the mob, she was frightened as she had never seen like this. Thereafter, she, together with her parents and children went with the people of their chawl to the S.R.P. Quarters, where they stayed for two days. At the S.R.P. Quarters, she had heard from the people of their chawl that everything is now burnt in their chawl and everything is looted. After two days, the police vehicle came and took them to the Shahibaug relief camp.

63.2 The witness has stated that in the entire incident, no one from her family had sustained any injury or died.

63.3 CROSS EXAMINATION: The witness has been cross-examined by the learned advocate for the defence; mostly in relation to the topography of the area. The witness has, however, admitted that at the time when they went inside the S.R.P. Quarters, no persons in the mob had stopped them.

63.4 SUBMISSIONS: The learned counsel for the appellants submitted that this witness does not involve anybody, nor has she made any allegations against the police. She has admitted that when they entered the S.R.P. Quarters and stayed there, no one prevented them from entering and the S.R.P. personnel, who belonged to both, the Hindu and Muslim communities, provided food and water for them. It was contended that through the testimony of this witness, the claims of other witnesses who have stated that they went towards the S.R.P. Quarters but were not permitted to enter, get falsified.

63.5 ANALYSIS: This witness is not an eye witness of the incident and has not implicated any accused. She had heard from people about the mob gathering on the road, and had fled with her family members to the S.R.P. Quarters. Considering the overall evidence of this witness, nothing much turns upon her testimony. Insofar as the contention that the witness has stated that no one stopped them from entering the S.R.P. Quarters, which falsifies the case of the other witnesses is concerned, from the overall evidence which has come on

record, it appears that in the morning hours, people from the chawls were not prevented from entering the S.R.P. Quarters, however, subsequently S.R.P. personnel appear to have been posted at the opening between the S.R.P. Quarters and Jawannagar and the Muslims from the chawls have been prevented from going inside.

64. **PW-54 Jubedabibi Rasidbhai Shaikh**, aged 64 years, has been examined at Exhibit-442. The witness has deposed that she is residing in *Jawannagar-ni-Chali, Naroda Patiya* since the last fifteen years. Her husband had passed away about thirty years prior thereto. She used to reside in lane No.2 and used to fetch water from lane No.1.

64.1 On the day of the incident she had gone to lane No.1 to fetch water at around 9:00 in the morning, at that time boys from the chawl were saying "the mob has come, the mob has come". She saw the mob coming. It came from the side of Uday Gas Agency. Upon seeing the mob, she immediately ran. She took her two daughters, who had come from their matrimonial homes, from her house and went towards Gangotri Society. After staying at Gangotri for about five minutes, she went to the S.R.P. Quarters. In the mob she had seen **Guddu Chhara** who is the only one whom she could identify as she knew him. She did not know anyone else in the mob. At the S.R.P. Quarters she had gone to Hasinaben's house. In the morning at 6:00 a.m., the police came and took them to the Shah Alam camp. Her first information report is given exhibit No.443. In the first information report she had stated facts regarding the things looted from her house. At the

relevant time she was working at people's homes and doing labour work. She used to mop and sweep people's houses.

64.2 CROSS EXAMINATION: In her cross-examination, the witness has denied the suggestion that on the day of the incident she had taken her daughters and locked the house and gone to the S.R.P. Quarters and has stated that she had not waited to lock the house and had taken her children and fled. In respect of this part of her evidence, the witness is sought to be contradicted as to her statement dated 12.5.2002 recorded by the police, to the effect that she had stated therein that she had gone home, taken her daughters Naseem and Rukshana and had locked their house and gone to the S.R.P. Quarters. Thus, the witness is confronted with her police statement not to contradict her with anything stated by her in her examination-in-chief, but is first put a question in her cross examination and is then sought to be contradicted with her police statement in respect of the answer given by her. Thus, through the process of cross examination, what is stated by the witness in her police statement is sought to be brought on record, which is not permissible in law. That part of the evidence of the witness, therefore, is not admissible in evidence.

64.3 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has only named Guddu Chhara who was a local resident and has not been able to identify some of the other accused who were also local residents, though she was residing in the area since seven years. It was submitted that this witness, apart from the fact that she does not implicate anyone other than Guddu, has not

seen any incident.

64.4 ANALYSIS: This witness has only implicated accused **Guddu Chhara** (deceased). Considering her overall testimony, nothing much turns upon it as she had taken shelter at the S.R.P. Quarters right from the morning and has not witnessed the incident. Besides, the witness says that she saw the mob coming from the side of Uday Gas Agency, whereas from the evidence emerging from the record, no mob had come from the side of Uday Gas Agency in the morning hours.

65. **PW-55 Faruk Kasambhai Saiyed**, aged 30 years, has been examined at Exhibit-444. The witness has deposed that he is also known as Mahammadfaruk Kasambhai Saiyed. He knows a little Gujarati but knows Hindi better.

65.1 The witness has deposed that he is residing in *Naroda Patiya* since his birth along with his family. At the relevant time, he was residing there with his wife and two children. His father lives separately at Hussainnagar. At the time of the incident, his mother also used to reside with his father and two brothers. He is working at New Shiv Motor Body as a truck body repairer and his service hours are from 9:00 in the morning to 8:30 at night.

65.2 The incident took place 28.2.2002. On that day, he set off at 8:30 in the morning for going for his job. At that time he was standing at the Naroda Patiya bus stand for going towards Chamunda. From the bus stand he has seen mobs gathering near Natraj Hotel. The mobs were getting the shops

in the area shut down. The people in the mob were wearing khakhi shorts and had tied saffron bands. On seeing all this, he returned home and took his children and went towards Gangotri Society. At that time, his mother, his brother, sister and his wife were also with him. They went to a house in Gangotri Society. From the terrace, he saw the people in the mob ransacking and burning everything. They were burning houses, killing people and ransacking everything. The people in the mobs had pipes, dharias and sticks in their hands. They stayed on the terrace of the Gangotri Society till 12:30 at night. Thereafter, the police came and took them to the Shah Alam camp.

65.3 The police came to the Shah Alam camp after four to five days and he had told them whatever he had seen. The witness is shown the complaint Mark-441/4 and he has identified his signature thereon. The complaint is read over to him and has admitted the contents thereof. The same is exhibited as Exhibit-304.

65.4 CROSS EXAMINATION: The witness has been cross-examined by the learned advocates for the defence with regard to the topography of the area. In his cross-examination, he has admitted that while he was standing at the Naroda Patiya bus stand, nobody had driven him away. He has also admitted that till he reached home from the S.T. Workshop, no incident had occurred. He has admitted that his family has not suffered any loss of life and that he cannot identify the persons who have looted his house and set it on fire.

65.5 SUBMISSIONS: The learned counsel for the

appellants have submitted that though this witness is residing in this area since his birth, that is, for around twenty years prior to the incident and has seen the mob from the terrace of Gangotri Society, he has not identified anyone and therefore, does not implicate any accused. He has made no allegations against any officers or the investigation and has admitted that the complaint was in a printed form and has also admitted that all the persons were wearing khakhi shorts and saffron bands.

65.6 ANALYSIS: All that emerges from the testimony of this witness is that the mobs started gathering at around 8:30 in the morning and were getting the shops in the area shut down. The witness fled with his family to Gangotri Society and took shelter on a terrace from where he saw the mob which was armed with weapons, damaging and burning houses and assaulting people. The witness's complaint was recorded at the relevant time and he has not named any accused.

66. **PW-56 Kamrunisha Muradali Shaikh**, aged 40 to 45 years, has been examined at Exhibit-448. The witness has deposed that she is residing at Chetandas-ni-Chali since the last twenty years with her husband and children. At the time of the incident she was residing with her husband and three children.

66.1 On 28.2.2002 which was a Thursday, the incident of communal riots had occurred. At the time of the incident as well as at present, she is working in a thread factory. Ordinarily, she went for her job at 8:30 in the morning and used to return at 7:00 in the evening.

66.2 On the day of the incident, she set off to go for her job at around 8:30 in the morning. After she reached her workplace, her employer's son told them to go back home as there was a call for bandh, and hence, she returned home at about 9:15 a.m. On that day, people were saying that there are riots outside, and hence, she also went out to see and saw that people were setting the Noorani Masjid ablaze and were pelting stones at the masjid.

66.3 Thereafter till about 12:00, she stayed at home. She had seen the people in the mob who setting things on fire. They were people from outside and she did not know them. At around 12:00, she left her house and went to Gangotri Society with her children.

66.4 The witness has further deposed that all the people in the mob in the open ground were outsiders. The mob which was near her house was comprised of people from the vicinity and this mob took away her goats and were burning and looting. About nine of her goats were taken away and there were many people. Out of the persons who took away her goats in this manner, she had seen **Suresh Chhara**. The other Chharas were also looting and thereafter they had gone to Gangotri.

66.5 They hid on a terrace of Gangotri Society together with many of her family members including her children, her sister, her sister's children, etc. She had sustained an injury on her chest and her daughter was injured on her forehead in the stone pelting. On the same night at 1:30, a police vehicle came

to Gangotri Society and took them to the Shah Alam Dargah where there was a relief camp.

66.6 The witness has deposed that the police came to the camp after five days and as everyone was advising, she had given her complaint there. The witness is shown the complaint Mark 441 and she has identified her thumb impression thereon. The contents of the complaint are read over to her and she has admitted that the same are correct. The complaint is given Exhibit No.449.

66.7 The witness has deposed that after four months, the police had taken her to her house and had recorded her statement and had drawn a panchnama of her house after surveying her house. All her household articles had been looted, but her house had not been burnt.

66.8 After five to six years she was also called to Gandhinagar where she was asked about the facts of her complaint and her statement was also recorded.

66.9 The witness has stated that since Suresh Chhara has taken away her goats about eight years prior thereto, she is not sure whether she would be able to identify him but if she can recognise him she will identify him. The witness has thereafter, correctly identified accused No.22 Suresh Chhara.

66.10 CROSS EXAMINATION: In her cross-examination, it has been elicited that she had reached the factory at 9 o'clock. The witness has admitted that when she returned from the factory via Krushnanagar, she had reached

her home peacefully. It has further come out that she had stayed at home till 1 o'clock. The witness has admitted that when she left her house, till then the mob had not come till their chawl. The witness has denied that there is an open ground near Gangotri Society and has stated that it is very far. From the cross-examination of this witness it has been elicited that at the relief camp some people were sitting and everyone was giving their complaints there. Somebody told her to go there to lodge her complaint and, hence, she had gone there. She has admitted that when she went to give her complaint, other people had also come. She has stated that she is not aware as to whether the police were there where she gave her complaint. The witness has admitted that the person who took down the complaint wrote what she had told him and thereafter it was read over to her and she had put her thumb impression thereon. She has also admitted that in the complaint given by her she had not named any accused.

66.11 The witness had denied that she had named the accused whom she has identified only before the SIT, and has voluntarily stated that she had named him everywhere. The witness has admitted that she does not know what is recorded in the complaint Exhibit 449 and that there is reference to V.H.P. in the complaint but she does not know what it is. Similarly she does not know what Bajrang Dal is and that she never had any occasion of talking with any worker of V.H.P. or Bajrang Dal.

66.12 The witness has stated that she does not know whether in her statement dated 7.6.2002 recorded by the police, she had said that she does not know any of the persons

in the mob. She has admitted that she had not described Suresh Chhara before the SIT with his physical features, address, etc. The witness has admitted that the name Suresh Chhara is very common in their locality and that there are several persons named Suresh Chhara. She has admitted that she had never had any occasion to talk to Suresh Chhara but has stated that eight years ago he used to come there and hence she knew him. The witness has denied that at the instance of people from her community, she was deposing falsely and that she had falsely identified the accused.

66.13 The witness has denied that one cannot see Jawannagar from Gangotri Society. She has voluntarily stated that it is nearby and that one can see Jawannagar if one climbs on the terrace. The witness has admitted that there was stone throwing from the masjid also.

66.14 Since two statements of this witness were recorded by the assignees of the concerned Investigating Officer, the contradictions in her evidence are sought to be proved through the testimonies of the concerned assignee officers.

66.15 PW-281 Dhananjaysinh Surendrasinh Vaghela, the assignee officer has admitted that he has recorded the statement of this witness on 7.6.2002. He has admitted that this witness had stated before him that she could not recognize any person in the mob. The assignee officer has stated that in his investigation, it has not been revealed that a statement of this witness was also recorded on 12.5.2002. However, it was recorded that earlier also, a statement of this witness was recorded. The assignee officer has stated that he

does not remember as to whether when he was given instructions to record a statement of the witness, any complaint was given by her or whether he was informed that he was required to record a statement in the context of her complaint. The assignee officer has admitted that through the statement of this witness, no name of any accused has been revealed.

66.16 PW-302 Dilip Arjunbhai Rathod, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness has not given the name of any accused in the statement recorded by him.

66.17 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that the witness has implicated only Suresh Chhara (A-22) and has identified him. The limited allegation against this accused is that he took away her goats. It was pointed out that in her statement dated 7.6.2002, she has not named anybody, and in her application dated 5.3.2002 also she has not named any accused. It was submitted that though the witness did not know accused No.22, no test identification parade was conducted. It was pointed out that the complaint Exhibit 449 is in printed form and the witness is not aware of certain parts thereof, wherein reference is made to the VHP and Bajrang Dal. It was submitted that the witness has admitted that there was stone pelting from the masjid. It was argued that the claim of the witness that she and her daughter were injured is nowhere stated either in the complaint or before any authority until her statement came to be recorded by the SIT nor has any medical

certificate indicating that either she or her daughter sustained any injury has been brought on record. It was also pointed out that the witness has not made any allegation against the police that though she had named the accused they had not written it down.

66.18 Referring to paragraph 5 of her deposition, it was submitted that once the witness left for Gangotri, it is not clear as to how she could have seen the incident that took place at her house. Attention was invited to the contents of paragraph 15 of her deposition, to submit that in her cross-examination it has come out that when she returned from her workplace through Krushnanagar, she could do so peacefully. It was pointed out that in her complaint she has not named anyone. Reference was made to paragraph 28 of her deposition in the context of the sequence of events narrated in paragraphs 4 and 5 of her examination-in-chief, to submit that she could not have seen the incident of theft of goats from her house or seen accused No.22 Suresh, and hence, she had not named him in her FIR. It was urged that even if the testimony of the witness is accepted at face value she has implicated Suresh Chhara only for the act of looting her goats.

66.19 Referring to paragraph 28 of the deposition of PW-281 Shri Dhananjaysinh Surendrasinh Vaghela, the assignee officer, who had recorded her statement on 7.6.2002, it was pointed out that the omission in the statement dated 7.6.2002 has been proved through the testimony of this witness namely that she has not named any accused and that she does not know any person in the mob. It was submitted that therefore, for the first time after six and a half years, the witness has

named accused No.22 before the SIT. It was submitted that the witness has admitted that there is a huge population of Chhara and Sindhi communities in that locality and that there are many persons by the name of Suresh Chhara in that area. Therefore, in view of the above two admissions, coupled with the fact that there was no TI Parade even after the SIT recorded her statement, the identification of the accused for the first time before the court cannot be considered as evidence against accused No.22. Besides, there is no recovery of any goat from accused No.22 to corroborate the same. It was submitted that the evidence of this witness, therefore, does not inspire confidence, more particularly when she has named the accused only after six and a half years of the incident and that such time gap is enough to support the defence theory of false implication at the instance of other persons.

66.20 ANALYSIS: This witness has named only one accused viz. Suresh Chhara accused No.22. This witness had lodged a complaint at the relevant time and her statement has been recorded by the police on 7.6.2002. However, neither in the complaint nor in her statement has she named accused No.22. In her cross-examination, it has been elicited that she was read over her complaint, whereafter she had signed it. It is not the case of the witness that she had named the accused at the relevant time and that the police had not written his name. The omission in her statement dated 7.6.2002 is duly proved through the testimony of PW-281 as well as PW-302. From the testimony of this witness, it emerges that she was at home till 1 o'clock, and when she set out from her house, the mob had not come till their chawl. According to the witness, the mob

near her house was comprised of Chharas and people from their locality who were looting the houses and taking away her goats, amongst whom she had seen accused No.22. The witness is a resident of Chetandas-ni-Chali, which is situated at a considerable distance from Gangotri Society. Considering the topography of the area, it would not be possible for the witness to see what was happening at her house in Chetandas-ni-Chali from the terrace of Gangotri Society. Since the mob had not come to their chawl till she left her house and went to a terrace at Gangotri Society, the version of the witness that she saw accused No.22 in a mob taking away her goats, does not inspire confidence, more so, considering the fact, that she has come up with this version for the first time six and a half years after the incident when her statement came to be recorded by the SIT. In view of the above, her testimony to the extent she has implicated accused No.22 does not appear to be credible and reliable.

67. **PW-72 Shakilabanu Firozahmad Ansari** has been examined at Exhibit-510. The witness has deposed that she was residing at Naroda Patiya since her birth. In the year 2002, she was residing there with her mother and her house was situated in *Pandit-ni-Chali*. In the year 2002, Riyazhussain Babubhai Shaikh was her husband. Thereafter, she had divorced him and married Firozahmad Salauddin Ansari. When she was residing with her ex-husband Riyazhussain, she was staying at *Magdumnagar, Vatva*.

67.1 The witness has deposed that the riots took place on 28.2.2002. On that day, she had come to her mother's

place for Eid. Her mother's name is Kudratbibi. On that day, her mother Kudratbibi, elder brother Maheboob, younger brother Sabbirahmad, elder sister-in-law Bibibanu, younger sister-in-law Zubedabanu and her elder brother's three children, viz., Shabnambanu, Safiqahmad and Parveen and her younger brother's three children of viz., Shaminabanu, Mohammadasif and Nadeem, were residing together. At that time, her husband Riyazhussain was also with them.

67.2 The witness has deposed that her mother used to work in a thread factory from 8 o'clock in the morning till 8 o'clock in the evening. On the day of the riots also, her mother had gone to the factory at Chharanagar at 8 o'clock in the morning. At around 9 o'clock in the morning, her mother returned from the thread factory, as her employer had said that there was a call for bandh and hence, she should return home. Her mother had told them as to why she had returned home.

67.3 Her mother had also told that when she was coming back, she had seen that there was a mob of Hindus standing on the road, with saffron bands on their heads and the people in the mob had swords, sticks, rods, etc. in their hands. They were causing damage near the Noorani Masjid and were getting the shops shut. Upon hearing this, her elder brother Maheboob, went to fetch her nephews and nieces who had gone to read Quran e` Sharif at the masjid. Her brother had safely returned with them. Upon hearing this, they also came out. All the members of the family came outside and were standing in another lane outside their lane and were watching. They saw mobs of Hindus causing damage. They were

damaging shops and carts and were setting the Noorani Masjid on fire. The people in the mob had weapons in their hands like rods, swords, sticks, etc. They had come to know that the Maulana Imam of the masjid had also been beaten. Upon seeing and hearing all these things, they had returned home.

67.4 They were all hiding in their house, when at around 12 o'clock in the afternoon, they came to know that the mob was coming inside towards their chawl and hence, they left their home and went away. They had gone towards Jawannagar. Her sister Zarina was residing there and they went to her house and remained there for about two to two and a half hours.

67.5 Upon coming to know that the mob was coming towards Zarina's house at Jawannagar also, they came out of Zarina's house also and went towards S.R.P. There they asked for help to go inside. A policeman wearing khakhi uniform was standing near the S.R.P. Quarters, her mother requested him to let them go inside; however, the policeman told them that they would not let them enter and that under any circumstances, they have to die today. The policeman inflicted blows on her mother's legs with a stick and they returned from there.

67.6 They went to a shuttered shop towards Gangotri Society and were sitting inside the shop. There were also other people in the shop. When they were hiding inside, Bhavani Chhara, Guddu Chhara, Sahejad Chhara and Manu Bhangi also came there and told them that they should not be frightened and asked them to come with them and said that they would

make arrangements for their meal. Upon hearing this, they set off with Bhavani. Bhavani Chhara took them towards Gopinath Society and they sat on a terrace of that society. There also the sounds of the mob could be heard and they came to know that the mob was coming in that direction, and hence, they came out from there also. From there, they went to another terrace. She and her mother had come down from the terrace there.

67.7 Her mother told Bhavani that they had gold, money, ornaments and that he should take away whatever he wants, but he should show them a way to get out. Bhavani said, he is showing them the road leading to Naroda and they can go from there.

67.8 It was immensely crowded there and there was a pandemonium and at this time, she was separated from her family.

67.9 After getting separated from her family, they were going further. Her mother, her brother Maheboob, younger brother Sabbirahemad and their children and her younger brother's wife, etc. were going ahead. She had seen them going forward. When they started going forward, Bhavani gestured to the mob. The mob had many weapons, petrol, diesel, etc. They first assaulted her family members. Guddu Chhara, Bhavani, Sahejad Chhara, Manu Bhangi and Suresh Langdo, all five, were present in the mob that beat up her family members in front of her eyes. These five persons were helping the mob in setting everything on fire. This mob poured kerosene over her family members and burnt them alive. Her

three month old infant nephew was also thrown alive in the fire by the mob. On seeing all this, she went and hid on a terrace.

67.10 Along with her family, there were other Muslim persons also and they were also burnt alive by this mob. The burning people shouted for help, however, she was not in a position to go and help them because if she went there, the mob would kill her also and hence, she remained hiding on the terrace. She was watching everything from the terrace.

67.11 On the terrace where she was hiding, there were other Muslim persons also and they were talking and saying that Jadikhala and Hasanbhai Golawala of their mohalla had also been burnt alive and that Hasanbhai Golawala had been tied to a cot and burnt. On the terrace, she also come to know that a handicapped boy from their mohalla was told by the mob that if he says *Ram*, they would spare him, when the handicapped boy stated that even if he dies, he would not say *Ram*, they poured kerosene over him and burnt him alive. She hid on the terrace till late at night when the police vehicle came and took them to the Shah Alam camp.

67.12 At the camp, she met her nephew Safiqahemad, who was in a burnt condition. There she also met her sister-in-law Bibibanu and her niece Parveen. Bibibanu and Parveen had sustained injuries which were minor in nature and they were given treatment at the Shah Alam camp. Safiqahemad had sustained more injuries, and hence, he was taken to the Vadilal Hospital and she also went along with him.

67.13 At the camp, on the next day, she came to know

that her mother Kudratbibi, brother Maheboob and younger sister-in-law Zubeda and her nephew Mohammadasif, were also at the Civil Hospital and that after some treatment, they had passed away at the Civil Hospital and that they had been buried at the Ganjshahid Kabrastan. She did not get the dead bodies of her mother, brother and nephew; whereas her sister-in-law's dead body was taken by her parents.

67.13 The witness does not remember as to whether the police had recorded her statement at the Shah Alam camp. She has stated that the SIT had recorded her statement at Gandhinagar as stated by her.

67.14 The witness has stated that if Bhavani and Guddu Chhara were alive, she could have identified them. However, as per her knowledge, both of them had passed away. She has stated that she would attempt to identify Shahejad Chhara, Suresh Langdo and Manu Bhangi as a period of six years has elapsed. The witness has thereafter correctly identified accused No.28 – Manu Bhangi, accused No.26 – Suresh Shahejad and accused No.22 – Suresh Langdo in the dock.

67.15 CROSS EXAMINATION: This witness has been extensively cross-examined by the learned advocates for the accused. In her cross-examination, it has come out that she is illiterate and has not studied at all. She was residing with her parents at Pandit-ni-Chali. After her marriage also, she was residing at Pandit-ni-Chali. The witness has stated that she had come to her mother's place for celebrating Eid, three to four days prior to the riots. At that time, her husband and her son were also with her. She has admitted that when her mother set

off for going to her work, the situation was not in any manner disturbed. She has further admitted that upon hearing that the mob was coming, there was pandemonium in the chawl. She has further stated that wherever all the members of her family went, they had gone together till she and her children were separated from them. She has deposed that Zarinaben is her elder sister; however, she is not in a position to state the distance between the highway and Zarinaben's house. She has further stated that Zarinaben's neighbours were also in their houses where people were hiding.

67.16 The witness is not in a position to state exactly where her family members got separated from her, but has stated that it was something like a society. In her cross-examination, it has come out that in the shuttered shop, there were other Muslims also and that the shutter was half closed and half open. She has admitted that when other Muslims were sitting in the shop, at that time also, the shutter was half open. The witness is not in a position to estimate as to how long she was there in the shuttered shop. She is not in a position to state as to where the shop is located, whether Jawannagar, Gopinath Society or Hussainnagar. She has stated that there were about twenty to twenty five persons hiding in the shop. She does not know that when they came out of the shop, whether at that time the other Muslims who were sitting there had also left.

67.17 In her cross-examination, it has come out that she has not seen Gopinath Society earlier as she was not required to go on that side. She has admitted that on the day of the incident, they had gone to hide in Gopinath Society and has

voluntarily stated that on that day, Bhavani had asked them to come to Gopinath Society, and hence, they had gone there. The witness has denied that while they were going to Gopinath Society, no person in the public had stopped them. She has stated that at that time the mob was assaulting them and that they were cautiously going. She has admitted that she has not sustained any injury.

67.18 In her cross-examination, it has further come out that their family members who had got separated from them had gone towards Naroda. In a little while she had come to know that her family had got separated, however, it was so crowded it was not possible to catch up with them. Despite the crowd, she could see her family. Her family was not very far from her. The witness has admitted that the distance between her and her family could be covered within two minutes. At that time also, the mob was huge. The huge mob was between them. She has admitted that since the mob was between them, she could not reach her family. She has stated that she does not know whether the members of the mob had seen her.

67.19 The witness has admitted that all the people from their mohalla were at the Shah Alam camp and that they used to talk with each other as regards the nature and extent of injuries sustained by them. She had narrated the incident of her family at the camp. The witness has denied that the organizers of the camp used to keep a record of how many persons had come and who had come from which area and, has voluntarily stated that the police was doing all that writing work.

67.20 The witness has stated one or two months after she went to the camp, the police had come to examine her. When the police came to the camp, she herself had gone to the police and none of the camp organizers had introduced her. She does not remember whether she had got her statement recorded at that time itself.

67.21 The witness has stated that she has not told the camp people that eight persons of her family had been burnt alive, but had stated so before the police. She has admitted that for the incident of her family members, she had received about forty lakh rupees. She does not remember exactly after how much period, she had received such amount. The witness has admitted that she was stating facts regarding the damage and has voluntarily stated that they had fled in the clothes that they were wearing and at that time their position was very bad.

67.22 The witness has stated that in connection with the incident relating to her family members, she has not taken any action before any authority except for her statement before the SIT. In her cross-examination, she has stated that she knows Jadi Khala and Hasan Golawala and also knows the handicapped boy whom she has referred to. She has admitted that she had not seen the incidents relating to these three people, but had heard it from others. She has stated that her sister-in-law Bibibanu has passed away.

67.23 In her cross-examination, it has further come out that she never ventured out of her house without any reason

ad that whenever she went out, she wore a burkha. At that time she used to do tailoring work at home but did not go for a job. The material for stitching was sent to them at home and she did not have to go out to get it. The witness has also been cross-examined regarding the topography of the area.

67.24 In her cross-examination it has come out that prior to her statement being recorded, she had made an application to the SIT. She has admitted that after she made the application, the SIT had recorded her statement at Gandhinagar. She has admitted that when she went to make the application, she was totally fearless and was not afraid of anyone. She has admitted that she is not in a position to state as to who had written the application made by her before the SIT. She has further stated that when she made the application, she was not aware as to whether she has lodged any complaint with the police in respect of the incident of 28.2.2002. She has stated that nobody had told her to give the application to the SIT, at Gandhinagar. That on account of the public notice given in the newspapers, wherein it was stated that if anyone wants to make an application or say anything, they should do so and hence, since the members of her family had died, she had thought it fit to make such application. The witness is also cross-examined as regards who wrote the application and the manner in which the application was made. The witness has identified her thumb mark in the application and the application is read over to her and exhibited at Exhibit 511.

67.25 In her cross-examination, it has come out that the mob which came to their chawls had come inside from the

direction of the Noorani Masjid. She has stated that she cannot say whether the mob was standing at the corner of Gangotri Society. She has admitted that the people in the mob were also pelting stones. She has seen the people in the mob burning and assaulting people. She has not seen this mob setting houses on fire.

67.26 In her cross-examination, she has stated that on the day of the incident, they had gone from Pandit-ni-Chali towards Jawannagar and from there, to the shuttered shop. From the internal lanes, she had reached Gangotri Society. In her cross-examination, it has come out that in the shuttered shop where she was hiding, there were about twenty to twenty-five other persons and thereafter, there was no other space in the shop. She has admitted that persons sitting in the shop were sitting close to each other and they were all sitting inside with the intention of hiding. She is not aware as to whether the shutter was a steel shutter and has stated that it was true that the shutter could be closed by pulling it down. She is not in a position to say as to whether the shop is situated on the road immediately after Jawannagar ends. She has stated that even on date, she is not in a position to state as to where the shuttered shop is located.

67.27 In her cross-examination, she has stated that she has not seen any political leaders, police officers or police personnel coming and going to the camp during the eight months when she had taken shelter in the relief camp. She has stated that having lost her family members, she was not in a position to take note of any such things. She has admitted that other people like her who were living in the camp, used to talk

with each other.

67.28 In her cross-examination, she has admitted that while she was at the camp, one Shri Barot of the Crime Branch had recorded her statement and has voluntarily stated that she does not remember as to what she has stated therein. In her cross-examination, she is confronted with her statement dated 13.05.2002 recorded by the police wherein it is recorded that upon the above mob charging inside shouting and burning, in the pandemonium, six members of her family, namely, her mother Kudratbibi wife of Khurshid Ahemad, age 50 years, Sabbirhussain son of Khurshid Ahemad, age 25 years, Zubedabanu wife of Sabbirhussain, age 22 years, Shaminabanu daughter of Sabbirhussain, age 5 years, Mohammadasif son of Sabbirhussain, age 4 years, and Mohammad Nadim son of Sabbirhussain, age 4 years, got separated from them and all of them were surrounded by a mob belonging to the Hindu community and were killed. She had received news of such deaths at the Shah Alam camp when her younger brother Maheboobhussain Khurshid Ahemad met her and gave her the news and she had come to know that all of them had been burnt alive by the mob. The witness has denied that she has not seen the incident in which all the six persons were killed and has voluntarily stated that in all eight persons from her family were killed. The witness has also denied that her younger brother Maheboob had met her at the camp.

67.29 The witness has further been contradicted with her above statement, to the effect that she has also stated that the fact regarding their death was told to her by her younger

brother Maheboob Hussain Khurshid Ahemad when he met her at the Shah Alam camp and thereupon, she had learnt that all of them had been burnt to death by the mob and that her younger brother Sabbir Hussain was killed with sword blows.

67.30 The witness has denied that she has not seen any incident as stated by her in her examination-in-chief wherein, eight persons of her family members were killed, hacked down and set on fire and that no such incident has taken place. The witness has denied that she is stating all these facts on the basis of what her brother Maheboob had told her.

67.31 The witness has admitted that she has not gone to the hospital to meet her family members and that she has not seen their dead bodies and she does not remember as to whether the police had called her for identification of the dead bodies of her family members.

67.32 The witness is confronted with her statement dated 13.5.2002 in the context of paragraph 10 of her examination-in-chief and she has denied that she has not stated such facts before the police. The witness has voluntarily stated that she had informed the police, but the police had not recorded the same. She has denied that in her police statement, she has not stated that Bhavani started going ahead and gestured to the mob.

67.33 The witness is further confronted with her statement dated 13.5.2002 in the context of last eight lines of paragraph 12 of her examination-in-chief to the effect that she had not stated such facts in such statement. The witness has

voluntarily stated that they were informing the police and the police were not listening to them, and that they were telling them that they have written down everything. The witness has been cross-examined as regards the manner in which the statements were recorded by the police. The witness has stated that for the first time, she came to know that the police had not written down what was stated by her in her statement, when her statement was read over to her when they had gone before the SIT. The witness states that she does not remember as to whether she has stated before the SIT that no statement of hers has been recorded earlier.

67.34 The witness has been cross-examined with regard to the contents of paragraphs 13 and 14 of her examination-in-chief to the effect that she has not stated such facts in her statement dated 13.5.2002, which she has denied. At this juncture, it may be noted that below both the paragraphs in respect of which the above referred contradictions in relation to paragraphs 13 and 14 are put to the witness, the trial court has made a note that such facts are not found in the statement. This indicates that the trial court has recorded facts from the police statement accepting the same to be true. It is settled legal position, as is also clear from the provisions of section 162 of the Code, that a statement recorded under section 161 cannot be used for any purpose except for contradicting the witness in the manner provided under section 145 of the Evidence Act. Therefore, when the witness denies a particular fact as having been recorded in her statement, such contradiction has to be proved by the person who has recorded the statement, namely, the concerned investigating officer. In the absence of such facts being proved

through the testimony of the investigating officer or before the investigating officer is examined, it is not permissible for the court to refer to any part of the statement as no part of such statement is admissible in evidence unless duly proved in the manner provided in law. The procedure adopted by the trial court, therefore, is not in consonance with the legal provisions. It may be noted that at some places the court has referred to the statement to bring out the exact nature of contradiction, which appears to be permissible in law inasmuch as otherwise it would appear as if the witness had not stated anything in the statement under section 161 of the Code.

67.35 The witness has been cross-examined with regard to her stay at the V.S. Hospital when her nephew Shafiq Ahemad was under treatment and regarding the police recording statements of other persons who had come with her. The witness has denied that she was saying that the mob that she had seen was a Hindu mob is on the basis of assumption. The witness has voluntarily stated that those persons had tilaks on their foreheads and some of them had tied saffron bands, due to which, she thought that the mob was comprised of Hindus.

67.36 The witness is further confronted with her statement dated 13.5.2002 to the effect that she had stated therein that she does not know the people in the riotous mob, which was comprised of people from other areas and had tied saffron coloured bands on their heads and this riotous mob had looted her household articles and taken them away. The witness has also been confronted to the effect that she had further stated that the people in the riotous mob had, as stated

above, killed in all six persons from her family. She has voluntarily stated that she had mentioned eight persons. [Here also, the trial court has made a note to the effect that such facts are there in her statement without such facts having been duly proved through the testimony of the concerned investigating officer.]

67.37 The witness has admitted that in her statement recorded by the SIT, she had stated that on that day, she had no fear and that no one had threatened her. She has admitted that in her statement before the SIT, she had stated that on the next day, after going to the camp, she had come to know that members of her family have been burnt alive by the mob, out of whom her mother Kudratbibi, her brother Maheboob, her sister-in-law Zubedabanu, her nephew Asif were admitted in a burnt condition and that all four of them also had died during the course of treatment. [This part of the cross-examination of the witness is not admissible in evidence, inasmuch as the statement recorded by the SIT has been used for a purpose other than to contradict the witness.] The witness is also confronted with her statement dated 13.5.2002 to the effect that she had stated therein that in the afternoon, to protect their lives, all of them had gone to her elder sister Zarinabanu Afsharhussain's place at Jawannagar and stayed there for about an hour, and upon the Hindu mob coming, they had fled and come back home at Hussainnagar and had hidden in their house and in the evening, at around 5 o'clock, upon a huge mob of Hindus shouting kill, cut and torching the houses, coming charging inside, she, her husband and two children, all the four, and other members of her family were separated in the pandemonium and till 12 o'clock at night, they were hiding

in different houses in the chawl and at 12 o'clock, upon the police vehicles coming, they went to the relief camp at Shah Alam at around 2 o'clock. The witness has voluntarily stated that after they left Hussainnagar and went, the mob was coming inside and hence, they were not in a position to return back to the same place.

67.38 The witness is sought to be contradicted to the effect that in her statement before the SIT she had not stated that Bhavani, Guddu, Suresh Langdo, Sahejad and Manu Bhangi, all five of them, were helping the mob and burning and that she could not go to save them as the mob would kill her. The witness has stated that she does not remember as to whether she has named the three accused whom she has identified before the court, before any police. She has admitted that she has not been called by the police at any point of time for test identification of the three accused

67.39 In her cross-examination, it has come out that at the time when her statement was recorded by the SIT, she has not stated that Shri Barot had not written down what she was stated by her. The witness has denied that in her statement before the SIT she has named five accused after due deliberation over a period of six years upon being so tutored. In the cross-examination of the witness, it has been brought out that on the day of the incident, the roads were fully crowded. She has admitted that the mobs were so huge that it was difficult for even a cycle or a scooter to pass through. The witness has admitted that at the time of the incident, it was very difficult to identify anyone. The witness has also admitted that she has resided at Naroda Patiya for at least twenty two

years.

67.40 The witness has been re-examined by the Assistant Special Public Prosecutor for the purpose of explaining certain contradictions brought out in her cross-examination. In her re-examination, the witness has admitted that in her statement dated 27.5.2008 recorded by the SIT, she has stated that from her mother's family, viz., her mother Kudratbibi, both brothers Maheboob, Sabbir, sister-in-law Zubedabibi, niece Shabnam, niece Shamina, nephew Asif, nephew Nadeem, had died. In her re-examination it has been further brought out that the witness had, in her statement recorded by the SIT, stated that her mother and all of them had come down and told Bhavani Chhara to save them, so he had said that they would save them. Whereupon her mother said that she had ornaments and money, he may take all of them and but find a way for them to escape, whereupon he had told them to escape from road towards Naroda. that they were separated and were searching the road going towards Naroda.

67.41 After re-examination, the witness has been further cross-examined, whereby the witness is sought to be contradicted as to her statement dated 13.5.2002. The witness has admitted that till her statement was recorded by the SIT for a period of six years, she had not stated before anyone that two other persons from her family had died. [The re-examination and the subsequent cross-examination of the witness relates to the number of members of the family of the witness who have died in the incident. From the evidence on record, it appears that initially, six persons had passed away; later on, her brother and nephew had also passed away,

meaning thereby, the number of persons who had died increased from six to eight.]

67.42 Two statements of this witness have been recorded, one by the local police and the other by the SIT. Both the officers have been cross examined by the defence to prove the omissions and contradictions as to the statements recorded by the concerned officers.

67.43 PW-284, Tarunkumar Amrutlal Barot, the assignee officer has, in his cross-examination, admitted that this witness had stated before him that upon the above mob of Hindu community shouting "kill, cut" and burning entering inside, the members of her family started running helter and skelter and got separated, wherein (1) her mother Kudratbibi, wife of Khurshidahemad, aged 50 years, (2) Sabbirhussain, son of Khurshidahemad, aged 25 years, (3) Jubedabanu, wife of Sabbirhussain, aged 22 years, (4) Shaminabanu, daughter of Sabbirhussain, aged 5 years, (5) Mahammadasif, son of Sabbirhussain, aged 4 years and (6) Mahammadnadim, son of Sabbirhussain, aged 4 months, got separated from them and all six of them were surrounded by people belonging to the Hindu community and were killed and her younger brother Maheboobhussain Khurshidahemad had given her the news when he met her at the Shah Alam camp and she came to know that the mob had burnt all of them alive. The assignee officer has admitted that this witness had stated before him regarding the happening of the incident, wherein six members of her family had died.

67.44 The contents of paragraph 10 of the examination-in-

chief of this witness are read over to the assignee officer, wherein the witness has stated regarding her mother having offered gold, money and ornaments to Bhavanisingh for showing them the road to escape and Bhavanisingh had told them that he was showing them the road of Naroda and they should escape. The assignee officer has admitted that such facts were not stated by the witness before him. The assignee officer has denied that the witness had stated the facts stated by her in paragraph 10 of her deposition before him, but that he had not written them down. The assignee officer has admitted that this witness had not stated before him that when Bhavanisingh started going ahead, he had gestured to the mob.

67.45 The contents of last eight lines of paragraph 12 of the deposition of the witness are read over to the assignee officer who has admitted that the witness had not stated these facts in the statement recorded by him and has further stated that it has not happened that the witness had stated such facts, but he had not written them down. The contents of paragraph-13 and the contents of paragraph 14, except for the last line, of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that these facts have not been stated by the witness in the statement recorded by him. The assignee officer has denied that this witness had not stated before him that she was residing with her mother since eight years in a house of their ownership and has stated that the witness had stated such facts before him. The assignee officer has admitted that the witness had not stated before him that she had come to celebrate Eid at her mother's place. The assignee officer has admitted that the witness had

stated before him that she could not recognize any person in the mob and that the people in the mob were from the same locality and had tied saffron bands on their heads and the people in the mob had looted all the articles and household goods from the house and taken them away. That as stated by her earlier, the riotous mob had, in all, killed six people from her family. The assignee officer has admitted that the witness had stated before him that therefore, the people of their community started pelting stones in defence and were opposing them to defend themselves. That to protect their lives, all the family members together went to her sister Zarinabanu Asrafhussain's house at Jawannagar and remained there till the afternoon and stayed at Jawannagar also for about one hour and upon the mob of Hindus coming, they had fled from there and returned to their house at Hussainnagar and were hiding in their house and in the evening at around 5 o'clock, a Hindu mob shouting "kill, cut", burning the houses, charged inside and she, her husband and her two children, all four of them and other members of her family, got separated in the pandemonium and till 12 o'clock at night, they had remained hiding in the houses in the chawls and upon the police vehicles coming at 12 o'clock at night, they sat inside and had come to Shah Alam relief camp at 2 o'clock at night. Her house has not been damaged, but all the household goods from her house and a rickshaw have been burnt.

67.46 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 28.6.2008. He has admitted that this witness had not stated before him that they had closed their house and gone to Ansari's house. (The

witness in her deposition has stated that Pinjara and Ansari is one and the same person). The Investigating Officer has admitted that this witness has not stated before him that Bhavani, Guddu, Suresh Langdo, Sahejad and Manu, all five, were helping the mob in burning. He has stated that, however, the witness has named all the accused and that the people in the mob had continued with the damaging and burning.

67.47 SUBMISSIONS: Referring to the contents of paragraph-4 of the testimony of this witness, Mr. Y. S. Lakhani, learned counsel for the appellants-accused submitted that in her statement before the police, she has not stated that she had come to her mother's house for celebrating Eid. Referring to paragraphs 9 and 10 of the examination-in-chief of the witness, it was submitted that the witness does not say as to on which side they were going, viz., whether towards the highway or the canal, nor does she state as to from where she had seen the incident, which fact itself indicates that she had not seen the incident.

67.48 It was submitted that this witness does not say as to on the terrace of which house of the society she had gone. It was submitted that the evidence on record shows that the mob from the canal was comprised of totally unknown persons and these named accused were not part of that mob. Referring to the contents of paragraph 12 of the testimony of the witness, certain omissions were pointed out as to her statement recorded by the police. Referring to the testimony of PW-284, it was pointed out that the contradiction has been proved through the testimony of the said witness. It was pointed out that the contents of paragraph-13 of the examination-in-chief

of this witness do not find place in her police statement dated 13.05.2002, which fact has been proved through the testimony of PW-284 and such facts have been stated for the first time before the SIT. Reference was made to paragraph 14 of the testimony of the witness to submit that the same does not form part of the statement recorded by the police and that such facts have been subsequently brought on record to corroborate such version given by some of the witnesses before the SIT. Reference was made to paragraph 27 of the deposition of PW-284 to point out that such contradiction has been duly proved.

67.49 Reference was made to paragraph 68 of the testimony of the witness, wherein, in her cross-examination, she has stated that other than her, twenty to twenty five other persons were sitting in the shuttered shop in which she was hiding and that there was no more space behind them; and the witness has admitted that everyone in the shop were sitting close to each other and were sitting inside with the intention of hiding. It was pointed out that the testimony of the said witness is contrary to the depositions of the other witnesses, who have stated that they had taken shelter in huge godown with shutters wherein there were large number of people and not a small shop, whereas this witness has stated that there was only sufficient space for twenty to twenty five persons to sit in that shop. Referring to the contents of paragraph 74 of the cross-examination of the witness, it was pointed out that the witness has given a totally different version before the police than what was stated by her in her examination-in-chief. It was submitted that her statement before the SIT runs contrary to what she has stated before the police and,

therefore, her version of being an eyewitness after six years, is not correct and that the contradiction has been proved through the testimony of the concerned Investigating Officer PW-284. Referring to the contents of paragraph 85 of her testimony, it was pointed out that despite the position as reflected therein, no complaint had been filed by the witness at any place. The learned counsel for the appellants-accused submitted that before the police, names of any accused had not been given by the witness and for the first time before the SIT she has named the accused referred to in her examination-in-chief.

67.50 Mr. B. B. Naik, learned counsel for some of the appellants-accused referred to paragraph 6 of the examination-in-chief of the witness to submit that in relation to what the witness has stated in that paragraph, the witness has not identified anyone. It was submitted that the witness has stated that thereafter, they came back to Pandit-ni-Chali, which proves that till 11:30, the mobs had not entered the chawls. It was submitted that there is nothing on record to show that the witness's sister Zarina left the house with them. Moreover, the witness does not point out the place where the shuttered shop was situated, which indicates that she was not present at the scene of offence on that day. Referring to the contents of paragraphs 9 and 10 of the examination-in-chief of the witness, it was submitted that there are certain inherent improbabilities in the evidence of this witness. It was submitted that it is not clear as to from which side, the mob had come. It was submitted that the witness does not say on what side they were going, whether towards the highway or the canal, which clearly shows that she has not seen the incident. It was argued that the witness has also not stated as

to on the terrace of which house of the society, she had gone. According to the learned counsel, the evidence on record shows that the mob from the canal was comprised of totally unknown persons and these named accused persons were not part of that mob.

67.51 Referring to the contents of paragraphs 23 and 25 of the testimony of this witness, it was submitted that the facts stated therein raise serious doubts about her presence at the scene of incident. Referring to the contents of paragraph 28 of the deposition of the witness, wherein the witness has stated that after coming out of the shop, her mother had asked Bhavani the direction in which they should go and that they had gone in the same direction, it was submitted that here, the witness states that Bhavani had met them at Jawannagar, whereas in paragraph 12 of her deposition, she states that Bhavani had met them near Gopinath Society, which is a major contradiction in her story. Referring to the contents of paragraph 32 of her deposition, wherein she has stated that in the mob, she could still see her family and that her family was not very far from her, it was submitted that it is improbable that the witness could see her family members in the crowd.

67.52 In the context of what has been deposed by the witness in paragraph 34, wherein the witness has stated that the distance between her and her family was about two minutes and that there was a huge mob between them, due to which, she could not catch up with her family, it was submitted that if there were a mob between her and her family, the witness could not have seen as to who has done what to her family. Referring to the contents of paragraphs 65 and 69 of

the deposition of the witness, it was submitted that it is clear that the witness is aware of the topography of the area and hence, it is unbelievable that she does not know where the shuttered shop inside which she had gone, is situated. It was submitted that the witness could have pointed out the shop where she had gone if she had actually gone there.

67.53 Referring to the contents of paragraph 77 of her deposition, wherein the witness has admitted that she had not gone to meet her family members at the hospital and that she had not seen their dead bodies and at present, she does not know whether or not the police had called her to identify the dead bodies, it was submitted that the witness has not made any efforts to visit the hospital because she was not aware about the same. The attention of the court was invited to the contents of paragraph 103 of the deposition of the witness, wherein she has stated that she had not seen any women of their community wearing a police dress accompanying them, to submit that the story put forth by PW 52 Aminaben, is not supported by any of the witnesses. It was pointed out that this witness in her cross-examination (paragraph 105) has admitted that it was very difficult to identify anyone in the incident.

67.54 The learned counsel submitted that looking to the admission made by the witness in paragraph 91 of her deposition that in her statement before the SIT, she had stated that she had come to know about the death of her family members in the camp, clearly renders the deposition before the court unreliable. It was submitted that in her police statement also, she has stated that she came to know about

the death of her family members in the camp only and that looking to the discrepancies in her evidence and the contradictions in her evidence before the court, her evidence cannot be said to be of a sterling quality on which the court would rely to convict the accused persons in a serious offence where the maximum punishment is capital and imprisonment for life.

67.55 ANALYSIS: This witness is an eye witness and was present at the site on the day of the incident. In all, eight members of her family have died in the incident. Six members died, either on the spot or immediately thereafter and two members died a short while thereafter. If the testimony of the witness is considered de hors the portion in respect of which omissions are brought out in her examination-in-chief, it emerges at around 9 o'clock in the morning they had seen mobs of Hindus damaging shops and carts and setting the Noorani Masjid on fire and that the people in the mob were armed with weapons. This witness was a resident of Pandit-ni-Chali, which is one of the chawls situated at the entrance of the S.T. Workshop road parallel to the chawls opposite the Noorani Masjid. At around 12 o'clock in the afternoon, the mobs started coming to their chawls, and hence, they fled from there and went to Jawannagar to her sister Zarina's house and stayed there for around two to two and a half hours. When the mobs started coming towards Jawannagar, they went towards the S.R.P. Quarters, but were not permitted to enter inside. Therefore, they took shelter in a shuttered shop at Gangotri Society together with other people. While they were there, Bhavani Chhara, Guddu Chhara, Sahejad Chhara and Manu Bhangi also came there and told them that they should

not be frightened and asked them to come with them and that they would make arrangements for their meal, and hence, they went with them. Bhavani took them to a terrace of Gangotri Society. When the mobs started coming in that direction they went to some other terrace and were sitting there. There, she and her mother came down from the terrace. It was immensely crowded there and there was a pandemonium and at this time, she was separated from her family. According to this witness, her family was going ahead in front of her wherein her mother, her brother Maheboob, her younger brother Sabbirahemad and their children and her younger brother's wife etc. were going in front. She saw them going ahead. The witness hid on a terrace till late at night when the police came and took them to the Shah Alam camp. On the next day she came to know that her mother, brother Maheboob and younger sister-in-law Zubeda and her nephew Mahammadasif were at the Civil Hospital and after some treatment they had died.

67.56 From the cross-examination of this witness, contradictions have been brought on record and proved through the testimony of the Investigating Officer PW 281 that before the police she had stated that the fact regarding her family members being burnt to death had been stated to her by her brother at the hospital. Therefore, it appears that from the point when the witness got separated from the family while going towards the road going to Naroda, the witness has not seen the incident of her family and what had been stated to her by her brother appears to have been stated by her as if she had witnessed the same herself. Since the names of the accused have cropped up for the first time before the SIT and before the police she had stated that she does not know any of

the accused, it would be hazardous to rely upon the testimony of this witness against the named accused. Nonetheless, the other facts stated by the witness, till the time she got separated from her family appears to be credible and there is no reason to discard her testimony to that extent. As regards the witness having stated that Bhavani Chhara, Guddu Chhara, Sahejad Chhara and Manu Bhangi had come to the shuttered shop and offered them a meal, whereafter they took them towards Gangotri Society and made them sit on the terrace is concerned, this part of her testimony has not been contradicted. However, from this part of the testimony of the witness even if it is accepted to be true, no culpability can be attributed to any of the named accused as would amount of an offence.

67.57 Thus, from the testimony of this witness, it is established that the mob was damaging properties on the road till around 12:00 in the afternoon, after which it started entering the chawls on the front side of the highway and came to Jawannagar at around 4:00 in the afternoon. Subsequently, the mobs cornered the Muslims near Gangotri Society after 5:00 p.m. and there was a massacre. It also comes out that the police had come late at night.

68. **PW-58 Munavar Sarmuddin Shaikh**, aged 50 years, has been examined at Exhibit-454. The witness has stated that he can understand Gujarati, but would find it convenient to depose in Hindi.

68.1 The witness has deposed that he is also known as Munirsha, Munarsha and Munwar all three of which are his

names. He is residing at *Badarsing-ni-chali* since the last thirty five years and is doing tailoring work at home. In his house, his mother, his father, his brother, brother's wife, his wife and he used to reside together.

68.2 The incident took place on Thursday 28.2.2002. On 28.2.2002, in the morning at about 9:00 to 9:15 there were sounds. There were cries that "the mob has come, the mob has come" and hence they came out of their house. He came out on the road outside his house, when he saw mobs both from the direction of Natraj Hotel as well as Krushnanagar. After coming home and locking his house, and taking his family members, they went ahead a little towards Jawannagar. At Jawannagar there were steel sheets on the roof of one house and they all lay down on it till 12:30 at night, when the police came and took them to the Shah Alam camp.

68.3 The witness has admitted his signature on the complaint Mark 441/10 and has admitted the contents thereof and the same has been exhibited at Exhibit 455. The complaint has been registered as a first information report being Naroda Police Station I C.R. No.183/02 (Exhibit 309).

68.4 CROSS EXAMINATION: In his cross-examination the witness has admitted that his family has not sustained any injury or loss of life in the incident. From his cross-examination it has been elicited that the complaint lodged by him was on a printed form and the witness was not aware of the facts printed thereon, wherein there is reference to the workers of VHP and Bajrang Dal.

68.5 SUBMISSIONS: The learned counsel for the appellants submitted that this witness was residing at Badarsing-ni-Chali since 27 years prior to the incident, but he does not implicate anyone nor does he make any allegation against the police. The complaint lodged by him is in printed form. The witness says that his statement was recorded at a madressa which, in fact, was constructed after the incident. It was submitted that this witness is residing in this area for thirty five years, but has not named any accused.

68.6 ANALYSIS: This witness, upon coming out on the road and seeing the mob, has left his house with his family and had taken shelter over the roof of a house at Jawannagar. The witness has not named any accused nor has he given any narration of the incident. Moreover, no member of his family has been injured in the incident. Nothing much turns upon the testimony of the witness which could be helpful to either the prosecution or defence.

69. **PW-59 Sarmuddin Khwajahussein Shaikh**, aged 60 years, has been examined at Exhibit-456. The witness has stated that he can understand Gujarati, but would find it easier to depose in Hindi.

69.1 The witness has deposed that he is a resident of *Badarsing-ni-Chali* since the last thirty-five years. At the relevant time, he used to do the work of washing rickshaws. At present he is working at a tea stall. At the time of the incident he used to wash rickshaws near the gate of a bank near the S.T. Workshop.

69.2 The witness has deposed that the incident took place on 28.2.2008. On that day he had gone to wash rickshaws at 6:00 in the morning outside the gate of the bank. He had washed rickshaws till 9 o'clock. Thereafter he saw a mob coming from the direction of Natraj Hotel. In the mob which was coming he saw saffron bands on foreheads and saffron stoles on shoulders. The people in the mob were pelting stones at them. In those days also he used to wash rickshaws till 10 o'clock and after 10 o'clock he used to go the tea stall. On that day also he went to the tea stall which is adjoining the Noorani Masjid. The people in the mob were pelting stones and the police had released tear gas shells there. Thereafter, because the police had lobbed tear gas shells, the persons working with him were saying "let us go". At that time there was also firing from the opposite site. Hence, he went towards his home to see his children, when he was injured on his right shoulder and his head with a brick. The people in the mob had thrown the brick. Upon not finding his family at home, he went from his house to some other person's terrace and sat there. He had gone to the terrace in this manner at 12 o'clock in the afternoon. He had gone to the terrace as mobs were coming from both the sides and he was afraid for his life and to protect his life he had climbed up.

69.3 In the evening he learnt that his children had stayed at the house of a Marathi at the S.R.P. Quarters. The Marathi was his son's friend. He stayed on the terrace till 8:30 in the evening and then he had gone to the terrace of one Mansuri Pinjara. When he did not see anyone below, he got down and climbed on Mansuri Pinjara's terrace, where he stayed till 1:30 at night, whereafter the police came and took them to the

Shah Alam camp.

69.4 The witness had deposed that he met his wife, children and others at the camp next day in the morning.

69.5 On the second or third day after they went to the camp, the police had come and he had lodged his complaint there. The witness has identified his signature below the complaint Mark 441/12. He has stated that he has not named any accused. No member of his family was injured nor was there any loss of life.

69.6 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he does not know the name of the doctor who treated him at the camp and that the doctor had told him that he had been injured by a bullet. In his cross examination it has further come out that till he washed the last rickshaw at 9:30-10:00, he did not feel that there was anything to worry. He has stated that on that day at around 9:30, upon the mob coming, he was worried and he went to the hotel. He has admitted that till 9:30 in the morning, he did not see any mob.

69.7 The witness has been cross-examined as regards the topography of the area and he has admitted that going through the road to the Uday Gas Agency, first there is an open field after which Jawannagar, Gangotri Society and Gopinath Society, in that order, are situated. The witness has admitted that some of the mobs coming from the Krushnanagar to Uday Gas Agency road, went towards Naroda Patiya and some of them went inside the chawls from the Uday

Gas Agency Road. All of them went into the pit that is to Jawannagar, Gangotri and Gopinathnagar.

69.8 In his cross-examination the witness has stated that he had stayed at the tea stall for about half an hour. The witness has denied that while he had remained at the Noorani Masjid, that is, at the hotel, there was no stone pelting and has voluntarily stated that he was injured in the stone pelting. The witness had denied that both Hindus and Muslims were pelting stones.

69.9 The witness has denied that at that time he was also pelting stones and was in the mob and has admitted that he was injured by a bullet at his hotel near the Noorani Masjid and that the bullet with which he was injured came from the side of the S.T. Workshop gate. He has admitted that the police were shooting from near the S.T. Workshop and was also releasing shells. At that time there were mobs on both the sides and they were in the middle when he was injured by a police's bullet. The witness has admitted that he stayed at his hotel for about half an hour and then returned home and that during this period the traffic was closed. The witness has admitted that he has not named anyone in his Exhibit 457 complaint, as he had not seen any of the accused.

69.10 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness was residing in the area since twenty seven years prior to the date of the incident. He has seen both the mobs closely for a considerable time. One mob came from Krushnanagar and another from Natraj. Still he has not given the names of any of the accused,

including the local residents. It was submitted that according to this witness he was washing rickshaws and till 9:30 a.m. he did not see any mob and till that point of time nothing happened that was frightening.

69.11 ANALYSIS: This witness has deposed regarding mobs coming from both sides of the highway and resorting to pelting stones. That the police had lobbed tear gas shells and there was firing wherein he was injured by a bullet. However, no medical certificate has been produced to show that he had sustained any bullet injury. The witness has not named any accused. Nothing much turns upon the testimony of this witness.

70. **PW-60 Usmanbhai Daudbhai Shaikh**, aged 52 years, has been examined at Exhibit-458. The witness has stated that he can understand Gujarati, but finds it easier to speak in Hindi and would therefore depose in Hindi.

70.1 The witness has deposed that he is residing at *Kumbhaji-ni-Chali, Next to S. T. Workshop, Naroda Patiya*, since the last thirty years with his family, which is comprised of him, his wife, his two sons and two daughters.

70.2 The witness has deposed that in the year 2002, he was serving at Jay Ambe Estate, Bapunagar Road. The incident took place on 28.2.2002. At that time, he used to work in the night shift and used to go at 11 o'clock at night and used to return at 7 o'clock in the morning. On the day of the incident also, he returned home at Kumbhaji-ni-Chali at 7 o'clock in the morning and had his bath and breakfast and went to sleep. His

four children went out on the road and saw that people were screaming and crying, and hence, his children came to wake him up. He woke up and went on the road in front of the Noorani Masjid and saw that on both the sides of the road, mobs were coming from Natraj Hotel and Krushnanagar. He was crossing the road and coming with his daughter, who had gone to the Noorani Masjid to study, when he was injured on his head as well as on his leg with stones.

70.3 He saw that the people in the mob had weapons in their hands and were wearing iron hats on their head and khaki clothes. He had seen the weapons, sticks, etc., in their hands and the people in the mob were pelting stones from the side of the masjid and were burning handcarts. The people in the mob had also resorted to firing. The people in the mob had also fired at one Pirubhai there. The youth from the Muslim area lifted him and took him away. Thereafter, they thought that there were a lot of disturbances there, and hence, they should go away. Therefore, leaving their house open, they had gone towards Gangotri Society, and sat on a terrace of Gangotri Society. While sitting there, they saw that the Hindu mobs were burning everything and rioting. He saw them killing people and burning them. The police was not permitting anyone to go inside towards the S.R.P. Quarters, which also he had seen from the terrace. The S.R.P. people had lobbed tear gas shells and had resorted to lathi-charge. They had seen all this while sitting on the terrace till 3 o'clock at night.

70.4 In the evening, after 7 o'clock, someone was shouting "help, help" from the well behind the S. T. Workshop, which he had heard from the terrace. They were sitting on the

terrace, hungry and thirsty. Thereafter, at 3 o'clock at night, the police vehicle came and upon calling them, they came down and jumped across the burning dead bodies and reached the police vehicle which took them to the Shah Alam camp.

70.5 The witness has further stated that his son Ayub had sustained stone injury on the head on the Naroda Patiya road and that he and his son had availed of treatment at the camp. His son Maheboob had also sustained stone injury at Naroda Patiya and he too had availed of treatment at the camp. The witness has stated that after five days, since he was not feeling well his wife had lodged a complaint at the relief camp. The witness has further stated that he was called to Gandhinagar, where his statement was recorded.

70.6 CROSS EXAMINATION: The witness has been cross-examined with regard to the topography of the area. The witness has admitted that in his statement recorded by the police, he has not named any accused and that till date, he has not given the names of any accused. In his cross-examination it has come out that he is not aware as to whether his statements were recorded on 3.11.2006 and 10.6.2008 and as to whether he had named any accused in either of these statements. The witness has admitted that the bullet with which Piru was injured was by a weapon in the hands of persons wearing khaki clothes and steel hats. He is not aware as regards the time when such bullet was fired. The witness has voluntarily stated that upon seeing a lot of public they were terrified and were more concerned about saving their lives, and hence, they had not noticed the time. He has denied that Piru had sustained bullet injury at 8:30 in the morning and

has voluntarily stated that it was after 9:30. Piru was standing on the road near S.T. Workshop where presently there is a police chowky. He has stated that he has seen Piru being injured by the bullet. He does not know the direction from which the bullet came, but knows that he was injured by a bullet.

70.7 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness is a resident of Kumbhaji-ni-Chali since more than twenty years prior to the incident. It was submitted that from the examination-in-chief of the witness, it is apparent that he had remained on the road for a considerable time and had the opportunity of seeing the mob closely, despite which the witness has not named any accused, which gives reason to believe that the mob was comprised of outsiders. It was further pointed out that according to this witness Piru had received a bullet injury near the S.T. Workshop.

70.8 ANALYSIS: From the testimony of this witness, it emerges that he has seen the mobs come on the road in the morning. He has also seen Piru getting injured in the firing. While in his examination-in-chief he has stated that the people in the mob were firing and Piru was injured with a bullet, in his cross-examination it has been elicited that the bullet with which Piru was injured was by a weapon in the hands of persons wearing khaki clothes and steel hats, which would be indicative of the fact that Piru was injured in police firing. The witness has not named or described any accused nor has he made any allegations against the police. He, however, has deposed that while they were sitting on a terrace at Gangotri

Society, they could see Hindu mobs burning everything and rioting and killing people and burning them. According to this witness, from the terrace he had also seen the S.R.P. personnel prevent people from entering the S.R.P. Quarters, lob tear gas shells and resort to lathi charge. Furthermore, this witness has stated that while going to the police vehicle they had to go across burning dead bodies.

71. PW-61 Abdulkarim Saiyadrasul Shaikh, aged 50 years, has been examined at Exhibit-462. The witness has stated that he can understand Gujarati, but would find it easier to speak in Hindi and hence he would depose in Hindi.

71.1 The witness has deposed that in the year 2002, he was residing at *Kumbhaji-ni Chali at Naroda Patiya*, with his family which is comprised of his wife and four sons and six daughters.

71.2 In connection with the Godhra incident that has taken place on 27.2.2002, there was a call for bandh on 28.2.2002. On 28.2.2002, he was at home and had gone to a hotel near Noorani Masjid at 9:00 to 9:30 in the morning to have tea when he had seen a mob of Hindu coming from the direction of Natraj Hotel. The mob was armed. The people in the mob were coming to assault. They had started pelting stones at the Noorani Masjid, and hence, he left the place and returned home. At that time, the police were releasing tear gas. A person had sustained a bullet injury there. The bullet had injured Pirubhai. Thereafter, he was frightened, and hence, he took his children and wife towards Jawannagar. He stayed there till 3 or 4 o'clock. His brother's house was at Jawannagar

and his whole family had stayed there.

71.3 At around 4 o'clock, a mob of around four to five thousand people came to Jawannagar also. At that time all the family members got separated. From there, he went towards Gangotri Society and climbed on a terrace and hid there. On the same day, at around 2:30 at night, a police vehicle came and took him to the Shahibaug relief camp. He did not find his children there. However, two days thereafter, he met his children and his begum.

71.4 About four days thereafter, the educated people were giving their statements before the police and he also gave his statement, on which his son had signed. His son's name is Mohammadsalim Abdulkarim. In his complaint, he had stated that the mob had come from Krushnanagar and he had also given his address, etc. In his complaint, he had stated that a mob of Chharas had come and that **Hariyo Chharo** (A-10) was there in the mob. However, such fact had been stated by him upon hearing it from someone. The complaint, except for the words "Hariyo from Krushnanagar", has been exhibited at Exhibit-463. [It appears that the complaint is a part of the complaint Exhibit 312].

71.5 The witness has stated that about one and half month after lodging the complaint, the police had come and had taken him to Naroda Patiya for the purpose of drawing a panchnama of his house. He has further stated that he was called to Gandhinagar, but he had not gone. Thereafter, the SIT had come to Naroda Patiya, where his statement was recorded.

71.6 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that before the SIT he had stated that he does not know anyone in the mob. He has admitted that in the complaint he had named Hariyo on the basis of what he had heard at the camp. He has admitted that the police have not informed him that his complaint has been merged with some other first information report. The witness has further admitted that no member of his family has been injured in the incident. He has stated that the terrace of Gangotri which he has referred to in his examination-in-chief is near the S.R.P. Quarters. The house where he went had a single storey, and had construction only on the ground floor and had a boundary wall on all four sides. He has admitted that behind this bungalow and the pit there are six bungalows which are in Jawannagar-ni-Chali. He has admitted that there are at least fifty to sixty houses in Jawannagar. He has admitted that in Jawannagar-ni-Chali some houses have single storeys and some have double storeys; however, there are more houses with roofs.

71.7 SUBMISSIONS: The learned counsel for the appellants submitted that the witness went on a terrace of Gangotri but does not say that he has seen anything. In his complaint he has named Hariyo on the basis of what he had heard in the camp. Therefore, accused No.10 has been implicated only on the basis of hearsay and the witness has not seen him in the mob personally. This witness is residing in the area since more than twenty years but has not named any other accused. Before the SIT he has admitted that he could not identify anyone in the mob.

71.8 ANALYSIS: From the testimony of this witness, it emerges that there was a mob on the road at around 9:00 to 9:30 in the morning, which was armed and was pelting stones at Noorani Masjid. That the police lobbed tear gas shells and resorted to firing in which Piru was injured. The witness fled with his family and took shelter at Jawannagar; however, a huge mob came to Jawannagar at around 4:00 p.m. Though the witness has named accused No.10 Hariyo in his examination-in-chief, he has admitted that he had named him on the basis of hearsay.

72. **PW-62 Bizanibegam Usmanbhai Shaikh:** The prosecution had moved an application Exhibit 460 to examine this witness as an additional witness, which came to be allowed.

72.1 PW 62- Bizanibegam Usmanbhai Shaikh, aged 45 years, has been examined at Exhibit-464. The witness has stated that she can understand a little Gujarati, but would find it convenient to speak in Hindi and would therefore depose in Hindi.

72.2 The witness has deposed that in the year 2002, she was residing at *Kumbhaji-ni-Chali, Naroda Patiya*, since the last twenty five to thirty years, together with her husband, her children, her mother-in-law and father-in-law. At the relevant time, she used to do tailoring work to earn a livelihood and her husband used to work in a mill and after the mill was closed down, he was working in a factory.

72.3 In the year 2002, her husband used to work in the night shift. At times he used to work in two shifts and at times he used to work in a single shift. Her husband used to go for his job at 11 o'clock at night and used to come back at 7 o'clock in the morning.

72.4 The incident took place on 28.2.2002 which was a Thursday and there was a call for bandh. On that day, they were at home together with their children. Her elder son had gone for his job, however, he had returned back at 9:00 to 9:30 on account of the bandh.

72.5 Her husband returned from his job at around 7:00 to 7:15 and after taking a bath, he went to sleep. She sent her two daughters and her son to the Noorani Masjid for reading the *Quran Sharif*. On that day, she had gone to the fair price shop at Hussainnagar to purchase kerosene; however, the shop was not open and she learnt that on account of the bandh call, the shop was not open, and hence, she returned home.

72.6 Thereafter, she was thinking of finishing her household work, when she heard sounds of shouts and running. She went on the road to see. She saw that there was a mob on the road near Natraj Hotel. The people in the mob had tied saffron bands and they had weapons like knives, sticks, swords in their hands. Upon seeing this, she returned home and woke her husband. Thereafter, she and her husband went to fetch their children from the masjid when they saw that there was stone pelting on the masjid. They could not find their children at the masjid and she and her husband got separated in the crowd. Subsequently, she found her children.

72.7 Since the mobs had grown larger, at around 11:30 to 12:00, they had gone to Jawannagar. The entire family had gone there. They stayed at Jawannagar for a little while and then, went to Gangotrinagar (sic.). They went on the terrace of a house at Gangotrinagar and were sitting there. While they were on the terrace, at around 3 o'clock in the afternoon, somebody in a khakhi uniform shouted and called them down to have food. After they came down, that person was with them for a little while after which they did not know where he went.

72.8 Thereafter, tear gas shells started bursting and there was firing. On the rear side there is an entrance to the S.R.P. Quarters which is a part of the broken compound wall, many persons were trying to enter from there, and hence, somebody was beating them. Therefore, they did not go from the side of the broken S.R.P. wall and waited for a while. They went back to the terrace of another bungalow in Gangotri society and sat there. Till 3 o'clock at night, sounds of "help ... help" were coming.

72.9 At 3 o'clock at night, vehicles came to take them to the Shah Alam camp. They were very frightened; however, they were assured that the people who had come to take them were their people and thereafter, the police vehicles also came. Therefore, they got down to go to Shah Alam camp. By the time they reached the vehicle they had to cross several corpses. Her husband was wearing a lungi and undershirt, and hence, he said that he would go home and change his clothes as their house was on the way. When he went home, he found

that everything in the house was burnt and he came and informed her that the house is burnt and nothing remains. Thereafter they went to the Shah Alam camp and stayed there.

72.10 The witness has further deposed that at around 12 o'clock in the afternoon, her husband and her elder and younger son had sustained injuries in the riots. They had taken treatment after they went to the camp. The witness has also deposed regarding the damages sustained by them. She has further stated that she has given a complaint in which she has not named any accused and has identified her signature on the complaint and admitted the contents thereof. The complaint is exhibited at Exhibit-465.

72.11 The witness has stated that after lodging the complaint, the police had come to her to inquire about the incident and had recorded her statement wherein she had stated all that she had seen.

72.12 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that she is illiterate and only knows how to sign. The witness has denied that on that day when she went up to the masjid to bring her kids, there was no hurdle in her way. The witness has voluntarily stated that stone pelting was going on and that with a lot of difficulty they had reached up to the masjid. During that time, her husband was injured by a stone. The witness has admitted that when she went to the Noorani Masjid at that time she had seen a mob near Natraj Hotel. The witness has admitted that till they reached Noorani Masjid, they had not been injured by the stones. While they were returning from the Noorani Masjid, her

husband had sustained a stone injury on the road. The witness has stated that while returning from the Noorani Masjid, they had not met any person from their chawl whom they knew. When they went towards the Noorani Masjid also she does not remember having met anyone from her chawl whom she knew. The witness has voluntarily stated that the entire road was so crowded that they did not notice as to whether they had met any person whom they knew. The witness has admitted that the crowd was comprised of people of their chawl. The witness has denied that when they went towards the Noorani Masjid and returned, the mob at Natraj Hotel was stationary and has voluntarily stated that the mob was continuously coming. The witness is thereafter cross-examined with regard to the topography of the area.

72.13 In her cross-examination, it has further come out that they had stayed at Jawannagar for around half an hour to one hour and from there they had gone to Gangotri Society. They had stayed at Gangotri Society till 2:30 to 3 o'clock. The witness has admitted that when she went to the Noorani Masjid in the morning to fetch her kids, she had returned back in five minutes. She has stated that it took them around half an hour to reach Gangotri Society from Jawannagar and has voluntarily stated that they were going there very cautiously. The witness has admitted that they had gone from Jawannagar to Gangotri from the road on the side of the S.T. Workshop compound wall. The witness has voluntarily stated that there are many other roads for going to Gangotrinagar.

72.14 The witness has admitted that upon people from their community coming in vehicles to pick them up, they had

gathered on the road. The witness has stated that she had not seen Hindus and Muslims pelting stones against each other on the day of the incident.

72.15 In her cross-examination, it has also come out that she had lodged the complaint Exhibit-465 at the camp. The witness has admitted that there were many people who were taking down their complaints. The witness has stated that she felt that the people who were taking down the complaints were police personnel. They were in plain clothes. The witness has admitted that the people who were with her in the camp stated that the police personnel were taking down the complaints, and hence, she was saying that they were police personnel. She has stated that they were recording complaints on printed paper. The witness has admitted that she herself has not read the complaint application and has voluntarily stated that they had read it over in everyone's presence; however, she had not paid attention to it.

72.16 The witness has admitted that it had not happened that she had seen that any of her family members was cut down in her presence or was shot with a bullet and thereafter burnt, or burnt alive or murdered. [This question is put to the witness as such averments form part of the printed material in the complaint.]

72.17 The witness has admitted that she has not named any accused in her complaint because she did not know any such thing. The witness has been further cross-examined as regards her previous statement dated 12.5.2002 to bring out minor contradictions therein.

72.18 SUBMISSIONS: The learned counsel for the appellants submitted that this witness was residing in the area since twenty two years prior to the incident and has not named any accused, though she has passed through the mob and seen it very closely. Referring to her cross-examination, it was pointed out that the printed complaint contained certain printed statements thereon which were not stated by the witness and that the same is proved through the testimony of this witness.

72.19 ANALYSIS: From the testimony of this witness, all that emerges is that when she went on the road towards the Noorani Masjid to fetch her children, there were mobs on the road with people with saffron bands, armed with weapons in their hands. That upon the mobs increasing, at around 11:30 to 12:00, they had gone to Jawannagar, from where they had gone to the terrace of a house in Gangotri Society, where they stayed till late at night and could hear cries of “help” “help” while they were there. Though this witness has not named any accused nor given any narration implicating any accused, she has unnecessarily been cross-examined at great length. From her cross-examination, it emerges that complaints of victims were taken on printed forms, which contained printed material stating facts which were not actually stated by the concerned persons. Other than this, nothing much turns upon the testimony of this witness.

73. **PW-64 Gulamrasul Saiyadrasul Shaikh**, aged 45 years, has been examined at Exhibit-489. The witness has deposed that at the time of the incident, he was residing at

Imambibi-ni-Chali, Opp. S.T. Workshop, Naroda Patiya. The incident took place on 28.2.2002, which was a Thursday and there was a call for Gujarat Bandh. He was at home. In the morning at around 8:30, he had gone out to have tea. After having tea, he had returned home when stones started falling on the roof of his house. Hence, he took all his children and went towards Jawannagar to save their lives. At Jawannagar, he and his family hid on a terrace of Gangotri Society. He had seen burning houses and smoke coming from there. At 12 o'clock at night, the police came and took them to the Shah Alam relief camp. He and his son sustained injuries on account of the stone pelting at Jawannagar. In the open ground of the Jawannagar, there was a huge mob, where people wearing khakhi shorts and saffron bands were standing. While running and trying to escape from the mob, he and his son sustained stone injuries.

73.1 This witness has not supported the prosecution case and is sought to be cross-examined by the Special Public Prosecutor. The witness has also been cross-examined by the learned advocates for the defence.

73.2 Since the witness is a hostile witness and nothing substantial has come out in his deposition, nothing much turns upon the testimony of this witness and hence, it is not necessary to refer to the same in detail.

74. **PW-65 Abdulrahim Abdulwahab Shaikh**, aged 50 years, has been examined at Exhibit-490. The witness has deposed that he used to reside *behind Mahammadi Madressa, Millatnagar, Shah Alam*, in the year 2002. He was residing

there with his family comprised of his wife and two daughters. He used to run a garage near the gate of Ambica Mill-2, at Kankaria.

74.1 The incident took place on 28.2.2002, on which date there was a call for bandh in connection with the incident that took place at Godhra. About a month prior to the incident, his parents had come to his house and told him that they would stay at his place for fifteen days and thereafter, they would go to the house of their relative Babubhai, who is residing *near Noorani Masjid, Naroda Patiya*. On the day of the incident, in the morning at around 9:00 to 9:30, he had set out towards Naroda Patiya from his residence in Millatnagar on his bicycle. He had gone to Naroda Gam in the Naroda Police Station area to the house of one Ashrafkhan, who was his friend, at which point of time, the situation was tense and Ashrafkhan had told him to take his children and household goods in a loading rickshaw and go to a relative's place in the city. He told Ashrafkhan that his parents were also at the house of Babubhai Painter and he would also take them in the loading rickshaw. Ashraf told him that since he has been residing there since years and such things keep on happening, he would not face any difficulty, and that they may go and keep faith in Allah.

74.2 The witness has further stated that from Naroda Police Station, while coming towards Naroda Patiya, dirty water had accumulated on the road and there was a puddle and he was standing there. From the puddle, he went towards the Naroda Patiya. When he reached Naroda Patiya, there was a crowd of thousands of people and he saw mobs and mobs. The

Hindus in the mobs were pelting stones and the Muslims were fleeing. At that time, the Patiya Chowky was not there. He had seen his father and mother supporting each other and coming from Hussainnagar-ni-Chali. His father was taking the support of his mother's shoulder and was walking. From far, he saw a Hindu striking a Muslim with a sword. At that time, a person going on the road caught hold of his father. The person had brought something in a can and he poured the same on his parents and another person came with a burning rag and threw it on his parents and his parents were saying, "Ya Allah, save us, Ya Allah save us". With his own eyes, he had seen his parents burning. Upon witnessing this scene, his spirit was broken and he had kept his bicycle on one side and was sitting helplessly. The mob was very huge, and hence, he could not save his parents. If he had gone to save them, like his parents, he too would have been killed. In total despair, after a little while, he went to his house at Millatnagar. The time when his parents were burnt must have been around 2:00 to 2:30 in the afternoon. Thereafter, he returned home and after sometime, he registered his name with the relief camp and went to stay there.

74.3 His father had gone to Babubhai Painter's house to arrange the marriage of his [the witness's] two daughters. He had never found the dead bodies of his parents. He had gone to Dariyakhn Ghummat to identify the dead bodies and he had learnt that the dead bodies which had come there were unidentifiable. Since his mother used to wear a silver anklet on her foot and his father used to wear a copper anklet on his foot, he felt that he may be able to identify their dead bodies. He had gone to Dariyakhn Ghummat as well as to the Civil

Hospital; however, he did not get to see the dead bodies of his parents. The witness has stated that he cannot identify the people who had poured inflammable substance on his parents and had set them ablaze. He had learnt that the last rites of his parents must have been performed together with other people and that he had learnt that there was a collective burial of the people who had died in the incident as per the Muslim religion.

74.4 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he had set off from Millatnagar at around 9:30 and had reached Ashrafbhai's house at Naroda after about two to two and a half hours. The witness has voluntarily stated that the roads were very crowded and hence, it was not possible to move swiftly. The witness has admitted that he had reached Ashrafbhai's house, which is opposite Naroda Police Station, at around 1 o'clock. He has admitted that when he reached there, no incident was taking place.

74.5 In his cross-examination, he has admitted that from where he was standing the road towards the chawls was curved. He has admitted that there was a mob on the road where he was standing and similarly, the mobs were also coming from the direction of Narol. He has voluntarily stated that there were sounds of firing. He has admitted that the sounds were very loud. In his cross-examination, it has further come out that he was standing on the platform of a hotel when he saw the incident. From the platform where he was standing, if he crosses the road which is 150 feet wide and reaches on the other side, the distance from there to the Noorani Masjid is about one minute. The witness has admitted that the road

which goes towards the chawl is after the Noorani Masjid.

74.6 The witness has admitted that from where he was standing, the passage for going inside the chawls was at a distance of about 800 to 1000 feet.

74.7 The witness has further stated that after he returned home, he has not seen his mother or father alive. He has also not seen the dead bodies of his parents. The witness has admitted that prior to giving his statement on 13.5.2002, he had not informed anybody about the incident of his parents. The witness has voluntarily stated that he had lost the spirit.

74.8 The witness has stated that Babubhai Qureshi's house, where his parents had gone, is at a distance of three hundred to four hundred feet from the road. He has admitted that from the platform where he was standing, he could not see Babubhai Qureshi's house. He has admitted that where he was standing, there was a huge crowd and that the side of the Noorani Masjid was also very crowded.

74.9 SUBMISSIONS: The learned counsel for the appellants submitted that as per the say of this witness his parents were burnt in front of his eyes at 2:30 in the afternoon. The witness does not involve any accused in the incident and is not in a position to identify those who committed the offence. It was submitted that from the spot where the witness was standing, he could not have identified his parents as the distance is about two hundred fifty metres. It was submitted that, therefore, this witness could not have seen such incident nor does he know how and where his parents died. It was

submitted that the witness is not reliable witness and that he is not even the local resident and that it is not established as to why he had come to the place of incident.

74.10 ANALYSIS: From the testimony of this witness it emerges that he is not a resident of the area. He could not identify any of the accused and has therefore, not named any accused. According to the version given by this witness, he was standing at Naroda Patiya and his parents came out of Hussainnagar and were burnt to death on the road. From the cross examination of the witness, it has been elicited that from where he was standing the road towards the chawls was curved and that there were mobs where he was standing and that there was a mob on the road where he was standing and similarly, the mobs were also coming from the direction of Narol. Considering the distance between where the witness was standing and the entrance of Hussainnagar-ni-Chali, as well as the fact that the road was curved near the chawl and there were huge mobs on the road, it is highly improbable that the witness could have seen his parents come out of Hussainnagar and could have identified them from this distance. Besides, it is too much of a coincidence that the witness who lives in some other area is standing on the road at a distance and he sees his parents coming out from Hussainnagar and the mob assaulting and burning them. From the overall evidence that has come on record, there is nothing to indicate that anyone was burnt to death on the road in the morning hours. Considering the timing of the incident and the spot from where the witness states he has seen the incident and the narration of the incident, the version given by the witness does not appear to be credible as the same is not

corroborated by any evidence on record. Besides, considering the huge mob that was there on the road after 9:30 a.m., the witness could not have seen any such incident from Naroda Patiya nor could he have heard what his parents had uttered from such a distance. In any case, since this witness has not named any accused and is not a witness of the main incident, nothing much turns upon his testimony.

75. **PW-66 Babubhai Mahammadhussain Budali**, aged 70 years, has been examined at Exhibit-491. The witness has deposed that prior to the riots, from the year 1970, he used to reside at *Hukamsing-ni-Chali, Naroda Patiya*. He was residing in a rented house. He used to work in Chandubhai's thread factory at Saijpur and had four sons and three daughters. At the time of the incident, his wife and three sons used to reside with him.

75.1 On 28.2.2002, that is, the day of the incident, he woke up in the morning and went for his job at Sheth Chandubhai's place at 8:30 in the morning. There, his employer told him that the situation was not good and hence, he should return home. Thereafter, he returned home on his bicycle and after leaving the cycle at home, he immediately came out where there is a neem tree. His house is the first house on the road and upon coming out, he saw that there was a mob near Krushnanagar and stone pelting was going on. Considering the situation, he had taken his children and gone to the nearby societies on the rear side. When they were going, stone pelting was continuing, in which, all his three sons were injured. He took his children and went and sat on a terrace. The time must have been around 1:30 in the noon. Till

late that night, they sat on the terrace.

75.2 From the terrace he saw that the houses in the chawls were burning. At around 1:30 at night, the police vehicles came and dropped them at the Shah Alam Dargah, where there was a relief camp. At the relief camp, his three sons had availed of treatment in connection with the injuries sustained by them. The witness has deposed that the people in the mob were wearing khakhi shorts and saffron bands and that he does not know any person in the mob. The witness has deposed that he has stated all this in his statement before the police and that the police had recorded his statement.

75.3 CROSS EXAMINATION: In his cross-examination, the witness has admitted that he was residing in the Naroda Patiya area since thirty two years prior to the incident. The witness has stated that he does not know all the people in the area and he cannot identify them with their names or faces. The witness has voluntarily stated that he is busy with his business from 8 o'clock in the morning till 6 o'clock in the evening and hence, he does not know anyone. The witness has admitted that he had seen that all the people in the mob were wearing khakhi shorts and saffron bands.

75.4 The witness has admitted that he, his son and other Muslims in the chawl were also pelting stones. He has voluntarily stated that to protect their lives they had to do something. Thereafter, he has stated that he himself had not pelted stones but his son had gone to pelt stones. The witness has admitted that in his statement before the police, he has stated that therefore to protect themselves, they had pelted

stones against them.

75.5 The witness has admitted that the police was firing and releasing tear gas at the people who were rioting. He has admitted that the society where he took his family was Gangotri Society.

75.6 SUBMISSIONS: The learned counsel for the appellants, have submitted that this witness has not been able to identify any of the accused. It was submitted that this witness is residing in the area since more than 32 years and has seen the accused clearly when they were involved in cross stone pelting, but has not named any of the accused. It was submitted that the witness has admitted that Muslims were also pelting stones. It was submitting that the witness has admitted that all the members of the mob were wearing Khakhi shorts and saffron bands. It was submitted that since the witness's son has received injuries and they were present while there was stone pelting, he must have seen the mob despite which he has not named any accused.

75.7 ANALYSIS: From the testimony of this witness, all that emerges is that when he came out on the road in the morning, he saw a mob pelting stones. From his cross-examination, it has emerged that they were also engaged in cross stone pelting, which, according to the witness, was done in the self defence. The witness has thereafter taken his children and gone to Gangotri Society where they remained till late at night. Nothing much turns upon the testimony of this witness, who has not narrated any specific facts with regard to the incident nor has he named any of the accused.

76. **PW-67 Afzal Abdulrauf Abdal**, aged 35 years, has been examined at Exhibit-492. The witness has deposed that at present he is residing at Citizennagar, Bombay Hotel, Narol, Ahmedabad. At the time of the incident he was residing at *Pandit-ni-Chali, Naroda Patiya*.

76.1 From three years prior to the incident, he was residing in his sister-in-law Rasulbi's house at Naroda Patiya together with his wife and his two sons. At the time of the incident, he used to work as a designer in Omkar Factory at Naroda Memco.

76.2 The incident took place on 28.2.2002. On that day there was a bandh call. At that time, he was sleeping at home. At around 10 o'clock, his wife woke him up because there were mobs standing outside and everyone was running helter skelter. The people of their community were fleeing. He had woken up.

76.3 After waking up, he went out to search for his son and he saw that there was a stampede and both his sons had sustained stone injuries. Thereafter, he took his family and went to the terrace of the Pinjara's house in Hussainnagar. It became evening. While sitting on the terrace, they could hear shouts of "Kill! Cut! Help!" They remained seated on the terrace. At around 12 o'clock at night, the police vehicle came and took them to the Shah Alam Relief Camp. The witness has stated that he could not identify anyone in the mob and that both his sons had availed of treatment in connection with the injuries sustained by them at Shah Alam camp.

76.4 CROSS-EXAMINATION: In the cross-examination of this witness, it has come out that he had gone to the terrace at Hussainnagar in the morning time. He had set out at around 10 o'clock in the morning and reached the terrace at around 10:30. The witness has admitted that there was safety in the chawl in which the house where he went, was. He, however, has denied that no incident had taken place in Hussainnagar-ni-Chali. The witness has admitted that till his wife woke him up at 10 o'clock, no incident had taken place. He has admitted that the police was firing at the riotous mob.

76.5 The witness has thereafter been re-examined, wherein he has admitted that in his statement before the police, he had stated that the sounds of the police firing at the riotous mob on the side of the road could be heard.

76.6 In his further cross-examination the witness has admitted that while referring to the side of the road in his police statement, he had not stated as to on which side of the road.

76.7 ANALYSIS: This witness has not seen any incident. Right from the morning upon the mobs coming, he, together with his family had taken shelter at the Pinjara's house in Hussainnagar. The witness does not name any accused and does not narrate any incident relating to the offences in question. Nothing at all turns upon the testimony of the witness and one wonders why the prosecution has sought to examine such witnesses, while dropping witnesses who had named accused in their statements before the police.

77. **PW-68 Naseembanu Mahammadkhalid Saiyed**, aged 30 years, has been examined at Exhibit-496. The witness has deposed that till the incident in 2002, she was residing at *Hussainnagar, Naroda*, with her mother-in-law, father-in-law, two brothers-in-law, her son and her husband.

77.1 The incident took place on 28.2.2002 and there was a bandh call. They were at home. Her husband was under the impression that though there is a call for bandh, nothing would happen and had gone to the electric shop where he was serving at around 9:00 to 9:30. Her husband is also known as Kalu and while he was repairing a fan, his employer told him to close the shop as the public was increasing a lot, whereupon he closed the shop and returned to his house and on the way, he was injured by a bullet on his back on a vertebra of his waist.

77.2 This incident had taken place at the corner of Hussainnagar. At around 11 o'clock, he had been hit by the bullet. Upon getting the news at home that her husband had been injured by a bullet, her brother-in-law named Abdulmajid went to the road to see and he too was injured on the leg with a bullet.

77.3 Despite the fact that both her husband and brother-in-law had been injured by bullets, she and her brother-in-law removed her husband and stealthily took him away. When the riots started, she and her husband, her brother-in-law and her son, all of them were at home and upon these two having sustained bullet injuries, all four of them, were hiding and

going to different places. They all sat in an empty house in the Gangotri Society.

77.4 When she went out to look, she saw that there were a lot of people and mobs were outside with pipes, swords, etc. in their hands. The police had resorted to firing. The people in the mob were shouting, “kill, kill”, “beat the bandiyas” and “no one should escape”. She has stated that she could not identify any of the persons in the mob as she was engrossed in looking after the two persons of her family who were injured by bullets.

77.5 Till night, they stayed in the house at Gangotri society, when the police came and said that, “come out, we are policemen, we will take you wherever you want to go”. The police took them in the vehicle to the Shah Alam camp. Her husband and brother-in-law were taken to the V.S. Hospital for treatment. Her brother-in-law was discharged from the hospital after three days, whereas her husband was admitted for twenty five days. Her husband is handicapped even today, as he had sustained a bullet injury on his back, the lower part below his waist is totally incapacitated. The witness has stated that with regard to the incident, the police had recorded her statement after three months of the incident.

77.6 CROSS EXAMINATION: In her cross-examination, the witness has stated that she was residing in either lane No.2 or lane No.3 of Hussainnagar and has voluntarily stated that since she did not go out of her house, she makes mistakes regarding Hussainnagar and Jawannagar. The witness is also cross-examined with regard to the topography of the area. In the cross-examination of the

witness, it has come out that she came to know that her husband was injured by a bullet, around one and half hours after he went for his job. When she and her brother-in-law went to look for her husband, he was lying against the wall opposite the masjid at the place where presently there is a police chowky. The witness has admitted that when she and her brother-in-law came out to see her husband, at that time, the people in the mob had not assaulted them or her husband with weapons and has voluntarily stated that at that time, throughout the day, there was a lot of commotion and, when she came out from the chawl, she did not see mobs on the road.

77.7 In her cross-examination, it has come out that on account of the bullet injury her husband was unable to walk, whereas the bullet had made a hole in her brother-in-law's leg and had exited and he could walk with a limp. Her husband was not bleeding whereas her brother-in-law was bleeding. She has further stated that for taking her husband from where he was lying, no one came forward to help her and her brother-in-law. She has voluntarily stated that they had dragged him and taken him. The witness has also stated that the bullet which had injured her husband was stuck in the vertebrae of his waist and was taken out after thirteen days. She has further stated that when the police came to take them to the relief camp, they had changed two houses for hiding and had taken shelter in the third house, from which they were taken to the relief camp.

77.8 An omission is sought to be brought out as to her statement recorded by the police, to the effect that she had

not stated that the bullet injury was sustained at the corner of Hussainnagar. The witness has stated that she cannot say the exact time when her husband had sustained the bullet injury and that she was stating the approximate time. The witness is sought to be contradicted as regards the utterances made by the mob, to the effect that she has not stated these facts in her police statement. The witness has admitted that the bullet injuries sustained by her brother-in-law and her husband, were on account of firing by the police. The witness has denied that the police had resorted to firing to control the mob and has voluntarily stated that the bullets were being fired at the Muslims and that the police had also colluded with the mob. The witness has stated that when she went to fetch her husband, there was no crowd of the people of their chawl. Those people, who were residing at the entrance, were leaving their houses and running towards the rear side. The witness has stated that on that day, there was a mob at the entrance and has voluntarily stated that that mob was of their people (the Hindus) and that the people of their (the witness's) community (the Muslims) were running towards the rear side. In her cross-examination, she has stated that she had not seen any stone pelting when she went to look for her husband and has voluntarily stated that upon hearing the news about her husband, she had lost her mental balance and had run to see her husband without even putting on a dupatta.

77.9 PW-278 Shri R. B. Joshi, the assignee officer who has recorded the statement of this witness has been examined to prove the omissions and contradictions in the testimony of the witness as to the statement recorded by him. In the cross-examination of, the assignee officer has stated that this

witness in her statement recorded by him had not stated that the bullet injury was sustained at the corner of Hussainnagar.

77.10 The contents of paragraph 7 of the examination-in-chief of the witness are read over to the assignee officer wherein the witness has stated that at the time of the riots the witness, her husband, her brother-in-law and her son, all four were at home and all four of them, in view of the fact that these two people had been injured with bullets, were stealthily going to different places; they had gone to an empty house at Gangotri Society and had sat there, to the effect that such facts have not been stated by this witness in her statement recorded by this witness. The assignee officer has admitted that the witness has not stated such facts before him but had stated that her husband and brother-in-law were injured by bullets. The assignee officer has also admitted that this witness has not stated before him "kill the bandiyas and not the single one should escape" He has also admitted that the witness in her statement before him has stated that thereafter from their house they had taken both of them and fled towards Jawannagar.

77.11 SUBMISSIONS: The learned counsel for the appellants-accused have submitted that this witness has not implicated anyone though she had seen the mob and that she has admitted that her husband and brother-in-law were injured in the police firing.

77.12 ANALYSIS: This witness is the wife of Mohammed Khalid, who is one of the persons who was injured in the police firing in the morning on the day of the incident. From her

testimony, it emerges that at around 11:00 a.m. her husband was injured by a bullet and he was lying against the wall opposite the masjid at the place where presently there is a police chowky. In the firing, her brother-in-law also sustained a bullet injury on his leg. She and her brother-in-law pulled her husband and hid in a house in the chawls and moved from one house to the other for hiding and while they were hiding in the third house, the police arrived and took them to the relief camp from where her husband and brother-in-law were taken to the V.S. Hospital. From the testimony of the witness, it further emerges that the police was not firing to control the riotous mob but was firing at the Muslims. This, witness has not named any accused nor has she described any incident.

78. PW-69 Badshah Abdulkadar Kureshi, aged 48 years, has been examined at Exhibit-497. The witness has stated that he understands a little Gujarati, but would find it more convenient to speak in Hindi and will therefore depose in Hindi.

78.1 The witness has deposed that he was residing at *Jawannagar* with his family since the last fifteen years with his wife and five children. He is serving at the mutton shop of Gosu, who is a resident of Ambedkar Nagar at Mirzapur and the house in which he is living is of his ownership.

78.2 The witness has deposed that since there was a call for bandh, he was sleeping till 10:00 in the morning. Upon waking up and going outside, he came to know that there were at lot of disturbances outside, people were coming towards their houses. He tried to go out, but the public was coming in and hence he went back to his house. He took his children and

stayed at home till 4 o'clock in the evening. Thereafter the public started coming even by breaking the wall. Rioting started there. They all went to behind their house to Gangotri Society and hid on the terrace. They stayed on the terrace till 12 o'clock. Thereafter the police vehicle came and took them to Shah Alam Dargah.

78.3 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that his house is the last house in Jawannagar. The witness has also admitted that a mob of people of their jamaat and their community had gathered there. The witness has admitted that in his statement before the police, he has not stated that the people from the public were coming to their chawls towards them and hence, he had gone on the rear side. The witness has voluntarily stated that he had answered only what the police had asked. The witness has further admitted that in his statement before the police, he has not stated that the second stone injured him on the waist because the police had not asked him. In his cross-examination he has stated that the police had come to the relief camp, two to two and a half months after the incident.

78.4 The witness has admitted that there was a mob of a thousand people outside his house on that day. He has admitted that those persons were sitting outside till four o'clock and till then he did not face any difficulty. He has stated that they (the witness) had jumped over the wall on the rear side and had gone. The witness has denied that from the terrace where he was sitting, one cannot see Jawannagar and Hussainnagar and has voluntarily stated that they can be seen

to a certain extent. In his cross-examination it has been elicited that there were many people on the terrace and there must be approximately two thousand to two thousand five hundred people on different terraces. The witness is not aware as to whether the water tank of Gangotri Society is situated near the terrace where he was sitting. He has not seen it.

78.5 SUBMISSIONS: The learned counsel for the appellants/accused, have submitted that this witness is residing in Jawannagar since more than seven years prior to the incident, but has not implicated any one. From the testimony of this witness it emerges that no one from the mob had entered that area till 4 o'clock in the evening. It was submitted that the witness resides in the last lane of Jawannagar but has not stated anything about the incident of Ayub who is stated to have jumped from the terrace whereafter he was burnt in a rickshaw by the mob by other witnesses.

78.6 ANALYSIS: This witness has not named any accused nor narrated any role played by the mob. From his testimony it appears that when he tried to go to the road, the other Muslims were rushing inside on account of the riots outside and hence, he returned home. Evidently, therefore, he has not seen the mob. The witness is a resident of the last lane of Jawannagar, viz. the last lane in which the Muslims were residing, because Gangotri Society is situated behind the last lane of Jawannagar. After returning home, the witness stayed there with his family till 4:00 p.m. Thereafter, the compound wall between the pit and Jawannagar was broken and the mob started coming inside when they left their home and took

shelter on a terrace of Gangotri Society. Prior to 4 o'clock, a mob was sitting outside his house but till then they did not face any difficulties. It, therefore, appears that while a mob was present at Jawannagar even prior to 4:00 p.m., it became active after 4:00 p.m. when the Jawannagar compound wall was broken and the mob entered from that side also which is indicative of synchronization between members of different mobs.

79. PW-70 Zubedakhatun Rahimbhai Shaikh, aged 55 years, has been examined at Exhibit-499. The witness has stated that she can understand Gujarat to a certain extent, but would find it easier to speak in Hindi and would, therefore, depose in Hindi.

79.1 The witness has deposed that since the last twenty one years, she is residing at *Hussainnagar lane No.1* together with her husband and two daughters and two sons. Her husband has a tea stall at Talod and comes home once a week. Her niece Asmabanu (her brother's daughter) also used to stay with them. She has studied up to the 7th Standard in Urdu and puts her signature in Urdu.

79.2 The incident took place on 28.2.2002. At that time there were riots. She was at home and her husband was at Talod. She, her four children and her niece were all at home.

79.3 On that day there were sounds coming from the road at around 9:00 to 9:30. On that day there was a call for bandh and hence they were getting the shops shut down. She came out on the road to see what was happening, at that time

the mob was pelting stones there. In the mob, some had sticks and some had steel spears.

79.4 The youth from their chawl went to the police and asked for help, but the police did not help and on the contrary they released tear gas and started firing. Upon seeing all this she was frightened.

79.5 When she went out to see, people from their chawl, Mohamed, Piru and Khalid had sustained bullet injuries. The people in the mob had tied saffron bands around their heads and were wearing shorts and undershirts. Some were wearing shirts. The mob was raising slogans of "Jay Shree Ram, Jay Shree Ram". Thereafter they reached home. The people of the chawl came and started saying that the mob was coming in that direction and hence she locked her house and went to Mansuri's house in the fourth lane from their house and stayed there till 11:30 at night.

79.6 The witness has stated that the house, in which they were hiding, had a steel door and there people were banging on the door and saying "Go away from here, and don't ever come back" and they were watching from the opening in the parapet of the terrace. **Guddu** and **Bhavani** were also in the mob. Guddu had a hockey stick in his hand and Bhavani had an iron pipe. The police came at about 12 at night and dropped them at the Shah Alam Camp. On the way at two places there was stone throwing at the police vehicle.

79.7 When they were going to sit in the police vehicle, there were burnt corpses lying on the road and flames were

coming out of their houses. The houses on the road through which they passed were also set on fire.

79.8 On the day of the incident, as stated by her, she had fled in the morning and while running she had fallen down and was hurt on the knee, but she had not taken any treatment for it. She had treated herself by applying balm.

79.9 She had stayed at the camp for eight months. After five days the police had come to the camp and had recorded her statement. The police had recorded her complaint.

79.10 Her complaint and loss, damage analysis form have been exhibited as Exhibit 500. The corresponding first information report is given Exhibit 304.

79.11 The witness is shown her signature at the bottom of her complaint and below her loss damage analysis form, which she has acknowledged to be hers.

79.12 The witness has stated that her complaint is read over to her. She has not given the names or addresses of any persons in her complaint nor has she stated any fact regarding her family members being killed or injured. She has stated facts regarding the people in the mob having swords and trishuls in their hands. The complaint and the loss damage analysis form are given exhibit No.500. [It appears that the first information report corresponding to her complaint is at Exhibit 304].

79.13 She had given her statement before the police at

the camp. Five to six years after the incident, she was called to a school near Jawannagar where at Naroda Patiya also, her statement was recorded.

79.14 The witness has stated that damage was caused to her house as reflected in the loss damage analysis form. She has stated the Guddu Chhara and Bhavani Chhara are not alive and have passed away.

79.15 CROSS EXAMINATION: In her cross examination, the witness has admitted that on the day of the incident, there were Hindu and Muslim mobs and they were pelting stones against each other. The witness has clarified that the Muslims were pelting stones in defence. They (the mob) were throwing stones at the masjid and they had thrown stones in defence. In her cross-examination it has come out that she does not know the full name of Ansari at whose house she had gone during the pandemonium. She has stated that this house was in the fourth lane after her house. The house was quite big and a lot of people had taken shelter there. It could be around hundred to one hundred and fifty people. She was there throughout the day.

79.16 In response to a question as to with whom she had talked throughout the day, the witness has said that they were all sitting mutely and that even if their children cried, they had to press their hands over their mouths.

79.17 In her cross-examination, it has come out that the witness knows the families of Khalid and Pirubhai and also know Khalid's wife. She has stated that on that day she had no

occasion to talk to Khalid's wife and that all she knows is that when Khalidbhai was injured he was kept outside. She has not seen Khalid's wife at Ansari's house.

79.18 The defence has sought to bring out certain omissions as to her statement dated 12.5.2002, to the extent put to the witness in paragraph 27 and 28 of her deposition, however, the same can in no manner be termed to be material omissions so as to amount to contradictions. One of the omissions suggested as to her statements dated 12.5.2002 and 28.6.2008, is that she had not stated therein that after closing her house she had gone to Ansari's house. The witness has voluntarily stated the Pinjara whom she has referred to is Ansari.

79.19 In her cross-examination, it has been elicited that it was approximately 11:00 to 11:30 in the morning when she went to the road when Piru and others were injured by bullets. She has admitted that Piru and Khalid who were injured were being lifted and brought by people from their chawl. The three persons who were injured were brought to a shop on the interior part of the chawls. The witness has admitted that after going to Ansari's house, she did not go to the road again.

79.20 The witness has admitted that no one in her family has been injured or suffered loss of life. The witness has been cross-examined at length as to who recorded her complaint and the manner in which it was recorded.

79.21 In her cross-examination, the witness has admitted that the police were present at the Noorani Masjid as well as

the S.T. Workshop on the day of the incident, but has voluntarily stated that they did not do anything.

79.22 PW-293 Shri B.T. Karoliya, the assignee officer assisting the Investigating Officer has been cross examined to prove the omissions and contradictions in the testimony of this witness as to the statement recorded by him. The assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness had not stated the facts stated in paragraph 7 of her deposition that the people in the mob were chanting "Jay Shri Ram, Jay Shri Ram".

79.23 The assignee officer has admitted that the witness had not stated before him that their house also was set on fire. He, however, has explained that the witness has stated that her house was also damaged. He has also admitted that the witness had not stated before him that she had seen her house burning.

79.24 SUBMISSIONS: The learned counsel for the appellants/accused submitted that this witness does not implicate anyone except Guddu and Bhavani. With regard to them also, she says that when they were at Ansari's house, they had made some utterances. It was submitted that the witness has not named any accused from the mob at Noorani, nor does she say that Guddu and Bhavani were in that mob.

79.25 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that when this witness went out on the road, she saw a mob pelting stones and three persons were

injured in the firing and were carried inside to a shop. It was submitted that considering the overall testimony of this witness, there is no reason to reject her evidence, which is required to be accepted.

79.26 ANALYSIS: The two accused named by this witness have passed away. The role attributed to those to accused is that while she had taken shelter at Ansari's house, the accused were banging on the steel door of the house and telling those inside to go away and never come back. From her testimony it emerges that Mahammad, Khalid and Piru were injured in police firing at approximately 11:00 to 11:30 in the morning and that people from their chawl lifted them and took them to a shop on the interior side of the chawl. This witness does not implicate any of the living accused. Despite lengthy cross examination, nothing has been brought out by the defence to dent the credibility of this witness. The version given by the witness is plausible and can be relied upon while considering the manner in which the incident has occurred. The witness, therefore, appears to be a trustworthy and credible witness.

80. **PW-73 Basubhai Maiyuddinbhai Saiyed** has been examined at Exhibit-514. The witness has deposed that his family is comprised of his wife Khatijabanu, son Ahesan Ahemad and two daughters Irshadbanu and Saminabanu. The witness has deposed that the incident took place on 28.2.2002. At that time, he was residing in *Room No.5, Badarsing-ni-Chali, Next to S.T. Workshop, Naroda Patiya* together with his family. The house at Badarsing-ni-Chali was of his ownership, which he has now given on rent. The witness has further stated that his native place is *Village Afzalpur, Taluka Afzalpur, District*

Gulbarga, State Karnataka, but he is born in Ahmedabad and had studied up till the 10th Standard in Gujarati at Ahmedabad.

80.1 The witness has deposed that on 27.2.2002, in the afternoon, there was communal tension in Ahmedabad city on account of the Godhra incident. On that day, in the morning, he had gone for his work. On account of the communal tension, he had taken his auto rickshaw and returned home in the evening and on that day, he had learnt that in the context of the Godhra incident, on 28.2.2002, there was a call for Gujarat Bandh by the Vishwa Hindu Parishad. On 27.2.2002, he had parked his auto rickshaw in front of his house, that is, on the road opposite the lane. Thereafter, he had gone to meet Gafurbhai near the S.T. Workshop and was talking with him when in the evening at around 6:30, Police Inspector Shri Mysorewala of Naroda Police Station came in a government jeep, wherein he and two armed uniformed policemen also got down. The Police Inspector told him that since there was a call for Gujarat Bandh on the next day, he was placing these two people for their protection and thereafter, went away. He (the witness) and Gafurbhai together, arranged for cots for the two policemen to rest at night and also arranged tea and snacks for them. He was there till around 10 o'clock at night, whereafter he went home and slept.

80.2 On 28.2.2002, he woke up early in the morning and his family members had also woken up. His two daughters were doing a hosiery course in the I.T.I., at Naroda and he told them not to go to the I.T.I. and also told his son not go for his job at Kubernagar. On that day, in the morning at around 8 o'clock, a huge mob of Hindus was coming from the direction

of Krushnanagar. On hearing the sounds of the mob, he came to the national highway road. After coming out, he was standing near the Jay Ambe Pan cabin. Munnabhai of the cabin was also present there with him. A Hindu mob was coming from Krushnanagar towards the Noorani Masjid. This mob was led by Bipin Panchal, Guddu Chhara and his two brothers. The Hindu mob was armed with weapons like swords, trishuls, spears, revolver and iron pipes.

80.3 In a little while, a huge mob came from the direction of Kubernagar Patiya, Natraj Hotel and this mob was coming towards Noorani Masjid. This mob was raising slogans like "Jay Shree Ram". This mob was led by **Kishan Korani, Ashok Sindhi, Suresh Langdo** and **Manoj Videowala**. In this mob, Manoj Videowala and Kishan Korani had revolvers with them. The other persons in the mob had weapons like swords, trishuls, spears and iron pipes, etc. The mob was setting shops belonging to Muslims situated next to the masjid, on fire and was also pelting stones. He had seen everything. At that time, it must have been approximately 9:30. At this time, people from their chawl were standing near Gafurbhai's house and Naroda Police Inspector Shri Mysorewala was also present there with his jeep. At this time, Police Inspector Shri Mysorewala gestured to the two persons whom he had placed for bandobust on 27.2.2002 and called them to the place where he was standing. At this time, Hindus were pelting stones on them and some of them were also pelting stones towards the masjid. At that time, the Muslim youth also threw stones to protect the masjid. When such stone throwing was going on, at that time, one of the two policemen who were placed there for protection on 27.2.2002, had resorted to

firing. The police had fired shots from the Noorani Masjid towards Gafurbhai's house, where they were standing. In the firing, a bullet scraped over the shoulder of Sarmuddin Khwajahussain (PW-59) and exited. At this time, four or five persons from their chawl went to Police Inspector Shri Mysorewala and asked him to work impartially, whereupon Mysorewala told him that today, he was not in a position to protect their masjid and that they should protect themselves because there was pressure on them from above.

80.4 The witness has further deposed that Police Inspector Shri Mysorewala had told him that if he takes any action against the Hindu mob, then they would kill the police. Mysorewala also said that they should flee and hence, all of them who had gone there, returned on the opposite side to Gafurbhai's house.

80.5 The members of the mob were either setting shops ablaze or causing damage to the masjid and one of the persons had started a tanker parked near the masjid and had dashed the same against the door of the masjid, due to which, the door of the masjid and the adjoining Milan Hotel were broken down. Thereafter, the mob started advancing towards the opposite side where they were standing at Gafurbhai's house. At this time, it was around 12:30 in the afternoon. Upon this happening, everyone started running. He was afraid and went to his house. When he went back, he saw that his house was locked and he went into the chawls on the rear side to inquire about his family members, but he could not find his daughter and his wife there.

80.6 Thereafter, he was standing at the back of his house and was inquiring about his family members. In the meanwhile, from the rear side of his house from the open ground, a mob came. This mob went towards the Noorani Masjid. While searching, he reached a small road near the S.T. Workshop where Muslim women and men were standing. The mob was moving ahead step by step. The Muslims were comprised of children and elders, all of whom went towards Gangotri Society. At the corner of Gangotri Society, they met three persons, namely, (1) **Jay Bhavani**, (2) **Tiwari Conductor** and (3) **Dalpat Chhara**. Upon seeing them, they (the accused) asked them as to where they were going and told them to hide in a godown. Approximately, one hundred and fifty of them had hidden in the godown. After ten minutes, from what they were talking, he felt that these three persons would burn down the godown. Thereafter, he pinched a small boy who started crying, whereupon, he told Bhavani to open the door as the boy wanted to drink water. Thereafter, upon Bhavani opening the door, all of them, men, women and children went out together. At that time, around fifteen to twenty persons were left in the godown and the rest had come out. Those who came out and fled went towards a small gate near the S.R.P. Quarters. They requested the S.R.P. personnel who were standing there; however, they did not let them enter inside. They did not even let them stand there and hence, as Gangotri Society was empty, they climbed on its terrace. At that time, it was approximately 4:00 in the evening. From 4:00 in the evening till 8:00 at night, he sat on the terrace.

80.7 In the meanwhile, at about 5 o'clock, a mob came. In this mob, **Kishan Kourani (A-20)**, **Manoj Videowala (A-**

41), Ashok Sindhi (A-38 or 45) and Suresh Langado (A-22) were present. Under the leadership of these four persons, the house of Majid Langda, which was in the last line of Hussainnagar, came to be burned. Majid was engaged in the business of bidi, cigarette and miscellaneous items in his house. As Majid's house was in the last line, under the impression that nothing would happen, he had locked his house with his wife and children inside. His family was comprised of around six to seven members. In the fire which was kindled at Majid's house, all those persons who were inside the house were burnt alive which he had seen with his own eyes. Thereafter, at around 8 o'clock, he went down to answer nature's call. At that time, **Jay Bhavani, Dalpat and Tiwari Conductor** were snacking on *bundis*. He went near them and asked for some water. However, they said that even they did not have any water to drink and hence, he went back to the terrace. After the earlier incident, as well as the incident that took place at Majid's house, those persons who were left in the godown, who were approximately fifteen to twenty persons as well as those who could not climb near the S. T. wall, such people were sitting near the compound wall and **Tiniyo Marathi (A-55)**, son of S.R.P. chased them away. All these persons who fled from there did not return. They were killed and thrown in a dry well.

80.8 The witness has further deposed that thereafter, he climbed on the terrace and was there till around 11 o'clock at night. Around five big police vehicles came near Gafurbhai's house at 11 o'clock at night and they were shouting that if anyone has survived or is hiding, they should come down. A Muslim belonging to their area was also with them (with the

police). They together with their families came out on the road. On that day, it was dark. While coming from Gangotri Society towards Patiya, there was a burnt dead body lying on the road, which he could not see in the darkness and upon bumping against the dead body, he fell down, due to which he sustained injury on his back for which he had availed of treatment at the camp. They were taken in the vehicles, but as there were too many people, his turn had come in the second trip. All of them were taken to the Shah Alam camp. In the meanwhile, he found his son and both of them had gone to the Shah Alam camp together.

80.9 The witness has stated that he can identify all those persons whom he has stated he had seen in the mob. He has stated that since a long time of seven to eight years has passed since he had seen them and there might be changes in their physical features, he would be able to identify them from near. The witness has identified Dhanraj (A-16) as Ashok Sindhi and therefore, he has failed to identify accused Ashok Sindhi. The witness has correctly identified Tiwari Conductor (A-25), Manoj Videowala (A-41), Naresh, Guddu Chhara's brother (A-1) and Kishan Kourani (A-20). The witness has wrongly identified accused No.22 as Tiniyo Marathi, and therefore has failed to identify him. Similarly, he has identified accused No.34 as Suresh Langdo and hence, in this case also, there is a misidentification. Out of the accused named by him, this witness has not identified Bipin Panchal (A-44) and Hariyo Chhara (A-10) at all.

80.10 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that on 27.2.2002 and

28.2.2002, that is, on both the days, the water supply and electricity supply to Naroda Patiya was stopped. In his cross-examination, it has further come out that on the day of the incident, in his family, other than him, his son Ahesan Ahmad had also sustained injury on the knee on account of falling down. Like him, his son had also availed of treatment at the camp; however, no medical certificate had been issued to them. In his cross-examination, it has further come out that while they were at the Shah Alam Camp, after four to five days, two persons who looked like police but were not wearing police uniform, had come with printed forms and in the queue, there were around fifteen hundred to sixteen hundred people whom they had called. They had also asked him about how much loss he had suffered and he had stated regarding the loss which he had sustained. The witness stated that he does not remember as to whether he had given the names of three or four accused. The witness does not know whether the same had been written down or not. The witness has further stated that he had also asked them to record the names of the accused and that he had named three or four accused, however, he does not know as to which names they had written down. He has stated that he wanted to give names of other accused also, however, they had told him to see how long the queue behind him was, and that he should give his statement in short and that he should give his detailed complaint thereafter. He has stated that they had asked him to sign on such form. The witness has admitted his signature on the complaint application. The witness has read the contents of the complaint and has stated that what is stated therein is true. However, all the facts stated by him in the complaint have not been written down. The complaint has been exhibited

as Exhibit-518, and the corresponding first information report is Exhibit-308.

80.11 The witness has further stated that after recording of the complaint-Exhibit-518, the Crime Branch had recorded his statement on 15.5.2002. He has further stated that even the Crime Branch did not record all the facts as stated by him. In his cross-examination, it has come out that in the year 2008 he had read in the newspaper that if any complainants or witnesses of Godhra incident are dissatisfied, they can contact the SIT. Hence, he had addressed an application through Registered A.D. to the SIT Office, at Gandhinagar. The complaint application is produced with a list Exhibit-519. The witness has admitted his signature below the complaint application and has stated that the same is in his son's handwriting, which he can identify. After reading the contents of the application, the witness has admitted the contents thereof and the application is exhibited as Exhibit-520. About twenty days after making the application, he had received a summons at home, wherein a date was given on which he was required to appear personally at the SIT office. On the date mentioned in the summons, he had personally gone to the SIT office, where his statement was recorded.

80.12 In his cross-examination, he has stated that Badarsing-ni-Chali and Pandit-ni-Chali are next to each other and Pandit-ni Chali is behind Jay Ambe Pan House. In his cross-examination, the witness has stated that the owner of Jay Ambe Pan House was one Vermaji. The witness has been cross-examined with regard to the topography of the area. In his cross-examination, he has stated that at present, he does not

remember in which chawl Gafurbhai was residing; however, his residence is on the road. His (the witness's) house is the last house in the chawl. The witness has stated that from the time he is residing in the Naroda area, he knows Gafurbhai. The witness has denied that Gafurbhai's house is adjoining his chawl and has stated that there is no chawl adjoining Gafurbhai's house. The witness has denied that he has contested any elections from the Saijpur Ward and has voluntarily stated that he has contested the elections from the Naroda ward, at which point of time he had only 182 voters who were all from the neighbouring chawls. He has stated that he was not required to go and ask for votes and he had contested the elections in 1976, at which point of time, there was a Panchayat. The witness has stated that he does not have any interest in politics, but has a liking for it. The witness has stated that if he is at home and if somebody has any task, he does it for him. The witness has denied that because of his liking for politics, he wants to go ahead in politics. He, however, has voluntarily stated that right from the beginning, he is a rickshaw driver and that today also, he is a rickshaw driver.

80.13 [The trial court has made a note to the effect that the learned advocate for the defence wanted to put questions to the witness with regard to his criminal background, and has opined that the same would be likely to embarrass the witness and hence, the court cannot permit such questions to be put to him. The learned advocate for the defence had submitted that the questions should be taken down, whereupon the court recorded that the question is recorded, however, permission to ask such question is not granted and the witness is told that it

is not necessary for him to answer such question. The question sought to be put to the witness was as to whether any offence was registered against him under section 326 of the Indian Penal Code at the Maninagar Police Station. The court has recorded a finding to the effect that it has found that the above question is not necessary as it does not have any connection with this case. Moreover, putting such a question would amount to asking an insulting question to the witness and he would be put to an embarrassing position and hence, the question is rejected. [In this regard it may be pertinent to note that it is settled legal position that a witness can be put to any question in his cross-examination to impeach his credibility. The criminal antecedents of a witness would certainly be relevant material for the purpose of impeaching the credibility of a witness. Under the circumstances, the trial court was not justified in not permitting the defence to put such question to the witness on the ground that the witness would feel embarrassed.]

80.14 In his cross-examination (paragraph 49), it has come out that the witness is not a member of the Noorani Masjid Committee. On 28.2.2002, when he went to Jay Ambe Pan Parlour at 8:00 in the morning, the riots had not started. The witness has voluntarily stated that the mobs were coming from the direction of Krushnanagar. The witness has admitted that despite stone throwing having commenced, he had stood at the Jay Ambe Pan Galla. The witness has voluntarily stated that the stone pelting was on the opposite side. For a minute when he was standing there, there was no stone pelting at their chawl. The witness has voluntarily stated that thereafter immediately there was stone pelting at their chawl. He has

denied that the moment the stone pelting started, he has returned to his chawl. He has stated that he has not been hurt by a single stone during the stone pelting.

80.15 The witness has admitted that the Muslim youth were also throwing stones as a counter offensive. The witness has voluntarily stated that it was the Hindus who firstly started pelting stones and that with a view to protect the masjid; the Muslim youth had also pelted stones. He has admitted that through this mob, he had gone to meet Shri Mysorewala. At that time, nobody had thrown stones at him. The witness has voluntarily stated that at that time, other people were standing near Gafurbhai's house and that stones were being pelted at them. The witness has admitted that on 28.2.2002, from the time he left his home at 8:00 in the morning till 12:30, he had remained outside. After returning home at 12:30, he had not gone to search for his family members in all the chawls, but had gone to the chawl behind his chawl. He does not remember the name of the chawl, but says that he could trace out his family within fifteen minutes. The witness has denied that in his application Exhibit-518, he had not given the names, addresses and description of Guddu Chhara's two brothers. The witness has denied that he has not given the names of Guddu Chhara's brothers in his statement before the SIT. The witness has admitted that no test identification parade was carried out in respect of accused No.1 Naresh Chhara whom he had identified in the court on the previous day. In his cross-examination, the witness has stated that he had not complained to the managers about the names of the accused as stated by him, not being written down in his complaint at Exhibit-518. The witness has voluntarily stated that those

times were very different. They all were very frightened, staying in the camp, and did not know the names of the persons who were staying next to them. In such a situation, whom would they go to complain? The witness has admitted that Shah Alam is a Muslim area. He has admitted that the Shah Alam camp was a Muslim camp. He has also admitted that he has not lost any family member in this incident, nor have any of them sustained any serious injuries. He has denied that at that time, there was no fear in the camp. The witness has voluntarily stated that till three months, they were not free from fear.

80.16 In his cross-examination, the witness has further stated that in connection with the facts as stated by him not being written down in his application Exhibit-518, he had not made any complaint to any higher officer. He has stated that the reason was that no higher officer used to come there. The witness has further stated that they did not even have the facility of sending Registered A.D. post and that the person who took the readymade application Exhibit-518, came after four to five days, whereas it took them about three months to come out of their fear.

80.17 In his cross-examination, the witness has stated that in the year 2005-06, he was staying at home at Vatva. He has admitted that in the year 2005-06 also, he had not made any application to any higher authority. The witness has voluntarily stated that the reason was that neither the police nor the government was theirs. He has also stated that he has not made any application to the State Human Rights Commission for the reason that they themselves were coming

and writing down their complaints in detail. The witness has admitted that on 12.5.2002 when his statement was recorded, on that very day, he had come to know that the Crime Branch had not recorded his statement as stated by him and that the words have been changed as per their own whims. The witness has stated that he does not remember as to which were the words which he had stated but were not taken down. In his cross-examination, it has further come out that the person who had recorded his statement had not read it over to him. He had not asked the police to read over the statement to him. The witness has voluntarily stated that at that time, there were so many people that they were not responding to anyone.

80.18 In his cross-examination (paragraph 85), it has come out that the fact that in his complaint Exhibit-518, all the facts stated by him had not been written down and that incomplete details had been written down. As to which names had been written down out of the three to four accused named by him, was something that he had come to know only today. In his cross-examination (paragraph-91), the witness has denied that he can identify those two policemen who had been dropped near Gafurbhai's house on the previous day, even today. He has admitted that they had made arrangements for tea, etc. for the two policemen.

80.19 The witness has stated that the incident of Sarmuddin had occurred at about 9:30 on 28.2.2002. He has denied that at the time of Sarmuddin's incident, he was at home. He has further denied that when the incident took place, Sarmuddin was at the corner of their lane. He has stated that when the incident took place, he was at the Patiya Narol road,

near Gafurbhai's house. The witness has stated that he cannot say what was the distance between him and Sarmuddin, but has stated that he was quite near. The witness has denied that between him and Sarmuddin, there were about forty to forty-five persons, but he has voluntarily stated that there must be ten to fifteen persons. The witness has stated that if he looks from Gafurbhai's house, then he can recognize a person standing at Noorani Masjid, if he knew him. The witness has denied that when Sarmuddin sustained bullet injury, he was standing next to him. A contradiction is sought to be brought out in this regard to the effect that in his statement recorded by the Crime Branch, he had stated that at that time, Sarmuddin Khwaja Hussain Shaikh, who was standing next to him, was injured on his right shoulder by a bullet through private firing from the mob. The witness has stated that it is definite that Sarmuddin was injured in the police firing. He has admitted that on the date when he lodged the complaint Exhibit-518, he was aware of the fact that Sarmuddin was injured in police firing. The witness has voluntarily stated that he knew this from the time of the incident itself. The witness has admitted that in his readymade complaint Exhibit-518 as well as in the statement dated 3.5.2002 recorded by the SIT, he has not stated that Sarmuddin was injured in police firing. The witness has voluntarily stated that at none of these three places, the injury sustained by Sarmuddin was the subject matter. The witness has admitted that the fact that Sarmuddin had sustained injury through the firing carried out by one of the two policemen who were posted near Gafurbhai's house on 27.2.2002, has not been stated by him in Exhibit-518 as well as statements dated 12.5.2002 and 3.5.2002. The witness has voluntarily stated that this is because he did not have faith in

either police or the government.

80.20 In his cross-examination, he has stated that as far as he knows Majid's full name is Abdul Majid Langda, but he does not know his father's name. The witness does not know whether the full name of Majid Langada is Abdul Majid Mohammad Usman Shaikh. He has stated that the incident of Majid Langda occurred after 4 o'clock on that day and that he cannot give the exact time as he was not wearing his watch on that day. The witness has denied that at the time of the incident, it was dark. He has stated that at the time of Majid's incident, he was on the terrace of Gangotri society and that Abdul Majid resided in the last line of Jawannagar. The witness has stated that in his examination-in-chief, due to inadvertence, he may have stated Hussainnagar-ni Chali instead of Jawannagar. He has further stated that Abdul Majid's house was comprised of only a ground floor and the door of the house was facing Noorani Masjid and it had a small window from which he used to sell goods in the evening.

80.21 The witness has admitted that on that day, people were killed and thrown in the well. The witness has voluntarily stated that he himself has not seen them being thrown in the well; however, two persons who had escaped and were sitting with him in the godown had told him about it. The witness has admitted that there is a road between the last lane of Jawannagar and the terrace of Gangotri. The witness has stated that at the time of the incident, there was no wall between Gangotri Society and Jawannagar. He has further stated that when they went to Gangotri, they had seen the temple which was inside the society. He has stated that he

does not know whether the godown in which they had taken shelter was near the temple. He has stated that they were standing in the godown and that the godown was facing east. He has stated that there were around one hundred to one hundred and fifty people in the godown and that the godown did not have a window and had a wooden door and did not have a shutter. The door of the godown was in two parts and there was a chain to lock the godown from outside. He has stated that there was no platform outside the godown door and that they had gone inside the godown one after other. He has further stated that no Muslim leaders were standing outside to protect them and that there were three people there to keep them inside the doors. He has admitted that after sending all the one hundred and fifty people inside, the door was shut. He has stated that they had remained inside for around twenty minutes and that in the interior side, women were sitting and the men were standing. He has admitted that nobody came to the godown and attacked. The witness has voluntarily stated that there was preparation. He has stated that they were not talking inside because all of them were frightened. He has stated that the roof of the godown was made of tin sheets. The witness has stated that he does not know whether there was a hole in the godown and has voluntarily stated that from the movement of these people, which he saw from the cracks in the door, he had become suspicious. The witness has denied that there is open space on all four sides of the godown. He has stated that the open space of the godown was towards the S.T. compound wall. He has stated that they must have gone to the godown at approximately 2 o'clock and had gone to the terrace of Gangotri at around 4 o'clock.

80.22 The witness has stated that he does not hire videos from Manoj Videowala. He has no relation of visiting Manoj's house. The witness has voluntarily stated that he does not know where he resides. He has stated that he has got no business or credit dealings with Manoj and he had no occasion of talking to Manoj.

80.23 The witness has also stated that just like Manoj Videowala, he also does not have any relations with Kishan Korani. Similarly, he also does not have any kind of relations or contact with Suresh Langda. He has stated that before the SIT he had said that he was in a position to identify all the persons whom he had named as accused. He has stated that the SIT authorities had not arranged any test identification parade for identifying the accused. He has admitted that he has identified the accused for the first time before the court.

80.24 The witness has admitted that in his readymade complaint, exhibit-518, he has not named the persons whom he has identified as accused in the court and has voluntarily stated that he had tried to give their names, however, they had not written them down. He has admitted that Kishan Korani's (A-20) name does not find place in his statement dated 12.5.2002 recorded by the Crime Branch. He has however voluntarily stated that he had given such name.

80.25 The witness has stated that he knows Majid Langda since around fifteen years. He does not remember as to whether on 27.2.2002 and 28.2.2002, he had personally met Majid Langda. He has admitted that on the date of the incident, Majid was with him on the terrace. He has admitted

that they were on the last terrace of Gangotri Society. He, however, does not know as to whose terrace it was. He had reached the terrace at around 4 o'clock in the evening.

80.26 The witness has admitted that a lot of people belonging to the Muslim community were there on the terrace on that day. On that day, on the terrace, there was conversation between him and Majid to the effect that his house was burnt and that his children were inside the house. That upon inquiring from Majid, he had told him that he had kept his wife and children inside the house and had locked it from outside. The witness has admitted that on the date of the incident, he had not gone to Majid's house and has voluntarily stated that on that day, there was so much fear that no one was in a position to go to anyone's house. The witness has denied that between the terrace on which they were and Majid's house, there are twenty five to thirty houses and has voluntarily stated that there are no houses in between and that Majid's house can be clearly seen from the terrace.

80.27 The witness has stated that while they were on the terrace, no mob had come to the Gangotri society. The mob which came to Jawannagar was comprised of fifty to sixty persons, which he had seen from the terrace when it came near Majid's house. The witness has stated that he does not know whether the mob had broken the lock on Majid's house. He has admitted that the door of Majid's house was on the opposite direction, from which they were standing. He has admitted that he could not see what the mob was doing at the door. He has denied that all the members of the mob had tied saffron bands and had stated that some of the people had tied

such saffron bands. He has denied that they had put black cloths on their face. The witness has admitted that he has not seen as to how many members of Majid's family were inside his house. The witness has denied that the members of Majid's family were not inside his house and that they have not been burned and that he is falsely deposing and that he has not seen any mob coming to Majid's house. The witness has admitted that Majid had told him that his family members were burned and that is how he came to know about it. The witness has denied that Majid had never told him any such facts with regard to his having locked his family members inside the house and they having been burned. The witness has denied that Majid's family members did not die inside the house, but died in the part outside the society.

80.28 The witness is sought to be contradicted as regards the contents of paragraph 17 of his examination-in-chief, to the effect that all the facts stated therein have not been stated by him in his statement dated 12.5.2002 before the Crime Branch, his readymade complaint Exhibit-518 and the application Exhibit-520 made before the SIT. The witness has voluntarily stated that he was giving the names, but those who were writing, did not take it down. The witness has denied that in his statement dated 12.5.2002, he had stated that "upon looking out of a hole in the wall after half an hour" and has stated that he had stated that "while he was seeing from the crack between two doors". The witness has admitted that in his readymade complaint, Exhibit-518, the application Exhibit-520 and statement dated 12.5.2002, he has not stated that he was looking from the cracks between the doors. The witness has admitted that this fact has not been stated by him even in

the statement made before the SIT. From the cross-examination of this witness, it has come out that Gafurbhai is still alive.

80.29 The witness has denied that the mob came charging from all four sides and has voluntarily stated that one mob came from the direction of Krushnanagar and another mob came from the side of Natraj Hotel. The witness has stated that on the day of the incident, he had occasion to meet the police for the first time, while going to the camp at 11 o'clock at night. The witness has denied that he had boarded the vehicle which was going to the relief camp as he had faith in the police and has voluntarily stated that everyone was standing there and he had gone where they were going. The witness has admitted that at that time, he had not told the managers of the camp that he had seen a great part of the riots and knew a lot and hence, they should make arrangements for him to narrate the same to the Police Commissioner and the Collector. The witness has voluntarily stated that the riots were continuously going on and the situation was extremely bad and the managers were never idle as they were busy making arrangements for their meals and they did not have any time. In these circumstances, it was not possible to state any such things to the managers. The witness has stated that after a week, he had gone out of the camp on the road. He has stated that after about two months in the camp, he had gone to take money from a Hindu acquaintance as he did not have any money. The Hindu whom he met was his friend and he had given him Rs.200/-. The witness has stated that prior to 2002, he knew many advocates. He did not think that he should use Rs.200/- and meet an advocate and inform him about his

sufferings and find a remedy in that regard. The witness voluntarily states that the managers of the camp as well as the advocates who used to visit the camp used to give them a lot of help.

80.30 The witness has stated that after about four to five days after they had gone to the camp, an announcement had been made on the mike in the context of which, he had made the readymade complaint Exhibit-518. He has further stated that at that time, he did not advise them not to give such readymade complaints and that complaints with detailed information should be given. The witness has stated that it was not possible for him to do so as the managers of the camp, themselves were knowledgeable in law and they would be aware of such facts. It has further come out that it took about four minutes to take down his complaint Exhibit-518. That there was a heap of printed complaints out of which, they used to take out one and take down their complaints. The witness has admitted that the printed facts on the complaint Exhibit-518 were printed prior in point of time. The witness is cross-examined at great length and in great detail about the manner in which the complaints were recorded at the camp.

80.31 In his cross-examination, it has come out that when for the first time he saw the mob coming from Krushnanagar, the mob was on the opposite side of the S.T. Quarters (sic. S.R.P. Quarters). In his cross-examination, it has further been elicited that he had not seen any Muslim mob near Noorani Masjid pelting stones at a Hindu mob. The witness has voluntarily stated that the Muslim population residing behind the masjid was very frightened and did not even come on the

road. The witness has stated that he had seen the Muslim mob pelting stones to protect Noorani Masjid when the mob from the side of Krushnanagar which was pelting stones reached Noorani Masjid. He has stated that the Hindu mob was extremely large, whereas the Muslim people were a few in numbers, and hence, the resistance given by the Muslim to protect Noorani Masjid by pelting stones did not have any effect.

80.32 The witness has admitted that in the readymade complaint Exhibit-518, complaint before the SIT Exhibit-522 and statement dated 12.5.2002, he has not stated that he can identify the accused if he sees them. The witness has stated that in his application Exhibit-520, he had not stated that the person, who had written down the readymade complaint Exhibit-518, had not taken down the names of the accused though he had given them. The witness has stated that this was because Exhibit-520 was not his statement, but only an application to the SIT.

80.33 The witness has stated that he does not know that on the date of the incident, a Hindu boy named Ranjit had been killed. He has stated that he does not know as to how many Hindus had been killed in the Naroda Patiya area. The witness states that he only knows that the dead body of the owner of Jay Ambe Pan House whose name is Vermaji was lying on that day, which has not been found till date. He has stated that Hindu mob thought that Vermaji was a Muslim and hence, had killed him.

80.34 The witness has admitted that the facts narrated

from the eighth line till the end of that paragraph 6 of his examination-in-chief had not been stated by him in his statement dated 12.5.2002. It may be noted that these facts related to certain events that are stated to have occurred on the previous day, and are not relevant insofar as the incident is concerned. Under the circumstances, such omission cannot be said to be a material omission so as to amount to a contradiction. Therefore, such question ought not to have been permitted to have been put to the witness. The witness has further admitted that in his statement dated 12.5.2002 recorded by the police as well as his complaint Exhibit 518 and application Exhibit 520, he had not stated the facts stated in paragraph 8 of his deposition, wherein the witness has stated that Bipin Panchal, Guddu Chhara and his two brothers were leading the mob and the people in the mob were armed with swords, trishuls, spears, revolvers and iron pipes, and has further stated that, that was the reason why he had to go before the SIT.

80.35 The witness is also confronted with his previous statement dated 12.5.2002, to the effect that the facts stated by him in paragraphs 11 and 12 his examination-in-chief wherein the witness has stated facts with regard to cross stone pelting at Noorani Masjid and police firing wherein a bullet grazed Sarmuddin's shoulder and the Muslims having requested Shri Mysorewala to act impartially etc., have not been stated by him in such statement which the witness has denied. The witness has admitted that he had not stated the facts stated in paragraph 13 of this examination-in-chief viz. that P.I. Shri Mysorewala had also told him that if he takes action against the Hindu mob, then they will kill the police;

Mysorewala also told them to flee and hence all those who had gone had returned and gone on the opposite side to Gafurbhai's house; in his previous statement dated 12.5.2002. The witness is sought to be contradicted as to his previous statement dated 12.5.2002 as well as his statement before the SIT to the effect that he had not made any mention of the words "door of the masjid" used in paragraph 14 of his examination-in-chief in such statements. The witness confronted with his statement dated 12.5.2002, to the effect that all the facts stated in paragraph 14 of his examination-in-chief wherein the witness has referred to the damage caused by the mob to the masjid as well as Milan Hotel and the mob advancing forward at around 12:00 in the afternoon whereafter he went home, have not been stated in such statement, which he has denied. The witness is further confronted with his previous statement dated 12.5.2002 to the effect that the facts stated by him in the first seven lines of paragraph 15 of his examination-in-chief have not been stated by him in such statement, which he has admitted. Insofar as the first seven lines of paragraph 15 of the examination-in-chief of the witness are concerned, the same are merely an elaboration of facts and cannot be said to be an omission in the nature of contradiction. In the same paragraph the witness has referred to Jay Bhavani, Tiwari Conductor and Dalpat Chhara having told them to hide in the Godown, but no contradiction has been brought on record qua this part of this deposition. The witness is also contradicted with regard to the contents of paragraph 16 of his examination-in-chief to the effect that such facts had not been stated by him in his statement dated 12.5.2002, which he has denied. However, in this paragraph the witness has merely referred to their having gone towards S.R.P.

Quarters and upon not being permitted to enter they had gone to a terrace of Gangotri Society. The witness is sought to be contradicted as regards the contents of paragraph 18 of his examination-in-chief, only to the extent of the words "*Bundi Snacks*" and the words "*at around 8 o'clock*" used in that paragraph, to the effect that such words had not been used in his statement dated 12.5.2002, which he has denied. A contradiction is sought to be brought out as regards the facts stated in paragraph 19 of his examination-in-chief to the extent that he has not stated the words "*incident that took place at Majid's house*", in his statement dated 12.5.2002 recorded by the CID, Crime Branch, which he has denied. The witness is also sought to be contradicted as regards first 14 lines of paragraph 20 of his examination-in-chief wherein the witness has referred to his having stayed on the terrace till 11:00 p.m. and facts regarding the police having come and taken them to the relief camp, to the effect that he has not stated such facts in his statement dated 12.5.2002, which he has denied. These facts in the opinion of the court have no direct relation to the incident in question and hence, omission to mention such facts in the police statement cannot be said to be so material so as to amount to a contradiction. The witness is further sought to be contradicted as regards the facts stated in paragraph 28 of his examination-in-chief wherein the witness has referred to the police in plain clothes having come to the camp with printed form etc., to the effect that he had not stated such facts either in his statement dated 12.5.2002 recorded by the Crime Branch or statement dated 4.6.2008 recorded by the SIT, which he has denied and has voluntarily stated that he had stated such facts, but they had not written down the same. Since the facts stated in paragraph 28 relate

to events much after the incident, non-mentioning of such facts in the previous statements cannot be said to be an omission amounting to a contradiction.

80.36 The witness is further sought to be contradicted to the effect that the last five lines stated by the witness in paragraph 29 of the examination-in-chief were not stated by him in his statement dated 4.6.2008 before the SIT as well as in his statement dated 12.5.2002, which he has admitted to the extent of his statement recorded by the SIT and has voluntarily stated that the readymade complaint was not written down in the manner he had stated and the Crime Branch had also recorded his incomplete statement and hence, he was required to give his statement before the SIT. Pertinently, the contents of paragraph 29 of his examination-in-chief, once again relate to events at the camp and have no direct connection with the offence and hence, non mentioning of such facts, in the absence of any specific query having been put by the investigating agencies, cannot be said to be an omission amounting to a contradiction. The witness has admitted that the facts stated in paragraph 30 of his examination-in-chief to the effect that the facts stated in the complaint are true, however, the writer had not taken down and the full facts have been stated by him before the SIT. The witness has denied that he has not stated the facts recorded in page 19 of his examination-in-chief in his statement dated 12.5.2002 before the Crime Branch.

80.37 The witness has denied the suggestion that he has not witnessed the incident and that subsequently, he had filed a false application before the SIT making false allegations. In

his cross-examination, it has come out that the witness has not studied beyond Standard X. The witness has denied the suggestion that as he has been named as an accused in the complaint lodged in connection with burning of Bipin Auto, he has wrongly named Bipin Panchal in his statement.

80.38 The assignee officer and the Investigating Officer (SIT) who had recorded statements of the witness have been cross examined to prove the omissions and contradictions in the testimony of the witness as to the statements recorded by them.

80.39 PW-281, Shri D. S. Vaghela, the assignee officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has stated that he does not remember as to whether a copy of the complaint of this witness was given to him when he was instructed to record his statement. The assignee officer has admitted that he has not recorded the statement of the witness in connection with any complaint given by him or for investigating any complaint given by him. The assignee officer has admitted that he was not informed about any complaint having been given by this witness earlier. The assignee officer has stated that the statement of this witness was recorded at the Shah Alam camp. He has also admitted that it has not happened that the statement of this witness had been changed by the Crime Branch and that it has also not happened that certain words in the statement have been changed. He has admitted that this witness had stated before him that on 3.5.2002, he had gone to protect his house. He has also admitted that the witness had stated before him that at that time, Sarmuddin Shaikh who was standing near

him was injured by a bullet from private firing on his left shoulder and was injured. He has also admitted that this witness had not named Kishan Korani before him.

80.40 The contents of paragraph 17 of the examination-in-chief of the witness are read over to the assignee officer and he has admitted that the witness has not stated such facts in the statement recorded by him.

80.41 The contents of paragraph 11 of the examination-in-chief of the witness are read over to the assignee officer, wherein he has stated that at that time, the people of their chawl were standing near Gafurbhai's house. There, Naroda P. I. Shri Mysorewala was also present with his jeep. The assignee officer has admitted that such facts have not been stated by the witness in his statement recorded by him.

80.42 The contents of paragraph 12 of the examination-in-chief of this witness have been read over to the assignee officer who has admitted that such facts have not been stated by this witness in the statement recorded by him. The assignee officer has admitted that the witness has not mentioned the words "door of the masjid" in the statement recorded by him.

80.43 The contents of paragraphs 14 and 16 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that such facts have not been stated by the witness in his statement recorded by him. The assignee officer has admitted that the witness had not stated before him the facts regarding the accused eating snacks like *Boondi* as well as at around 8 o'clock at night.

80.44 A part of the contents of paragraph 19, the contents of first fourteen lines of paragraph 20, the contents of paragraph 28 as well as the contents of last five lines of paragraph 29 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him. The assignee officer has admitted that the witness had not stated before him that earlier, he had lodged a complaint and the person who had taken down the complaint, had not taken down the full facts.

80.45 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT), in his cross-examination, has admitted that he has recorded the statement of this witness on 4.6.2008. The Investigating Officer (SIT) has admitted that this witness had stated before him that his earlier statements dated 12.5.2002 and 9.5.2008, were correct and proper. In the opinion of this court, this part of the evidence is inadmissible inasmuch as the statement under section 161 of the Code has not been used to contradict the witness, but has been brought on record to corroborate the stand of the defence.

80.46 The Investigating Officer has admitted that this witness has not mentioned the words, "Masjid door" but has mentioned the word, "Masjid wall".

80.47 The contents of paragraph 28 of the deposition of this witness are read over to the Investigating Officer, who has admitted that the witness has not stated such facts in the statement recorded by him. In paragraph 28, the witness has

stated that when they had gone at the Shah Alam camp, about four to five days thereafter, two persons who were not wearing police uniform, but looked like police had come with a printed form. They were called and around fifteen hundred to sixteen hundred people had formed a queue there. In the opinion of this court, the events that had transpired at the camp, can hardly be said to have any connection with the incident in question and hence, cannot be said to be an omission amounting to a contradiction. Such questions, therefore, ought not to have been allowed to be asked to the witness.

80.48 The Investigating Officer has admitted that this witness has not stated before him that all the facts stated by him in the complaint had not been recorded. He has further admitted that the witness had not stated before him that even the Crime Branch people had not recorded all the facts stated by him.

80.49 SUBMISSIONS: The learned counsel for the appellants/accused, have invited the attention of the court to paragraph 6 of the deposition of this witness together with paragraph 170 thereof, to submit that an omission has been proved to the effect that the witness has not stated these facts in his statement dated 15.5.2002. [In this regard, it may be noted that the facts which are sought to be contradicted are the facts relating to certain events which occurred on the previous day and as discussed earlier, the same cannot be said to be an omission in the nature of a contradiction.] The learned counsel have further pointed out that the witness in paragraph 8 of his examination-in-chief has named accused Bipin Panchal, Guddu Chhara and his two brothers as leading the

mob and that the members of the mob were wielding arms like swords, trishuls, spears, revolvers, steel pipes etc., whereas such facts have not been stated by the witness in his statement dated 12.5.2002 and that such contradiction has been proved on record in paragraph 171 of the deposition of the witness, wherein the witness has admitted the same. It was submitted that this is a material omission amounting to a contradiction, inasmuch as, the accused who are named in the examination-in-chief, have not been named in the statement recorded before the police.

80.50 Reference was made to the contents of paragraph 9 of the examination-in-chief, to submit that the witness has not named accused No.20 – Kishan Korani in his police statement, which has been proved through the testimony of the assignee officer PW-281 D. S. Vaghela (paragraph 40), whereby it is duly proved that the witness has not named Kishan Korani in his police statement. [It may be noted that the witness has not been confronted with his previous statement recorded by PW 281 insofar as the contents of paragraph 9 of his examination-in-chief is concerned, and hence, the question of proving such contradiction through the testimony of the concerned police officer would not arise. The contradiction, therefore, cannot be said to have been proved.]

80.51 The attention of the court was invited to paragraph 172 of the cross-examination of this witness, to submit that a contradiction has been brought on record that the witness has not stated the facts as stated in paragraphs 11 and 12 of the examination-in-chief in his statement dated 12.5.2002, and that such contradiction has been proved through the testimony

of PW 281 (paragraph 43). It was pointed out that the witness has admitted that the facts stated in paragraph 13 of his examination-in-chief have not been stated by him in his statement dated 12.5.2002. Referring to the contents of paragraph 14 of the examination-in-chief, it was submitted that the entire facts stated therein have not been stated by the witness and that the contradiction has been proved through the testimony of the Investigating Officer, PW-281 (paragraph 46). It was submitted that the witness has created this story for the first time when his statement was recorded before the SIT.

80.52 It was submitted that the fact of the incident about the tanker having dashed with the gate of the masjid whereby the gate was broken and due to its impact, Milan hotel was also demolished, are not the facts which have emerged as per the prosecution case. It was submitted that no such incident of door or wall having been broken have been proved by any witness and that the witness is, therefore, creating a story not put forward by the prosecution. Referring to the contents of paragraph 15 of the examination-in-chief, it was submitted that though no one is implicated in this paragraph, no such events have transpired and none of the witnesses have stated so and that the other witnesses have denied any such incident. Referring to the contents of paragraph 17 of his examination-in-chief, it was submitted that the entire set of facts have been created after six and a half years. Reference was made to the testimony of the PW 281 the assignee officer (paragraph 47), to point out that such facts have not been stated by him in his statement recorded by the police. Reference was made to the contents of paragraph 18 of the examination-in-chief of the

witness, to submit that a contradiction has been brought out to the effect that the time stated by him and the fact regarding “bundi and snacks” have not been stated by him in his statement before the police, which has been duly proved through the testimony of the assignee officer (para-47). Referring to the contents of paragraphs 28 and 29 of the examination-in-chief, it was submitted that an omission has been proved through the testimony of both the Investigating Officers PW-327 and PW-281. [In the opinion of this court, not stating what has been stated in paragraph 28 of the examination-in-chief cannot be said to be a material omission so as to amount the contradiction, inasmuch as, the same does not have any direct connection with the incident in question]. It was submitted that the witness has tried to project that though he wanted to name more accused persons, he was not permitted to do so, and has cleverly attempted to show that the printed complaints were at the instance of the police and not at the instance of the NGOs. Reference was made to the contents of paragraph 51 of the testimony of PW-281, to submit that no such grievance has been made by the witness either before the police or the SIT.

80.53 It was submitted that the grievance that the written complaint given by the witness, which was registered, was not a complete version as dictated by him has been raised by the witness for the first time before that court. Referring to the contents of paragraph 31 of the examination-in-chief of the witness, it was submitted that it has been duly proved through the testimony of PW-327 (paragraph 408) that the witness has not stated before the Investigating Officer that the Crime Branch has not recorded his statement correctly. It was

submitted that no grievance was raised before the police or the SIT with regard to the printed complaint dated 5.3.2002 and as regards the police statement, no grievance had been made before the SIT and for the first time before the court, such grievance has been made. Therefore, the grievance is without substance and it has to be construed that he has not made this statement. Reference was made to the contents of paragraphs 55 to 58 of the examination-in-chief of the witness, to submit that the witness has been made no such grievance anywhere. The attention of the court was invited to the contents of paragraph 65 of the deposition of the witness, to submit that when the witness came to know on 12.5.2002 itself, that his statement had not been recorded correctly, there was no reason for him not to make any grievance before any authority, or at least before the SIT. Referring to the further cross-examination of the witness and more particularly, paragraphs 70, 73 and 74, it was submitted that the victims were going to the S.T. bus station and were moving around freely and were not under any fear as such, and that the witness has not lost any family member and has admitted that no serious injury is caused to his family members, he had ample opportunity to raise his grievance.

80.54 Referring to the contents of paragraphs 115 to 118 of the cross-examination, it was submitted that though the witness had no acquaintance with Manoj, he has named and identified him. Insofar as Kishan Korani is concerned, he was not named before the police and was named for the first time before the SIT. It was submitted that the witness has no acquaintance with Suresh Langdo and had not correctly identified him. It was submitted that from the cross-

examination of the witness, it has been clearly brought out that he had no acquaintance with the accused and that no test identification parade had been carried out and it is only before the court that he had identified the accused for the first time.

80.55 Referring to the contents of paragraph 126 of his cross-examination, it was submitted that it is amply clear that what has been deposed by the witness as regards the incident of Majid's house, is in the nature of hearsay. It was submitted that the printed complaint, though *prima facie* appears to be given at the instance of some of those agencies who were helping the victims, this witness has attempted to show that it was prepared by someone who appeared to be a policeman, but was not in uniform. In paragraph 30, he has attempted to point out that those police like persons have not fully written the facts as stated by him, which is stated by him for the first time before the court and that neither in the statement dated 12.5.2002 recorded by the police nor in his statement dated 4.6.2008 before the SIT, such facts have been stated.

80.56 It was submitted that considering all the omissions, only the facts stated in paragraph 9 of the examination-in-chief remain. Therefore, as far as the accused are concerned, the role has been attributed in paragraphs 8, 9, 15, 17 and 19 and five incidents have been narrated. It was submitted that in paragraph 8, the witness has implicated Bipinbhai, Guddu Chhara and his two brothers and qua Bipinbhai, there is no identification at all, whereas Guddu is dead. It was submitted that the names of Guddu's brothers have not been given and there is nothing on record to show whether the witnesses had any acquaintance with Guddu's brothers. It was submitted that

out of the two brothers, though Naresh (Accused No.1) has been identified, even if he is taken to be the Guddu's brother, such fact has not been stated in the police statement and so, for the first time before the SIT, accused No.1 Naresh has come in the picture, that too, only as Guddu's brother. Insofar as the other brother, that is, accused No.10 Haresh is concerned, there is no identification. It was submitted that no act has been attributed to Guddu or his two brothers in any other paragraphs.

80.57 It was submitted that insofar as accused No.44 Bipin Panchal is concerned, except for the contents of paragraph 8 of the statement, there are no allegations made against this accused and he is not identified. Moreover, Bipin Panchal has been named only in connection with the morning incident.

80.58 It was submitted that insofar as the second incident is concerned, four accused are attributed roles. Out of the four accused, Kishan Korani's name was admittedly not stated before the police and has been stated for the first time before the SIT. No overt act has been attributed with any weapon.

80.59 As regards Ashok Sindhi, it was submitted that it is not clear as to which Ashok he is referring to, inasmuch as, there are two Ashoks, viz. (i) Accused No.38 and (ii) Accused No.45. It was submitted that the witness has identified accused No.16 as Ashok Sindhi and hence, there is no identification at all, as Ashok is ultimately not identified.

80.60 As regards accused No.22 Suresh Langdo, it was

submitted that the witness has named him as a part of the mob before the police and the SIT, but has not correctly identified him, and instead of him, accused No.34 Laxman has been identified as Suresh.

80.61 As regards Manoj Videowala, it was submitted that there is no acquaintance, but he has named him in both the statements and has correctly identified him. He, however, has not attributed him any specific role qua the weapon viz., the revolver and no recovery or discovery of any weapon has been made either from Manoj Videowala or Kishan Korani.

80.62 It was submitted that the third part of the incident which is narrated in paragraph 15 of the examination-in-chief of the witness, out of the three accused named by him, only accused No.25 Tiwari is alive. It was submitted that all that is stated in paragraph 15 is that the three persons named therein have guided the people to take shelter in the godown, which does not show any criminal complicity of accused No.25. It was submitted that this is the only incident where his name figures, hence, no offence is made out qua him. It was submitted that though Tiwari is identified, the same is of no consequence in view of the lack of any allegation against him.

80.63 It was submitted that some persons referred to in the 8:30 incident are sought to be implicated even in the incident of 5:00 p.m., which even otherwise is *prima facie* unlikely, considering that thousands of persons were moving around, it is not likely that the same person would see the same accused in the morning and again see all four at another place after nine hours at 5:00 p.m. in the evening. Apart from

that, this entire set of facts was not stated either in his complaint or in his first available statement dated 12.5.2002. It was submitted that the witness has contested the elections and was a public figure and had the assistance of advocate, was provided with legal assistance in the relief camp and he had all the opportunity to lodge a complaint, but at no point of time, any grievance was made or complaint was lodged about the serious offence of murder by five to six persons. It was submitted that the witness is not reliable for the reason that except for the facts stated in paragraph 9 of his examination-in-chief, he has come out with all new facts after six years.

80.64 It was submitted that insofar as the incident of Majid is concerned, PW-156 Abdul Majid has been examined and he does not support the say that his family members had been burnt alive in the house. In support of such contention, the attention of the court was invited to the contents of paragraph 8 of the testimony of PW-156 Abdul Majid. It was submitted that there is no evidence that any panchnama of his house had been prepared and dead bodies have been found inside. It was submitted that this witness has stated that he could not see the front door of Majid's house, so in any case he could not have seen the incident.

80.65 It was submitted that the evidence of the other witnesses is that the mob which came first was from the Natraj Hotel side and then from Krushnanagar side, whereas this witness has stated to the contrary. It was urged that in this whole incident, the witness has not assigned any overt act to any accused, and except for naming them, he has not said anything further against them.

80.66 Referring to paragraph 112 of the deposition of this witness, it was submitted that this is not the godown situated in Gangotri as the description does not match. In connection therewith, reference was made to the testimony of PW-137 Rafikanbanu, to submit that therefore, it becomes doubtful as to whether the witness was there in the godown. Referring to the contents of paragraph 15 of the cross-examination, it was submitted that the witness has contradicted himself, inasmuch as, in paragraph 15, he says that he had heard those three persons, whereas in paragraph 113, he says that the door was closed. Referring to the identification of the accused before the court, it was submitted that the witness has identified accused Naresh by name, though in his deposition he has referred to him as Guddu's brother. It was submitted that such identification cannot be accepted and that the identification of the accused by name creates a doubt. Referring to the contents of paragraph 53 of his cross-examination, it was submitted that the evidence of this witness raises serious doubts about his presence and his having seen the incident during the course of the day.

80.67 Referring to contents of paragraph 126 of the deposition of the witness, it was submitted that the witness has only seen Majid's house burning and he has no personal knowledge about the incident. The so-called incident about the tanker having dashed with the gate of Masjid and thereby the gate being broken and on account of its impact, Milan hotel was also demolished are not facts which have emerged as per the prosecution case. Therefore, the witness has created a story which is not put forward by the prosecution.

80.68 It was, accordingly, argued that the witness has contradicted many other witnesses on vital facts and incidents stated by him. He has also improved his version in his SIT statement and before the court, as against what he has stated in the first information report and his statement before the police. The witness has identified two accused and did not identify three accused named by him. The omissions and contradictions and other discrepancies between the deposition, FIR, police statement and SIT statement are vital and important and considering all these aspects, the witness is not a credible and reliable witness and his evidence does not inspire confidence.

80.69 ANALYSIS: This witness has stated that the incident of Sarmuddin had occurred at about 9:30 on 28.2.2002. The witness has denied that when Sarmuddin sustained bullet injury, he was standing next to him. A contradiction is sought to be brought out in this regard to the effect that in his statement recorded by the Crime Branch, he had stated that at that time, Sarmuddin Khwaja Hussain Shaikh who was standing next to him, was injured on his right shoulder by a bullet through private firing. The witness has admitted that in his ready-made complaint Exhibit-518, statement dated 3.5.2002 as well as the statement recorded by the SIT; he has not stated that Sarmuddin was injured in police firing. The witness has voluntarily stated that at none of these three places, the injury sustained by Sarmuddin was subject matter.

80.70 The witness has stated that at the time of Majid's

incident, he was on the terrace of Gangotri Society and that Abdul Majid resided in the last lane of Jawannagar. The witness has stated that in his examination-in-chief, due to inadvertence, he may have stated Hussainnagar-ni-Chali instead of Jawannagar.

80.71 From the testimony of this witness, it emerges that a mob of Hindus had gathered on the national highway and had come towards the Noorani Masjid. The mobs had come from the side of Krushnanagar as well as from the side of Natraj Hotel. The people in the mob had set the shops belonging to Muslims on fire and were pelting stones. This was at around 9:30 in the morning. It also emerges that Naroda Police Inspector Shri Mysorewala was present there with his jeep. According to this witness, there was police firing where PW-59 Sarmuddin Khwaja Hussain was injured when a bullet grazed over his shoulder.

80.72 This witness has referred to a tanker being rammed into the door of the masjid on account of which, the door as well as Milan Hotel were damaged. In this regard it may be noted that in the panchnama of the scene of offence there is a specific mention regarding a tanker having been reversed into the masjid. However, though there are photographs of the scene of offence and videography thereof, there is no such photograph. Pertinently, on the internet, photographs of the Noorani Masjid with a tanker reversed into it which appear to have been taken immediately after the incident are available. Unfortunately, none of the prosecuting agencies have thought it fit to bring them on record. Nonetheless, this fact does find support in the panchnama of the scene of offence, which was

prepared immediately after the incident. Therefore, to the extent the witness talks about the tanker being rammed into the door of the masjid, the same is corroborated by the documentary evidence on record. According to this witness, this had happened at around 12:00 to 12:30 in the afternoon, after which he left and went home.

80.73 This witness has deposed with regard to having gone into shuttered godown at the instance of Jay Bhavani, A-25 Tiwari Conductor and Dalpat Chhara, wherein about one hundred and fifty people were hiding. According to this witness, he apprehended that the godown may be burnt down by these three people, and therefore, he pinched a four year old boy who started crying, whereupon he told Bhavani to open the door as the boy wanted to drink water and upon Jay Bhavani opening the door, all of them came out. This part of the version given by the witness does not find support from the testimonies of any of the other witnesses as none of them have given a version that matches the version given by this witness. The witnesses, by and large have stated that, either Jay Bhavani or some other accused or S.R.P. personnel came and told them that alternative arrangements were made for them near Teesra Kuva, whereupon they had come out of the shuttered godown. Therefore, to the extent the witness talks about apprehending that the above named three persons would burn the godown and pinching a small child to come out of the godown, do appear to be an exaggerated version.

80.74 The witness has stated that thereafter, they had gone towards the S.R.P. Quarters, however, despite their requests, the S.R.P. people standing there did not let them

enter, whereupon they went to a terrace of Gangotri Society at around 4 o'clock in the evening, where he remained till 8 o'clock at night.

80.75 The witness refers to four accused persons, namely, Kishan Korani (A-20), Manoj Videowala (A-41), Ashok Sindhi (A-38 or A-45) and Suresh Langdo (A-22) as having set Majid's house on fire with his family and children, in all, around six to seven persons inside. Insofar as the incident of burning of Abdul Majid's house along with his family members is concerned, there is no evidence to corroborate the same and in fact, the evidence is to the contrary inasmuch as Abdul Majid's family members are stated to have been killed at the passage of the water tank. Therefore, there was no question of Abdul Majid telling this witness that he had locked his family members in his house when he left. To that extent, the testimony of the witness does not appear to be truthful.

80.76 The version given by the witness regarding coming down from the terrace and seeing Jaybhavani, Dalpat and Tiwari having snacks and asking for water also, does not appear to be credible. From the testimony of this witness, it further comes out that while they were going towards police vehicles at night, he bumped against a dead body which was lying on the road. Several witnesses have stated that while they were going to the police vehicles they had seen burning corpses lying on the road.

80.77 This witness has named different accused as being in the mob at different points of time. This witness has named Bipin Panchal, Guddu Chhara and his two brothers, namely,

accused No.1 and 10, as leading the mob on the road in the morning. These facts, however, have not been stated by him in his statement dated 12.5.2002, which the witness has admitted. Therefore, the names of these persons have come on record at a subsequent stage. Moreover, the witness has failed to identify Haresh Chhara (A-10) and Bipin Panchal (A-44) in the dock. Though he has referred to two brothers of Guddu Chhara in his deposition, during the course of identification, he has referred to accused No.1 Naresh Chhara by name.

80.78 The witness has also named Kishan Korani (A-20), Ashok Sindhi (A-38 or 45), Suresh Langda (A-22) and Manoj Videowala (A-41) as leading the mob coming from the direction of Kubernagar Patiya Natraj Hotel. The witness has further stated that Manoj Videowala and Kishan Korani had revolvers and the other persons were armed with swords, trishuls, spears and iron pipes etc. The witness has also named Kishan Korani (A-20), Manoj Videowala (A-41), Ashok Sindhi (A-38 or 45) and Suresh Langda (A-22) in the mob at 5 o'clock in the evening which set Majid Langda's house on fire. He, however, has wrongly identified accused No.16 as Ashok Sindhi and therefore, could not correctly identify accused Ashok Sindhi and has wrongly identified accused No.34 as Suresh Langdo. Therefore out of the witnesses named by him, the witness has identified Manoj Videowala and Kishan Korani correctly.

80.79 The witness has referred to the presence of Jay Bhavani, Tiwari Conductor (A-25) and Dalpat Chhara as having shown the shuttered godown to them. Though Tiwari (A-25) has been identified, from the testimony of the witness, no

criminal complicity can be said to have been attributed to the witness. Insofar as Tiniyo Marathi (A-55), concerned all that is attributed to the witness is that he chased away the people who had come out of the shuttered hall and were sitting near the S.R.P. compound wall. Besides, the witness has wrongly identified accused No.22 as Tiniyo Marathi; hence, he could not correctly identify accused Tiniyo Marathi.

80.80 The evidence of this witness can therefore, be considered only qua Manoj Videowala (A-41) and Kishan Korani (A-20).

81. **PW-74 Sardarali Kasamali Saiyed** has been examined at Exhibit 523. He has deposed that he is residing at Jawannagar since the last twenty four years. His family was comprised of his wife and six children. At the relevant time he used to run a scrap cart.

81.1 The incident happened on 28.2.2002. On 28.2.2002, there was a call for Gujarat Bandh on account of burning of a train at Godhra. On that day he was at home with his wife and children. At the relevant time his wife Salimabanu used to do labour work in a thread factory. On that day she had gone for work but returned at about quarter to nine to nine o'clock and she was very worried. He asked his wife the reason for her being worried and she told him in an anxious tone that there are huge mobs near Krushnanagar and Natraj Hotel and hence he too was worried and came on the road. Upon coming on the road, he saw that the persons in the mob had sticks, pipes etc. Hence he came home and told that "*Let's go to nana nani's*

place in the third lane of Jawannagar", in other words, he suggested that they go to his in-laws place. His wife told him to take care of his daughter who was around three years old at the relevant time.

81.2 His wife was handicapped in one leg and one of her eyes was totally non-functional and hence she could not see with that eye. His wife left their youngest daughter with him and took the other children with her and went to her parental home and he had told his children not to go elsewhere and go straight to their grandparent's home.

81.3 At around 10 o' clock there was a lot of commotion on the road. From outside people were coming running inside and hence, upon his asking them, he was told that the scene outside was very bad and that people are pelting stones at the masjid. He, therefore, went nearby his chawl and talked to people, which consumed time of about one to one and a half hours. At that time a mob was coming from the direction of Uday Gas Agency and the mob was shouting and there was a lot of commotion. He went on the terrace to see and was worried and he came down with his daughter. He moved about after coming down, when the stone pelting started. To avoid injury by stones to his daughter and himself, he went into the last line where young and old were all climbing the stairs and going on the terrace of Gangotri. He also took his daughter to Gangotri and went down and sat there. He sat there for about one hour. There was a shuttered house in front, where a lot of persons belonging to the Muslim community were going into, and hence, he also went and sat inside the side of the shutter. After a little while there was a very horrific scene. Gas

cylinders started bursting and there were sounds from all directions. At that time one of the Muslims amongst them said that they should all go out because if they remain inside they would all be set ablaze. Hence everyone came out. Two minutes after they came out, he met his wife and five children there.

81.4 They stayed there peacefully for just about ten minutes when people with swords and pipes could be seen. The people were frightened. There was a lot of public and they went towards the wall of the S.R.P. where there were policemen. The policemen beat them there. The policemen were beating indiscriminately without considering as to whether it was a child, woman or man and told them to go back, hence they went back.

81.5 At that time, a Hindu mob came from the open ground and they had petrol, kerosene, sticks, pipes, swords and such things and on seeing that they ran back. While running, his wife fell down. Upon turning back and seeing, the mob was very close by and his wife could not get up. He fled from there but went into a passage and was watching. At this time his entire family had got separated. He was standing in the passage and watching when he saw that his wife was beaten with swords and pipes and was set on fire after pouring petrol and kerosene. On seeing this he was terrified.

81.6 He, thereafter, took his daughter and ran to protect his life. After getting beaten at two three places he was trying to save his life and he ran with his daughter to the terrace of Gangotri Society where everyone else was going.

81.7 Thereafter at about 12:30 at night the police came. They did not trust that it was a police vehicle as it was the police who had got all this done. They were very frightened and one person from them said that he would go on the road and see if there is a police vehicle, and if there is a police vehicle he would come back. That man returned after ten minutes and told them that it was true that there was a police vehicle. Thereafter they went on foot to where the police vehicle was parked and saw the destruction of the population. It was burning on all four sides. They were taken to the Shah Alam Camp at night. There was a rush to sit in the police vehicle.

81.8 The police had recorded his statement. He did not know the persons who had set his wife ablaze. He found all his five children in the camp. His wife's dead body lay where she was set on fire.

81.9 CROSS EXAMINATION: In his cross-examination, the witness has stated that he could not identify his wife's body as it was burnt. In his cross-examination (paragraph 26) it has come out the Majid Langda is his brother-in-law (wife's brother). The witness has stated that he has seen the road from Majid's house to Gangotri Society. One road is the one that runs along the wall of the S.T. Workshop and the other is to climb down from the stairs into Gangotri from near his house. He has admitted that there is a common wall between Gangotri Society and Majid's house. He has stated that it takes about two minutes to walk from Gangotri Society to Majid's house.

81.10 The witness has denied that the incident of his wife took place at their chawl, but stated that it took place in the open ground on the rear side. In his cross-examination it has further come out that he still remembers his wife screaming when she fell down and after all these years he can still recognise his wife's voice. He has further stated that upon witnessing his wife's scene he took his daughter and went away. He has voluntarily stated that he could not go to save his wife and his wife did not have the strength to get up after she fell down.

81.11 ANALYSIS: Though this witness comes across as a truthful and credible witness and is an eye witness who has seen his wife being done to death by the mob, he has neither named nor described any of the culprits, and hence, his testimony does not in any manner assist the prosecution in proving the charge against the accused.

82. **PW-75 Maiyuddinmiya Ahmedmiya Shaikh** has been examined at Exhibit 525. This witness has deposed that he was residing at **Lane No.1 Jawannagar** since eight years prior to the incident. He used to do casual labour work and was working in a steel factory by the name of Pramukh Steel Factory at Vatva GIDC .

82.1 The witness has deposed that on the day of the incident there was a call for Gujarat Bandh and some incident happened on the road. They did not venture outside their house and he does not know anything. At the time of the incident, he was at home and all his family members were at

home. It was around 10 o'clock in the morning. At the time of the incident a mob came from the direction of Krushnanagar and the members of the mob were armed with weapons and there was violence. They had gone on the rear side to a terrace in Gangotri Society and were sitting there. At that time it was around 3 o'clock in the afternoon. At 11 o'clock in the night, upon the vehicle for Shah Alam coming, they were taken to the Shah Alam camp.

82.2 The witness has deposed that he knows two persons from the mob namely **Bhavanisingh and Guddu Chhara** (both deceased). He has deposed that no one in his family has sustained any injury or has suffered loss of life in the incident. His house was looted in the incident and was burnt. He does not remember whether the police had recorded his statement.

82.3 CROSS EXAMINATION: In his cross-examination, he has stated that he had seen the mob which was comprised of fifteen to twenty thousand people. The people in the mob had tied black cloths around their faces and were wearing shorts and undershirts. He could not identify anyone in the mob.

82.4 The witness has admitted that the mobs came to Jawannagar after 6 o'clock in the evening. He has denied that the mob had spread terror and burnt after 6:00.

82.5 SUBMISSIONS: The learned counsel for the appellants-accused has submitted that this witness was residing in Jawannagar area since more than 8 years prior to the incident. Despite which, he has not implicated any one,

except Guddu and Bhavani. The attention of the court was invited to the contents of paragraph 11 of the cross-examination of the witness, to submit that the witness has admitted that he could not identify any person in the mob as they had covered their faces with black cloths.

82.6 ANALYSIS: As per the testimony of this witness, a mob came from the direction of Krushnanagar and was armed with weapons. At about 3 o'clock in the afternoon they had gone to a terrace in Gangotri Society and remained there till late night when the police came and took them to the camp. From the people in the mob the witness has named two persons viz. Bhavanisingh and Guddu Chhara both of whom are dead. The testimony of this witness therefore, does not assist the prosecution in proving the charge against any of the accused.

83. **PW-76 Mohammadhussain Munirbhai Shaikh** has been examined at Exhibit-526. This witness has stated that he can speak a little Gujarat and can understand it but he finds it more convenient to speak in Hindi and, therefore, will depose in Hindi. The witness has deposed that he is residing in the fourth lane of Jawannagar. In the year 2002, he was residing with his wife Noorjahanbanu and his two sons Ahmedraza and Hamidraza. His father's name is Munirbhai Ahmedbhai Shaikh and he does the work of recitation of azaan in the Ziya Masjid at Vatva. His mother's name is Jenabbibi and she is doing household work. In the year 2002, his parents were residing at Patiya with him. His elder brother's name is Meblahussain, younger brothers' names are Sabbir and Anwar. They too were residing at Naroda Patiya in the year 2002. At present, they

are residing at Vatva. His sister Gosiyabanu is residing at Vatva with his brother and, therefore, she is unmarried. He is working in a thread factory at Naroda Patiya.

83.1 The incident took place on 28.2.2002. On that day, there was a bandh call in the context of the incident that took place at Godhra on 27.2.2002.

83.2 On the day of the incident, he woke up at around 8:00 to 8:30 in the morning. At that time, there was unrest on the road. A mob was coming from Krushnanagar towards Noorani Masjid. At that time, a mob of Hindus was breaking the masjid and the police was firing at them (the Muslims). The police was releasing teargas. In the firing, one Ahmed Badshah was injured by a bullet. Ahmed Badshah was lifted by the witness's brother and three other boys and taken inside the chawl.

83.3 At that time, the witness was on the road. Upon Ahmed Badshah being injured by a bullet, they all went inside. There was a stampede towards the chawls due to which they could not muster courage and hid in the chawl. The people in the mob had tied bands over their faces. He had seen **Guddu Chhara** and **Bhavanisingh**. **Guddu Chhara** had a pipe and **Bhavanisingh** was gesturing to show the place where the Muslims were hiding. The witness and his wife, his mother-in-law, all fled towards Gangotri Society. In the pushing and pulling, his wife's hand got separated from his. His mother and his younger brother went inside the S.R.P. Quarters. The S.R.P. Quarters people beat them with sticks and drove them away and did not let them enter inside. They told them that they

were prohibited from going inside. At this time, it must have been around 12 o'clock in the afternoon. They all went to Gangotri Society.

83.4 Stones were being pelted inside from the Gangotri Society from the open ground. They went and hid on Gauri Apa's terrace which is in their lane. From Gauri Apa's terrace they went on the rear side of Gangotri Society. They were about to go towards Teesra Kuva. However, they were told not to go there as people were being hacked there. There were mobs at Teesra Kuva as well as in the open ground behind them and hence, they were stuck in between.

83.5 His wife Noorjahan, his mother-in-law Mahaboobi, his nephew Mohsin and niece Afreenbanu, all four were hacked and set ablaze. He had seen them being set ablaze from far, but did not have the courage to go there. His younger son Hamid was with him.

83.6 This incident took place at Gangotri Society. Shehnazbanu had saved his son Ahmed and brought him on the terrace. He too was burnt. They remained hidden on the terrace till 11:00 to 11:30 at night. Thereafter, at night, the police came in a vehicle to call them. While they were being taken to the camp, corpses were burning on the road. The police took them in that vehicle to the Shah Alam camp. On the next day, he had taken his elder son for treatment to Vadilal Hospital. His elder son Ahmedraza was kept for treatment at Vadilal Hospital for about five months. He had a talk with his son at the V.S. Hospital and he had informed him that his mother, maternal grandmother, Afreen and Mohsin

were no more.

83.7 After fifteen days, the witness came to know that his brother Shabbir had also sustained burns in the incident and was in the Civil Hospital. His wife was buried at the Shahibaug Kabrastan, the receipt whereof is with his brother.

83.8 His house was damaged and he had incurred a loss of Rs.25,000/-. Firstly, he had received aid of Rs.1,300/- and in all, he had received Rs.10,000/- towards damages. He had received Rs. 5 lakh as compensation for his wife's death.

83.9 The police had recorded his statement at Vadilal Hospital. Thereafter, he had made an application to the SIT at Gandhinagar and he had given his statement at Gandhinagar. The witness has stated that he is illiterate and has produced the application made by him to the SIT with the list Exhibit-527. The last part of the application Mark 527/1 is shown to him. The witness has identified his thumb impression below the application. The contents of the application are read over to him and he has admitted the contents thereof to be true. The application is exhibited as Exhibit-528.

83.10 The witness has stated that after his wife died in the incident, he has married again.

83.11 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that in lane No.4 of Jawannagar there are about 25 to 30 houses and that the residents of these 25 to 30 houses have been residing with him for many years. He has admitted that he knows all the people

residing in these houses by their names.

83.12 The witness has stated that he made the application Exhibit-528 after he came to know about it from someone that it has come in the newspaper. He has admitted that at the time of making the application Exhibit-528, he was speaking and the writer was writing. He has admitted that at that time, he did not have a newspaper or a letter with him. He has stated that the person who wrote the application has not told him about the number of any Supreme Court case. He had got the number from his chawl, that is, Lane No.4 Jawannagar. The witness has stated that he does not remember as to which person had given him this number. He has admitted that he has not described the incident in the application Exhibit-528.

83.13 The witness has admitted that in the statement recorded by the SIT, he had stated that his statement dated 3.3.2002 is correct and proper. The witness has denied that in his statement dated 3.3.2002, he has not given the names of accused Guddu Chhara and Bhavanisingh. He has stated that once in five months the police had come to the V.S. Hospital. He has denied that when the statement was recorded on 3.3.2002 at the V.S. Hospital, he had not given the name of any accused to the police. The witness has voluntarily stated that he had given the names but they had not written them down.

83.14 In the cross-examination of this witness, it has come out that he came to know that the police had not written down the names of the accused after six years. He came to know about it for the first time after two – three months that the

names of the accused given by him have not been written down. He has thereafter, stated that he does not specifically remember as to when he came to know that the police had not written down the names given by him. The witness has admitted that prior to making the application Exhibit-528, he had not received any kind of threat from any person.

83.15 The witness has admitted that while he was at the V.S. Hospital, the police have recorded his statement twice. He has stated that they had come twice on the same day. He does not remember as to whether different policemen had come on both the occasions. The statement had been recorded at the side of the bed where his son was admitted. He has initially admitted that in both the statements he had not given the name of any accused. Upon understanding the question, he has stated that he had named the accused in both the statements, however, the police had not written them down.

83.16 The witness has admitted that in the statement recorded by the SIT, he has not stated that though he had given the names of the accused, the police have not written it down in his statement dated 3.3.2002.

83.17 The witness has stated that he has also given the name of the accused in the application Exhibit-528. He has stated that he does not know whether the DCB Crime has recorded his statement on 13.5.2002. He has thereafter, stated that he remembers that the Crime Branch had recorded his statement at the relief camp on 13.5.2002. He has admitted that in the statement he had stated that he could not recognise any person in the mob. (The trial court has made a

note that after the sentence, the witness has stated that there were Chhara people, out of whom he knew Guddu, which is a part of the sentence.)

83.18 The witness is cross-examined with regard to acquaintance with Guddu. The witness has stated that he has never gone to Chharanagar and does not know where Guddu Chhara is staying nor has he any occasion to talk with him or have tea with him. The witness has voluntarily stated that but he knew him. The witness has voluntarily stated that Guddu had four to five houses opposite their house.

83.19 The witness has stated that at around 8:30 in the morning, he had woken up and come out. He had come out and gone to Noorani Masjid. He had reached near the Noorani Masjid at around 10:00 to 10:30. He went there and saw that people were breaking Noorani Masjid. He has admitted that at that time, he had seen mobs of people coming from the direction of Krushnangar, Kalupur, Saijpur Bogha and Kubernagar. The mobs were huge huge and there must be around fifteen to twenty thousand people in the mob who were creating a ruckus. The witness has admitted that on account of the shouting and commotion, one could not hear what any one was speaking and that from all four sides, people were coming to Noorani Masjid. The witness has admitted that it was so crowded that there was pushing and pulling within the crowd and that all this had started a few minutes before he reached there at 10:00 to 10:30 in the morning.

83.20 The witness has stated that many mobs had come inside Jawannagar from all four sides. There were around ten

to fifteen thousand people in the mob. A mob had also come from the rear side of Gangotri Society from the canal road.

83.21 The witness has admitted that the people in the mob had tied black scarves around their faces and had tied saffron bands on their heads and were wearing shorts and undershirts. The witness has admitted that at Jawannagar, Muslim people were also pelting stones at the mob and there was cross stone pelting.

83.22 The witness has admitted that after 6 o'clock in the evening, huge mobs had come inside Jawannagar. The witness has denied the suggestion that the mobs which came after 6 o'clock killed their family members and put them back inside their house. The witness has admitted that the members of his family, who died in the incident, had died on the Gangotri Society and Gopinathnagar road. The witness has admitted that at that time, he was on the terrace of Gangotri Society and has stated that he does not know as to who was the owner of the house.

83.23 The witness has admitted that at that time, it was around 7:30 to 8:00 in the evening. The witness has admitted that the place which is known as Jawannagar pit does not have any electric pole. He has stated that if one looks from Gangotri Society's terrace, the pit cannot be seen.

83.24 The witness has admitted that Muslim people were also pelting stones on the Hindus to protect the masjid. He has admitted that on that day, tube-lights, bulbs etc. were thrown on the road and has voluntarily stated that the Hindu people

were throwing them. They were throwing them in such a quantity that no person could go inside the chawl from the road.

83.25 The witness has admitted that he has not received compensation for the death of his mother-in-law. He has admitted that he had made the application Exhibit-528 to obtain compensation in connection with the death of his mother-in-law. The witness has denied that for the purpose of obtaining compensation, he is giving the statement as dictated by the SIT.

83.26 SUBMISSIONS: The learned counsel have submitted that as per the deposition of this witness, in the morning, he was at the highway and he has said that he went inside after Ahmad Badshah was injured, but he does not give the name of any accused. In relation to the evening incident also, he does not name any accused. It was submitted that the witness has named Guddu Chhara and Bhavanisingh to the effect that he had seen them after they came back from the road, but he does not say where he had seen them. It was submitted that it is not possible that this witness would not know the local accused who are implicated by other witnesses if they were present. It was submitted that though this witness was on the highway, he has not identified any accused, some of whom were local residents.

83.27 It was submitted that the witness was residing in Jawannagar since many years and he had also gone to the road in the morning. He had also seen the evening incident and the mob in the noon, but still does not implicate any

accused except Bhavanisingh and Guddu without alleging any overt act, and has not named other accused who are local residents like Dalpat, Tiwari, Manu, Ramila, Geeta and Sahejad. He has also stated that a mob had gone there to Teesra Kuva and the people were caught in the evening.

83.28 ANALYSIS: On a perusal of the evidence of this witness, it emerges that only one statement of this witness was recorded on 3.3.2002 at the Vadilal Sarabhai Hospital. As per the version given by this witness, the mobs of Hindus had gathered on the road and were damaging the Noorani Masjid. The police fired at the Muslims wherein one Ahmed Badshah was injured. The witness has named Guddu Chhara (deceased) and Bhavanisingh (deceased) in the mob. However, it appears that in the statement dated 3.3.2002, the witness has not named either of the two accused. This court has already discussed the manner in which the Investigating Officer had recorded the statements at the hospital; however, considering the fact that both the named accused are dead, it is not necessary to delve upon the same. As per the unchallenged version given by this witness, it has come out that he together with his wife and mother-in-law had fled towards Gangotri Society. But in the rush, his wife got separated from him. His mother and brother tried to take shelter at the S.R.P. Quarters, but were driven away. Whereafter, all of them went to Gangotri Society. Initially, they went to Gauri Apa's terrace, from where they went to the rear side of the Gangotri Society. While they were about to go towards Teesra Kuva, they were cautioned not to go there as people were being hacked. However, there were mobs at Teesra Kuva and in the open ground behind them and they were caught in between. The

witness's wife Noorjahan, his mother-in-law, his nephew Mohsin and niece Afreenbanu were all hacked and set ablaze which he had seen from far. Except to the aforesaid extent, nothing much turns upon the testimony of this witness who has named only two of the deceased accused. The testimony of this witness, therefore, would not assist the prosecution in establishing the charge against the accused.

84. **PW-77 Rasidkhan Ahemadkhan Makrani** has been examined at Exhibit-529. This witness has deposed that in the year 2002, he was residing at Pandit-ni-Chali at Naroda Patiya. He was working as a painter in D. I. Company and his working hours were from 9:00 am to 5:00 pm. At the relevant time, he was residing with his wife Jayedabibi and his two daughters Nabirabanu and Sabiyabanu in a rented house. The riots took place on 28.2.2002. On that day, he was sleeping at home. When he woke up in the morning, there were riots on all four sides. When he came outside, he saw that there was destruction on all four sides. The Noorani Masjid was being vandalized. Hindu people had come there. The people had also come from the side of Krushnanagar. Those people were pelting stones. They, therefore, went towards the side of khada (pit). They went there and hid on the terrace on the side of Jawannagar. Thereafter, there were severe riots. In the riots, Muslims were being killed. Thereafter, the police came to take them at 12 o'clock and took them to the Shah Alam camp. He was injured on his hand in the stone pelting and was given treatment at the camp. Damage was caused to his house and various articles were taken away. The police had inquired about the same and had recorded his statement.

84.1 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that there was cross stone pelting between Muslims and Hindus. He has admitted that he too was part of the mob and has admitted that he was injured in the cross stone pelting. The witness has admitted that he has not seen any riots.

84.2 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness was residing in the area since a considerable time prior to the date of the incident, but has not implicated anyone and has admitted that he has not seen the incident.

84.3 ANALYSIS: This witness has participated in the cross stone pelting on the road. He has not named any accused nor has he narrated any incident that occurred during the course of the day. Nothing turns upon the testimony of this witness and one wonders why the prosecution which has dropped witnesses who had named accused in their police statements, has examined such witnesses whose evidence does not in any manner help the prosecution case.

85. **PW-78 Noormohammad Sarmuddin Shaikh** has been examined at Exhibit-530. This witness has deposed that since his birth, he is residing in Hukumsing-ni-Chali, Naroda Patiya. At the time of the incident he was residing with his wife Sultanabegum, father Sarmuddin, mother Zeenatbibi and brother Mohammad Shakeel. At that time, he was doing casual electric work and his brother was doing the tailoring work and his father had retired.

85.1 The incident occurred on 28.2.2002. On that day, there was a call for Gujarat Bandh. The members of his family were present at home. On that day in the morning, between 9:15 to 10:00, a mob came towards their house from Naroda Patiya side. This mob was damaging the masjid. At that time, the police fired bullets towards them.

85.2 There, several Muslims had told the police to stop the mob from damaging the masjid, however, the police had not stopped them and had released tear gas towards them.

85.3 Therefore, to save their lives, they ran on the rear side of Jawannagar. While running, his mother, his wife, his brother, all of them, had got separated. He and his father started running towards Jawannagar. His father could not run and the mob inflicted a blow on his leg with a sword and felled him. The people in the mob had swords, spears, pistols, etc. They also had kerosene. They had kerosene or petrol or something like that. The people in the mob started sprinkling something like kerosene or petrol on his father and he (the witness) fled to save his own life.

85.4 They climbed on the terrace of Jawannagar and went to the terrace of Gangotri Society, which was on the rear side and hid there. Many people from Jawannagar area were hiding there. Thereafter, between 12:30 to 1 o'clock at night, they were taken in a police vehicle to the Shah Alam relief camp, where he met his mother, brother and wife.

85.5 He had seen that the people in the mob who had thrown something on his father and attacked him; they were

wearing khakhi shorts and white undershirts. They had tied cloths on their faces. They had started vandalizing and looting the Patiya area and were burning the shops.

85.6 They had not found their father's dead body afterwards. The police had recorded his statement in the camp and upon asking him about the incident, he had narrated the same. The witness had made a complaint application together with loss damage analysis form which was produced with a list Exhibit-531. The witness has admitted his signature on the complaint and has admitted the contents of the complaint which were read over to him and the same is exhibited as Exhibit-532.

85.7 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he had not got the application form Exhibit 532 from anywhere but that somebody had come to the camp and got it written down from them. He has stated that he has put his signature on the application Exhibit 532 in the presence of the person who came to get it written down. The witness has denied that in his application Exhibit 532 he has stated that his father was missing since 28.2.2002. The witness has denied that he had prepared Exhibit 532 and given it to the people at the camp. He does not remember whom he had given the application to and does not know whether a Government official or somebody else had taken it.

85.8 The witness has stated that the police had recorded his statement at the relief camp and that till his statement was recorded, he had not seen his father's dead body. He has

denied that in his statement dated 13.5.2002, before the Crime Branch, he had stated that his father must have been killed during the riots that took place at Naroda on 28.2.2002. (It appears that the witness has stated that his father was killed and not that his father must have been killed in the statement recorded by the police). The witness has admitted that in his application Exhibit-532, he has not mentioned regarding his father's incident and has voluntarily stated that no one had informed him that this was to be recorded in the form. He was stated that this was a loss/damage form and hence, he had only given details regarding the damage sustained by him.

85.9 The contents of paragraph 4 of his examination-in-chief are read over to the witness, who has denied that he has not stated such facts in his statement dated 13.5.2002 and 21.6.2008. The witness has denied that the mob came from all four sides. He has stated that the mob came from front and from the rear side, namely, from the Highway road and from the canal. The witness has denied that on that day, he had taken his children and gone away to the S.R.P. camp and has voluntarily stated that on that day, he did not have any children.

85.10 The Investigating Officers who recorded the statements of this witness have been cross examined by the defence to prove the omissions and contradictions in the testimony of this witness qua the statements recorded by them.

85.11 PW-307, S. S. Chudasama, the Investigating Officer

has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.5.2002. The contents of paragraph 4 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that there several Muslims told the police to stop the mob which was breaking the masjid, however, the police did not stop them and released tear gas against them, and the Investigating Officer has admitted that this witness had not stated these facts before Shri Chauhan.

85.12 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 21.6.2008. The contents of paragraph 4 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein the witness has stated that several Muslims told the police that "they are damaging the masjid, stop the mob" but the police had not stopped them and had released teargas against them. The Investigating Officer has admitted that the witness has not stated such facts in the statement recorded by him.

85.13 SUBMISSIONS: The learned counsel for the appellants-accused have submitted that this witness has not named any accused and has stated that he had seen that the members of the mob had covered their faces with cloth. It was argued that though this witness had seen the morning incident and the incident of his father, he has not named any accused.

85.14 ANALYSIS: The witness refers to the mob on the road and firing by the police and also states that they had fled towards the rear side towards Jawannagar and his father being

caught by the mob and some inflammable substance having been sprinkled on him and he being set ablaze. However, the version given by the witness is very vague and no specific time has been given by him, as to when such incident happened and where. The witness has also not named any accused nor ascribed any role to them. There is nothing substantial in the evidence of this witness which would support the case of either of the sides.

86. **PW-79 Ibrahimhai Alambhai Mansuri** has been examined at Exhibit-533. The witness has deposed that he is residing at Naroda Patiya together with his wife, four daughters and son since the last eighteen years. He carries on the work of cycle repairing and plumbing on the footpath. His daughters are named Rehana, Raziyanu, Sayarabanu and Nilofer, and his son is named Irfan.

86.1 The incident took place on 28.2.2002. He was at home in the morning. On that day, there was a call for bandh. On that day, there were shouting near the masjid at around 09:30 to 10:00 in the morning. There was stone pelting and the masjid was being set ablaze. On seeing this, he had fled. He went back to his house, took his family members and was trying to lock his house and go away, at that time, the mob came from opposite side and hence, they returned to Jawannagar. The members of the mob were pelting stones and were throwing burning rags. From there, they went to Jawannagar when the mob came from behind. Thereafter, they were standing near the S.T. wall. While they were standing near the S.T. wall, the mob was coming from the opposite direction. On seeing the mob, they started going on the side of

the S.R.P. Quarters. The members of the mob had weapons and they were throwing stones and setting things ablaze. They were not permitted to go inside the S.R.P. Quarters and were driven away. Thereafter, they went to a society. He does not know the name of the society. Thereafter, they went to Gangotri Society and Gopinath Society. From there, they were beaten and driven out and were not permitted to go inside. Thereafter, they went on the terrace of Jawannagar and hid there.

86.2 The witness has further deposed that there were mobs on all four sides. The mob had come to the gate of Gopinath Society and his wife and his daughter were caught in the mob. At that time, they had climbed on the terrace. However, the people in the mob had thrown his wife and his daughter Nilofer in the fire. Before throwing them in the fire, the people in the mob had fractured both the hands of his wife with a sword and inflicted injuries. They had thrown Nilofer in the fire and Nilofer was burnt. His wife was lying unconscious on the side of the wall and the people in the mob thought that she is dead, and hence, they left her there and went away. From the terrace, he had seen that the mob had dispersed. However, twenty-five to thirty dead bodies were lying there. The witness has stated that there were many people in the mob, out of whom, **Bhavanisingh** was also standing with a stick. Many people had tied yellow bands on their heads and were wearing bundies. They remained on the terrace till 11 o'clock at night. The police vehicle came at night and took them from the terrace to the Shah Alam Camp. Thereafter, his wife was taken to the V. S. Hospital and was provided treatment. The lock of his house at Hussainnagar was broken

and the household articles came to be looted. The police had recorded his statement at the camp as well as at the Patiya.

86.3 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that the terraces of Gangotri and Jawannagar are common. The witness has voluntarily stated that there is a parapet in between. He has admitted that if one wants to go from a terrace in Jawannagar to a terrace in Gangotri Society one can cross the parapet to go there. He has admitted that on that day, Muslims had gone from the terrace of Jawannagar to the terrace of Gangotri. The witness has admitted that Gangotri Society has a population of Hindus and Gopinath Society is also populated by Hindus. He has admitted that the people from the Hindu societies were standing in front yard of their houses to see that the people in the mob who had come from outside do not resort to rioting in the society.

86.4 The witness has denied that at that time, Bhavanisingh was standing near his house. The witness has admitted that the SIT had recorded his statement on 2.7.2008 wherein he had stated that he had only seen Bhavanisingh standing there in front of his house and could not identify anyone else. The witness has stated that he does not know Nazir Master alias Popat Darji, however, there is a master in their area and he knows him. This master teaches in a school and does social work in the camp. He has admitted that he does the work of bringing medicines for those who are injured, bringing post mortem notes and helping anyone in need of treatment. He also used to prepare applications for obtaining compensation and used to submit post mortem notes together with the application to the Government or the Collector

wherever necessary.

86.5 The witness has denied that everyone used to write and sign on the printed forms. The witness has voluntarily stated that he used to write for those who could not write and read it for them and thereafter, take the signature and then used to deliver the complaint to the concerned Department.

86.6 The witness has admitted that he got his typed complaint written by this master and everyone used to get their application written by this master whom he knows from his face. He resides in the Naroda Patiya area.

86.7 The witness has denied that master was teaching in the school where he had gone for recording of his statement. The witness has admitted that on the day when he got his statement recorded, this master was present in the school.

86.8 The Investigating Officers who have recorded the statements of this witness have been cross-examined to prove the omissions and contradictions in the testimony of this witness.

86.9 PW-307 Shri S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.5.2002. The contents of paragraph 16 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that his wife had become unconscious and they thought that she is dead and had gone away, have not been stated by him in the statement recorded by Shri

Chauhan. He has denied that the witness had not stated that his son was thrown into fire by the people in the mob. He has stated that the witness had stated that his daughter Nilofer, aged 7 years, had died on account of the burns and that his wife had also sustained burns.

86.10 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 2.7.2008. He has admitted that this witness has verbatim not stated before him that his wife had become unconscious and, therefore, they thought she is dead and went away. The Investigating Officer has stated that the witness had stated before him that the mob had beaten his wife with hockey and sword on her head and on her left hand and that she was injured.

86.11 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness was residing at Hussainnagar since ten years prior to the incident. He has named only accused Bhavanisingh and that too, not as being a person in the mob. Moreover, no overt act has been attributed to him. The witness does not implicate any other accused though he was a resident of the same area.

86.12 ANALYSIS: From the testimony of this witness, it emerges that as the mob had come and was pelting stones and throwing burning rags, they had left their house and had gone towards Jawannagar. Thereafter, they went towards the S.R.P. Quarters, but were not permitted to enter inside and were driven away. Thereafter, they went to a terrace at Jawannagar and hid there. Subsequently, the mobs gathered

from all four sides and while the witness and his wife and children were going towards the terrace of Gangotri Society, near the gate of Gopinath Society, his wife and daughter were caught by the mob. His wife was assaulted and both her hands were fractured with a sword, and both his wife and his daughter Nilofer were thrown in the fire. His wife was lying unconscious near the side of the wall and the people in the mob thought that she was dead and they left her there and went away. After the mob dispersed, he saw that there were about twenty five to thirty dead bodies lying there. Out of the people in the mob, he had identified Bhavanisingh (deceased) who was standing there with a stick. In the cross-examination of the witness, nothing substantial has been elicited to dislodge the core of his testimony, namely, that his wife and daughter were assaulted by the mob and his daughter Nilofer had died on account of the burns. The witness appears to be a credible and truthful witness. Therefore, there is no reason to disbelieve the testimony of this witness to the extent noted hereinabove. This witness, however, has not named any accused except Bhavanisingh (deceased).

87. **PW-80 Maheboobbhai Umarbhai Shaikh** has been examined at Exhibit-539. The witness has deposed that from 1985 to 1986, he was residing at *Hussainnagar-ni-Chali, Naroda Patiya* with his wife Shakinabanu and daughter Taiyaba. In the year 2002, he was residing in a rented house and was giving tuitions to children and eking out his living. Prior thereto, he was doing commission work. While doing commission work, the scaffolding had broken and his bone of waist was broken and since then, he is handicapped and uses a wheel chair.

87.1 The incident took place on 28.2.2002. On that day, there was a call for bandh by the Vishwa Hindu Parishad in the context of burning of a train at Godhra on 27.2.2002. On the day of the incident, he was at home. At around 9:00 to 9:30, people outside were saying that the mobs have come to the masjid and everything outside is burning and there is stone pelting. On that day, he was very much frightened and was at home with his family members. At this time, there was an assault on the chawls of the front side and they were coming on the rear side. The people from the neighbouring chawls also started coming to their place. His house was fully crowded at that time and it was felt that the mob would also come there. At that time, his friend lifted him and took him. All of them set off towards Jawannagar. They had lifted him and taken him towards Jawannagar, and made him sit in a house, where a burning rag had fallen on his leg and he had sustained burn injuries and had shouted "*Somebody lift me up*" after which, his friend Ibrahimbhai had lifted him and they proceeded further and continued to protect him. All this time, his wife and his daughters were with him. At this time, it was around 1:30 in the afternoon. His friend Ibrahimbhai ultimately carried him to the house of one Akhtarbhai Chudivala and they had hidden there and secured the chain from inside. At that time, his wife, his daughter, his maternal aunt, son of his maternal aunt, all of them were together in Chudivala's house till it became dark. At that time, while searching for his sister-in-law, Ibrahimbhai came there. At that time, he had told Ibrahimbhai that there was no public there and that they should take him to a place where everybody was sitting. He replied that all are sitting on the terrace of a society, namely, Gangotri Society. Ibrahimbhai

had lifted him. All others who were with him also came with him at the terrace of Gangotri society, where they sat till 11:30 to 12:00 at night. Thereafter, they were taken to the Shah Alam relief camp by the police.

87.2 CROSS EXAMINATION: In the cross-examination of this witness, he has stated that he is acquainted with the entire Naroda Patiya area. He has admitted that after their Hussainnagar chawls, Jawannagar is situated and behind Jawannagar, there is Gangotri Society and thereafter, Gopinath Society. He has admitted that the S.T. Workshop compound wall road goes straight from Hussainnagar, Jawannagar, Gangotri Society and Gokulnagar and from the open ground to the canal. The road goes parallel to the wall.

87.3 The witness has admitted that on one side there is the S.T. Workshop wall and on the other side there are Gangotri Gopinath Societies and between them, there is a road. He has admitted that the houses on the Gangotri Society road are residential houses and at the relevant time, there were no shops, factories or godowns on the Gangotri Society Gopinath Society road.

87.4 The witness has stated that Akhtarbai Chudiwala's house where he had gone is in Jawannagar. He had reached there at around 5:00 to 5:30 in the evening. Ibrahimbai had come at around 7:00 to 7:30. The witness has stated that Ibrahimbai had left him at Akhtarbai's house. The witness has denied that when he was at Akhtarbai's house, there was nothing to be afraid of. The witness has voluntarily stated that those who could go on their own, those people out of fear had

left and gone away. A lot of sounds were coming and they were also afraid.

87.5 In his cross-examination, it has come out that Akhtarbai's house is in lane No.4 of Jawannagar and is situated next to the S.R.P. Quarters compound wall. He has denied that Akhtarbai's house is next to Majidbai's house and has voluntarily stated that this house is situated after leaving two to four houses.

87.6 The witness does not remember whether any untoward incident had taken place at Majidbai's house while he was there. He has stated that since the mob was coming, they had gone inside.

87.7 PW-307 S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 12.5.2002. He has admitted that in his statement, this witness had not stated that Ibrahimbai while searching for his sister-in-law, came to Akhtarbai's house and the witness told Ibrahimbai that there was no public there and that wherever there are people, he should take them there and Ibrahimbai had lifted him and taken him, have not been stated by the witness in the statement recorded by him.

87.8 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness has not seen any incident. It was pointed out that from the testimony of this witness, it emerges that they were safe at Jawannagar till it became dark and then, they went to Gangotri.

87.9 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is a natural witness and is an eyewitness. From his evidence, it is established that by 1:00 to 1:30 p.m. the mob had started coming inside the chawls and that there is no cross-examination on this aspect.

87.10 ANALYSIS: From the testimony of this witness, it is apparent that he was handicapped and therefore, was required to be carried by someone while they were trying to escape from the mob. From the testimony of this witness, it emerges that the mob had come to Hussainnagar at around 1:30 in the afternoon. Thereafter, they had taken shelter in a house at Jawannagar together with his family members and in the evening after the mob had gone, they had gone to the terrace of Gangotri Society where other Muslims had taken shelter. In the cross-examination of the witness, it has been elicited that they had reached Akhtarbhai Chudiwala's house in Jawannagar at around 5:00 to 5:30 in the evening. This witness has not named or described any accused.

88. **PW-81 Chandbhai Saiyadbhai Ratal** has been examined at Exhibit-540. The witness has deposed that in the year 2002, he was residing with his wife Jetunbegam, three sons, viz., Rafik, Safik and Javed, daughters, viz., Shabana and Rizvan, at *Jawannagar, Naroda Patiya*, since the last 30 to 32 years.

88.1 The incident took place on 28.2.2002. On that day, there were riots. There were mobs of Hindus with bands tied around their foreheads. He was at home in the morning

between 9:00 in the morning till 4:00. He was frightened. His children were also frightened. At 9 o' clock, when he was going out for work, his sons had stopped him. During the course of riots, people started coming forward. At around 10 o'clock, he also left his house and went away to somebody else's house. He had left his house open and gone away due to fear. The witness states that the house where he had gone was somebody else's house. While coming out, he had seen that there were outsiders who had weapons in their hands. They had gone to the third lane of Jawannagar and had stayed in that house till 4 o'clock. After 4 o'clock, as the mob started coming, they started going on the interior side and thereafter, they climbed on the terrace of Gangotri Society. He had seen the mob pelting stones. **Guddu Chhara** was there with a sword in his hand. They were on the terrace till 12 o'clock, whereafter the police had come and taken them to the Shah Alam camp, where they stayed for six months. The witness has stated that except for Guddu Chhara, he could not recognize anyone and that the police had recorded his statement at the relief camp and that Guddu Chhara had died.

88.2 This witness has named only accused Guddu Chhara who has passed away thereafter.

88.3 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that during the period while he was in the camp, he has met the police on two occasions. He has stated that the names of the police, who were coming to the camp, were Rajubhai and Amratbhai Patel and that he knew them well. He has stated that he also knows the person who was managing the camp. He has stated that he has not

told either the police or the Managers of the camp that he wanted to lodge a complaint about the incident. He has stated that he had given his complaint before policemen other than the above referred two policemen. The witness has denied that after recording his complaint, the police had called him again to record his statement and has voluntarily stated that the police had called him for the second time for carrying out a survey and at the time when he was called for the survey, he was orally examined.

88.4 The witness has admitted that at around 9:00 to 9:30, out of fear, he had gone home and had stayed at home with his family members and thereafter, he had gone to the terrace of the Gangotri Society. The witness has admitted that many people from their community were hiding on the terrace of Gangotri Society at 8 o'clock at night. He has admitted that from the terrace of Gangotri Society, he saw that houses of his chawl were being set on fire and he had seen the smoke.

88.5 The witness has admitted that at 8 o'clock they could only see the smoke. The witness has admitted that from the time he left his home, till he reached Gangotri Society, he could not recognise any person. The witness has admitted that he has not stated before the police that he had seen Guddu Chhara with a sword on the day of the incident. He has denied that because he has not seen Guddu Chhara, he has not given his name to the police. The witness has denied that he has not seen the incident with his own eyes and has voluntarily stated that he had seen people with saffron bands. The witness has denied that it was only the people with saffron bands that were pelting stones and has voluntarily stated that

in the stone pelting, the people with saffron bands as well as local people were also there.

88.6 PW-302 D. A. Rathod, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that he had recorded the statement of this witness at the Shah Alam camp. He has stated that he has not recorded any complaint of this witness. He does not remember as to whether he has recorded the complaint of this witness at the camp and that he had taken the thumb impression of the witness on the complaint. The assignee officer has voluntarily stated that at present, he has the statement which was recorded in his presence. The assignee officer has admitted that except for Guddu, this witness has not named any accused in the statement recorded by him.

88.7 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness has not seen any incident and has named only Guddu Chhara with a sword, whereas other witnesses state otherwise. It was submitted that the witness does not say where he had seen Guddu, nor has he attributed any overt act to him. Except Guddu, he does not implicate any local residents of the surrounding area. It was submitted that he has named Guddu Chhara for the first time before the court.

88.8 ANALYSIS: This witness has implicated only **Guddu Chhara** (deceased) to whom he has not attributed any overt act. From the testimony of this witness, it emerges that the witness had remained in the third lane of Jawannagar till 4

o'clock and after 4 o'clock since the mob had started coming, they had gone towards the interior side and had climbed on the terrace of Gangotri Society.

89. **PW-82 Pirubhai Ismailbhai Sholapuri** has been examined at Exhibit-541. The witness has deposed that in the year 2002, he was residing at *Jawannagar, in the Last Line, Naroda Patiya* with his family. His family was comprised of his wife Reshma, his sons Shahrukh, Yusuf, daughter Shayra, mother-in-law Nasimbanu, brother-in-law Asif, sister-in-law Najju, in all eight persons. He used to drive his auto rickshaw No.GJ-1-UU-624 and used to earn a living.

89.1 The incident took place on 28.2.2002. There was a call for Gujarat Bandh. He was with his family at home. In the morning at 9 o'clock, public started running and coming into the chawls. Upon inquiry, he came to know that a mob of Gujarati people was pelting stones at the masjid and the mob was also attacking nearby shops. On account of such events on that day, at around 9:30, he took his family and went to the S.R.P. Quarters, where he stayed for entire day and night. The witness has deposed that throughout the day, he was standing and watching as to who was doing what, and in the afternoon at 1:30, there were many people in the open ground. Out of these people, he had recognized one person, whose name was **Guddu Chhara**, whom he had seen in the middle of the people with a sword. Since Guddu Chhara was residing in their chawl, he knew him very well. He did not know any other person in the mob. On the next day, the police vehicle came and took them to the Shah Alam camp, where he stayed for around six months.

89.2 CROSS EXAMINATION: The witness has admitted that on the day of the incident after he left his home at 9:30 in the morning, he had gone straight to the S.R.P. Quarters. He has stated that he was standing taking support of the S.R.P. Quarters compound wall when he had left the family members a little inside. Till 6 o'clock, he was standing with the support of the compound wall.

89.3 The witness has stated that the mob which he had seen must have been comprised of about one and a half thousand people. He has admitted that Guddu Chhara has three to four houses in Jawannagar. He has stated that he had seen Guddu Chhara at 2 o'clock in the afternoon. He has denied that he saw Guddu Chhara while he was standing on the verandah of his house. The witness has denied that the people in the mob that he had seen had tied black coloured scarves over their faces and has voluntarily stated that the people in the mob were wearing saffron bands. The witness has denied that faces of all the people in the mob were covered and has voluntarily stated that only some people had covered their faces. The witness has stated that he had gone to the S.R.P Quarters through Jawannagar. He has denied that Majidbhai's house is near the S.R.P. compound wall and he has stated that it is far away. The witness has admitted that when he went to the S.R.P. Quarters, at that time there were many other people with him. He has admitted that the S.R.P. people had come near the S.R.P. compound wall. He has voluntarily stated that there was an S.R.P. bandobust. The witness has denied that the S.R.P. people had spread throughout the compound wall and has stated that they were only there near

the lane. He has admitted that the S.R.P. people were not permitting anyone to go in and were also not allowing anyone to come out. He has admitted that the S.R.P. people made everyone sit inside. He has voluntarily stated that many people were standing near the compound wall and that the people were very frightened.

89.4 In his cross-examination, it has come out that he resides at Ektanagar since last five years. He has admitted that this house was given to him by the Relief Committee. He has admitted that houses have been constructed at Ektanagar for the victims of the Naroda Patiya incident and that the Relief Committee has given him the house without payment of any consideration.

89.5 The witness has admitted that there is a Hindu population also in the S.R.P. Quarters and has admitted that the Hindus who were residing in the S.R.P. Quarters had made arrangement for meals for them. The witness has denied the suggestion that as the Relief Committee and the people of the Jamaat had given him the house at Ektanagar, he was falsely deposing before the court.

89.6 PW-307 S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 12.5.2002. The contents of first three lines of paragraph 4 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein he had stated that he stayed there for the whole day and saw as to who was doing what and saw that in the afternoon at 1:30, there were plenty of people in the open

ground. The Investigating Officer has admitted that such facts have not been stated by him in the statement recorded by Shri Chauhan.

89.7 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness is a resident of Jawannagar. According to his say, he was seeing everything from behind the wall of the S.R.P. Quarters, but he has only named Guddu Chhara with a sword and has not implicated any other accused, including local residents.

89.8 ANALYSIS: From the testimony of this witness, all that emerges is that at 9:30, he had taken his family and gone to the S.R.P. Quarters and stayed there for the entire day. The witness claims to have seen the incidents taking place in the open ground from the S.R.P. Quarters and has deposed that he had identified one person named Guddu Chhara (deceased). From the cross-examination of the witness, it emerges that the S.R.P. people were not permitting anyone to go inside and were also not permitting anyone to come outside and that many people were standing near the compound wall and that they were very frightened. This witness has named only Guddu Chhara (deceased).

90. **PW-83 Fatmabibi Makbulbhai Shaikh** has been examined at Exhibit-542. The witness has deposed that she has been residing at Pandit-ni-Chali, Naroda Patiya since the last about 28 years and is doing casual labour. Her husband has passed away about 13 years back. She has two daughters and one son, namely, Khatijabanu, Rasidabanu and Maiyuddin. Her native is Village Rangampet, District Sherampur,

Maharashtra.

90.1 The witness has deposed that the incident took place on 28.2.2002. On that day, she was at home. There was violence. There was a mob which was pelting stones. She took her children and went out to watch. All this was happening on the road at around 9:30 in the morning. She saw that many people were pelting stones at the Noorani Masjid and setting things ablaze. In the mob, she saw **Guddu Chhara, Sahejad Chhara, Bhavani Chhara** and **Tiwari**. Upon seeing all this, she took her children and went away towards Hussainnagar, where they went and sat in a godown. Thereafter, upon the mob advancing, they left the godown and went to Jawannagar. On account of the fear, they went on the terrace of a society and sat there. However, the mob reached there also. Her house was vandalized and set on fire and the articles were looted. The police had recorded her statement with regard to whatever she had seen. The witness has identified accused No.26 Sahejad Chhara in the court and though present, he had stated that Tiwari is not present. Thus, out of four accused named by the witness, two accused, namely, Guddu Chhara and Bhavani Chhara have died and the witness has not identified Tiwari.

90.2 CROSS EXAMINATION: In her cross-examination, the witness has admitted that in her police statement, she has not stated that she had taken her children and gone on the road. The witness has explained that this was for the reason that all these facts did not come to her mind at that time. Thereafter, the witness has stated that she might have stated such facts before the police, but the police might

not have recorded them. The witness is confronted with her police statement to the effect that she had not stated the facts stated in paragraph 3 of her deposition that she had gone with her children on the road and in the mob, she had seen the four named accused. The witness has stated that if the police have not written down what she stated, what she could do. Similarly, the witness is confronted with her police statement to the effect that she had not stated that she had taken her children to Hussainnagar, where they went to a godown and sat there and she once again stated that what could she do if the police did not write it down? Similarly, the witness has been confronted with the police statement to the effect that she has not stated therein that thereafter, upon the mob advancing, they left the godown and went to Jawannagar out of fear and the witness has once again stated that what could she do if the police did not write it down? The witness has denied that in her police statement, she had stated that when the mob came towards their chawl, she took her children and left and she had not seen anyone being beaten. The witness has admitted that prior to 28.2.2002, she had no occasion to meet Guddu Chhara and Bhavani, but has voluntarily stated that they used to frequently come to their chawl, and hence, she had seen them many times. In the cross-examination, she has admitted that at no point of time, did she have any work with Sahejad or that she had gone to his house. The witness has admitted that on the day of the incident, she was at home at around 10 o'clock and upon her chawl being attacked, she and her children escaped with their lives and from there, they went to the terrace of a house with her children and hid there and upon the police coming late at night, she had got down from the terrace. The witness has further admitted that upon their

chawl being attacked at 9:30, she along with her family, fled from there and hid on the terrace of a house and came down when the police came there late at night and other than that, she had not gone anywhere else.

90.3 The witness has been re-examined by the learned Special Public Prosecutor to explain the contradictions brought out as to her police statement to the effect that in her statement before the police, she has stated that out of the people in the mob who had attacked their chawl, she had seen and identified Guddu Chhara, Sahejad Chhara, Bhavani Chhara and Tiwari who drives the municipal bus.

90.4 PW-307 S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 12.5.2002. The contents of paragraph-4 from the fourth line to the eighth line of the examination-in-chief of this witness are read over to the Investigating Officer, wherein the witness had stated that she had come out with her children to watch; all this was happening on the road at around 9:30 in the morning; she had seen that several people were pelting stones at the Noorani Masjid and were burning it; in the mob, she had seen Guddu Chhara, Sahejad Chharo, Bhavani Chhara and Tiwari. The Investigating Officer has admitted that such facts have not been stated by her in the statement recorded by Shri Chauhan. The contents of the first five lines of paragraph 4 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein the witness had stated that upon seeing all this, she took her children and went towards Hussainnagar; there, they sat in a godown; thereafter, upon

more mobs coming, they had left the godown and gone to Jawannagar; thereafter, out of fear, they had gone right upto Jawannagar. The Investigating Officer has admitted that such facts have not been stated by her in the statement recorded by Shri Chauhan.

90.5 The Investigating Officer has admitted that this witness had stated before him that when the people in the mob came towards their chawl, she had left with her children and had not seen anyone killing anyone.

90.6 SUBMISSIONS: The learned counsel for the appellants-accused, have invited the attention of the court to the testimony of PW-307 Mr. S. S. Chudasama to submit that the omissions put to the witness in paragraphs 3 and 4 of her testimony have been duly proved through this witness. It was submitted that the omission which is sought to be brought on record in the cross-examination in paragraph 16 of the testimony of the witness has also been proved through the concerned Investigating Officer PW-307. It was submitted that out of the four accused named by the witness, two have expired, while Tiwari has not been identified and the witness has identified only Sahejad Chhara accused No.26. It was submitted that the SIT has not recorded her statement and her only statement was recorded by the local police on 12.5.2002. It was submitted that in her statement dated 12.5.2002, there are no allegations implicating the accused and that for the first time, they have been implicated before the court. Referring to the re-examination of the witness, it was submitted that the witness has never stated that the accused had attacked her in a chawl and therefore, in re-examination, this fact could not

have been brought on record as it was never the case of the witness in her examination-in-chief that there was an attack on the chawl. It was submitted that Sahejad Chhara's name is not there in the police statement of this witness and there is no such statement about any attack on her chawl, and therefore, there is nothing in her deposition which implicate any of the accused persons.

90.7 ANALYSIS: From the testimony of this witness, it emerges that after seeing the incidents on the road, she had taken her children and gone and sat in a godown, and upon the mob advancing, she had left the godown and gone to Jawannagar to the terrace of a society. In her examination-in-chief, the witness has stated that she had seen four accused, viz., **Guddu Chhara, Sahejad Chhara, Bhavanising Chhara** and **Tiwari** in the mob on the road, however, in her cross-examination, a contradiction has been brought out that she has not stated such facts in her statement dated 12.5.2002. The contradiction is proved through the testimony of PW-307 Shri S.S. Chudasama the Investigating Officer (SIT), which reveals that the witness had in fact not stated that she had seen the above named accused in the mob on the road. The prosecution has re-examined the witness to explain the contradiction wherein it has been brought out that in her police statement, she had stated that out of the persons in the mob who had attacked their chawl, she had seen and identified the above four accused.

90.8 Therefore, though the witness had named the accused in her police statement, the place, time and role attributed to the said accused was different. Therefore, since

the witness has not deposed regarding the accused having attacked her chawl in her testimony before the court, the explanation brought out in the re-examination would be of no avail to the prosecution.

91. **PW-85 Yunusbhai Mohammadbhai Shaikh** has been examined at Exhibit-551. The witness has deposed that he was born in the Naroda Patiya area and is working as an electrician. In the year 2002, he was residing at the same address at Hussainnagar with his wife Rukhsanabanu alias Mahebubbibi, his father Mohammad Millatali and his children, namely, his son Wasim and daughters Asmabanu and Nasreen. His native is Tirvalli, Taluka Haveli, Karnataka. His mother Mumtazbanu was residing with his brother. His father sometimes used to stay with him and sometimes used to stay with his brother. His brother's name is Harun, who is residing at *Hukamsing-ni-Chali, Naroda Patiya*.

91.1 The witness has deposed that the incident took place on 28.2.2002. Since there was a call for bandh on that day, he was at home. On that day, his daughter was ill and there were riots near his house, he had gone out to bring medicines for his daughter Asmabanu. When he had gone out to bring the medicines at 7:30 to 8:00 in the morning, there was nothing. After taking the medicines, he returned home and thereafter, they were at home.

91.2 In the morning, there were riots and hence, they had gone to the rear side of the chawl and were sitting there. Thereafter, they went to the lanes of Gangotri, Gopinath Society and were all sitting there. There were many people. It

must have been around 11:30 at that time. The left their home at 11:30 and wherever they went, there was a lot of commotion on all sides and stone pelting was going on. He took his daughter in his lap and sat there. At that time, his family members, viz., his father, mother, his wife and children, all of them were at that place along with others. There was a lot of commotion there and all the people got up and started running. In this chaos, all of them got separated. His daughter Asma, who was in his lap, remained with him and rest of them, got separated. From this place, he also ran and climbed on the terrace of a house in Gangotri Society, where he found his wife and son. On the terrace, he did not find any other members of his family. In this incident, his daughter Asma sustained stone injury on her head and she was bleeding. Out of fear, they sat on the terrace itself. When it became dark at night, the police came to fetch them. When they came to the road, he found his father, however, his mother was not found. They were taken to the Shah Alam relief camp in a vehicle. For a period of eight days in the relief camp, he did not know anything about his mother. After about eight days thereafter, he received a message that his sister Farzanabanu had sustained burn injuries and was admitted in the Civil Hospital, and hence, he went to Civil Hospital to inquire about her. In the hospital, his sister told him that his mother Mumtazbanu, his brother's son Akram, his niece by the name Farhana, all of them died in the incident at Gopinath Gangotri Society. His sister told him not to look for them anymore. His sister did not tell him as to how they had died. However, she told him that they had died on the spot. The witness has further deposed that his entire house was burnt and he had sustained damages of Rs.1,75,000/-. The witness has not named any accused.

91.3 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that his sister Farzana used to reside in Imambibi-ni-Chali and his brother Harun used to reside in Hukamsing-ni Chali. The witness has admitted that on the day of the incident, he did not have occasion to meet his sister Farzana or brother Harun and has voluntarily stated that on the previous day, they were together. The witness has admitted that the parapets on the terrace of the houses of Gangotri Society in some cases are two and a half feet and in some cases three feet high. The witness has admitted that when he hid on the terrace at Gangotri, it was dark. The witness has further admitted that with a view to see that the mob cannot see them, all the Muslim brothers on the terrace were sitting and they were sitting in such a manner, that the mob could not see them. The witness has stated that approximately three hours may have passed between the time they went on the terrace of Gangotri society and the time when the police came. The witness has admitted that he met his brother Harun at the camp, where he had given his complaint application Exhibit-553. The witness has denied that he had got the application Exhibit-553 made through the people in the camp and has stated that the police had come and were recording complaints, and hence, he had also gone to give the complaint application Exhibit-553. The witness has further admitted that the police were taking down details of whatever damage / loss they had sustained. The witness has admitted that thereafter, his statement came to be recorded at the camp on 15.5.2002. The witness is sought to be contradicted to the effect that he has not stated the facts stated in paragraph 5 of examination-in-chief in his complaint

Exhibit-553 as well as statement dated 15.5.2002. The witness is further sought to be contradicted to the effect that he had not stated that he had gone with his daughter Asma on his lap to Gangotri in his statement dated 15.5.2002 and that on the terrace of Gangotri, he had met his wife and son. [It may be noted that the witness has denied all the aforesaid suggestions put to him, however, the court below every paragraph has made a note that such facts are not stated in the statement dated 15.5.2002 and the complaint.]

91.4 The witness is further sought to be contradicted to the effect that he has not stated the facts stated in paragraph 12 of his examination-in-chief to the effect that his sister had told him that his mother, sister-in-law, brother and niece all died in the incident of Gopinath Gangotri Society. The witness has admitted that he has not stated any details with regard to the names of the accused or the weapons used by them in his application Exhibit-553 and that in his statement dated 15.5.2002, he has not stated any specific facts connecting any accused with the incident. The witness has further admitted that in his statement dated 28.6.2008 made before the SIT also, he had not stated any facts connecting any accused with the offence and has further admitted that he did not know any person in the mob who participated in the incident. Certain questions are put to the witness with regard to his relations with his family members as well as with regard to Nazir Master and some other persons. The witness has admitted that on 28.2.2002, between 9:30 to 10:00, the mobs of Hindus had gathered and were pelting stones at their chawl and had attacked by setting them ablaze, due to which, he had taken his wife and children on the interior side of the chawl. The

witness has further admitted that he does not know any person in the mob and thereafter, they had gone to Gangotri Society and thereafter, the police came therein vehicles and took them to the Shah Alam camp.

91.5 In his cross-examination, it has further come out that his brother Harun had come in the morning to inquire about Asma's health and thereafter, he had met him in the relief camp. In his cross-examination, it has further come out that when the witness reached Gangotri Society, it was around 4 o'clock in the evening. The witness has admitted that till the time he went to Jawannagar, no incident of stone throwing or arson had taken place. The witness has voluntarily stated that there was a lot of commotion and has admitted that while he was going at Jawannagar, till then, he had not seen any person in Jawannagar Khada. The witness has admitted that where the terraces of Gangotri Society end, the wall of the S.R.P. Quarters is situated. In the cross-examination of the witness, it is further brought out that they had not gone to any house in Gangotri Society and had not hidden inside any house. The witness has voluntarily stated that they were hiding on the terrace and that they must have been sitting in the lane of the temple for approximately one and a half hours. He has further admitted that during that period, no incident had taken place at Gangotri Society or Gopinath Society and that at that time, he had not met his brother Harun in the temple lane or terrace of Gangotri Society.

91.6 To prove the omissions and contradictions in the testimony of the witness, the prosecution has examined the Investigating Officer/assignee officer who had recorded the

statement of the witness.

91.7 PW-282 Shri K. S. Desai, the assignee officer has admitted that he has not recorded the statement of this witness in connection with any complaint lodged before him. (It appears that this witness had given a ready-made complaint, Exhibit-553). The contents of paragraph 5 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him. Considering the contents of paragraph 5 of the examination-in-chief, the same relate to what the witness had done early in the morning and have no direct connection with the incident in question and therefore, cannot be said to be a material omission so as to amount to a contradiction. The assignee officer has admitted that the witness has not stated that he had taken his daughter Asma in his lap on the terrace, but has stated that the witness had stated that he had taken his wife and children and gone and sat on the terrace of Gangotri Society. The assignee officer has further admitted that this witness had stated that he had found his wife and son, but has not stated that he had met them on the terrace and has further admitted that the witness had not stated that he was informed about the incident by his sister. The assignee officer has admitted that the witness had stated before him that they stayed on the terrace of Gangotri Society till late and has admitted that he had not stated that they were sitting on the terrace.

91.8 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 28.6.2008. He

has admitted that this witness had stated before him that he is shown his printed form/ complaint application dated 6.3.2002 as well as the statement dated 15.3.2002 which are read over to him and that the facts stated therein are correct and true. In the opinion of this court, this part of his deposition is inadmissible in evidence inasmuch as the statement under section 161 of the Code has not been used to contradict the witness.

91.9 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness was residing at Lane No.6, Hussainnagar since 29 years prior to the incident. The witness is the brother of Farzanabanu, but he has not implicated anyone, nor has he seen anyone in the mob.

91.10 ANALYSIS: This witness has not named any accused in his deposition. He is the brother of Farzanabanu. From the testimony of the witness, it emerges that his mother Mumtazbanu, his brother's son Akram and his niece Farhana (Farzana's daughter) died in the incident. However, the witness has not seen the incident, but was informed about it by his sister Farzana. This witness, therefore, is not an eye-witness to the incident. Even otherwise, as he has not named any accused, his testimony does not in any manner assist the prosecution in proving the charge against the accused.

92. **PW-86 Raziyanu Yakubhai Shaikh** has been examined at Exhibit-554. The witness has deposed that in the year 2002, she was residing with her husband, her sons Mohammad Shafik, Mohammad Halim, Maiyuddin, Nasruddin and Mohammad Hussain, Sadekhabibi wife of Mohammad

Shafik and their son Mohammad Asif. Her husband and her son were doing tailoring work. One week prior to the incident, her son Mohammad Shafik, his wife and their son as well as her husband, all four had gone to their native village Rangampet, District Gulmarg, Karnataka. The incident took place on 28.2.2002. It was a Thursday. There was a call for bandh. On that day, all of them were at home. In the morning, at around 9:30, a lot of commotion could be heard from the side of the Noorani Masjid where stone pelting was going on. Thereafter, the riots increased, and hence, they took their children and went on the rear side. Their house was a tin house and being afraid, they went on the rear side of the side of the chawl leaving the house open. Upon the attacks increasing, they started going behind towards the S.R.P. Quarters. All her children were with her, out of them, two got separated, namely, Mohammad Halim and Maiyuddin. At the S.R.P. Quarters, they went to the house of a policeman who was a Muslim, and hence, he kept them in their house. They stayed there at night till 5 o'clock. In the morning, the police vehicles came, and took them to the relief camp. The witness has stated that she did not know anyone in the mob. Thus, this witness has not seen any part of the incident and hence, she has not been cross-examined by the prosecution.

92.1 This witness has not been cross examined.

92.2 **SUBMISSIONS:** The learned counsel for the appellants-accused submitted that probably this witness has been residing in Hukamsinh-ni-Chali since many years prior to the incident, yet she could not identify anyone in the mob.

92.3 ANALYSIS: Nothing turns upon the testimony of this witness inasmuch as she has neither implicated any accused nor has she stated anything which would support the prosecution case. Therefore, this witness has not even been cross-examined by the defence.

93. **PW-87 Tamizanbanu Taufikmiya Sumra** has been examined at Exhibit-555. The witness has deposed that in the year 2002, she was residing at *Imambibi-ni-Chali* with her husband and children. On 27.2.2002, a train was set on fire at Godhra, due to which, there was a call for Gujarat Bandh on 28.2.2002. At that time, she was at home with her family till 10 o'clock in the morning. On that day, they were at home. In the meanwhile, a huge mob came from the direction of Chharanagar. A huge mob also came from the direction of Krushnanagar. The members of the mob had weapons in their hands like sticks, dharias. She had seen the mob coming, and hence, she took her children and fled and went towards the S.R.P. Quarters. Thereafter, after two days, they went to Shahibaug camp. The witness has stated that she had seen the mob, but had not recognized anyone.

93.1 CROSS-EXAMINATION: The witness has not been cross-examined by the defence.

93.2 SUBMISSIONS: The learned counsel for the appellants-accused submitted that probably this witness has been residing in Hukamsinh-ni Chali since many years prior to the incident, yet she could not identify anyone in the mob.

93.3 ANALYSIS: From the evidence of this witness it is

apparent that she has not been able to identify any one in the mob. Nothing much turns upon the testimony of this witness, and hence, the defence has not even thought it fit to cross-examine her.

94. **PW-88 Jamilabanu Maheboobhussain Shaikh** has been examined at Exhibit-556. The witness has stated that in the year 2002, she was residing with her family at *Jawannagar*. Her family was comprised of her husband, her three sons and four daughters, viz., Ahemadali, Farzana, Salim, Sahin, Ashiyana and Afreen. The witness has further stated that she, her husband and two sons and daughters were engaged in making readymade clothes.

94.1 The incident took place on 28.2.2002, which was a Thursday. At that time, she was at home. There was a call for Gujarat Bandh and they all were at home. On that day, at around 10:00 to 10:30, they came to know that there were riots near the Noorani Masjid on the road outside. People were coming running inside the chawl, and hence, she came to know that there were riots outside. They took all their family members and went on the terrace.

94.2 Upon hearing that there were riots, her elder son had gone out of the house. He had sustained a bullet injury in the incident. They had climbed on the terrace at around 3 or 4 o'clock and she was there till 1 o'clock at night, whereafter the police vehicles came and they got down from the terrace and went to the Shah Alam camp.

94.3 The witness has further deposed with regard to the

damage caused to her house and the things looted therefrom. She has further stated that in the incident, her son Ahemad Badshah had gone out and had sustained a bullet injury. Thereafter, other persons with him got burnt during the incident, wherein her son also sustained burns on his body and thereafter, came home and sat down. Her son was given treatment at the V.S. Hospital, where he was admitted for ten months. She has stated that she could not identify anyone in the mob which had come.

94.4 CROSS EXAMINATION: In the cross-examination of this witness, she has denied that Muslims were also responding by pelting stones in the incident and has voluntarily stated that the Muslims were running hither thither. Someone went behind the chawls and someone climbed on the terrace to escape. The witness has admitted that a few people out of whom, twenty to twenty five people belonging to their chawl, had pelted stones. The witness has denied that at that time her son Ahmad had gone towards the Noorani Masjid and has admitted that she had not seen the incident of he being injured by a bullet. The witness has admitted that Ahmad after returning home had informed her as to how he had sustained the bullet injury and how he got burnt. Certain questions have been put to the witness with regard to the manner in which Ahmad sustained burn injuries.

94.5 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness has not identified anyone, nor does she implicate anybody. Moreover, the witness has also not witnessed the incident in which her son had sustained bullet injury and burns. Her son Ahemad

Badshah (PW 154) was residing in that area since twenty years prior to the incident, but has not implicated anyone though he had seen the mob and had sustained bullet injury.

94.6 ANALYSIS: This witness has not implicated any accused and merely refers to the rioting on the road near the Noorani Masjid at around 10:00 to 10:30 in the morning. She has further stated that her son had sustained bullet and burn injuries in the incident, but has not stated that she has witnessed such incident. Nothing stated by this witness is, therefore, of much assistance either to the prosecution or the defence.

95. **PW-89 Abdulrasid Abdulkarim Shaikh** has been examined at Exhibit-557. The witness has stated that he was residing at *Hussainnagar, Lane No.1, Naroda Patiya*, since the last forty years and was serving in the S.T. Workshop since the last seventeen years. Over and above his service, he was doing the work of T. V. Channel. His family is comprised of his wife, four daughters and a son. The incident took place on 28.2.2002. On that day, he had gone to his office in the S.T. Workshop nearby. He had started work. Between 9:30 to 10:00 in the morning, there was a lot of commotion and disturbances on the road outside the gate of the S.T. Workshop. Hence, all the workers came out. He also came out and saw that on the outside, there were huge mobs of Hindus and an attack on the masjid was going on. Their officer came out and immediately sent all the workers inside. Thereafter, the riots escalated and the danger increased. Since he belonged to the minority community, his colleagues hid him in the house of one Vijaybhai. The atmosphere inside the S.T. Workshop was

similar to that of outside and the people inside were also shouting slogans of “Jay Shri Ram”.

95.1 For the entire day, he was at Vijaybhai’s house till 3:30 to 4:00 on the next day. As per the information given by his family, they had sent the police to fetch him. The vehicle was sent with S.R.P. police wherein he had gone to the S.R.P. Quarters, where he met his family. The witness has deposed that in the incident, his house was damaged and looted. He had sustained loss of Rs.2,57,000/-. The witness has stated that he had not seen anyone on the day of the incident.

95.2 CROSS EXAMINATION: This witness has denied that in his statement dated 23.5.2002, he has not stated the fact regarding the atmosphere in the S.T. Workshop being the same as outside and that inside also slogans of “Jai Shri Ram” were being chanted.

95.3 The witness has admitted that the S.T. Workshop wall is very high and there is a barbed wire on top. The witness has stated that he does not know whether any stones and burning rags were thrown from the S.T. Workshop. He has denied that all the Hindus in the S.T. Workshop had protected him. The witness has voluntarily stated that his friends from his Department had protected him. The witness has admitted that till his statement dated 23.5.2002 came to be recorded, he had not stated these facts to anyone. The witness has admitted that there are about 90 employees belonging to the minority community in the S.T. Workshop and has voluntarily stated that on that day, as there was a call for Gujarat Bandh, the employees from Ahmedabad city and villages had not

come for their job.

95.4 PW-300 Shri N.S. Malek, the assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 23.5.2002. The assignee officer has admitted that this witness in the statement recorded by him had not stated that the atmosphere inside the S.T. Workshop was the same as outside and slogans of "Jai Shri Ram" were being chanted inside also. The assignee officer has admitted that this witness had not stated any such fact from which the names of any accused had been revealed. The assignee officer has voluntarily stated that in his statement, the witness has stated that he had happened to hear that Suresh Langdo, Harshad Mungdo, Guddu Chharo and Manu Harijan and others were amongst the people who had taken away his property. The assignee officer has admitted that this witness has stated before him that he does not know as to who had taken away the goods and who has set the house on fire. [It appears that such questions have not been put to the witness].

95.5 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness is a resident of Hussainnagar since more than thirty two years prior to the incident, yet he has not implicated anyone. Moreover, there is nothing in his evidence.

95.6 ANALYSIS: All that emerges from the testimony of this witness is that there was commotion and rioting on the road outside S.T. Workshop at 9:30 to 10: 00 in the morning.

96. **PW-90 Gauriben Mohammadmashak Kureshi** has been examined at Exhibit-559. The witness has stated that she is also known as Jayedabibi Mohammadmashak Kureshi. Her native is *Village Shahpur, District Gulbarg, State Karnataka*. Since the last thirty eight years, she is residing at *Jawannagar, Naroda Patiya*.

96.1 The incident took place on 28th of the second or third month of the year 2002. Seven or eight months prior to the incident, her husband died of a heart attack. In the year 2002, her family was comprised of her sister-in-law, her children, her brother-in-law and their children. On the date of the incident, the fight had started at 10 o'clock in the morning. The Noorani Masjid was attacked. On that day, her son, brother-in-law, etc. came and told her that there were a lot of disturbances outside. She felt that everything would be over. But, the people were burning everything and had reached till Jawannagar when her brother-in-law told her that they should also go, and hence, her brother-in-law's children, her children, her sister-in-law and her brother-in-law, all left their house and went to Gangotri Society and sat there till 7 o'clock in the evening. At that time, people of Gangotri Society told them to go away because if the mob came, they would attack upon them too. Hence, they went away from there. When they came out, one mob came from the direction of the masjid and another mob came from the direction of Naroda. On seeing these mobs, they entered the lane of Gopinath Society; however, the members of the society closed the gate when they saw them entering the society. At that time, the people from the terrace were throwing oil, kerosene, diesel, etc. The members of the mob had kerosene with them. The witness has

stated that as far as she remembers, kerosene which had come to the rationing shop on 27.2.2002, was also obtained by the people in the mob. They prepared rags soaked in kerosene and also started inflicting blows with swords and throwing burning rags. On seeing the mob, she went out through a little opening which was there in the Gopinath Society when a person in the mob inflicted a blow with a pipe on her and with a sword on her hand. Thereafter, she told the mob that she was a Hindu and escaped from the mob. The witness has further deposed that kerosene rags were also thrown on the members of her family and they were being cut with swords and beaten with pipes. In all, six members of her family died in the incident on that day, namely, her son Hussain, her brother-in-law Salambhai Kureshi, her brother-in-law's daughter Reshma Salambhai, her brother-in-law's son Samir Salambhai, her brother-in-law's son Imran, daughter Meraj. In this incident, her sister-in-law Parveenbanu was severely burnt and was taken for treatment to the Vadilal Hospital. She had also gone to the Vadilal Hospital where she was treated for three months. The witness has stated that she had seen three persons in the mob, viz., **Jay Bhavani**, **Guddu Chhara** and **Dalpat Chhara**, who were the main persons involved in killing her family members. The witness has deposed that at present all these three persons have passed away. The witness has further deposed that the policemen were not letting her go inside the S.R.P. Quarters. She had beseeched them to let her young children go, however, they were not letting them go and told that there had orders from above. They had further told her that they had orders to kill them for 72 hours. From the Vadilal Hospital, she had gone to the Civil Hospital, where she was shown the dead bodies for the purpose of identifying her family

members. All the dead bodies were swollen. She had identified all the dead bodies of her six family members.

96.2 For a period of two months after the incident, she was under the impression that her son Abdulla had also died in the incident, and hence, she had identified seven dead bodies. The witness states that after two months, she found her son Abdulla and therefore, she had approached the Crime Branch, Gaekvad Haveli and informed the police about the same and that the police had commended her for her honesty. The police had also recorded her statement.

96.3 CROSS EXAMINATION: In her cross-examination, the witness has admitted that the mob was throwing stones on the houses in the chawl and burning them, and hence, they had fled to save their lives. The witness has denied that while fleeing, her family members had got separated. The witness has denied that till her statement dated 4.3.2002 was recorded, she had no information about her family members. The witness has denied that after she had gone from the spot, later on, she learnt that many persons were burnt. The witness has voluntarily stated that six members of her family were killed in front of her eyes, which she had seen. The witness has admitted that she had identified seven dead bodies of her family members and has voluntarily stated that six members of her family were killed in her presence and all the dead bodies were swollen and the faces had turned black and the dead bodies were not identifiable. Since one of her sons could not be found, she had thought that he too must have died, and hence, she had identified the seventh dead body.

96.4 The witness is sought to be contradicted with regard to the facts stated by her in her examination-in-chief to the effect that in statement before the police dated 4.3.2002, she had stated that her family had fled and had got separated from them and that despite searching for them, till date, she could not find them. The witness has voluntarily stated that the police had written down the facts which she had not stated and had not written down the facts as stated by her. In her cross-examination, the witness has stated that she does not specifically remember as to when the police has recorded her first statement and has voluntarily stated that she was under shock because so many persons from her family had died. The witness is sought to be contradicted with the contents of paragraph 6 of her examination-in-chief to the effect that in her statements dated 4.3.2002 and 17.5.2002, she had not stated that the fight started at 10 o'clock in the morning on the day of the incident when there was an attack on the Noorani Masjid. A similar contradiction is sought to be brought out qua the contents of paragraph 6 of her examination-in-chief to the effect that in the above police statements, she had not stated that her son, brother-in-law etc. came and told her that there were disturbances outside and she felt that everything would be over. Certain contradictions are sought to be brought out as regards the facts stated in paragraphs 6 and 7 of her examination-in-chief to the effect that she had not stated the same in her statement dated 4.3.2002. An omission in the nature of contradiction has been brought out to the effect that in her statements dated 4.3.2002 and 17.5.2002, the witness had not stated the facts stated in paragraphs 8 and 9 of her examination-in-chief. The witness has admitted that in her

statement dated 17.5.2002, she had stated that a mob of thousands of people with weapons had come, wherein her brother-in-law Abdul Salam Kureshi, his daughter Reshmabanu, Merajbanu, sons Samir and Imran and her son Husain, etc. were killed and burned. A suggestion is put to the witness to the effect that in her statement before the police, she had not stated that burning rags were also thrown on her family members and her family members were cut with swords and beaten with pipes and in this manner, six members of her family had died. A contradiction is brought out to the effect that in her statement dated 4.3.2002, the witness has not named Jay Bhavani, Guddu Chhara and Dalpat Chhara as being the main persons involved in killing her family members. It may be noted that this contradiction is limited to the statement dated 4.3.2002 and there is no such contradiction as to her statement dated 17.5.2002. A contradiction is sought to be brought out to the effect that the witness, in none of her three statements recorded by the police, had stated the facts stated by her in paragraph 15 of her examination-in-chief wherein she has stated that the police were not letting her go inside the S.R.P. Quarters and she had beseeched them to at least let her younger son go in, but they were not letting him go inside and were saying that there are orders from above and had also told them that they had orders that they had 72 hours for killing. The witness has admitted that at that time, there were no weapons in the hands of Jay Bhavani, Guddu Chhara and Dalpat Chhara. She has voluntarily stated that these three persons were leading the mob and were the main persons in the mob. She has stated that she cannot specifically say as to whether Dalpat Chhara was in the Krushnanagar mob and has voluntarily stated that mobs had gathered from all

sides and she can say with certainty that all three of them were there. She has stated that she cannot specifically say as to in which mob Jay Bhavani, Guddu Chhara and Dalpat Chhara had come and has specifically stated that two different mobs had come which had gathered at the corner of their chawl near Jaybhavani's house wherein all three were there.

96.5 The witness has denied that she was at Gangotri Society till 7 o'clock in the evening and has voluntarily stated that the burning started at 6:00 to 6:15 and it had become dark. The witness has denied that when she was at Gangotri Society the entire society was empty and all the people had gone away. She has voluntarily stated that the women had gone but the men were present.

96.6 The witness has admitted that she is also known as Gauri Apa in the Jawannagar area. She has voluntarily stated that she is also known as Jayedabibi and resides in the fourth lane of Jawannagar.

96.7 Several statements of this witness have been recorded by the police, and the concerned Investigating Officer or assignee officer of the concerned Investigating Officer have been cross-examined by the defence to prove the omissions and contradictions in the testimony of the witness qua the statements recorded by them.

96.8 PW-282 Shri K. S. Desai, the assignee officer has admitted that he has recorded the statement of this witness on 17.5.2002. The assignee officer has admitted that this witness had not stated before him that on the day of the incident, the

fight started at 10 o'clock in the morning and at that time, there was an attack on the Noorani Masjid. He has further admitted that the witness had not stated before him that there were a lot of disturbances outside and she felt that now everything would be over and that her brother-in-law said that they should go away.

96.9 The contents of paragraphs 8 and 9 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The assignee officer has admitted that this witness has not stated before him that kerosene soaked rags were also thrown on the people of their family and they had started cutting her family members with swords and were assaulting them with pipes and in this manner, six members of her family had died.

96.10 The contents of paragraphs 15 and 17 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness had stated the facts regarding the S.R.P. people not permitting them to enter despite their requesting them to do so, by saying that there were orders from above and that for two months, after the incident, she was under the impression that her son Abdulla had also died in the incident and therefore, she had also identified Abdulla's dead body among the seven dead bodies identified by her. However, upon her son being found, she had informed the police. The assignee officer has admitted that such facts have not been stated by the witness in the statement recorded by him.

96.11 PW-296 Shri J. V. Surela, the assignee officer, in his cross-examination has admitted that he has recorded the statement of this witness on 4.3.2002. The assignee officer has admitted that this witness in her statement dated 4.3.2002 had stated that on 28.2.2002 there was a call for Gujarat Bandh. In the meanwhile, at around 11 o'clock a huge mob of people came from the direction of Saijpur Patiya and started pelting stones, damaging houses and torturing them. Out of them people of her family also fled and got separated from them and upon trying to search them out, till date, they cannot be found and it has been learnt that on that day, the riotous mob had burnt many people. The assignee officer has admitted that this witness has not stated before him that on the day of the incident at around 10 o'clock, the fight was going on at that time the Noorani Masjid was attacked. There were severe riots outside and she felt that everything would be over. Her brother-in-law told her that they should go away from there. Therefore, her brother-in-law's children, her children, her sister-in-law and her brother-in-law and all of them left their house and set off. All of them went and sat at Gangotri Society. They sat there till 7 o'clock in the evening. At that time, the people at Gangotri Society told them to go away from there; otherwise the mob would come and also kill them. Hence, they had gone away from there. The assignee officer has admitted that this witness has not stated before him that when they came out, one mob came from the direction of the masjid and another mob came from the direction of Naroda.

96.12 The contents of paragraphs 8 and 9 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not

stated such facts before him. He has admitted that the witness has not stated before him that kerosene rags were also thrown on her family members and her family members were cut with swords. The assignee officer has admitted that this witness has not named any accused before him.

96.13 The contents of paragraph 15 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him. The contents of paragraph 17 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that except for the fact that the witness has identified seven dead bodies, the rest of the facts have not been stated by her in the statement recorded by him.

96.14 PW-307 S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 19.5.2002. The contents of paragraph 15 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that such facts have not been stated by the witness before him. The contents of paragraph 17 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that the witness has not stated all the facts stated by her in her statement dated 19.5.2002 recorded by him and has clarified that the witness had stated that Abdulla was with her and he is alive and he had not sustained any injury. Other than that, the facts stated therein have not been stated by her before him.

96.15 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has given altogether a different story before the court than that given in the police statement. There are serious contradictions, omissions and discrepancies in her deposition before the court and the police statements. It transpires that she has not seen any incident as claimed by her in the evidence. Her evidence cannot be relied upon in such serious offences. It was submitted that this witness has been residing at Jawannagar since 30 years prior to the incident. Her sister-in-law Parveenbanu Salambhai Qureshi has been examined as PW-152. It was submitted that this witness has named three accused, namely, Bhavani, Guddu and Dalpat, all of whom are dead. It was submitted that the entire incident which she has narrated that when she went to the scene of incident there were two mobs and they were caught in between and her family members were killed, is not stated in her police statement. It was submitted that the fact regarding the incident of family members being killed in her presence, has not come on record during the course of investigation.

96.16 It was submitted that there are serious contradictions, omissions and discrepancies in her deposition before the court and in her police statements, and it therefore, transpires that she has not seen any incident as claimed by her in her evidence. Her evidence therefore, cannot be relied upon in a case where such a serious offence is alleged against the accused.

96.17 ANALYSIS: From the testimony of this witness, it emerges that on the day of the incident, the mob reached

Jawannagar while committing arson. The witness and her family members namely, her brother-in-law's children, her children, her sister-in-law and brother-in-law, all left their houses and went to a terrace of Gangotri Society where they stayed till around 7 o'clock in the evening. At that time, the residents of Gangotri asked them to go away as otherwise the mob would come and would also assault them.

96.18 In the cross-examination of the witness, various contradictions have been brought out as to her police statements dated 4.3.2002 and 17.5.2002. Considering her evidence other than that in respect of which omissions and contradictions have been proved, it emerges that on the day of the incident, after they left Gangotri Society as referred to hereinabove, the witness's son Hasan, her brother-in-law Salambhai Kureshi, her brother-in-law's daughter Reshma Salambhai, brother-in-law's son Samir Salambhai, her brother-in-law's son Imran, daughter Miraj, have died in the incident. In the incident, her sister-in-law Parveenbanu was severely burnt and was admitted to the Vadilal Hospital for treatment. In the mob, the witness had seen three accused, namely, **Jaybhavani, Guddu Chhara** and **Dalpat Chhara**, who were the main persons in killing her family members. Insofar as naming of the three accused are concerned, there is an omission as to her statement dated 4.3.2002, however, the witness has named all three in her statement dated 17.5.2002. In any case, the three accused named by her, died before the deposition of the witness was recorded. Therefore, through the testimony of this witness, none of the present accused have been implicated. In paragraph 39 of her cross-examination, the witness has admitted that the three named accused did not

have any weapons in their hands and has voluntarily stated that all three were leading the mob and were the main persons in the mob.

96.19 Since the witness has named the three accused, none of whom are alive, nothing much turns upon the testimony of this witness, except to the extent noted hereinabove.

97. **PW-91 Mansuri Salim Yusufbhai** has been examined at Exhibit-564. This witness has stated that he has been residing at *Pandit-ni-Chali, Naroda Patiya* since his birth. His father had passed away. His mother Aminabanu, he himself, his two brothers, and their wives and their children, all are residing together. He was married to Hajrabanu and earlier, he used to work as salesman with Ganesh Medical Agency.

97.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. He was at home on that day and was sleeping on the terrace of his house. In the morning between 9:00 to 9:15, sounds of mobs belonging to the Hindu community were coming from the road side. He woke up on account of the commotion and from the terrace; he saw that mobs were facing each other on the road, one from the side of Krushnanagar and another from the side of Natraj Hotel. The mobs were violent and the members of the mobs had tied saffron bands and were wearing khakhi shorts.

97.2 After waking up, he was watching everything from the terrace, when stone pelting started from the terrace of Jayveer Complex situated near his house and in the stone

pelting, he was injured with a stone on the right side of his forehead, whereupon he came down from the terrace. When he came down, he found that the people were running helter skelter in the chawl. The police had resorted to firing near the Noorani Masjid and had released tear gas shells. The mob was setting the Noorani Masjid on fire; hence, there was a stampede in their chawl. They also left their house open and went towards Jawannagar-ni-Chali.

97.3 From Jawannagar-ni-Chali, they went towards the S.R.P. Quarters, where they were not permitted to sit. In the evening at 5 o'clock, he along with his family, climbed on the terrace of Gangotri Society, where there were other people of their community. From the terrace, they saw that their chawl was set ablaze and the smoke rising high therefrom. Thereafter, they remained on the terrace of Gangotri Society. At night, after the situation had calmed down, the police came and took them to the relief camp at around 3 o'clock. The witness has deposed that in the incident, he had sustained stone injury on his forehead, whereas none of his other family members had sustained any injury or loss of life. The witness is not in a position to say as to who were the persons in the mob and cannot identify anyone.

97.4 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that in place of Mahavir Hall Complex, which he has referred to in his evidence, now there is Rudraksh Hospital. Pandit-ni-Chali and Rudraksh Hospital are situated next to each other and that Pandit-ni-Chali faces the Noorani Masjid. The witness has stated that his house is situated in Pandit-ni-Chali, opposite the Noorani Masjid. The

first chawl on the main road is Pandit-ni-Chali and that adjoining Pandit-ni-Chali is Imambibi-ni-Chali.

97.5 The witness has stated that he does not know whether the police were firing and releasing tear gas at those who were rioting. He has admitted that he has not seen any incident on the road with his own eyes.

97.6 PW-279 Shri B. J. Sadavrati, the assignee officer has admitted that he had recorded the statement of this witness on 15.5.2002. He has also admitted that this witness had not named any accused in the statement recorded by him. It may be noted that despite the fact that the witness has not named any accused in his examination-in-chief, the defence has sought to put such a question to the assignee officer, which reveals the nature of cross-examination which has been conducted in the matter.

97.7 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness has been residing at Pandit-ni Chali ever since his birth, viz. 23 years prior to the incident. It was submitted that despite this position the witness has not named any accused. It was pointed out that according to this witness he had sustained an injury on his forehead due to stone pelting, but no medical certificate has been brought on record to corroborate his statement. It was submitted that nothing has come out of the evidence of this witness so as to support the case of the prosecution against the accused.

97.8 ANALYSIS: All that emerges from the testimony of

this witness is that mobs came from both sides of the highway and resorted to rioting and set the Noorani Masjid ablaze. The police had resorted to firing and lobbing tear gas shells. They tried to take shelter at the S.R.P. Quarters but were turned away. The witness has not named any accused nor has seen the main incident. Nothing much really turns upon the testimony of this witness.

98. **PW-92 Abdulhak Abdulrahim Luhari** has been examined at Exhibit-565. This witness has stated that at the relevant time, he was residing in *Lane No.12, Jawannagar*, which is also known as Jawaharnagar. He was residing there since fifteen to twenty years prior to the incident. At that time, he was engaged in tailoring work and did not have any children. He was bringing up his brother-in-law Riyazbhai's daughter by the name Afsanabegum as he did not have any of his children.

98.1 The incident took place on 28.2.2002. On that day, there was a call for bandh. He was at home with his wife. At that time he had not gone out but was near his house with his wife. The riots started at around 9 o'clock on that day. Since the mobs were coming inside the chawl, he and his wife went towards the interior of the chawls. Since the mobs were coming, they were afraid and with a view to save their lives, they had gone out.

98.2 The mob which he had seen on that day was comprised of around fifteen thousand people. However, he does not know who was in the mob. But upon seeing the mob, he and his wife were terrified. There was danger to their lives

from such mobs. In the meanwhile, at around 4 o'clock, they had gone outside the gate of the S.R.P. Quarters and were sitting in the open space near it. Other people were also sitting there, who suggested that they should go further to the society, where they would be protected. The people present there also suggested that they may flee to Naroda from the rear side. In the meanwhile, some people started going on the rear side towards Naroda, when the mob came from the opposite side, whereupon those people started coming back. In the meanwhile, the crowd swelled and in the melee, his wife got separated from him. To protect his life, he went to a terrace of Gangotri Society where other people were sitting. In the meanwhile, at around 11:30 to 12:00 at night, a police vehicle came and took them to the Shah Alam relief camp, where he learnt that his wife had been burnt alive. Thereafter, he had gone to the Civil Hospital to identify the dead body. However, the condition of the dead body was such that he could not identify it as the dead body was burnt and it had turned black. The witness has stated that he does not know any person in the mob.

98.3 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that Gopinath Society is situated behind Gangotri Society and there is open plot behind Gopinath Society. The witness has admitted that from the open ground where they had gone, one can go to Naroda village from one side and on the national highway from the other. The witness has admitted that there was a huge mob in the open ground comprised of about ten thousand people. The witness has further admitted that the mob was coming with weapons to attack the chawls from Gopinath Gangotri Society. The

witness has admitted that there were no known persons in the mob. He has further admitted that the mob which came from the side of Gangotri Gopinath Society had started killing all the Muslims who came in their hands on the road of Jawannagar, Gangotri Society and Gopinath Society and set some persons on fire. The witness has further admitted that the mob had started advancing ahead in the chawls and started looting the chawls and killing people and burning them.

98.4 The contents of paragraph 15 of the testimony of this witness are read over to the assignee officer, wherein he has stated that no member of his family was missing. The assignee officer, however, has stated that the witness has stated before him that his wife was burnt alive.

98.5 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness could not identify the dead body of his wife. He was residing in Jawannagar since twenty years prior to the incident, but though he had seen the mob, he could not identify anyone. It was submitted that the witness has lost his wife, but does not implicate any accused including the local residents. It was pointed out that while some of the witnesses had deposed that tear gas shells were burst and they were compelled to leave the place, this witness has not stated any such thing. Moreover, this witness has stated that a mob had come from the canal side.

98.6 ANALYSIS: As is evident from the examination-in-chief of this witness, nothing has been stated by him which in any manner furthers the prosecution case. It is difficult to

understand as to why the prosecution has examined witnesses like him, when witnesses who have named accused persons have been dropped.

99. **PW-93 Jahedabanu Iqbalahemad Shaikh** has been examined at Exhibit-567. This witness has deposed that in the year 2002, she was residing at *Hussainnagar, Naroda Patiya* with her family. She is residing at Ahmedabad from her birth, but her native place is *Gulbarg, Karnataka*.

99.1 In the year 2002, her husband was doing tailoring work and continues to do the same till date. At the time of the incident, her family was comprised of her husband, her son and three daughters. Her son's name is Mohammad Asif and her daughters' names are Reshmabanu, Parveenbanu and Nilofer. Her daughter Reshmabanu is no longer alive. She had died in the incident.

99.2 The incident took place on 28.2.2002. On that day, there was a call for bandh. Her family members were all at home on that day and at around 9:30 in the morning, she had gone to the water tap to fetch water and her husband had gone on the road outside. The water had stopped. She came near the Noorani Masjid and saw that there was stone throwing by the mob. Upon such stone pelting having started, they went inside the lane and started going towards Jawannagar. They had also gone towards Gangotri Society; however, they were driven away from there. The people in the mob were armed with swords, sticks, etc. and had released tear gas. When she went to Gangotri Society, it must have been around 2 o'clock in the afternoon. From there also, they were driven out, and

hence, they went to the S.R.P. Quarters, where they were not permitted to enter. By that time, it was 6 o'clock in the evening and it was slightly dark. At that time, the mob was burning the houses and tyres and they had flee to save their lives. At that time, her daughter Reshmabanu got separated from her and they had gone and hidden in a room in Jawannagar, where they stayed till 12 o'clock at night, whereafter the police vehicle came and took them to the Shah Alam camp at around 12:30 at night. Her husband has also got separated from her during the incident and met her two days after the incident. Upon searching her daughter Reshmabanu, she could not be found. She has further stated that after three days, she came to know that she had been burnt in the incident. She was told this fact by Harun who was residing near them at Patiya and whose entire family had been burnt in the incident. Reshmabanu's dead body was not found and they received her burial receipt from Shahibaug Kabrastan. Her other daughter Parveenbanu was also injured with a stone on her back and she was given treatment at the camp. The witness has stated that she did not know any person who was involved in the incident. However, since other people were giving some names, she had also given the names of some persons; however, she does not know them. The witness has admitted her signature on her application and has admitted the contents thereof. The application has been exhibited as Exhibit-569.

99.3 CROSS EXAMINATION: This witness in her cross-examination has stated that she knows Harun and that his full name is Harun Mahammadbhai. He resides at Chetandas-ni-Chali and that she had a talk with him. In her cross-

examination it has further come out that she does not know any Hasanbhai and no one has talked with her about any incident regarding Hasanbhai.

99.4 In her cross-examination she has stated that she came to know that statements are to be recorded at Gandhinagar because everyone was going there and hence she also went there. She has admitted that the person who wrote the application Exhibit 569 had written it and brought it and upon his asking her to sign on the application, she had signed it.

99.5 She has admitted that when she went to the S.R.P. Quarters it was around 6 o'clock in the evening and at that time it had also become dark. She has admitted that the incident took place after it became dark.

99.6 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that this witness was residing at Hussainnagar since thirty two years prior to the date of the incident. Her daughter Reshmabanu has died in the incident. It was submitted that this witness is a very truthful witness. She has categorically stated in paragraph 10, that she gave names of some persons only because others were giving the names and that as a matter of fact, she has not seen any one, nor identified any one from the mob. It was submitted that the witness is residing in the area since many years, yet she has not implicated anyone in the offence, including the local residents. She has gone on road also but has not identified anyone in the morning mob also. She and her husband both have gone to the road but she has not named

any accused. She has stated regarding Harun having told her that her daughter Reshmabanu was set ablaze, but the witness does not implicate any accused. She has further admitted that the names of the accused were being discussed and that is why, she came to know their names.

99.7 ANALYSIS: From the testimony of this witness, it emerges that they had gone to the S.R.P. Quarters, but were not permitted to enter. At around 6:00 p.m., it was slightly dark and her daughter got separated from her and they had gone and hidden in a room in Jawannagar, where they stayed till night when the police arrived. Her daughter Reshmabanu was not found, and subsequently, the witness has learnt that she had been burnt in the incident. This fact was told to her by Haroon whose entire family had been burnt in the incident. This witness has not named any accused in her testimony and has frankly stated that in her statement before the police, she had given the names of accused as other people were giving some names. However, she did not know such persons.

100. **PW-94 Akbarsubhani Nazirahemad Munshi** has been examined at Exhibit-570. This witness has deposed that in the year 2002, he was residing at *Jawannagar, Naroda Patiya* with his family since the last twenty years. His family was comprised of his wife Abedabibi and son Arbaaz. His wife used to work in a thread factory.

100.1 The witness does not remember the month, but says that as far as he remembers, the incident took place on the 28th in the year 2001. On that day, there was a call for bandh. He had gone for his job at 8 o'clock, where he received

a phone-call at the factory informing him that they should shut the factory and go home. Hence, he closed the factory and returned home.

100.2 On that day, from the factory, he went straight to his mother's house, who was residing behind the Noorani Masjid, and from there, he went to Jawannagar where his wife and children were, that is, he went home.

100.3 During that time, at around 9:00 to 9:30 in the morning, there was commotion, and hence, he came out, and saw a mob of Hindu persons pelting stones at the masjid, due to which, he was worried and took his wife and children to the society behind their chawl. He had gone to Gangotri Society. They had stayed at Gangotri Society till 5:00 in the evening. From the terrace, he had seen the fire and the smoke coming out.

100.4 From the terrace he had seen the mob committing arson. He has also seen the mob killing. They stayed on the terrace till night, whereafter the police vehicle came at 1 o'clock. They went in that vehicle to the Shah Alam relief camp, where they stayed for six months.

100.5 The witness has deposed that in the mob which was committing arson and was killing people, he had seen Jay Bhavani and Tiwari – accused No.25. Other than that, he does not know anyone in the mob. The witness has further deposed regarding the extent of the loss sustained by him on account of his house being looted and burnt down. The witness has thereafter identified accused No.25 Tiwari correctly.

100.6 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that his first statement was recorded by the police at the Shah Alam camp on 13.5.2002, and prior thereto, he had not stated the facts as deposed by him in his examination-in-chief to anyone. The witness has admitted that he has identified accused No.25 Tiwari for the first time before the court and that he had no occasion to talk with Tiwari, nor did he had any occasion to go to his house, nor was he involved in any transaction or dealing with Tiwari or having any kind of relation with him. He has also admitted that he also did not have any relation with Jay Bhavani. The witness has voluntarily stated that since he was residing in the same area, he knew him. The witness has stated that Jay Bhavani was residing in Gangotri Society, whereas he was residing in Lane No.4, Jawannagar. The witness has admitted that where Jawannagar ends, there is a wall of the S.R.P. and on the other side, there is the wall of Gangotri Society. The witness has admitted that he has not stated the facts stated by him in paragraph 5 of his examination-in-chief in his statement dated 13.5.2002 made before the police. The witness is confronted with his statement dated 13.5.2002 to the effect that he had not stated the facts stated by him in paragraph 6 of the examination-in-chief that in the morning at around 9:00 to 9:30 people were shouting and he came out and saw that the Hindu mob was pelting stones at the masjid. The witness has admitted that he has not stated the facts in this manner. The learned advocate for the defence has clarified that the contradiction is sought to be brought out only to the extent of use of the word "masjid" in the examination-in-chief.

100.7 The witness has admitted that on the day of the incident they had gone to the terrace of Gangotri Society. He has stated that they had left their house at 2:30 in the afternoon and thereafter they had gone to Gangotri Society where they stayed till night.

100.8 The witness has admitted that from the terrace where they had stayed, his house could not be seen. The witness has admitted that there are no houses with two storeys in Jawannagar and has admitted that on the terrace where they were, it became dark at around 6:00 to 6:30. The witness has admitted that nobody came on the terrace and asked them to go away.

100.9 The witness has also admitted that after 6:00 to 6:30, the mob came from the side of Uday Gas Agency road. The witness has denied that the persons in the mob had tied bands around their mouth, but has admitted that they had tied bands on their head.

100.10 The witness has further admitted that with a view to see that the mob does not see them, all those persons who were there on the terrace were sitting and hiding. He has admitted that the mob which he had seen was in the Jawannagar ground. The witness has also admitted that the mob which was coming was such that on account of the crowd they had to push to come forward. The mob was at a distance of around 200 to 300 feet from the terrace where he was. The witness has admitted that it was at that time that he first saw the people in the mob.

100.11 In his cross-examination, it has further come out that is not aware of what kind of clothes Jay Bhavani and Tiwari were wearing. The witness has stated that he cannot say whether five to twenty five people came and thereafter Jay Bhavani came. The witness has voluntarily stated that he has not seen them beating or hacking anyone in the mob. He had merely seen them present in the mob.

100.12 The witness has stated that it did not happen that firstly five to twenty five people came and Tiwari came thereafter. The witness has voluntarily stated that he had seen Jay Bhavani and Tiwari in the mob and he had not seen them killing or doing anything. He has also admitted that he had not seen them advancing forward.

100.13 SUBMISSIONS: The learned counsel for the appellants-accused submitted that police statement of this witness is recorded two and a half months after the incident. The witness admits that he has identified the accused for the first time before the trial court. It was argued that the witness has named accused No.25 only by his surname, viz., Tiwari and without any description, therefore, there is nothing to show that it is accused No.25, who has been named by this witness. It was further submitted that no overt act has been attributed to this accused, nor anyone has sustained any injury. It was submitted that the witness could not have seen the named accused as he was sitting and hiding on the terrace of a house in Gangotri Society. It was submitted that considering the fact that there is a parapet wall on every terrace of Gangotri, it is highly improbable that the witness could have seen the incident and even if it is believed that he has seen them then

also considering the fact that at that time darkness had set in, it was not possible for him to see them. It was pointed out that no test identification parade had been carried out to identify the accused and the witness has identified accused No.25 for first time in the court after more than eight years.

100.14 ANALYSIS: This witness has deposed that he had gone to Gangotri Society with his family where they stayed till night. The witness has stated that from the terrace of Gangotri, he had seen the mob committing arson and killing people and in the said mob, he had seen **Jaybhavani** (deceased) and **Tiwari** (A-25). From the cross-examination of the witness, it has been elicited that while he had seen Jaybhavani and Tiwari in the mob, but he has not seen them committing any overt act or coming forward with the mob. Insofar as the names of the accused are concerned, the witness has named them in paragraph 9 of his examination-in-chief, however, this part of his testimony has not been dislodged in the cross-examination of this witness and no contradiction has been brought out in that regard. Therefore, to the extent the witness has named the accused; he is consistent in his statement before the police as well as in his deposition before the court.

100.15 On behalf of the appellants, it has been contended that the witness has named the accused only by his surname, namely, Tiwari, without any description and hence, there is nothing to show that it is accused No.25 who has been named by this witness. From the overall evidence which has come on record, the accused No.25 Tiwari appears to be well-known in the area by his surname Tiwari. Though no overt act has been attributed to him, the witness is consistent right from the

beginning about his presence in the mob which was assaulting and committing arson. From the cross-examination of the witness, no contradiction has been brought out insofar as this part of his evidence is concerned. Therefore, there is no reason to disbelieve the witness so far as the presence of the accused No.25 Tiwari in the mob is concerned.

100.16 Through the testimony of this witness the prosecution has proved the presence of accused No.25 Tiwari in the mob in the evening, without any overt act being attributed to him.

101. PW-104 Mohammadsalim Mohammadhussain Shaikh has been examined at Exhibit-668. This witness has deposed that he is residing in *Lane No.7, Hussainnagar* and in the year 2002 also, he was residing there. His family is comprised of his wife, elder daughter Kamrunisha, thereafter his daughter Sayrabanu, son Rahemuddin, daughter Ashiyabanu and son Moinuddin. His son Moinuddin was not born in the year 2002. His native place is *Taluka Shahpur, District Gulbarga, State Karnataka*.

101.1 The incident took place on 28.2.2002. On that day, there was a call for bandh. He was at home in the morning. The bandh was declared by the Vishwa Hindu Parishad. Since several such bandh calls are not successful, he set off for his work in his auto rickshaw at around 8:30 to 9:00 in the morning. When he came out on the main road and reached Milan Hotel, which is near the Noorani Masjid, he saw that there was a total bandh on all four sides. Milan Hotel was partly open and was in the process of closing down. While he

was drinking tea, he saw the police going around their area with one Asifkhan and checking inside the masjid and nearby shops. While they were checking, a mob of around 1500 people came from the side of Kubernagar. The mob was being led by **Kishan Korani** accused No.20, **Manoj Videowala** accused No.42 and **Murli Sindhi** accused No.2. The mob was slowly advancing towards their area. On seeing this, he started his rickshaw and took a turn towards his home. While he was going home, the mob was at a distance of around thirty feet from him. While going, he saw that the mob was armed with weapons wherein Kishan Korani had a sword, Murli Sindhi and Manoj Videowala had revolvers. Thereafter, he went and informed his brother Sattarbhai (PW-201), who resides on the upper floor of the house, that a mob has come outside with weapons, hence, he should take his family and go towards the S.R.P. police line. After telling this to his brother, he went out to see as to what was happening. On coming out to the corner of the chawl, he saw that the mob which he had seen was at a distance of around forty feet from him and was shouting "Jay Shri Ram" and was attacking their area. They were pelting stones and were setting the houses and *lari gallas* near the masjid on fire. At that time, it was around 9:00 to 9:30 in the morning. At that time, an empty army truck passed from there and the people in the mob who were engaged in the acts which he had stated, ran towards Natraj Hotel. Thereafter, a police jeep came, which halted at the S.T. Workshop gate. Behind this jeep, **Kishan Korani**, **Manoj Videowala** and **Murli Sindhi** came. After a little while, a white Maruti franti car came there. He saw that MLA **Mayaben Kodnani** was there in the car, whereafter she spoke to Kishan, Murli, Manoj and the police. While speaking, Mayaben's tone was

aggressive. She was gesturing towards their area and was saying something. All these people, that is, Mayaben, Kishan, Murli, Manoj and the policemen gestured with their hands to the mob which had run away towards Natraj Hotel and called it back. Mayaben discussed something with the mob in an aggressive tone. Thereafter, she sat in the very car in which she had come, and left.

101.2 This mob from the side of Natraj aggressively attacked their area. The mob which was comprised of Hindus, resorted to pelting stones and firing, and at the same time, the police had also resorted to firing. At this time, it must have been approximately 9:30 to 10:00. He had seen that Manoj Videowala had resorted to private firing due to which, Abid, a rickshaw driver, was hurt by a bullet on his private parts. At this time, he had seen Murli Sindhi also resorting to private firing due to which, Mustaq Razakbhai Kaladiya had sustained a bullet injury on his shoulder. At that time, other persons were also injured. All of them were frightened, due to which, they had gone on the interior side of the chawl. Thereafter, he sent his family together with his brother to the S.R.P. police lines and he too had gone with them. When he went inside the police lines, the police had stopped him. But he told them that he was residing in the police lines and saying this, he also went inside. At this time, it must have been 10:30 to 11:00. After going inside the police lines, he looked around for his family, but he could not find it, hence, he went to the house of Pratapbhai Kharadi who was residing in the police lines. His friend told him that he himself was going to search for his family and went towards Gangotri Society in search of his family. His friend had made him sit at his home and at that

time, he had seen that around one hundred fifty people of their area were sitting in the open ground of the S.R.P. camp. His friend could not find his family and he stayed at the house of his friend Shri Kharadi for the entire day. His friend Shri Kharadi returned home at around 8:30 in the night and informed him that many persons of their area had been burnt alive at the corner of Gangotri Society and that he could not find his family. He had searched for his family amongst the people who had escaped alive and had come to the S.R.P. Quarters but he could not find his family there also. He asked Shri Kharadi to make arrangements for sending all the survivors to a safe place and he (Shri Kharadi) had contacted the police officers residing in the S.R.P. and called for a police vehicle, which was a big van. The van took as many people as could be filled in and went, at which point of time, at Krushnanagar, people had pelted stones and had shouted kill, cut and broken the glass of the vehicle. The witness was not sitting in that vehicle; however, Faridabanu who was sitting inside, had informed him about it. Thereafter, he stayed at Pratapbhai's house till 3.3.2002. Later on, he went to Devjipura camp in the police headquarters jeep to look for his family, but could not find it. Thereafter, he went to the Shah Alam camp in a rickshaw, where he found his family, which was safe and sound. He along with his family had stayed at the Shah Alam camp for six months. In this incident, none of his family members had sustained any injury. However, his niece and her two children were burnt alive in the incident. His house had been looted in the incident and he had incurred a loss of about Rs.55,000/-.

101.3 The witness has further deposed that he had stated

the facts regarding the incident to the people at the camp and had also informed the Crime Branch, when the panchnama of his house was drawn and he had asked the Crime Branch to record his statement. He had stated the names of the accused whom he has named before the court to the Crime Branch, however, they had not recorded his statement and told him to go to the Naroda Police Station. Thereafter, he had contacted Shri G. L. Khunti of Naroda Police Station, who was the Police Inspector at that relevant time. He informed Shri Khunti about all the facts and Shri Khunti told him that the complaint would lie before the Crime Branch, and hence, his statement has to be recorded before the Crime Branch. In this manner, his faith in the Crime Branch as well as the Naroda Police Station was shaken. Thereafter, the Crime Branch had asked him details about his name, address and the damages sustained by him, whereafter the police had never contacted him. After six months, they returned to his house in their area and started to lead a normal life.

101.4 In the year 2008, he came to know through the newspapers as well as the media, that an SIT had been constituted, whereupon he made an application to the SIT. He gave his statement before the SIT, wherein he had stated the true facts of the incident. The SIT officers had come to him once again and recorded his statement regarding why he had not lodged any complaint in relation to the incident in the year 2002. He had told the SIT that the reason for not lodging the complaint at the relevant time was because his complaint was not being taken by the Crime Branch and the Naroda Police Station and since they were not recording his complaint when he named the above referred accused. The SIT has recorded

his statement in this regard. The witness has further stated that he can identify Mayaben, Kishan, Murli and Manoj Videowala and has identified Kishan Korani (Accused No.20), Murli Sindhi (Accused No.2), Manoj Videowala (Accused No.41) and Mayaben (Accused No.37). The witness has stated that over and above the aforesaid accused, he could also identify one other person in the mob whose name he does not know till date, but whom he knows by his face and has pointed out to accused No.58 – Santoshkumar Kothumal.

101.5 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he had studied in Gujarati till the 6th Standard. The witness has admitted that before the SIT, he had given his opinion as to why the incident had occurred and has voluntarily stated that he has seen the incident himself. The witness has admitted a portion of his police statement as extracted in paragraph 32 and 33 of his testimony as regards the reason why he thought that the incident had taken place.

101.6 As discussed earlier, it is by now well settled and it is also clear on a plain reading of the provisions of section 162 of the Code that a statement recorded by the police under section 161 of the Code can be used only for the purpose of contradicting a witness and not for any other purpose. The portion of the police statement which is extracted in paragraphs 32 and 33 has not been referred to for the purpose of contradicting the witness, but for bringing on record the statement of the witness as recorded by the SIT, wherein the witness had given his opinion as to why the incident had taken place. Such part of the police statement is, therefore, not

admissible in the evidence and the trial court ought not to have permitted the same to be brought on record.

101.7 In the cross-examination of this witness, he has stated that as far as he remembers, in the context of an incident in Kashmir in the year 2001, the B.J.P. had given a call for bandh and all these three accused other than Mayaben, had burnt tyres in front of Natraj Hotel at Naroda Patiya and were trying to assault people who looked like Muslims and that he had seen the same while he was standing there with his rickshaw. The witness has admitted that the said incident took place in the year 2001, and has voluntarily stated that even in the incident of 2002, he had seen the three of them.

101.8 The witness has admitted that the facts regarding the incident of 2001 and naming the three accused had not been stated by him to anyone prior to the SIT recording his statement. In his cross-examination, the witness has stated that he knew Asif since last fifteen to twenty years. The witness has stated that after the incident, he had a talk with regard to the incident with Asif, during which there was also a talk about his going along with the police for checking the shops. The witness has denied that there is no such person called Asif and that he has created an imaginary person.

101.9 The witness has stated that he knows Abid since his childhood; however, he does not know exactly where he stays. The witness has further stated that he knows Mustaq Razak Kaladiya, but does not know where he stays, but knows that he resides in his area and knows him by his name. The witness has further stated that Mustaq Razak Kaladiya is not alive at

present, and that as per his information, he had died on account of the bullet injury. The witness has voluntarily stated that he had heard that he was in a coma for two years on account of bullet injury and died thereafter. He has stated that during these two years, he has never gone to inquire about the Mustaq's health. The witness has denied that he has not seen Abid sustaining a bullet injury and that Abid had died only due to burn injuries and there was no firing on him and that Mustaq had not sustained any injuries due to firing.

101.10 The witness is cross-examined as regards the topography of the area. The witness has admitted that Milan Hotel where he was drinking tea is situated adjoining the Noorani Masjid and has further admitted that while going from their chawl to the Noorani Masjid, when one crosses the road, there is a divider on the road and that due to this divider, for going from their chawl to the Noorani Masjid, one has to first take a turn towards Narol. The witness has been cross-examined as regards the time taken by him while he was drinking tea at Milan Hotel. The witness has admitted that there was a huge mob near Natraj Hotel. The witness has denied that there was a huge mob near Noorani Masjid. He has stated that he was watching the events while standing where the S.T. Workshop compound wall ends, where there is a police chowky at present. The witness has admitted that from this place, he could not see the mob on the road which goes towards Ahmedabad. The witness has stated that the number of people in the mob was approximately one thousand five hundred. The witness has denied that his statement was recorded on 11.6.2002.

101.11 The witness has stated that his statement was not recorded by the police on 11.6.2002 and has denied that in such statement, he had stated the facts as reproduced in paragraph 59 of his testimony. [It may be noted that despite the fact that the witness has denied having given such statement, and at this stage, the Investigating Officer has not yet been examined to establish the recording of such statement, the trial court in a note below has recorded that these sentences are there in the statement.]

101.12 The witness has admitted that it is true that about twenty to twenty five thousand people had come to their area and had set people ablaze. The witness has admitted that in his statement before the SIT, he has stated that after the incident, he had stayed at the relief camp for six months and that he had mentioned the fact regarding a mob of twenty five thousand people coming and burning people to the people at the relief camp. The witness has stated that he is not aware as to whether the workers had kept tables outside the relief camp and were sitting there. He has admitted that in the relief camp, announcements used to be made on the mike that the Crime Branch police have come and whoever wants to lodge a complaint, can do so.

101.13 The witness has admitted that he had made an application wherein both he and Nazirbhai Master, have signed. The witness has further stated that prior to his statement being recorded by the SIT at Gandhinagar, he had made an application for the purpose of recording his statement. He has admitted that he had written therein that the accused should be punished and has voluntarily stated that

it is only if the accused are punished that he would get justice. The witness has further admitted that in his application, he had stated that such statement should be recorded, whereby the accused are punished. The application is read over to the witness and is given Exhibit No.669. The witness has admitted that the application Exhibit-669 has been written by Nazirbhai Master and has further admitted that he did not have any talk with Nazirbhai Master as to why the details of the incident and the names of the accused were not written therein. The witness has voluntarily stated that the main object behind the application was that his statement should be recorded by the SIT. The witness is shown the application Mark 644/39 and he has identified his signature thereon. The witness has admitted that the names of the accused who have been identified as well as the names of the accused who have not been identified by him before the court, have not been stated in the application. He has stated that this is the second application made by him, which is given Exhibit No.670. The witness has voluntarily stated that this application was made by the people of their area jointly. As all of them were poor people and going to Gandhinagar was very expensive, they had made a request that the SIT should come to their area and record their statements.

101.14 The witness has admitted that during the six months when he stayed at the relief camp, there was no fear or threat. The witness has admitted that after he returned home from the camp till 2007, he was carrying on his business and at that time also, he did not receive any threats or was not under fear. The witness has further admitted that after returning from the relief camp, he has been able to roam about

in Ahmedabad city and do his business. The witness has voluntarily stated that after returning from the relief camp, initially there was fear; however, slowly they are now set. The witness has denied that after 2002, he has been able to do his business fully and has voluntarily stated that there were a few difficulties and that he has been able to do his business properly only after 2004. The witness has denied that he has not addressed any letter to the Police Department in connection with this incident and that during this period, he used to take passengers to many courts and that he has not made any application or complaint in connection with the incident before any court. The witness has voluntarily stated that as stated by him in his statement, the Crime Branch and the Naroda police has not recorded his statement and hence, no court would listen to him, and therefore, he had not made any application or complaint. In the cross-examination of this witness, it is brought out that several well known leaders had visited them at the camp and he has admitted that he had not talked about the incident or made any complaint to such people.

101.15 The witness has stated that after keeping his rickshaw at home, he was standing near the wall of the S.T. Workshop for two to three minutes. The witness has admitted that at that time, no incident had taken place at the Noorani Masjid and that he had not seen any private car near the Noorani Masjid and had also not seen the dead body of Ranjit being hacked and thrown near the Noorani Masjid. The witness has further stated that he has not seen any Muslim drive a Tata 407 near the crowd near the Noorani Masjid. The witness has admitted that in his statement dated 29.9.2008; he has

stated that “..... Upon asking me about the attack on the masjid, I have not seen any attack on the masjid.”

101.16 [At this stage, the learned Special Public Prosecutor had invited the attention of the court to the fact that the witness has not stated any such facts in his examination-in-chief. Such contradiction in the statement is sought to be brought out in relation to the facts brought out in the cross-examination, and hence, the same technically cannot be said to be a contradiction. In connection therewith, the court has recorded that at this stage, the testimony has been recorded; the submission made is mainly subject matter of appreciation of evidence, which can be taken into consideration as an issue at the time of evaluating the evidence and hence, such a submission is taken note of. In the opinion of this court, the approach adopted by the trial court is contrary to the settled legal position whereby, a statement recorded by the police cannot be used for any purpose except for contradicting a witness. It is further well settled that such contradiction has to be in relation to the primary statement of the witness and that through the process of cross-examination, the statement recorded by the police cannot be elicited. The trial court should, therefore, have disallowed the question as this is not a matter of appreciation of evidence but as regards whether or not such a question can be put in cross-examination in view of the bar contained in section 162 of the Code. These are questions which are to be answered by the trial court at the time of recording of the evidence and cannot be left to be decided at a later stage. The consequence of this approach adopted by the trial court is that voluminous inadmissible evidence has been permitted to be brought on record, thereby

burdening the record of the court. Upon reading the depositions of the witnesses, it appears that at some stage, the learned counsel for either side have raised objections against permitting inadmissible evidence from coming on record, which has been turned down by the trial court. After which the learned advocates have not persisted with the matter and have subsequently, actively participated in bringing such inadmissible evidence on record.]

101.17 The witness has voluntarily stated that when the officer of the SIT asked him about the attack on the masjid, he has understood as to whether he had seen the attack while standing in the Masjid, and hence, since there was no masjid nearby, he had given such a reply. In the cross-examination of the witness, it has come out that Abid was a rickshaw driver and was standing at a distance of 5 to 6 feet behind him towards the direction of the chawl. Mustaq Kaladiya was standing in front of him on the road. The witness has denied that Abid was not standing on the public road and has voluntarily stated that he was standing near him on the public road. He has denied that where Abid was standing, there were many people in front of and behind him and that there were many people standing in front of and behind Mustaq Kaladiya also. The witness has admitted that Abid and Mustaq were also among the fifty Muslims who were standing there. The witness has denied that they were pelting stones in defence. The witness has admitted that he has not seen any police and that at that time, there were no police at the Noorani Masjid and that at that time, he had not seen any police near Natraj Hotel.

101.18 In his cross-examination, the witness has stated

that at that time, from the direction of the S. T. Workshop gate, Manoj Videowala had fired towards the people of their area, when a police jeep was also standing there. At that time, the bullet came from the direction of the S.T. Workshop gate. The witness has admitted that firing was done by Manoj. He has further stated that Manoj was at a distance of about 40 feet from him. The witness has denied that there were other people around Manoj and that there were other people at that spot. The witness has stated that he has seen as to where Abid was injured with the bullet shot by Manoj. He has stated that when the bullet hit Abid, he fell down. He, however, cannot say as to whether Abid died on the spot. In the cross-examination of the witness, it has further come out that after Abid was injured by a bullet, he had not tried to give him any treatment. He had not seen as to whether while he was standing there, Abid's wife Ayeshabibi had come there or not. He has stated that after Abid fell down, four to five people picked him up and took him away, but he does not know the names of those people. In the cross-examination of the witness, it has come out that while he was standing there, he had seen the police firing and that the police had also resorted to firing. The witness has admitted that simultaneously with Manoj firing there was also firing by the police. The witness has denied that the police had resorted to firing at the mob which was rioting and was releasing tear gas shells. The witness has voluntarily stated that out of the mobs of Hindus and Muslims standing there, the police was only firing at the fifty Muslim people standing there. The witness has stated that he had seen the revolver in Manoj's hand, but he cannot state the length of the revolver. He had stated that he had seen the revolver in Manoj's hand for the first time at the gate of the S.T. Workshop. The witness

has stated that he does not know as to whether Manoj fired only one bullet and has voluntarily stated that after Abid was shot, he had moved his sight from Manoj because the atmosphere was very different. The witness has admitted that he had seen Manoj firing only to the extent of one bullet which had hit Abid and that he had not seen any more firing by Manoj. The witness has denied that he had not seen Manoj after Abid was injured with the bullet and has stated that he cannot say whether Manoj's revolver was a country-made tamancha or a 12 bore tamancha. The witness has admitted that he has not seen Abid sustaining any injury by a police bullet. The witness has further admitted that he has not seen Abid being injured in police firing.

101.19 In the cross-examination of the witness, it has further come out that the bullet which struck Mustaq Razak Kaladiya came from the same direction as the bullet which struck Abid. The witness has admitted that the bullet which hit Mustaq was not a police bullet. The witness has stated that Abid and Mustaq had sustained bullet injuries more or less at the same time. The witness has admitted that other than this, there was private as well as police firing and has admitted that after hearing the sounds of shooting and two persons falling, he had gone home.

101.20 The witness has stated that he cannot say as to what kind of fire arm Murli was wielding and has voluntarily stated that it was definitely a revolver. He has admitted that when Murli and Manoj resorted to firing, they were in the Hindu mob. The witness has denied that the mob was comprised of ten to fifteen thousand people and has voluntarily stated that

it must have been comprised of approximately fifteen hundred people. The witness has admitted that the Hindu mob was near the S.T. Workshop gate and has voluntarily stated that near the gate, there is an open ground where the mob was. The witness has stated that he knows exactly where the bullet hit Abid and Mustaq as he was standing near them. Mustaq had sustained a bullet injury on the left shoulder and Abid had sustained a bullet injury on the right side of his body on his private parts. The witness has admitted that the police had also resorted to firing at that spot. The witness has admitted that among the one thousand and five hundred people, there were people wearing khakhi shorts and undershirts and they also were armed with weapons. The witness has admitted that these people had also attacked their chawls on that day. The witness has denied that out of the five accused whom he had identified in the court, only two were in the mob. The witness has admitted that he had seen five persons in the mob of one thousand and five hundred during the time when he was standing there. The witness has stated that he had seen the accused even prior to the time he was standing at the S.T. Workshop.

101.21 The witness has admitted that he had seen three accused at the time when he was drinking tea at Milan Hotel. The witness has admitted that at that time, the mob was coming from the direction of Kubernagar and he had seen the mob from a distance of 300 feet. The witness has admitted that there were people wearing shorts and undershirts in the mob. In his cross-examination, the witness has admitted that while he was drinking tea at Milan Hotel, he had not seen which person had which weapon and has voluntarily stated

that thereafter, he took his rickshaw and was turning it at the divider when the mob was at a distance of thirty feet from him, at that time he had seen the weapons. The witness has admitted that when he saw this, his rickshaw was going with speed. He, however, has voluntarily stated that near the divider while he was taking the turn, the speed was very moderate.

101.22 The witness has admitted that prior to the incident, he never had any occasion to talk with the five accused whom he had identified before the court and there was no occasion to either sit with them or to visit their homes. The witness has stated that he had asked people the names of the accused and has voluntarily stated that in any case, he knew these people prior to 2002 and knew their names. The witness has stated that he had not seen the photographs of the accused and has also not seen their posters. He has stated that he has seen Mayaben in a T. V. programme and admitted that she is the MLA of that area. He knows the other accused by name as well as because they are B.J.P. workers.

101.23 In his cross-examination, it has further come out that out of the four accused, except for Mayaben, Kishan Korani and Manoj Videowala are BJP workers. The witness has admitted that Murli Sindhi's shop is situated next to Natraj Hotel. The witness has denied the suggestion that he has not seen any incident near the S.T. Workshop and that no such incident has taken place. The witness has denied that no incident of private firing has taken place and in such firing, no Muslim was injured. The witness has stated that he cannot say so with certainty as to whether anyone was injured in police

firing at that time.

101.24 The witness has admitted that on that day, at that time, Abid was not in a burnt condition at that spot. The witness has stated that he does not know from where Abid's dead body was found and has denied that Abid's death was not caused due to police or private firing and that he was falsely deposing before the court. The witness has stated that he does not know that Abid's dead body has been found near a tank near Gangotri Society and Gopinath Society. The witness has also denied that Mustaq's death has not been caused in police or private firing.

101.25 The witness is confronted with his statement dated 11.6.2002, but he has stated that no statement of his was recorded by the police. The witness has admitted that before the SIT, he had not given any explanation with regard to the facts stated in the statement dated 11.6.2002 and has voluntarily stated that when he had not given such statement and as the SIT had not inquired in that regard and had not asked him any facts with regard to such statement, he had not given any such explanation. In his cross-examination, it has come out that on that day, he had seen woman wearing a police dress near Noorani Masjid, but does not know her name.

101.26 In his cross-examination, this witness has admitted in his police statement that he has not given the physical description or any other description of the person whom he has identified as accused No.58. The witness has admitted that after sending his family, he had gone out to see what was happening. He has admitted that the second time when he

came out of his house, he had seen the mob towards Natraj Hotel and has admitted that he had seen the mob at around 9:30 in the morning. The witness has denied that Mayaben's car came half an hour thereafter. He has further denied that Mayaben had not come to the Naroda Patiya area and was busy with government work and that he is deposing falsely. The witness has admitted that he has not heard as to what Mayaben was talking with the police and the co-accused and has denied that subsequently, he came to know that Mayaben had instructed the police that since Hussainnagar, Jawannagar, etc. are within her electorate, they should ensure that they (the electorate) do not face any difficulty, despite which, after eight years, he is deposing falsely by implicating Mayaben. The witness has denied that subsequently he came to know that Mayaben with the gesture of her hand had told the police to look after her electorate, despite which, after such a long time, he was stating such wrong facts.

101.27 The witness has further stated that in his statement dated 29.5.2008, he has not stated that the Naroda Police Station and the Crime Branch people were not recording the names of Mayaben and other accused and has voluntarily stated that when Shri Raghuram and Smt. Geetha Johri came to their area, they had orally represented to them. (paragraph 132)

101.28 The witness has admitted that in his statement dated 29.5.2008, he had stated that "*..... from that car, Mayaben Kodnani, our MLA, who was wearing a white coloured saree and a saffron scarf around her neck had come and was talking with Kishan, Murli and Manoj. I do not know what they*

were talking about." The witness has denied that Mayaben was talking aggressively in such a manner to say that not only should they take care of this mob, but also the other mob, and that they are part of her electorate and was reprimanding the police and was, therefore, talking in an aggressive tone.

101.29 The witness has admitted that it did not happen that after his statement dated 29.5.2008, he remembered something and had gone to the SIT for recording the same. The witness has admitted that on 12.9.2008, his second statement was recorded by the SIT wherein, he had stated the following facts: "*..... In the riots that took place on 28.02.2002, I had seen (1) Mayaben Kodnani, (2) Kishan Korani, (3) Murli Sindhi, (4) Manoj Videovala in the mob near the gate of the S.T. Workshop and they were gesturing to the mob and were inciting them and I was standing at the police chowky at that time. They were at a distance of 25 to 30 feet from me and at that time, it was around 8 to 9 in the morning.*". The witness has voluntarily stated that the SIT had asked his explanation as to why he had not named these four persons in his statement in the year 2002 and it was in this context that his statement was taken and that in this statement, his focus was on why these names were not recorded in the statement of 2002 and not on the other details.

101.30 The witness has admitted that in his statement dated 12.9.2008, he has also stated that "*... .. At that place, around ten to fifteen women and men of their chawl were standing and he cannot say as to whether they can identify these people and that a youth named Abid was standing with him, who sustained injuries in the firing and*

died."

101.31 The witness has admitted that on the date of the incident, there was no question of his shouting to Mayaben and telling her that she was their MLA and should help them. The witness has denied that since he had a grudge in connection with the incident of 2001, wherein Pandits of Kashmir were burnt, he had wrongly named the five accused.

101.32 The witness has admitted that the facts stated by him in paragraphs 4 and 5 of his examination-in-chief have not been stated by him in his statement dated 12.9.2008 and that such facts have also not been stated by him in his statement dated 11.6.2002 recorded by the Crime Branch. The witness has admitted that the facts stated in paragraphs 6 and 7 of his examination-in-chief have not been stated by him in either of his statements dated 11.6.2002 or 12.9.2008. The witness has further admitted that the facts stated in paragraph 8 of his examination-in-chief have not been stated by him in his two statements dated 11.6.2002 and 12.9.2008. The witness has voluntarily stated that as stated by him earlier, he has not given any statement dated 11.6.2002 before the Crime Branch and that the second statement recorded by the SIT was for the limited extent of explaining. The witness has further admitted that the facts stated in paragraph 12 of his examination-in-chief have not been stated in his statements dated 12.9.2008 and 11.6.2002. The witness has admitted that the facts stated in paragraph 9 referred to in paragraph-154 of his testimony, have not been stated in his statements dated 12.9.2008 and 11.6.2002. The witness has admitted that in his statements dated 11.6.2002 and 12.9.2008, he has not stated the

following facts stated in paragraph 10 of his examination-in-chief, viz., "*Mayaben, Kishan, Murli, Manoj and the policemen gestured with their hands to the mob which had gone towards Natraj Hotel and called it back and thereafter, Mayaben departed in the car in which she had come.*" The witness has admitted that the facts stated by him in paragraphs 11 to 19 of his examination-in-chief are not there in the statements dated 11.6.2002 and 12.9.2008. The witness has admitted that the facts stated by him in paragraph 21 of his examination-in-chief to the effect that his niece and her two children were also burnt alive in this incident, have not been stated by him in any of his statements. The witness has admitted that the facts stated by him in paragraph 23 of his examination-in-chief are not there in the statements dated 11.6.2002 and 29.5.2008 and has voluntarily stated that these facts are stated by him in his statement dated 12.9.2008, where he was asked for an explanation. [It may be noted that though the witness has denied having given any statement dated 11.6.2002, he is persistently cross-examined to bring out omissions and contradictions in such statement.]

101.33 The witness has admitted that there was an inflow and outflow of people from the S.R.P. Quarters from the morning to the evening. Many Muslims had come to the S.R.P. Quarters after the evening, out of whom, some were injured Muslims. The witness has admitted that the people residing in the S.R.P. Quarters, amongst whom there were Hindus also, had made arrangements for food and drinks for the Muslims who had stayed at the S.R.P. Quarters. The witness has stated that the names of his niece and her children who were burnt alive in the incident are Saliyabanu Jenulabedin, son Subhan

and daughter Muskan. On a query by the court, he has stated that in the year 2002, he was not doing tailoring work, but was driving a rickshaw.

101.34 PW-282 Shri K. S. Desai, the assignee officer who is stated to have recorded the statement of his witness on 11.6.2002 has been cross-examined to bring out the omissions and contradictions in the testimony of the witness as to the statement recorded by him. The assignee officer has admitted that it has not happened that this witness had given the names of certain accused in his statement, but that he had not written them down and had told him to go to the Naroda Police Station. The assignee officer has voluntarily stated that this witness has not given the names of any accused to him. The assignee officer has admitted that this witness has not informed him regarding his having filed any complaint with the Crime Branch. The assignee officer has admitted that this witness had stated before him that when the incident took place at Naroda Patiya on 28.2.2002, at that time he was drinking tea at the tea stall opposite his house and at that time, at around 9:00 to 9:45 in the morning, a mob of around twenty to twenty-five thousand people attacked Hussainnagar and he and his children went and hid in the society situated behind Hussainnagar.

101.35 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statements of this witness on 29.5.2008 and 12.9.2008. The witness had stated before him that his statements dated 11.6.2002 and 29.5.2008 have been read over to him and have been recorded as stated by him and are

correct and true. The Investigating Officer has clarified that the witness had stated before him that his statement dated 11.6.2002 was only in connection with the loss and damage caused to him.

101.36 SUBMISSIONS: The learned counsel for the appellants-accused, have submitted that three statements of this witness have been recorded, viz., (1) statement dated 11.6.2002 before the Crime Branch, (2) statement dated 29.5.2008 before the SIT and (3) statement dated 12.9.2008 before the SIT. The attention of the court was invited to the omissions and contradictions in the testimony of the witness qua the statement recorded by the police, to submit that after six and a half years, when the SIT recorded his statement, the witness has for the first time come out with a bundle of facts and has named four accused and that it was easy for him after such a long lapse of time to create a story and say that his statement was not recorded by the Crime Branch at all in 2002. It was submitted that the witness had ample opportunities during this period to raise his grievance and narrate about the facts and also to disclose the involvement and complicity of the accused named, but he did not do so for such a long time.

101.37 In the context of paragraph 33 of his deposition, it was submitted that this witness has made a reference of something being recorded by the Crime Branch which according to him, now is something in relation to loss and damage recorded by the Crime Branch. It was submitted that the very fact that the Crime Branch asked something and he has stated something, indicates that his statement was

recorded and that now, he very cleverly indicates the statement to be of loss and damage. It was submitted that despite the above facts, the witness has never contacted the police, which means that if he was aggrieved, he could have made his grievance before many authorities and that there was no reason for him to sit silent for six years. Referring to the contents of paragraph 31 of his examination-in-chief, it was submitted that the witness has falsely implicated Manoj regarding use of revolver and Abid having received injury by that weapon. It was submitted that most of the witnesses say that Abid was injured in police firing and hence, there was no question of his being injured in a private firing. If at all Abid had received injury by private firing, then the prosecution is required to establish that the injuries sustained by Abid are from private fire arms and not from police fire arms.

101.38 It was submitted that as per this witness one thousand five hundred people were there in the mob, but most of the witnesses have stated that the mob was of more than five thousand people. Therefore, there is a vast difference in the figure. This raises a doubt about his credibility and it transpires that he is not telling the correct facts before the court and it indicates that he has not seen anything and is falsely deposing before the court.

101.39 It was submitted that most of the facts stated by the witness in his examination-in-chief from paragraphs 4 to 33, including the names of the accused and the so called role attributed to them, were not stated by him in his first available police statement dated 11.6.2002. It was submitted that when his first statement was recorded, it was after one hundred days

and prior thereto, no attempt was made by the witness to disclose these facts even after the statement dated 11.6.2002, till his statement was recorded on 29.5.2008 by the SIT that any of the facts regarding complicity of the accused were disclosed by him. It was submitted that insofar as the accused No.58 Santosh is concerned, the witness has neither named him before the police or the SIT or even before the court, but has simply identified him.

101.40 It was submitted that there are many material, important and vital contradictions in the deposition of the witness and in his police statement as well as the statement before the SIT. Thus, this witness is not reliable and credible and his evidence cannot be relied upon in such a case where the accused are charged with serious offences.

101.41 ANALYSIS: The evidence on record indicates that the statement of this witness was initially recorded on 11.6.2002. This statement was probably relating to the loss and damage sustained by the witness. It appears that, at the relevant time, no other statement of this witness was recorded and thereafter, his statements were recorded by the SIT on 29.5.2008 and 12.9.2008. The witness, in his cross-examination, has denied any statement of his having been recorded by the police on 11.6.2002.

101.42 In his examination-in-chief, the witness has named Kishan Korani (A-20), Manoj Videowala (A-42) and Murli Sindhi (A-2) in the mob on the main road. The witness has stated that Kishan Korani had a sword and Murli Sindhi and Manoj Videowala had revolvers. The witness has also referred to the

presence of Mayaben Kodnani at the scene of offence and has stated that initially a police jeep came and halted at the S.T. Workshop, which was followed by Kishan Korani, Manoj Videowala and Murli Sindhi, whereafter Mayaben Kodnani came in a white Maruti Franti Car and spoke to the three accused and the police. According to the witness, Mayaben spoke in an aggressive tone and thereafter, the mob aggressively attacked their area. The witness has referred to firing at the people by the mob as well as by the police. He has attributed specific roles to Manoj Videowala and Murli Sindhi and has stated that Manoj Videowala had resorted to firing in which Abid was injured by a bullet on his private parts and that Murli Sindhi had also resorted to firing, in which, Mushtaq Razak Kaladiya had sustained bullet injury on his shoulder.

101.43 In this regard, it may be noted that several witnesses who were present on the main road in the morning have referred to Mustaq and Abid being injured. However, majority of the witnesses have referred to the police having resorted to firing and the above referred two persons and others being injured in the police firing. Therefore, the testimony of this witness regarding Manoj and Murli having fired bullets is contrary to the version given by majority of the witnesses. Considering the fact that at the relevant time, no statement of this witness has been recorded, this version, which has come up for the first time in his statement recorded by the SIT in the year 2008, does not appear to be very credible.

101.44 Insofar as the presence of M.L.A. Mayaben Kodnani

at the scene of offence is concerned, the witness has stated that firstly a police jeep came, which was followed by the above three accused, whereafter Mayaben came in a car and spoke to the police and the three accused in an aggressive tone, thereafter the mob was summoned and Mayaben spoke to the mob in an aggressive tone, after which the mob attacked more aggressively. Reference to the presence of Mayaben is at around 9:00 to 9:30 at the S.T. Workshop gate. It is also required to be noted that the statement of this witness implicating Mayaben has come up for the first time in the year 2008. According to this witness, at the relevant time, he had gone to the Crime Branch for the purpose of recording his statement, however, they had not recorded his statement and had told him to go to Naroda Patiya Police Station and that when he went to the Naroda Patiya Police Station, he was relegated to the Crime Branch which only asked the details about his name, address and damage sustained by him and thereafter, never contacted him.

101.45 It may be noted that statements of majority of the witnesses have been recorded by the police at the relevant time wherein names of the three accused, except Mayaben have been recorded by the police. Therefore, there is no reason to believe that the police would not have recorded the statement of this witness naming at least the three accused viz., Kishan Korani, Manoj Videowala and Murli Sindhi, whose names have been recorded in the statements of other witnesses. Moreover, in the cross-examination of the witness (para 107), he has admitted that prior to the incident, he never had any occasion to talk with the five accused whom he had identified and that he had no occasion to visit their houses.

The witness has stated that he had asked the names of the accused to the people and has voluntarily stated that even prior to 2002; he knew these people as well as their names. This part of the statement of the witness is self-contradictory, inasmuch as, on the one hand, he says that he knew the accused and their names, on the other hand, he says that he had asked the people their names.

101.46 Insofar as accused No.58 **Santoshkumar Kodumal Mulchandani** is concerned, the witness has merely identified before the court, though he has not named him in his examination-in-chief or in any of his statements recorded by the SIT. In his cross-examination, it has been brought out that he had not even described the physical features of the said accused in the statement recorded by the SIT. Therefore, without naming the accused or describing him, the witness has merely identified accused No.58 Santoshkumar Kodumal Mulchandani as being one of the persons whom he had seen in the mob. Considering the fact that this accused was not named by the witness in any of his statements, nor had the witness given any description of the accused, it would be hazardous to rely upon such identification of the accused for the first time before the court.

101.47 In the above backdrop, considering nature of the testimony of this witness as well as the fact that the witness has implicated the accused Kishan Korani (A-20), Manoj Videowala (A-41) and Murli Sindhi (A-2) at a belated stage before the SIT after a period of more than six years and has not named Santosh Kodumal Mulchandani (A-58) even before the court, but has merely identified him in the dock, it would

be very risky to rely upon the testimony of this witness to establish the charge against the said accused in such a serious offence. Insofar as accused No.37 Mayaben Kodnani is concerned, the evidentiary value of the testimony of this witness shall be considered at the time of considering the culpability of the said accused.

102. **PW-105 Hussainbhai Valibhai Kaladiya**, aged 62 years, has been examined at Exhibit-676. This witness has deposed that he is residing at *Imambibi-ni-Chali, Naroda Patiya* since the last forty years and that in the year 2002 as well as today also, he is serving in *Bhatiya Enterprise, Soni-ni- Chali*. He was residing in *Imambibi-ni-Chali* along with his wife, son Sajidali, his wife Sabanabanu and his daughter.

102.1 The witness has stated that the incident took place on 28.2.2002. On that day, there was a call for bandh by the Vishwa Hindu Parishad. He was at home and in the morning at around 9 o'clock, he set off for his job, for which purpose he came on the road. Every day he used to go for his job after inquiring about the health of his friend Kadri, who was ill. On that day also, he had gone to inquire about his health. While he was sitting at his friend Kadri's house, a mob came from the side of Natraj Hotel and stood near the S.T. Workshop, and hence, he did not go for his job. The people in the mob started vandalizing the handcarts belonging to Muslims near the Noorani Masjid. Upon seeing this, he was frightened and went home. As soon as he reached home, he went stood at the entrance of his home and the disturbances escalated suddenly. There were many people in the mob. At the corner of their house, stone pelting also started. At this time, another mob

came from the direction of Krushnanagar. During this period, his nephew Mustaq was also on the road. While his nephew was going on the road, from the opposite side, tear gas shells were released and in a little while, there was a firing and his nephew Mustaqali Razakbhai Kaladiya was hit by a bullet. They, that is, his family members took Mustaq after he was injured with the bullet and were going, at that time, on the road; another boy named Abid had also sustained bullet injury. Thereafter, they had gone further, however, the disturbances continued. The armed members of the mob were trying to enter their chawls. At that time, from the side of the S.T. Workshop also, stones and rags were being thrown at their chawls. They went towards the S.R.P. Quarters; however, they were not permitted to enter inside. Thereafter, they went and stood in the chawls near Gangotri Society, which is near the S.R.P. Quarters. They had taken their nephew with him, at which point of time, his wife, his daughter-in-law, all were got separated. Subsequently, he came to know that his wife, daughter-in-law and granddaughter had gone inside the S.R.P. Quarters. There is a big open ground near Gangotri Society, where many people had gathered and where people were killed and cut. They had gone on a terrace of Gangotri Society and were sitting and hiding there and stood there till 1:30 at night.

102.2 Initially, six buses had come; however, they had not gone in them. Thereafter four other buses came from which people alighted and came to meet them and after verifying that these people were proper and they stated that they would take them to the Shah Alam camp, they sat in that bus and this bus took them to the Shah Alam Roza.

102.3 His wife, daughter-in-law and granddaughter came to Shah Alam in the bus which left from the S.R.P. Quarters early in the morning. After alighting from this bus, his wife, daughter-in-law and granddaughter went to his niece's house at P & T Quarters, Shah Alam. During this period, curfew was going on. After five days, he got the news that his children were safe. Upon coming to know that three of his family members are at the house of his niece, when the curfew was relaxed, he had gone there and met his family. He had brought them back to the relief camp. Upon finding his sister-in-law who lives in Millatnagar, he sent his family members to his home town at Chotila.

102.4 The witness has deposed that while they were on the terrace on the day of the incident, he has seen their house being burnt and smoke coming out from there. Before sitting in the bus going to Shah Alam, he had gone to see his house, where there were ashes and his entire house was burnt and it was not possible to go inside the house. Everything in the house was looted.

102.5 The witness has further stated that in the mob that was there on the day of the incident, there were many people from the Naroda Patiya area. Out of whom, Kadri to whose house he had gone to inquire about his health, had identified several of them to him. He has stated that there were several people from the Naroda Patiya area and out of the people whom Kadri had identified, were **Manoj Sindhi (accused No.41), Suresh Langado (accused No.22), Bipin Autowala (accused No.44), Guddu Chhara, Bhavani**

Singh and Tiwari (accused No.25).

102.6 A few days after going to the relief camp, he had made an application, but does not remember the date. A complaint produced with list Exhibit-677 is shown to the witness who has identified his signature at the bottom thereof. The contents of the complaint application are read over to him and he has admitted the contents thereof and the same is exhibited as Exhibit-678. The witness has further deposed that the Crime Branch had recorded his statement with regard to the incident at the camp and the SIT had recorded his statement when it had come to Naroda Patiya. The witness has stated that out of the four accused, two accused, viz., Guddu Chhara and Bhavanisingh have passed away and said that he would attempt to identify the other two accused as on account of the lapse of eight years and since he is suffering from cataract, he does not know whether he would be in a position to identify them. The witness has identified a person as Bipin Aowala, however, such person turned out to be accused Murli Sindhi. Thus, the witness has failed to identify either of the two living accused.

102.7 CROSS EXAMINATION: The witness has been cross-examination with regard to his complaint Exhibit-678 and has stated that he does not know as to who has written it. The witness has denied that the person who had written the complaint had read it over to him. The witness has stated that he has not given the name of any person whom he had known prior to the incident. The witness has admitted that the persons whom he has named in his complaint were not known to him prior to the incident and that he is not in a position to

state as to which weapons the named persons were holding in their hands. The witness has admitted that he has not specifically attributed any role to any individual person in the complaint. The witness has denied that he has not given the name of Bhavanisingh and Tiwari in the complaint, but has voluntarily stated that he had given such names, but the same have not been written down. The witness has admitted that he has not stated as to which weapons Bhavanisingh and Tiwari had in their hands as well as what part they had played in the offence. The witness has admitted that in his complaint Exhibit-678, he has not named Murli Sindhi (Accused No.2) or the weapon in his hand or the role played by him in the offence. The witness has further admitted that apart from his complaint, he has not named or attributed any role to Murli Sindhi in any of his statements. The witness has admitted that he knows Kadarbhai Sultanbhai Kadri, who resides on the road opposite his house in Kashiram-ni-Chali in the line of the Noorani Masjid. The witness has admitted that between his house and Kadarbhai's house, there is a two way national highway. The witness has stated that it may have happened that in his complaint Exhibit-678, he may not have stated that he had gone to Kadarbhai Kadri's house on the day of the incident to inquire about his health. The witness has admitted that the fact regarding his having gone to inquire about Kadarbhai's health was prior to the incident and was within his knowledge. The witness has admitted that in his statement before the police, he has not stated that he had gone to inquire about Kadarbhai's health. The witness has denied that the persons whose names he had given in the complaint Exhibit-678 were identified to him by Kadarbhai. The witness has admitted that till the time he was sitting at Kadarbhai's

house, he did not know any of the accused. The witness has admitted that when he gave his complaint, he had identified those persons whose names Kadarbhai had given, which fact was known to him. The witness has admitted that he was at Kadarbhai's house when the riots started. He denied that he had seen the riots while sitting inside Kadarbhai's house and has voluntarily stated that Kadarbhai's house is on the road and they were sitting outside the house when he had seen the riots. The witness has stated that Kadarbhai's house comes after leaving about thirty houses from the Noorani Masjid. The witness has stated that at that time, he had seen that a mob had come from the side of Natraj Hotel which was standing near the S.T. Workshop out of which, certain persons were vandalizing handcarts of the Muslims near the Noorani Masjid and were overturning them. The mob was comprised of approximately ten to fifteen thousand people. The witness has denied that the mob was comprised of people wearing khakhi shorts and undershirts and saffron bands on their heads and has voluntarily stated that some people were like that, but not all of them. The witness has admitted that the magnitude of mobs was so huge that the vehicles could not pass through. The witness has admitted that at that time, he had seen tear gas being released from the side of the Noorani Masjid and thereafter, bullets being shot and he had seen this happening. The witness has admitted that he cannot say whether the firing was done by the police and has voluntarily stated that he can say that much that they were the persons who were dressed in khakhi, but cannot say they were police. The witness has stated that he does not know whether it was the police who released the tear gas, but it had come in their direction. The witness has admitted that at the time, Abid, Mustaq and four to

five other persons had sustained bullet injuries and has voluntarily stated that he had seen only two persons being hit by bullets and that his own nephew had sustained a bullet injury. The rest of the things were heard by him.

102.8 The witness has further deposed that his nephew was hurt by a bullet next to the S.T. Workshop. The witness has denied that he had seen that a bullet hit his nephew Mustaq from Kadarbhai's house and has voluntarily stated that thereafter, he had come near the S.T. Workshop. The witness has stated that he does not know whether the first bullet had hit Mustaq or Abid. He has stated that he had seen Abid sustaining a bullet injury and sitting on the road.

102.9 The witness has admitted that he was at Kadarbhai's house at about 9:00 to 10:00 in the morning. The witness has stated that on an estimate, he can say that when Mustaq was hit by a bullet, he must have been approximately 100 feet away. Mustaq was injured by the bullet at the corner of the S.T. Workshop where there is a police chowky towards Narol side.

102.10 The witness has admitted that after Mustaq had sustained bullet injury, he was taken home and when they entered the chawl, he had seen Abid sitting there. He does not know where Abid had sustained a bullet injury, however, he was bleeding from his abdomen and upon inquiring from them, he had learnt that he had sustained a bullet injury.

102.11 In the cross-examination of this witness, it has further come out that they had taken Mustaq to his house. His

house is situated in Hukamsing-ni-Chali and that he had stayed there and cleaned his wound with Dettol and placed a burnt piece of cotton on the wound. Upon he feeling better in a little while, he had left. The witness has stated that insofar as he knows, thereafter, Mustaq's mother and brothers took him to some house near Gangotri society and thereafter, he had not inquired about Mustaq's health. The witness stated that he does not know whether Mustaq was given treatment and that he had later on learnt that on the next day, he was taken to the Civil Hospital. From the cross-examination of this witness, it is further brought out that he had gone to the boundary of S.R.P. in the afternoon after 12 o'clock and while going from S.R.P. to Gangotri, it had become dark. He had stayed near the S.R.P. compound wall for two to four hours, which he cannot exactly say; however, he was there prior to it becoming dark. The witness has admitted that while he was at the S.R.P. compound wall, there was no kind of fear and that when he went from S.R.P. to Gangotri, there were no obstacles and he had gone on the terrace, from where he had seen the neighbouring chawls. The witness has admitted that on that day, when he went from S.R.P. to Gangotri Society, he had not seen anyone being hacked down or killed. The witness has further admitted that on that day, he had not hidden anywhere except on the terrace of Gangotri Society.

102.12 The witness has admitted that while he was giving his complaint, he was at the relief camp and during that time, leaders of Muslim organizations used to visit the camp. The witness has admitted that he had signed the complaint Exhibit-678 after being satisfied that whatever was written therein was written as per his say. The witness has denied that he has not

stated the names of the four persons whom he had named in his complaint Exhibit-678 and in his statement dated 17.5.2002 recorded by the police. The witness has voluntarily stated that he had given the names, but they had not written them down. The witness has admitted that he had named the accused before the police on 17.5.2002 and has voluntarily stated that at every place, where he could give the names of the accused, he had named them; however, sometimes they were writing them down and sometimes they were not. The witness has denied that two accused whom he had named in his statement dated 17.5.2002 have not been named by him in his complaint Exhibit-678 and has voluntarily stated that he had given the names, but they might not have been written down.

102.13 The witness has denied that on the day of the incident, the police was releasing tear gas and firing at the people who were rioting and has voluntarily stated that the police was not firing at and not releasing tear gas at the rioters, but against the Muslims, and that if the police had fired at them on that day, the carnage would not have happened. The witness has admitted that the police had fired at the Muslim mob and has voluntarily stated that he wants to make it clear that there was no mob of Muslims and that they were scattered there. The witness has denied that he wants to say that the police was searching out Muslims and was shooting them and has voluntarily stated that if that be so, he would not be here to depose. He has stated that the police was firing at Muslims, where they stood in a group of ten to fifteen persons. The witness has admitted that in his complaint as well as in his statement, he has not given any physical description or

identification of the accused and has voluntarily stated that even on the day of the incident, he was acquainted with them and knew them by their faces and therefore, it was not necessary for him to give their description.

102.14 The contents of paragraph 2 of his examination in chief are read over to the witness wherein he has stated that *"I, everyday, go to visit my friend Kadri who was ill and
... did not go for my job"* to the effect that he has not stated such facts in his statement dated 17.5.2002. The witness is confronted with his statement dated 28.6.2008 to the effect that he had not stated the facts deposed by him in paragraph 2 of his examination-in-chief. (The learned advocate for the defence has clarified that the contradiction sought to be brought out only relates to the direction from which the mob was coming.).

102.15 The witness is confronted with his statement dated 17.5.2002 to the effect that he had not stated the facts stated by him in paragraphs 4, 6 and 9 of his examination-in-chief in such statement.

102.16 PW-282 Shri K. S. Desai, the assignee officer has admitted that he had recorded the statement of this witness on 17.5.2002. The assignee officer has admitted that he had not recorded the statement of this witness in connection with any complaint lodged by him. (The witness has given a ready-made complaint Exhibit-678). The assignee officer has admitted that this witness had not stated before him that Kadribhai had identified the accused.

102.17 The contents of paragraph 2 of the examination-in-chief of this witness from the second line to the tenth line, are read over to the assignee officer wherein the witness has, *inter alia*, stated that he was sitting at his friend Kadribhai's house, at that time, a mob came from the side of Natraj Hotel and was standing near the S.T. Workshop and hence, he had not gone for his job. The assignee officer has admitted that these facts have not been stated by the witness in his statement. The contents of paragraph 4 of the examination-in-chief of this witness are read over to the assignee officer, wherein he has stated that a mob with armed people was attempting to enter their chawls, at that time, stones and rags were being thrown at their chawls from the S.T. Workshop also. They had gone towards the S.R.P. Quarters, but were not permitted to enter. Thereafter, they had gone and stood at Gangotri Society near S.R.P. The assignee officer has admitted that these facts have not been stated by the witness in the statement recorded by him. The contents of paragraph 6 of the examination-in-chief of the witness are read over to the assignee officer, who has denied that the witness has not stated all the facts stated therein in his statement. The assignee officer has stated that this witness had told him that late at night, upon the police vehicles coming, they had taken them to Shah Alam Roza. Considering the contents of paragraph 6 of the deposition of this witness, what is stated therein is merely a elaboration of what is stated by him before the police and cannot in any manner be said to be a material omission so as to amount to a contradiction.

102.18 The contents of paragraph 9 of the examination-in-chief of the witness are read over to the assignee officer,

wherein he has stated that on the night of the incident when they were on the terrace, he had seen from the terrace that his house was burnt down and the smoke was coming out. Prior to sitting in the bus for Shah Alam, he had gone to see his house, but there were ashes in his house and everything in his house was burnt. It was not possible to go inside the house and everything from the house was looted. The assignee officer has denied that the witness has not stated all the facts stated by him in paragraph 9 of his examination-in-chief in the statement recorded by him. He has stated that the witness had stated the facts with regard to the damage caused to his house, but has not stated the other facts.

102.19 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 28.6.2008. Certain extracts of paragraph 4 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein the witness has stated that they had gone towards the S.R.P. Quarters, but were not permitted to enter. The Investigating Officer has admitted that this witness has not stated such facts before him. Certain extracts of paragraph 9 of the examination-in-chief are read over to the Investigating Officer, wherein the witness has stated that from the terrace he had seen that his house was burnt. The Investigating Officer has admitted that the words, "their house was burnt" are not there in the statement. He, however, has clarified that the witness had stated that he was on the terrace and had seen the chawl burning and that his house was in Imambibi-ni-chali.

102.20 SUBMISSIONS: The learned counsel for the

appellants-accused submitted that this witness is the uncle of Mustaq Kaladia, who is stated to have sustained fire arm injuries. It was pointed out that this witness has been residing at Imambibi-ni-Chali since the last 40 years, but could not identify any one. Various contradictions in the deposition of this witness as to his statements recorded by the Investigating Officer are pointed out. It was submitted that this witness, at the first point of time, had filed a printed complaint-exhibit 678 on 6.3.2002. Admittedly, when this complaint was made, he himself did not know any accused. In his printed complaint-exhibit 678, names of accused No.22, 44 and 41 are mentioned though he did not know any of them, and therefore, there are all chances that these names have been given in the printed complaint, not at the instance of the witness Mr.Kadri, but at the instance of some NGO or somebody else who was stated to be helping the victims. It was submitted that the stand of the defence is strengthened by the fact that Mr.Kadri is not examined. Therefore, what the witness says in the name of Mr.Kadri does not get support from any corner. It was submitted that in any case, the witness has failed to identify any of the accused.

102.21 ANALYSIS: This witness has testified that he left his house in the morning at 9 o'clock on the day of the incident for going for his job, and for this purpose, he had gone on the road. The people in the mob were damaging the stalls and carts belonging to Muslims near the Noorani Masjid. Upon seeing this, he was frightened and, therefore, he returned home. While going home, he had stood at the corner of his house, when all of a sudden, the riots escalated. There was stone pelting at the corner of his house and, at that time,

another mob came from the direction of Krushnanagar. His nephew Mushtaqali was also on the road, at that time, upon the nephew going on the road, teargas shells were released from the opposite side and in a short while there was firing. In the firing, his nephew Mushtaqali Razak Kaladiya was injured with a bullet. After Mushtaqali was injured, they (the family members) were taking him, at that time, on the way another youth named Abid also sustained bullet injury. Thereafter, they had gone further, however, the riots continued. When they were taking his nephew, his wife, daughter-in-law and granddaughter got separated from them. Later on, he came to know that all of them had gone to the S.R.P. Quarters. There was a big house near Gangotri Society where many people had gathered and where many people were hacked and killed. They had gone on the terrace of a house in Gangotri and had hidden there.

102.22 From the overall testimony of this witness, it emerges that several people in the mob were from the Naroda Patiya area, out of whom, Kadri, about whose health he had gone to inquire had identified several of them to him. The persons whom Kadri pointed to him were Manoj Sindhi (A-41), Suresh Langdo (A-22), Bipin Autowala (A-44), Guddu Chhara (deceased), Bhavanisingh (deceased) and Tiwari (A-25). Thus, after considering the contradictions and omissions in the police statement, this part of his testimony remains undislodged. Therefore, the version of the witness regarding his having gone on the road in the morning and seen Mushtaqali and Abid being injured in firing and having taken shelter on the terrace of Gangotri Society deserves to be believed. Moreover, there is no contradiction with regard to the witness having named the

above referred accused. However, from the testimony of the witness, it is evident that he did not know the named accused, but it was his friend Kadri, who identified them to him. The witness has also not been able to identify any of the accused in the dock. Under the circumstances, the testimony of this witness does not in any manner help the prosecution in establishing any charge against the named accused. The testimony of this witness, however, is relevant only to the extent noted hereinabove.

102.23 Besides, apart from the fact that even, according to the witness, he did not know the accused and could name them as Kadribhai had identified them to him, Kadribhai's house is situated in the same line as the Noorani Masjid, after leaving several houses in between. Therefore, it is difficult to believe that from such a distance, they could identify the accused on the road while sitting outside Kadribhai's house.

103. **PW-106 Farzanabanu Ayubkhan Pathan**, aged 38 years, has been examined at Exhibit-687. This witness has deposed that she is residing at *Naroda Patiya* since her birth. In the year 2002, her family was comprised of her husband, her two daughters Farhana and Reshma, in all four members, and since then, she was doing household work and also used to work in the elastic factory of one Parshottambhai. Her native place is Hubli, Karnataka. Her husband is serving in a scrap shop of one Shashtri. One of her daughters died in the riots that took place on 28.2.2002.

103.1 The witness has deposed that the incident took place on 28.2.2002. On that day, there was a call for bandh.

On 27.2.2002, when she returned from her work, she learnt that there was a bandh on 28.2.2002. Her husband had gone to Siddhpur on 27.2.2002 to attend a wedding. On 27.2.2002, she and her daughters were at home and knowing that on the next day, there was a bandh, they went to sleep after dinner.

103.2 On 28.2.2002, they woke up and had tea. Thereafter, she went to fetch water for her household purposes from a tap near their chawl, where the people of the chawl had told her that the Hindu mobs have gathered near the Noorani Masjid and are indulging in ransacking and arson and that the carts and cabins are being set on fire. They had gathered near the place where there is presently a police chowky and were standing there. From there, they saw that the police were with the Hindu mobs and the police were firing bullets at the Muslims and oppressing them. The police were releasing tear gas at the Muslims, and in the firing, three persons had sustained bullet injuries. They are Abidali, Khalid and Piru. At that time, it must have been approximately 9:00 to 9:30. Abidbhai died on the spot and Khalid and Pirubhai are alive.

103.3 The witness has stated that the mob which she saw was shouting, "kill", "hack" and some of the persons in the mob were wearing white undershirts and khakhi shorts and had tied saffron bands on their heads. The people in the Hindu mobs had implements like swords, hockey sticks, pipes, etc. The police were in front of the mob and were driving them (the Muslims) away. In this manner, they reached their chawl and the Hindu mob had resorted to vandalism and arson in their chawls. Thereafter, they had gone into a field in Jawannagar. At that time, it must have been approximately 2:00 to 3:00 in

the afternoon.

103.4 Thereafter, from there, they started going to the S.R.P. Quarters, but they were not permitted to enter and abuses were hurled at them and they were driven away and were told that today, they have to die. Thereafter, they had gone to Gopi Gangotri Society situated near S.R.P. Quarters and there also, they were not permitted to sit and they were shouting “kill”, “hack”. No one had given them shelter there. Thereafter, rags, stones and some articles like burning stones were prepared and were thrown on the Muslims from the S. T. Workshop. The time must have been around 6 o'clock in the evening.

103.5 Thereafter, they had gone near Jaybhavani's house and were sitting there. At that time, a policeman came and told them that they would take them in a vehicle for their safety. They believed this to be true and went with the policeman and found that there was a huge Hindu mob there also. At that time, a Hindu mob came from the other side also and they were surrounded there. At the place where they were surrounded, there was a passage of Gangotri Gopi Society. At that time both her daughters, her brother, sister-in-law, mother and nephew Akram were with her. Thereafter, shouts of “kill”, “hack” started coming and they got separated and her two daughter and her mother were with her. Her mother's name is Mumtaz.

103.6 At that time, the Hindu mob pulled her mother and killed her and set her ablaze in front of her.

103.7 At that time, her two daughters were also with her and the mob pulled her elder daughter Farhana away from her. They took off her clothes and four to five persons from the mob had raped her. Her younger daughter Reshma was beaten on the hands with pipes and both her hands were fractured. The mob also threw petrol on the back side of her (the witness's) body as well as on her hands and set her ablaze.

103.8 She, therefore, rolled on the ground to extinguish the fire and her younger daughter was also with her and both of them started rolling on the ground.

103.9 At that time, the persons in the mob pulled a girl named Zarina and raped her and cut her hands.

103.10 At that time, a police jeep came there. They hurled abuses at them and told them that if they are alive, they should come out and that they were sending a truck. Thereafter, a truck came and all of those who were alive were taken in the truck to the Civil Hospital, where they reached at around 9:00 to 9:30 at night.

103.11 The witness has stated that in the Hindu mob which she has referred to, she had recognised **Jay Bhavani (deceased), Sahejad (Accused No.26), Tiwari (Accused No.25) and Manu (Accused No.28)**.

103.12 The witness has further deposed that she and her daughter Reshma stayed at the Civil Hospital for about a month. Her husband, who was at Siddhpur at the time of the incident, came to know that they were at the Civil Hospital

when he returned to Ahmedabad, he came to the Civil Hospital. Thereafter, he also stayed with them. Thereafter, they all went to the Shah Alam Camp.

103.13 The witness has stated that her daughter Farhana was raped and killed. From her family, her mother Mumtaz, her daughter Farhana, her sister-in-law Gosiyabanu, nephew Akram and her aunt Rabiyanu, all were killed and burnt by the mob in front of her. The witness has further stated that while they were at the Civil Hospital, around five bodies had been buried at the Dariyakhan Ghummat Kabrastan and the Kabrastan Committee had merely given them the receipts of the kabrastan.

103.14 The witness has stated that her household goods and articles were set on fire and she had sustained loss of around rupees two lakh. Her statement had been recorded at the Civil Hospital and thereafter, she had given her statement before the SIT, where she had stated the facts about the incident. After her statement was recorded at the Civil Hospital, her statement was also recorded at the Shah Alam camp. Thereafter, the Crime Branch had also recorded her statement. The survey of the damage caused to her house has also been made. The witness has deposed that prior to giving the statement before the SIT, she had made an application because it had come in the newspaper that whoever wants to make an application, can do so. Such advertisement had come in the newspaper about two years prior thereto, but she does not remember the date of her application. The witness has stated that out of the four persons she has named, as far as she knows, Jay Bhavani has passed away and she has stated

that she can identify Manu, Tiwari and Sahejad. The witness has thereafter correctly identified all the three accused before the court.

103.15 CROSS EXAMINATION: In her cross-examination, the witness has stated that in the incident wherein her family members were killed and cut and set afire which she has referred to, the first incident was of her mother Mumtaz. Her mother's incident took place after 6:00 in the evening in the passage of Gangotri Gopinath Society. The witness has admitted that she did not know the persons who had pulled her mother. The witness has stated that petrol was poured on her mother and she was burnt alive. The witness has denied that at the time when her mother was pulled away, the mob was comprised of ten to fifteen thousand people. The witness has stated that the mob was comprised of a few people, but she does not know exactly how many people were there.

103.16 The witness has stated that the people in the mob were wearing different clothes and that there were only one or two persons wearing khakhi shorts and undershirts and that the rest were wearing regular clothes. The witness has stated that of the persons whom she has identified as being in the mob, she also knew Jay Bhavani and would have been in a position to identify him. The witness has stated that she came to know these four people on the day of the incident only. The witness has stated that the SIT had recorded her statement as stated by her. The witness has admitted that when her mother's incident took place, it was dark. The witness has, however, voluntarily stated that at that time, the faces of

people were visible. She has stated that she had no grievance against the officers of the SIT.

103.17 The witness is contradicted with her statement dated 28.5.2008 recorded by the SIT, wherein she had stated that at that time, she had seen the mob hacking people and burning them. However, since it had become dark, she could not identify as to who was in the mob. The witness has voluntarily stated that this fact was stated by her in relation to the persons other than four accused named by her. [It may be noted that as to whether it was dark at the time when the incident of her mother took place, is a question put to the witness in her cross-examination, whereafter she is sought to be contradicted by the answer she has given as against what she had stated before the SIT. It is settled legal position that through the process of cross-examination, the statements made before the police under section 161 of the Code cannot be elicited. Hence, the trial court ought not to have permitted the witness to be contradicted with the statement recorded by the SIT when the same was not used for the purpose of contradicting what the witness had stated in her primary statement.]

103.18 The witness has denied that she has not seen as to how the four persons killed her mother. The witness has stated that since it had become dark, she could not see as to which accused had which weapon in his hand, but she knew their voices and their faces very well and that since Manu comes to their place to sweep day and night, and also comes to beg for the leftovers, in this manner she knows all four of them. The witness has admitted that she has identified all the four by

their voices.

103.19 The witness has denied that the four people were not part of the mob and that they have not killed her mother with any weapon. The witness has voluntarily stated that all these four persons as well as the members of the mob had killed her mother and thereafter, sprinkled kerosene and set her ablaze. She has stated that along with the people in the mob, she has seen these four people killing her mother and she had stated these facts in her statement before the SIT. The witness has denied that she did not know as to who had pulled her daughter and stripped her till she gave the name in the statement recorded by the SIT. The witness has denied that she has not stated before the SIT the exact name of the person who pulled her daughter Farhana, killed her, stripped her and raped her, in her statement before the SIT. [The court has put a note to the effect that the witness has stated that her mother was being pulled and killed and Manu was one of them and that she knew him.]

103.20 The witness has admitted that, as to who had stripped Zarina and raped her and cut her hands, she does not know who they were or what were their names and she does not know them. The witness has stated that Zarina's incident took place immediately after the incident of her daughter. At that time, there were not more than twenty to twenty-five people in the mob. The witness has stated that she had seen Zarina's incident just opposite the incident of her daughter within a short span of time. Two to three boys had pulled her, stripped her and raped her and had cut her hands. The witness has stated that she cannot say as to how far Zarina was from

her, but states that she was just at a short distance. The witness has stated that Zarina was around 25 to 26 years old at the time of the incident, and that she was wearing salwar kameez like they do.

103.21 In her cross-examination, it has come out that the incident of her daughter occurred only five minutes after her mother's incident took place. Her daughter was pulled nearby in an open public place. The witness has admitted that after tearing her clothes, she was pushed on the ground. At that time, her daughter was crying a lot and five to six persons were pulling her. The witness has denied that those people had beaten and felled her daughter. The witness has voluntarily stated that they had made her daughter lie down and thereafter, had forcibly raped her. Those people were around four to five and they had climbed on her daughter. The witness has voluntarily stated that out of them, Manu was the first and he was the one who had pulled her daughter. The four people had raped her daughter and had killed her there and then. She was killed with a dagger. Thereafter, she was lying there.

103.22 The witness has admitted that she (her daughter) had sustained injuries on her private parts and has voluntarily stated that four people had ravished her like dogs. All of them had one after the other raped her and that between them, they were catching her daughter. The witness has voluntarily stated that the first person to rape her daughter was Manu, whom she knows very well. The witness has admitted that when her daughter was made to lie down, the accused were grabbing at her. She has denied that the persons who raped her had also taken off their clothes and has voluntarily stated that they had

only taken off the lower apparel.

103.23 In her cross-examination, it has further come out that the persons who had raped her daughter had handed over the weapons which they had to each other and had committed rape. She has admitted that at that time, Farhana was screaming. The witness has stated that she does not know as to how long it took for all four of them to rape her and that she only knows that four persons had committed rape.

103.24 The witness has admitted that when these four persons raped her daughter, she was quite nearby, but cannot say the exact distance in feet. Upon a query by the court, she stated that the distance would be approximately twelve feet. In her cross-examination, it has further come out that after her daughter was pulled and taken away, immediately thereafter, she (the witness) was also set ablaze and hence, she could not save her daughter. Several other people had also been set ablaze when she was set ablaze. After being burnt, she had sat there.

103.25 The witness has stated that despite this position, when they pulled her daughter and took her away, she had tried to go there; however, they had pushed her towards the fire. The witness has stated that she does not know as to whether after the act of raping was over, the four people had put on their lower apparel there itself. It has further come out that the four people had pulled and taken her daughter near the S.T. wall which was very near to where she was.

103.26 The witness has admitted that the S.T. wall is

opposite the water tank of Gopi and Gangotri Society. The witness has stated that she does not know the height of the S.T. wall, but it is higher than a person and there is a wire fencing above. The witness has admitted that this wall starts from near the national highway and goes till the place which is known as Teesra Kuva and that there is no place to sit near that wall. The witness has voluntarily stated that there is a road there.

103.27 The witness has admitted that thereafter, she had not seen her daughter Farhana. The witness has explained that after her death, she had not seen her. The witness has stated that they had inflicted two blows with a dagger on Farhana and thereafter they had gone. The witness has denied that the accused had left the dagger in her body and gone away and has voluntarily stated that she was bleeding from her abdomen. The witness has stated that she does not know where else her daughter Farhana was struck. However, she has stated that blood was oozing out of her head. She has stated that she does not know as to with what she was hit on the head or as to whether she was hit or not. She has stated that she had cried for help and has admitted that they were also in a burnt condition.

103.28 The witness has further stated that wherever she had given her statement, she has stated that the first person to rape her daughter was Manu. A contradiction has been brought out to the effect that in her statement dated 22.4.2002; the witness has stated that she does not know the persons who had raped her daughter. (Below this part, the court has made a note to the effect that in the statement,

there is such a reference. Thus, without waiting for the defence to establish the contradiction by examining the investigating officer, the court has accepted the contradiction by mere reference to the statement recorded under section 161 of the Code.).

103.29 The witness has denied that she has not attributed any specific role to Jaybhavani and Tiwari in any of her statements. She has denied that Jaybhavani and Tiwari had not done anything to her and has voluntarily stated that they were amongst those who had set her on fire. The witness has admitted that they had not inflicted any injury with any weapon on her, but has stated that they set her ablaze after sprinkling petrol and diesel on her. She has voluntarily stated that amongst the persons who set her ablaze Tiwari, Sahejad, Manu and Jaybhavani. The witness has admitted that right from the day of the incident, she was aware that these four people were also involved in setting her ablaze and has denied that she has not stated these facts in all her statements as well as the statement before the Magistrate. The witness has voluntarily stated that she has stated these facts everywhere.

103.30 The witness has denied that in her statement dated 22.4.2002, she has stated that somebody from the mob pulled her daughter Farhana and took off her clothes, raped her and stabbed her with a dagger in her stomach. The witness has denied that she has further stated that the people in the mob had sprinkled kerosene and petrol on them and burnt them.

103.31 The witness has admitted that she has not stated as to who had injured Reshma on her hand. She has admitted

that because she did not know as to which person was beating her. The witness has voluntarily stated that the mob which was assaulting her was a Hindu mob. She has denied that in her statement she has stated that she has recognised Jaybhawani and Tiwari in the mob and she does not know any other people in the mob. The witness has voluntarily stated that she had given the names of all the accused but they had written down only two names.

103.32 The witness has admitted that she does not know where Jaybhawani resides but has heard that he lives in the vicinity. The witness has stated that she knew that he drives an AMTS bus. She has stated that she had no occasion to talk to him or to visit his house and that she has no social relations with his family members.

103.33 The witness has stated that prior to the incident, Manu used to come to sweep at their place and used to come to ask for leftovers in the evening and hence, she knows him. She has not seen Manu's house and she had not gone on any terrace of Gangotri Society on the day of the incident. She has stated that she does not know that people from their chawl were on Manu's terrace from morning till evening on the day of the incident. The witness has stated that she has never had any occasion to talk with Manu and that he used to come to sweep sometimes and sometimes he used to be absent. The witness has stated that it was true that when they cooked mutton they used to throw the garbage outside where there also used to be bones. She has denied that Manu refused to remove such garbage. A suggestion is sought to be put to the witness that on account of Manu not removing certain garbage

and asking for money, they used have quarrels with him.

103.34 The witness has stated that she knows where Sahejad lives. He lives in Hussainnagar. He lives opposite her brother's house, after leaving one house. The witness has admitted that while going and coming towards her brother's house, she has heard sounds of aarti. She has admitted that Sahejad had a temple in his house. She has admitted that there used to be aarti at Sahejad's house every day.

103.35 A suggestion is put to the witness that she and the other persons residing in the area did not like Sahejad performing aarti at his home and the witness has voluntarily stated that if he performs aarti in his house what objection could she have. The witness has denied that Sahejad was not there in the mob on the day of the incident and that she was falsely implicating him. The witness has stated that she does not know where Tiwari resides but used to sit in a Kirana shop in the line of the Noorani Masjid. The witness has stated that she never had any occasion to talk with Tiwari or to visit his house. The witness has denied that Tiwari and Manu were not present on the day of the incident and that she was falsely implicating them at the instance of others.

103.36 The witness has stated that after the incident of her near and dear ones took place, till 9:00 to 9:30 at night, she was lying on the spot and thereafter, she was taken to the Civil Hospital. She had gone to the Civil Hospital in a truck. She does not know who was driving the truck but all those who were injured were taken in the truck to the Civil Hospital. For the purpose of climbing on the truck, those who were injured

had helped each other. Other people had helped her daughter who had sustained burns to climb on the truck.

103.37 The witness has stated that she does not remember exactly, but her mother's incident took place at around 6 o'clock. She does not know as to when her incident took place but after her mother's incident, the mob had started committing the acts stated by her. Her daughter's as well as her incident took place almost simultaneously. On the day of the incident, till she sat in the truck, she was lying on the spot. The witness has admitted that after the incident, she had gone to Farhana. She did not have any talk with Farhana because by the time she reached Farhana, she had died. She was in a naked condition. The witness has denied that the mobs involved in her and Farhana's incidents were different mobs. The witness has admitted that in the case of her incident and Farhana's incident different persons of the same mob were involved. The witness has stated that she had shown the police the place where her mother's incident, her own incident and her daughter Farhana's incident had taken place. She is not aware as to whether the police had drawn any panchnama in this regard. The witness has stated that she has not shown the place of Zarina's incident to anyone. Her sister-in-law Gosiyabanu used to reside in Chetandas-ni-chali. Akram was Gosiyabanu's son and he was one year old and he used to reside with Gosiyabanu. Her maternal aunt Rabiyanu used to reside in Dilip-ni-chali and Rabiyanu was with them right from the beginning on the day of the incident.

103.38 The witness has admitted that when the mob came on the road, she had heard sounds of teargas shells. She had

also seen the people wearing khakhi clothes firing. Abid was injured by a bullet in the firing by these people wearing khakhi clothes. She does not know whether Mustaq Kaladiya was injured by a bullet in the firing by the police. The witness has voluntarily stated that Pirubhai, Abid and Khalid were all injured by bullets and that it was the police, who had fired these bullets. The witness has stated that she does not know the persons who killed and burnt Gosiyabanu, Akram and Rabiyanu, but they were people from the mob.

103.39 In the cross-examination of the witness, it has further come out that at the Civil Hospital, her case papers were prepared, their names and addresses were asked and she was also asked about how the incident took place, which she has narrated. She has admitted that at the Civil Hospital, she had not given the names of the accused and the roles played by them. The witness has voluntarily stated that they had sustained burns and were very frightened.

103.40 She has stated that she had not stated the facts regarding the incidents and the names of the accused to the doctor. She had a talk with the doctor regarding how she had got burnt. She has admitted that she was fully conscious at that time. She says that as far as she remembers, her statement was not recorded by the police. She was admitted in the Hospital at around 9:00 to 9:30 at night on 28.2.2002 and was completely conscious from that time. The witness has admitted that, three days thereafter, on 3.3.2002, an officer had approached her and had orally examined her. The witness has denied that she had told the officer that on 28.2.2002, the incident had taken place near the S.T. Workshop and that it

had taken place at 6 o'clock in the evening. The witness has admitted that when she was asked as to who had set her on fire, she had stated that there were many people. The witness has stated that she was terrified at that time and hence, she had not given the names of these four persons. The witness has admitted that she had not told the officer that she was very frightened, and hence, she was not given the names of the accused. The witness has admitted that when the officer asked her as to whether she knew the persons who had burnt her, she had replied in the negative. The witness has stated that she was very frightened and hence, she had said so.

103.41 The witness has denied that she had not told this officer about the incident of her daughter Farzana, Zarina as well as the incident of Gosiyabanu, Akram, Mumtazbanu, Reshma and Rabiya. The witness has stated that she does not remember at present whether the officer had asked her whether she wants to say anything else and what reply she had given to such question. The witness has admitted that when this officer came to inquire, she could understand very well and could speak.

103.42 The witness is shown page No.1055 from the record of the Criminal Case No.1924/2002 and she is shown the thumb mark on the reverse side. She has denied that this is the thumb impression of her right thumb. She is shown a dying declaration Mark R. The witness has stated that she does not know that at the relevant time she was on bed No. 7 of E/7 Ward in the Civil Hospital because she is not educated. She does not know at what time the recording of the statement started and when it ended, but the fact regarding some officer

having come to record her statement is true. She does not remember as to whether he had taken her thumb impression.

103.43 She has admitted that this officer had asked her short facts about the incident. She has admitted that in these short facts she had not given the names of the accused and had also not stated about the incidents of the other people who were with her. The witness has voluntarily stated that because at that time she was very frightened. The witness does not remember whether the police had recorded any statement of her's at the Civil Hospital and has admitted that even in such statement, she had not given the names of any accused.

103.44 The witness has admitted that before the police, except for the incidents involving her and Reshma, she has not stated anything about the incidents relating to the other persons. The witness has voluntarily stated that she and Reshma were at the hospital and, therefore, she had only stated about the incidents relating to them.

103.45 The witness has denied that on that day, she did not know any person in the mob and has voluntarily stated that she was so frightened that she had not given the names. The witness has denied that she did not know the person who caused injury to Reshma and she has admitted that in this statement she has stated that she does not know the names and addresses of the persons who have burnt her and have caused injuries to her daughter.

103.46 The witness has admitted that in her statement she

has not stated regarding having gone to fetch water from the tap on the day of the incident and has voluntarily stated that out of fear, she could state only a few facts. She has denied that she had not seen any incident in the morning and that it was only at 6 o'clock in the evening, when the mobs came, that they had come out of their house. The witness has admitted that in her statement, she has not stated regarding the incident having taken place in the passage of Gopinath and Gangotri Society and has voluntarily stated that she had stated only a few facts. The witness has admitted that she has not stated facts regarding the incident of her daughter Farhana and others in her statement. The witness has voluntarily stated that at this time whatever little she could remember, she had stated before them.

103.47 The witness has denied that she was not aware of any incident that took place prior to 6 o'clock in the evening. She has denied that in her statement dated 3.3.2002, she had stated that at around 6 o'clock in the evening, they were at home when many people screaming and shouting "kill", "cut", with sticks, pipes and kerosene and petrol cans in their hands came to their chawl and firstly entered their houses and started looting them, due to which they came out of their house. The witness has voluntarily stated that she had told that on the day of the incident, right from the morning they had left their house, however, she does not know what the police had written down. The witness has admitted that she has stated that kerosene was sprinkled on her and her daughter and she had sustained burns on her back and right hand and her daughter Reshma was injured with pipes and sticks on her left hand and had sustained injuries. The witness

has denied that she has further stated that in the meanwhile, upon the police coming, the people in the mob ran away and the police have brought her and Reshma to the Civil Hospital and she is under treatment. The witness has admitted that DCB Crime Branch police had recorded her statement on 12.5.2002. She has admitted that she had gone to her brother's house near Jawannagar at around 9:00 to 9:30 in the morning. She has denied that her brother's house was next to Gopinath Gangotri Society.

103.48 She has stated that at around 3 o'clock they went from her brother's house towards S.R.P. Quarters. The witness has voluntarily stated that they were not permitted to enter the S.R.P. Quarters. Hence, they had gone back towards Gopinath Gangotri Society. There also, men had chased them away. From there they were sitting in the corner near Jaybhavani's house. At Jaybhavani's house a policeman came and told them "*come, let me take you for your safety*" and took them. She has denied that the policeman came near Jaybhavani's house at 6:30. She has admitted that the police had told them to come for their safety and that he would take them out from the Naroda road. She has admitted that they had followed him. The witness has voluntarily stated that many other people like them had also followed the policeman. She has denied that after coming out from Jaybhavani's house, they had started going towards an open ground next to Gangotri and Gopinath Society. She has admitted that there was a Hindu mob coming from the open ground also. She has denied that the mob from the open ground was comprised of around ten thousand to fifteen thousand people. She has stated that she does not know whether the mob was

comprised of one thousand people or whether the mob was comprised of five hundred people. She has stated that mob was not of five persons and has voluntarily stated that the road was small and that there were some people in the mob.

103.49 The witness has further stated that there were people wearing khakhi shorts and undershirts in the mob. She has voluntarily stated that there were mixed persons in the mob. She has denied that the mob which had come from the side of the open ground had attacked them. The witness has voluntarily stated that the mobs from both the sides had attacked them. She has denied that prior to the mob attacking them, no incidents had taken place. The witness has admitted that when the mob came she was sitting and hiding. The witness has admitted that at that time her daughter Reshma was assaulted. She has denied that Farhana was also killed at that time. She has denied that Farhana was assaulted with pipes and rods. The witness has admitted that in her statement dated 12.5.2002, she had stated that at 3 o'clock in the afternoon, people came from outside and were burning houses and hence, they came out and went to Gangotri Society behind their chawl and were sitting there till 6:30 in the evening and thereafter, a police man came there and told them to come with him and that he would take them from the road to Naroda, and hence, they had followed him and come out and at that time in the open ground, on the rear side there was a mob of persons and hence they told the policeman that they do not want to come there as the mobs had gathered there and that he should leave them back at Gangotri. In the meanwhile, the people from Gangotri and Gopinath Society also gathered on the road and the people from the opposite

side also came there, due to which, they were caught between the two mobs and in an open space, taking support of the compound wall, they hid themselves and the people in the mob which had come from the open ground, poured kerosene/petrol over them and set them on fire. At this time, both her daughters were with her. Her body had caught fire and started burning. At that time, she had told her younger daughter to hide behind the cabin and upon seeing her, the mob took her out and assaulted her and broke both her hands and her elder daughter was with her.

103.50 The witness has denied that in this statement, she has further stated that they pulled her (her elder daughter) from near her and took her outside and assaulted her with pipes and rods and killed her. The witness has voluntarily stated that she had specifically stated that Manu had pulled her elder daughter Farhana, however, she does not know what the police had written down. The witness has denied that in this statement she has not given the names of any accused to the police. The witness has denied that in the context of the accused, whom she has identified in the court, whatever she has stated about her near and dear ones and the incident that had taken place, she has not stated any such facts involving the accused in her statement.

103.51 The witness has denied that in her statement dated 12.5.2002 she has not stated anything regarding Farhana and Zarina being raped. She has also denied that she has not stated any facts regarding the incident of Gosiyabanu, Rabiyanu, Mumtazbanu, Akram, etc. The witness has denied that in her statement dated 12.5.2002, she has stated that she

does not know any of the accused and that till date, she was not in a position to identify any of the accused even if she saw them.

103.52 The witness has admitted that in her statement, she has stated that in her family, her elder daughter Farhana was killed and both the hands of her younger daughter were broken and her body was burnt and that she was injured. That she does not know any person in the mob and that she cannot even identify them if she sees them. The witness has stated that she wants to clarify that she has stated these facts in respect of the other people in the mob, other than those whom she knew. The witness has denied that she has not given the names of even those persons in the mob whom she could identify. The witness has voluntarily stated that she had given the names but does not know whether the person who had written down the statement has recorded it or not.

103.53 The witness is cross-examined with regard to her application Mark 644/08 as to who has written it down and where. The witness has identified her signature in the application Mark 644/08 and has stated that she had made this application to the SIT. The application is given Exhibit No.690. The witness is further cross-examined with regard to not having named the accused in her application or not having attributed any role to them. The witness has denied that in the application Exhibit-690, she has not made any averment to the effect that her earlier statements were not recorded as dictated by her. The witness has admitted that she had gone to record her statement before the SIT at Gandhinagar on 28.5.2008 and at the relevant time, she did not have any

problem. The witness has denied that before the SIT, she had stated that her earlier statements dated 3.3.2002, 22.4.2002 and 12.5.2002 were read over to her and that they were correct and proper.

103.54 The witness has admitted that in this statement she has stated that they had gathered at the spot where at present there is a police chowky and were watching the mob. The people in the mob were damaging the chawls and the carts and shops on the road near Noorani Masjid and were setting them on fire and the police were standing there. The police were releasing teargas in the direction where they were standing and were firing at the people belonging to their community. At this time, at around 9:00 to 9:30 in the morning in the firing, from their chawl, Khalid, Pirubhai and Abid Ali were injured by bullets. Abid died on the spot and Khalid and Pirubhai are alive. The people in the mob were wearing white undershirts and khakhi shorts and had tied saffron bands on their heads.

103.55 The witness has denied that she has stated that they all got separated. At this time, the mob severely assaulted her mother and burnt her, which she had seen with her eyes. Since it had become dark she could not recognise who was in the mob and her elder daughter Farhana was pulled away from her and was disrobed and killed. The witness has deposed that while stating so, she has also stated that Manu had pulled her daughter away and that he was also involved in assaulting and burning her. (It appears that the witness has mentioned the facts regarding Manu having pulled her daughter and assaulted her and that she had identified

him).

103.56 The witness has admitted that till 28.5.2008, when her statement came to be recorded, she had not seen her family members, namely, Mumtazbanu, Gosiyabanu, Farjana, Akram, etc. The witness has voluntarily stated that they had died in the incident so how could she see them.

103.57 The witness has admitted that in her statement recorded by the SIT, she has not stated the fact regarding her daughter Farhana being raped and has voluntarily stated that which mother would state such things about her daughter. The witness has denied that she has never seen Manu in the mob and had also not seen him committing any offence. The witness has denied that while dictating the statement, she remembered that Manu was there and hence she has given her name. She has voluntarily stated that she was sure that Manu was there and had given his name. The witness has denied that in her statement she has stated that while her statement was being recorded she had remembered that Manu Bhangi was also present amongst those who were pulling her daughter and taking her away and assaulting her. The witness has voluntarily stated that she has specifically given the name of Manu as being involved in this act. The witness has admitted that the SIT had read over her statement to her. She has admitted that in the statement she has also stated that three to four youths were pulling Zarinabanu from their chawl in front of her eyes and had disrobed her and raped her and thereafter had cut her hands. That she does not know these youths and that she cannot identify them if she sees them. The witness has denied that at the instance of leaders of her

community, she was falsely deposing and was suppressing the truth.

103.58 The witness has denied that she did not have any complaint against the investigation. There was no reason for her to make the application Exhibit-690 to the SIT. The witness has voluntarily stated that she wanted justice, which was the reason for her making the application.

103.59 The witness was confronted with her application dated 23.4.2002 to the effect that she has not stated that facts stated by her in the first eight lines of paragraph 7 of her examination-in-chief in such statement. The witness has been further confronted with the facts stated in paragraph 8 of her examination-in-chief to the effect that such facts have not been stated by her in her statement dated 12.5.2002. The witness was further confronted with her statement dated 22.4.2002 and to the effect the facts stated by her from the fourth to the seventh line of paragraph 8 of her examination-in-chief have not been stated by her in that statement. The witness was confronted with the last sentence of paragraph 8 of her examination-in-chief wherein she has stated that thereafter they had gone to a field in Jawannagar, to the effect that she has not stated such facts in her statement dated 22.4.2002. The witness was confronted with the facts stated by her in the first eight lines of paragraph 9 of her examination-in-chief, to the effect that she has not stated the said facts in her statement dated 12.5.2002.

103.60 The contents of paragraph 9 of the examination-in-chief of the witness from the third line to the eighth line and

the last five lines of paragraph 9 were read over to the witness to the effect that she has not stated such facts in her statements dated 22.4.2002 and 12.5.2002.

103.61 The contents of paragraph 10 from the sixth line to the twelfth line, were read over to the witness to the effect that she had not stated such facts in her statement dated 22.4.2002. The contents of paragraph 11 of the examination-in-chief of the witness were read over to her to the effect that she had not stated such facts in her statement dated 12.5.2002. The witness was confronted with the contents of the third line to the sixth line of paragraph 12 of her examination-in-chief, to the effect that she has not stated such facts in both her statements dated 12.5.2002 and 3.3.2002. The witness has admitted that she has not stated the contents of paragraph 14 of her examination-in-chief in any of her three statements dated 3.3.2002, 22.4.2002 and 12.5.2002. The witness is sought to be contradicted with the first three lines of paragraph 15 of her examination-in-chief to the effect that such facts have not been stated by her in her statements dated 3.3.2002, 22.4.2002 and 12.5.2002. The witness has denied that in her statements dated 22.4.2002 and 12.5.2002 she has not named Sahejad and Manu.

103.62 The witness has denied that in her statement dated 3.3.2002 and 12.5.2002 she has not given the names of the four accused in the context of the facts stated in paragraph 16 of her examination-in-chief.

103.63 The witness was further sought to be contradicted with the contents of paragraph 18 of her examination-in-chief

to the effect that she had not stated such facts in her statement dated 3.3.2002 and 12.5.2002. The witness has denied that in her statements dated 3.3.2002 and 12.5.2002, she has not informed the police that she knew Manu, Tiwari and Sahejad. The witness has denied that none of the offences mentioned by her have taken place in connection with her or any of her family members and that none of the accused whom she has identified before the court or who have died, were present at the scene of offence on the date of the incident and hence, in her dying declaration as well as in none of her police statements, she has named any accused. The witness has denied that she was falsely deposing at the instance of the leaders of her community.

103.64 PW-277 Shri M.T. Rana, the assignee officer has stated that he had recorded the statement of this witness on 22.4.2002. The assignee officer has admitted that this witness in her statement had stated facts regarding her daughter's clothes being pulled and she being raped and a dagger being stabbed in her abdomen, but she had not stated as to who had committed the act. The assignee officer has further admitted that this witness in her statement recorded by him had stated that she does not know the people who have raped her daughter. The assignee officer has denied that in none of her statements recorded by him, the witness had given the names of Jaybhavani and Tiwari and has voluntarily stated that this witness in her statement recorded by him had stated that the people in the mob were burning their people and she has clearly stated regarding the presence of Jaybhavani and Tiwari in that mob. The assignee officer has admitted that the witness has clearly stated that somebody from the mob had pulled her

daughter and taken off her clothes and had raped her and stabbed her in stomach with a dagger. He has further admitted that this witness had stated that in the mob she had identified Jaybhavani and Tiwari but, could not recognise the rest of the people in the mob. The Investigating Officer has further admitted that this witness has not stated the facts stated by her in the first seven lines of paragraph 7 of her deposition, wherein she has stated that on 28.2.2002, in the morning they woke up and had tea. Thereafter she herself had gone to fetch water for her family from the tap near their chawl. There, near the chawl, the people from the chawl had informed her that Hindu mobs have gathered near Noorani Masjid and are destroying and setting things ablaze and are setting stalls and carts on fire. They (the witness and others) had gathered next to where presently there is a police chowki and were standing there. The assignee officer has further admitted that this witness in her statement recorded by him has not stated that the people in the Hindu mob had instruments like swords, hockeys, pipes in their hands. The police were leading the mob and was driving them away and thereafter, they had gone to a field in Jawannagar. The assignee officer has further admitted that this witness has not stated the facts stated in paragraph 9 of her deposition to the effect that, "and that they had hurled abuses and had driven them away and told them that today they have to die. Thereafter, they had gone to Gopinath Gangotri Society near S.R.P. Quarters. There also they were not permitted to sit down and were shouting "hack, kill". They were not given shelter by anyone even there and thereafter, rags, stones and burning stones were prepared and were being thrown at Muslims from the S.T. Workshop. At this time, it was around 6 o'clock in the evening" had not been stated by the

witness in the statement recorded by him. The assignee officer has further admitted that this witness has not stated before him that her daughters were caught in the passage between Gangotri – Gopinath Society. He has also admitted that the witness has not stated before him that at that time, a police jeep had come and they had abused them and told them that whoever is alive should come out and that he was sending a truck. Thereafter, a truck had come. He has further admitted that this witness had not named Shahejad and Manu before him.

103.65 PW-278 Shri R. B. Joshi, the assignee officer, in his cross-examination has admitted that the witness has not named accused Manu in the statement recorded by him nor has she assigned any act or overt act to him. The assignee officer has stated that this witness had mentioned that her daughter's clothes were pulled and taken off and she was raped and a dagger was stabbed in her stomach, however, she has not stated that accused Manu had committed this act. The assignee officer has admitted that in the statement recorded by him, this witness has stated that her elder daughter was with her. She was pulled away from her and taken outside and was beaten with pipes and rods and was killed on the spot. The assignee officer has admitted that this witness has not stated before him that Manu had pulled her daughter and taken her away. The assignee officer has admitted that in her statement dated 12.5.2002 this witness has not given the name of any accused. The assignee officer has further admitted that on 12.5.2002 this witness had not stated anything regarding incidents of rape of Farhana and Zarina. He has admitted that the witness has not stated any fact regarding any incident of

Gosiyabanu, Rabiyanu, Mumtajanu, Akram etc. The contents of paragraph 8 of the examination in chief of the witness are read over to the assignee officer, who has admitted that such facts are not stated by the witness in her statement dated 12.5.2002. He, however, has pointed out that the witness had stated that at around 9:00 to 9:30 in the morning, the people in the chawl were shouting and saying, run a Hindu mob has come outside.

103.66 The first eight lines of paragraph 9 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not stated such facts before him.

103.67 The last five lines of paragraph 9 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that such facts are not stated by her in the statement recorded by him.

103.68 The contents of paragraph 11 of the examination-in-chief of this witness wherein she has stated that at that time, a Hindu mob had pulled her mother Mumtaz and that they had killed her mother in front of her and set her ablaze. The assignee officer has admitted that these facts have not been stated by the witness in the statement recorded by him.

103.69 The contents from the third line to the sixth line of paragraph 12 of the examination-in-chief of this witness are read over to the assignee officer, wherein she has stated that her clothes had been taken off and four to five persons from the mob had raped her. The assignee officer has admitted that

such facts have not been stated by the witness in her statement dated 12.5.2002.

103.70 The contents of first three lines of paragraph 15 of the examination-in-chief have been read over to the assignee officer wherein the witness has stated that at this time a police jeep had come. They hurled abuses and told that whoever is alive should come, he is sending a truck. The assignee officer has admitted that such facts have not been stated by the witness in her statement dated 12.5.2002. She, however, has stated that the police had come with a truck and had taken her and her younger daughter to the Civil Hospital. In the opinion of this court, the fact regarding the police jeep coming and the police abusing them and asking those who are alive to come out and that they would send a truck, cannot be said to be an omission in the nature of contradiction, and hence, such question ought not to have been permitted to be asked.

103.71 The assignee officer has, in his cross-examination, admitted that this witness had not given the names of Sahejad, Tiwari, Jaybhavani and Manu.

103.72 The contents of paragraph 18 of the examination-in-chief of this witness are read over to the assignee officer wherein she has stated that her daughter Farhana was raped and was killed. From her family members, her mother Mumtazbanu, her daughter Farhana, her sister-in-law Gosiyabanu, nephew Akram and her maternal aunt Rabiyanu were killed and burnt by the mob in front of her house. The assignee officer has denied that all the facts stated by the witness have not been stated by her in the statement

recorded by him and has stated that the witness has stated before him that her daughter was with her and that she was pulled away from her and taken outside and was killed by assaulting her with pipes and rods and that the other facts stated by the witness have not been stated by her in her statement.

103.73 The assignee officer has further admitted that in her statement before him, this witness has not stated that she knows Manu, Tiwari or Sahejad.

103.74 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002 at the Civil Hospital. The assignee officer has admitted that the witness has not named any accused in connection with the incident in the statement recorded by him. The assignee officer has admitted that this witness has stated before him that at around 6 o'clock, they were at home, at that time, a mob of many people came to their chawl screaming and shouting "cut", with sticks, pipes, cans of kerosene and petrol and entered the houses and starting looting them and hence, they all went out of the house. In the meanwhile, upon the police coming, the people in the mob fled and the police brought them for treatment and she and Reshma upon being brought to the Civil Hospital were under treatment.

103.75 The assignee officer has admitted that the witness has not stated certain portions of what is stated by her in paragraphs 12 and 15 of her examination-in-chief in the statement recorded by him, wherein the witness has stated

that her clothes were taken off and four or five persons in the mob had raped her. At that time, a police jeep came and abused them and told them that whoever is alive should come out, he was sending a truck.

103.76 The contents of paragraph 18 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness had stated facts regarding her daughter Farhana being killed in her statement but the other facts have not been stated by her. He has further admitted that the witness had not stated before him that she knew Manu, Tiwari and Sahejad.

103.77 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 28.5.2008. He has admitted that this witness had stated before him that her earlier statements dated 3.3.2002, 22.4.2002 and 12.5.2002 are read over to her and the contents thereof are correct and proper. Since the statement under section 161 of the Code has not been used for the purpose of contradicting the witness, this part of the deposition is not admissible in evidence. The Investigating Officer has further admitted that this witness had stated that they all got separated. At this time, the mob had beaten up her mother and set her on fire, which she had seen with her own eyes. Since it was dark, she could not recognise as to who was there in the mob and her elder daughter Farzana was pulled away from her and was disrobed and was killed. While the statement is being recorded, she has remembered that when they were pulling her daughter and beating, Manu Bhangi was also there.

103.78 SUBMISSIONS: The learned counsel for the appellants-accused submitted that the first statement of the witness was recorded by the police (PW 296) on 3.3.2002; her dying declaration was also recorded on the same day, that is, on 3.3.2002. Thereafter another police statement was recorded on 22.4.2002 by PW 277, and her third statement was recorded on 12.5.2002 by PW 278 and lastly, her statement came to be recorded by the SIT on 28.5.2008 by PW 327.

103.79 It was pointed out that in her first statement dated 3.3.2002 recorded by PW 296, the witness has not named any accused, which fact has been admitted by her in her cross-examination (paragraph 76). In her second statement dated 22.4.2002, recorded by PW 277, there is a specific reference to two out of the four accused named by her, viz. Tiwari and Jay Bhavani, however accused Sahejad and Manu were not named by her at the stage. In the third statement dated 12.5.2002 recorded by PW 278, once again she has not named any accused. Reference was also made to the dying declaration recorded by the Executive Magistrate (PW 130) to point out that the witness has not named any of the accused. It was submitted that, therefore at the first available opportunity, the witness had not named any accused either before the police or the Executive Magistrate. It was pointed out that insofar as accused Manu and Sahejad are concerned they have been implicated for the first time before the SIT.

103.80 It was submitted that the witness has narrated four different incidents, namely:

(i) Stone pelting and pulling and killing of her mother-Mumtaz as well as causing injuries to Reshma, Gasiyabanu, Rabiabanu and Akram; for these incidents she has not implicated any one in her dying declaration or three police statements or any statement before the SIT.

(ii) Stripping of her daughter, raping her and causing injury. In her dying declaration and in her three police statements the witness has not made any allegations against the named accused. Only before the SIT, while her statement was being recorded, she has stated that she recollects the presence of Manu.

(iii) Zarinabanu Naemuddin Shaikh (PW 205) being stripped, raped and injured; however, there are no such allegations in the dying declaration, the three police statements or the SIT against anybody.

(iv) The witness has stated regarding having seen the accused as part of the mob setting persons on fire, however, in her dying declaration no name has been given, whereas, in first statement dated 3.3.2002 she has not named any accused, whereas in her second police statement dated 22.4.2002 which is recorded at the camp, the witness has named Jay Bhavani and Tiwari. In her statement dated 12.5.2002, she has not named any accused and then before the SIT she has named all the four accused.

103.81 It was submitted that so far as Tiwari is concerned, she has only named by his surname and not by his full name.

It was submitted that his identity and acquaintance of the witness is also not clear and no Test Identification Parade has been held. It was submitted that only by his surname it is difficult to fix identity that the person referred to by the witness is accused No.25 and no one else. It was submitted that in one of her statements, the witness has stated that she does not know the people in the mob, which is proved through the Investigating Officer concerned.

103.82 It was further submitted that the evidence of this witness as regards the time of the police firing is different from the version given by other witnesses. It was submitted that other witnesses have stated that it took place after 9:30. It was submitted that the witness does not say from where she saw the firing and timing of the firing is also incorrect, which creates doubt about her presence on the road. It was submitted that the witness has not stated anything about any attack on the Noorani Masjid and she also does not say as to when she went home and when her family joined her and the route she took for going to the Jawannagar pit.

103.83 Referring to contents of paragraphs 12 and 13 of her examination-in-chief, it was submitted that looking to the sequence of events as stated by the witness that she was also attacked and she was rolling on the ground, it would not be possible for her to see how Farhana was taken away and where. It was submitted that it is highly improbable that she could have seen what had happened to Farhana. It was submitted that in her examination-in-chief the witness has not stated that Manu was the person who had snatched Farhana away. Referring to paragraph 29 of her cross-examination, it

was pointed out that the witness has admitted that she had identified the accused by his voice. It was submitted that in such a serious offence such evidence cannot be relied upon. It was submitted that the incident of her daughter took place after the incident of her mother, and therefore, the witness could not have identified anyone nor could she have seen the incident. Secondly, a question arises as to whether she had actually seen the incident. In these circumstances, it was not possible for her to have seen the incident, and therefore, the witness is completely lying before the court. It was submitted that insofar as the evening incident is concerned the witness has admitted that at that time it was dark. Under the circumstances she could not have seen the weapons in the hands of the accused in the darkness. It was submitted that the witness has also stated that she had identified the accused by their voices, but has not stated that they were speaking so that she could identify them by their voices. It was submitted that except for the fact that the witness was injured and her younger daughter-Reshma was also injured, nothing can be believed from her evidence. Therefore, her evidence is neither reliable nor credit-worthy which can inspire the confidence of the court to rely upon in such a serious offence.

103.84 Reference was made to the contents of paragraph 116 of her cross-examination, to submit that the witness has made an application before the SIT stating that the accused are threatening her, whereas before the SIT, she has stated that she had not received any threats from any of the accused. It was submitted that the manner in which the application was made, and considering the fact that such application contained facts which were not correct, it is evident that there were some

interested parties who were tutoring the witnesses.

103.85 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has named three accused persons and has identified all three of them in the dock. It was submitted that insofar as the incident of Farhana daughter of this witness is concerned, to more witnesses, viz. PW 85 and PW 198 have referred to the same and insofar as the incident of Zarina is concerned, the same finds corroboration in the testimonies of PW158 and 205. It was submitted that in the incident of Farhana, the witness has named three persons, namely, Tiwari, Sahejad and Manu. Insofar as Manu Bhangi is concerned, the witness has attributed overt act to him, which she had not stated in her 2002 statement. It was submitted that the place of incident is the same as per the testimonies of all the three witnesses so far as Farhana is concerned. It was submitted that the witness has also sustained burn injuries and she was in the hospital and her first statement was recorded on 3.3.2002. It was submitted that not naming the accused in the dying declaration or the first statement cannot be said to be a major contradiction since she has already given the explanation for not naming the accused, which is plausible and probable. It was argued that the omissions brought out in paragraphs 7, 8 and 9 of her examination-in-chief cannot be termed as contradictions since they do not affect the incident in question.

103.86 It was further submitted that even if there is some contradiction in respect of the incident in one or the other statements, it cannot be called a material contradiction which will affect the testimony of the witness insofar as the incident

in question is concerned. Therefore, the omission of certain sentences does not affect the prosecution case and in the last statement before the SIT, the totality of the case is mentioned and the accused cannot get any advantage for not mentioning the incident in the earlier statements as mentioned in the examination-in-chief. It was urged that this witness lost her mother and other relatives and an untoward incident has happened to her daughter, she cannot be disbelieved on some contradiction or omission as she has no reason to involve any accused wrongfully.

103.87 ANALYSIS: As pointed out by the learned counsel for the appellants/accused, four statements of this witness have been recorded by the investigating agencies. The first statement was recorded on 3.3.2002 at the Civil Hospital by PW 296 Shri J.V. Surela an assignee officer. On a perusal of the testimony of the assignee officer, it has been noticed that he has recorded statements of several witnesses on the same day at the Civil Hospital. The defence has brought on record the entire statements of the witnesses as recorded by the assignee officer, a conjoint reading whereof, shows that all the statements are identically worded, except for the names and addresses of the persons whose statements were recorded and the names of his/her family members and the injuries sustained by such persons and/or their family members, which gives reason to believe that such statements have been recorded mechanically and not in terms of what had been stated by the victims. While it is true that in the cross-examination of this witness, she has admitted that she had not given the name of any accused when this statement came to be recorded, it is equally true that she has stated that she was

under immense fear at that time. The witness has also stated at that time she had stated whatever little she could recall. The incident took place in the evening of 28th February, 2002 and her statement was recorded on the third day thereafter. Several members of her family were brutally murdered in the presence of the witness. Therefore, though the witness was conscious, it cannot be gainsaid that she must have been under a state of shock and fear. One can also take judicial note of the fact that the Muslims residing in the area had taken shelter in relief camps and it had taken them months to muster the courage to return back to their homes. Therefore, not naming the accused immediately after the incident, that too, considering the conduct of the police at the time of the incident and the manner in which the statements of the witnesses have been recorded by Shri Surela, would not render the evidence of the witness unreliable when she subsequently names the accused before the police, of course, depending upon the stage when she has named them. Moreover, the witness has denied having stated that in the meanwhile upon the police coming, the mobs had fled and the police brought them for treatment to the Civil Hospital in such statement, which indicates that such facts have been introduced by the assignee officer to show that the police had come to the rescue of the victims, which fact, is not supported by a shred of evidence. In the opinion of this court, considering the manner in which the first statement of the witness has been recorded, the same has to be ignored while considering the omissions and contradictions in the testimony of the witness.

103.88 Another aspect of the matter is that when several statements of a witness are recorded, the subsequent

statements are further statements wherein the witness would normally state what he or she wants to say in addition to what has already been stated by him or her in the previous statement. Therefore, non-mentioning what has already been stated in a previous statement cannot be said to be an omission or contradiction qua the subsequent statement. Despite this clear legal position, during the course of the cross-examination of the witnesses, the learned counsel for the defence have sought to bring out omissions and contradictions qua subsequent statements, even though there is no such omission or contradiction in the previous statement, thereby creating a lot of confusion and unnecessarily increasing the volume of the evidence. At this stage it was the duty of the prosecution to object to such questions being asked, however, (for reasons not far to seek, presumably because the remuneration of the prosecutors is fixed on a per day basis), it appears that the learned Special Public Prosecutor and the Assistant Special Public Prosecutors have not thought it fit to curtail the cross-examination to only that part which is admissible in evidence. Therefore, while appreciating the evidence of the witness, the omissions and contradictions in the subsequent statements, where there are no such omissions or contradictions in the previous statement, are required to be ignored. As regards the dying declaration of the witness, for the reasons recorded while discussing the topic of dying declarations, the same is required to be ignored.

103.89 Considering the evidence of this witness de hors that part of her evidence in respect of which the omissions and contradictions qua her statement dated 22.4.2002 have been brought on record and proved together with the facts elicited

by the defence in her cross-examination, what emerges is that on the day of the incident, that is, 28.2.2002, the witness had come on the road and had seen the police with the Hindu mobs. The police were firing at the Muslims and committing atrocities on them. The police was lobbing tear gas at the Muslims. The police had also resorted to firing wherein three persons, viz., Abidali, Khalid and Piru were injured. Abid died on the spot. The people in the mob were shouting "kill, hack" and some of them were wearing white undershirts and khakhi shorts and had tied saffron bands on their heads. The witness and other Muslims went inside the chawls and the people in the mob had started setting their chawls on fire and damaging them. This had happened at around 2:00 to 3:00 in the afternoon. Thereafter, they (the witness and others) started going from there towards the S.R.P. Quarters, but were not permitted to enter inside. Thereafter, they went and sat near Jaybhavani's house. While they were sitting there, a policeman came and told them that for the purpose of their safety, they would take them in vehicles. Believing this to be true, they (the witness and others) went with the police, but there was a huge mob of Hindus. At that time, on the other side also, there was another huge mob of Hindus and they got surrounded by both the mobs. At the time when they were surrounded, both her daughters, her brother, sister-in-law, mother and nephew Akram were with her at the spot. Thereafter, there were shouts of "kill, hack" and they got separated. Her two daughters and her mother Mumtaz were with her.

103.90 At that time, the Hindu mob pulled her mother Mumtaz and killed her in front of her eyes and set her ablaze. Both her daughters were also with her at that time and the

people in the mob pulled her daughter Farhana from her and took off her clothes and four to five persons in the mob had raped her. Pipe blows were inflicted on both the hands of her younger daughter Reshma and her hands were fractured. The people in the mob had poured petrol on the back as well as hands of the witness and set her ablaze. At that time, she had rolled on the ground to extinguish the fire. Her younger daughter was also with her and both of them had rolled on the ground. Thereafter, those who were alive were taken in a truck to the Civil Hospital, where they reached at around 9:00 to 9:30 at night. In the mob, the witness had seen Jaybhavani and Tiwari (A-25). Though the witness had named accused No.26 Sahejad and accused No.28 Manu in her deposition as well as in the statement recorded by the SIT, she has not named them in any of her three police statements. On behalf of the prosecution, it has been contended that if certain facts are stated in the subsequent statement recorded by the SIT, the same are required to be taken into consideration while deciding as to whether or not there are any omissions or contradictions in the testimony of the witnesses. In the opinion of this court, the statement has been recorded by the SIT at a much belated stage, after more than six years of the incident. Therefore, when prior thereto, two statements of the witnesses have been recorded wherein the names of some of the accused have also been recorded, there is no reason to believe that though the witness has named some more accused, the police had not taken them down, more so, considering the fact that the accused who are named subsequently are ordinary people and not persons who could have influenced the investigating authority. Besides, the names of these very accused have been recorded in the statements of other

witnesses. Therefore, if such names had been stated by the witness, there was no reason for the concerned officer not to have recorded their names. Therefore, when such names have been stated at a highly belated stage and considering the fact that the applications made to the SIT were drafted by unknown parties and various facts not stated by the witness were stated in the applications, chances of the witness having given such statements after some tutoring cannot be ruled out. Therefore, it would be hazardous to base a conviction on the basis of the evidence which has come on record at a much belated stage, more so, in the background discussed hereinabove.

103.91 From the testimony of the witness, it also further emerges that amongst her family members, her mother Mumtaz, her daughter Farhana, her sister-in-law Gosiyabanu, nephew Akram and maternal aunt Rabiyanu were killed by the mob in front of her.

103.92 As regards the contention that the witness has admitted that in her statement dated 12.5.2002 she has stated that she does not know the names and other details of the persons in the mob and cannot recognise them even if she sees them, which renders nugatory the naming of the accused in her statement dated 22.4.2002, the same has to be considered in the light of the explanation that follows, namely that this part of her statement was with reference to the people in the mob, other than those whom she could identify.

103.93 The graphic description of the incident of rape as has been brought out by the defence in the cross-examination of this witness has a ring of truth in it. The fact that the witness

has been able to withstand even this kind of cross-examination concerning her daughter which must have been sheer torture for her, shows the dogged resolve of a mother to bring justice to her daughter even if she has to reveal facts which no mother would ever want to reveal about her daughter. One can only imagine the depths of despair and the agony that the mother must have felt while having to depose such facts before the court. There is no reason whatsoever for the court to discard this part of the evidence of the witness, more so, when it has been elicited by the defence in her cross-examination. In a case like this where the role of the police is suspect, where the trial court has totally discarded the statements recorded by the police at the relevant time, the court would be cautious in accepting the version given by the concerned police officer at face value. When the police, on account of their conduct lose their credibility, the contradictions/omissions brought out qua the statements recorded by them would pale into insignificance and the court would evaluate the evidence of the witness according to his/her credibility.

103.94 From the testimony of this witness, the prosecution has proved that the witness's daughter was brutally raped by the mob. It is further proved that Jay Bhavani (deceased) and Tiwari (A-25) were also present in the mob during the evening incident.

104. **PW-107 Mohammadbhai Kalubhai Khalifa**, aged 55 years, has been examined at Exhibit-698. This witness has deposed that he used to reside at *Hussainnagar, Next to S.T. Workshop, Naroda Patiya*, at the relevant time. His family was

comprised of his wife Nasimbanu and three children – Mohsin, Wasim and Imran. The incident took place in the second month of the year 2002. On that day, there was a call for Gujarat bandh. On that day, he was at home with his family. At around 10:00 to 10:30, the mobs had gathered and were shouting kill, hack. The people in the mob were shouting, kill, hack the bandiyas. The mob was pelting stones and was comprised of ten to fifteen thousand people. They were trying to save their children. They locked their houses and took their family and started running towards S.R.P. Quarters. His family had gone a bit far from him and he was left alone. They were stealthily going to School No.10. He had hidden himself in the school and stayed there for three days. He had met his wife and children at S.R.P. Quarters, whereafter he had gone to the Naroda police chowky. He had first gone to the excise chowky, and from there, he had gone to the Naroda Police Station, from where they were taken to the Shah Alam relief camp.

104.1 The witness has further stated that in the mob, he had seen **Bhavani, Dalpat Chhara, Bipin Autowala, P. M. Shah**, who is an S.T. employee and **Gohel Jamadar**. Bhavani had a pipe, Dalpat had a sword, Bipin Autowala had a revolver, Gohel Jamadar and P.M. Shah were giving diesel and kerosene to the persons in the mob, and they were shouting “kill, cut”. After seeing all this, he had gone to the S.R.P. Quarters.

104.2 The witness has stated that he has sustained a loss of around one and half lakh rupees due to the damage caused to his house. The witness has stated that the facts stated by him before the court are as stated by him in his statement recorded by the police which was recorded at Naroda Patiya.

His statement was also recorded at the relief camp, which was frequently visited by the police. They were the D-Staff policemen. The witness has stated that he had also made an application, whereafter he was taken to Gandhinagar and was interrogated and he had stated the facts as stated by him before the court. The witness has stated that as per his knowledge, Dalpat Chhara and Jaybhavani have died and that he can identify Bipin Autowala and P. M. Shah. The witness has, thereafter, identified Bipin Autowala (Accused No.44) correctly and has stated that he could not see the S.T. employee P.M. Shah.

104.3 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he was residing in Hussainnagar since October, 1983. He was residing in Lane No.1. The witness is cross-examined with regard to the topography of the area. The witness has denied that in the morning between 10:00 to 10:30, both the communities were pelting stones at each other and has voluntarily stated that they (the Hindus) were pelting stones at them. He has also admitted that no member of his family has sustained any kind of injury in the incident. In his cross-examination, he has stated that when he was saying that he was stealthily going, at that time, he was hiding against the S.T. wall. From 10:30 in the morning till 5:30 in the evening, he had hidden himself near the S.T. wall and at that time, other Muslims were also standing with him near the wall. The witness has admitted that the place where he was hiding was an open space and not a closed space and has admitted that the mob has not caused any injury to him. In the cross-examination of this witness, it has come out that he had gone to School No.10 from the road

behind the S.R.P. wall, where there is a wire fencing. From the S.T. to school No.10, there is a society in between. The witness has admitted that while passing from the society, the mob had not caused any injury to him, but has voluntarily stated that they had injured others.

104.4 The witness has further admitted that on the day of the incident, the mobs were coming from the direction of Krushnanagar, Patiya as well as the canal and that the mobs were coming from all four sides. The witness has admitted that since he was running around and was hiding, he does not know exactly from which side, the mobs were coming. The witness has stated that he has seen the canal and has admitted that the mobs were coming from the side of the canal and has thereafter stated that three Marathas with swords were standing. The witness has denied that he has not seen Bipinbhai in the mob on that day.

104.5 The witness is shown his complaint application together with the loss damage analysis form which is jointly exhibited at Exhibit-699. The witness has admitted the contents of the complaint application Exhibit-699.

104.6 The witness has admitted that the person whom he knows as P. M. Shah is not present in the court. The witness has further admitted that in his statements dated 13.5.2002 and 14.5.2002 recorded by the police, he has not stated that the mobs were saying, hack and kill the bandiyas. The witness has further admitted that in his statements dated 13.5.2002, 14.5.2002, 22.10.2008 and 31.5.2008; he has not referred to the fact about having stayed in the school on the day of the

incident. The witness has stated that in his statements dated 13.5.2002 and 14.5.2002, he has stated that they had gone to school No.10 and hidden there, but has not stated that he had stayed there for three days.

104.7 The witness has admitted that in his statement dated 13.5.2002, he has not named P.M. Shah and Gohel Jamadar. The witness is contradicted with his statements dated 13.5.2002 and 14.5.2002 to the effect that he had not stated that Bhavani had a pipe, Dalpat had a sword and Bipin Aowala had a revolver. The aforesaid omission is brought out only to the extent of the weapons which the accused are stated to be holding.

104.8 The witness is shown the application made by him to the SIT and he has admitted his signature thereon. The same is exhibited at Exhibit-700. The witness has denied that there was no special reason for his making the application and has voluntarily stated that since he had not received compensation for the damage sustained by him, he had made the application and that the SIT had recorded his statement at Gandhinagar and that he had given his statement to the effect that he should get the compensation.

104.9 The witness has admitted that he had no talking relations with the accused and that from the time he gave his complaint, till date, he has not met the accused and had no occasion to meet them. The witness has denied that on the day of the incident, the Muslim mobs had gathered near Noorani Masjid and he was standing there with a sword. He has admitted that on the date of the incident, the Muslim mob had

attacked the Hindus to protect Noorani Masjid. He has denied that the Muslims had pulled and brought a boy by the name of Ranjit. The witness has stated that he does not know and has not seen that on that day, a vehicle TATA 407 had driven through the Hindu mobs and two Hindu boys had died in the incident. In his cross-examination, it has come out that he knew Bipinbhai since four to five years prior to the incident. He knew him because he had a garage. The witness has denied that on the date of the incident, at around 11:30, Bipin Autowala had been set on fire. The witness has denied that Bipin Auto Garage had been burnt by the Muslims on the day of the incident and that he too was amongst them. The witness has denied that since Bipin Autowala had lodged a complaint wherein many Muslims had been named, he too has been tutored to give the name of Bipin Autowala and that with a view to repay the obligation of the Islamic Relief Committee which had given him a house, he was falsely deposing before the court.

104.10 To bring out the contradictions and omissions in the testimony of the witness, the defence has cross examined the PW-300 Shri N.S. Malek, the assignee officer of the concerned Investigating Officer who had recorded the statement of this witness. In his cross-examination, the assignee officer has admitted that he has recorded the statement of this witness on 14.5.2002. The assignee officer has admitted that this witness at the time of recording his statement, has not shown to him any complaint recorded by the Naroda Police Station from the Crime Branch. He has admitted that the witness had not stated before him that the people in the mob had shouted "kill, hack the bandiyas". He however, has stated that the witness had

stated before him that they were shouting “kill” “hack”. The Assignee Officer has admitted that this witness has not stated that Bhawani, Dalpat or Bipin had weapons with them. He, however, had given the names of all the accused.

104.11 PW-307 S. S. Chudasama, the Investigating Officer has admitted that a statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.5.2002. The Investigating Officer has denied that this witness in his statement dated 13.5.2002 has not stated the facts regarding Bhavani having a pipe, Dalpat having a sword and Bipin Autowala having a revolver. He has clarified that the witness had not stated that the accused had weapons with them, however, the witness had stated that Bipin Autowala was present and that he was in the mob and that he had also given the name of Dalpat Chhara, Bhavani Chhara etc. in his statement.

104.12 SUBMISSIONS: The learned counsel for the appellants- accused submitted that the witness was residing at Hussainnagar since 18 years prior to the incident. The witness has named accused-Bhavani, Dalpat Chara, Bipin Autowala, P.M. Shah and Gohel Jamadar. It was submitted that no person like Gohel Jamadar is an accused in this case. Reference was made to paragraphs 16 and 17 of the cross examination of the witness wherein the witness has stated that he had hidden against the S.T. Compound wall from 10:30 in the morning till 6:30 in the evening, to submit that having regard to this factual situation, namely, that the witness remained near wall for the entire day, it is not possible that he would not have sustained any injury. It was submitted that the printed

complaint of this witness is exhibited at Exhibit 699, wherein no names of any accused are mentioned. It was submitted that the witness has admitted the contents of his complaint application- Exhibit 699, wherein he has only referred to persons, viz. Chharas and Sindhis, whereas in his deposition he has implicated five persons. It was submitted that accused Bhavani, Dalpat and the other three persons are neither Sindhis nor Chharas. It was pointed out that so far as accused P.M. Shah is concerned, the witness has admitted that he has not named him and therefore, not identified him. Gohil Jamadar is not an accused. Bipin Autowala is neither a Chhara nor a Sindhi. Reference was made to the testimonies of the concerned Investigating Officers, who had recorded statements of this witness to bring out contradictions in the statements of witnesses. It was pointed out that in his statement dated 13.5.2002, the witness has only referred to the presence of Bipin in the mob, which is proved through the testimony of PW-307. It was submitted that the witness had only given the name of the accused and had not attributed any weapon; however, for the first time, before the SIT, the witness has come up with an improved version that Bipin had a revolver with him. It was submitted that it was very doubtful whether the witness, in fact, had witnessed anything.

104.13 It was submitted that the witness was hiding near the wall with other witnesses and does not refer to any incident having occurred. It was submitted that when two persons have been killed on the road, it is difficult to understand how the witness had escaped despite the mobs being there. It was accordingly contended that this witness could not have seen anything.

104.14 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is a natural witness and has seen the incident. No material contradiction or omission has been brought out in his cross-examination and his version is consistent right from 2002. It was submitted that this witness is a believable and credible witness and his evidence cannot be brushed aside on any ground whatsoever.

104.15 ANALYSIS: From the testimony of this witness it emerges that the witness has seen that the mobs had gathered on the highway at 10:00 to 10:30 in the morning and were pelting stones. In the mob he saw Bhavani (deceased), Dalpat Chara (deceased), Bipin Autowala (accused-44), P.M. Shah (accused-57) and Gohil Jamadar (not an accused). The witness has identified Bipin Autowala before the court.

104.16 In his cross-examination, the witness has admitted that he had not named P.M. Shah and Gohil Jamadar in his statement dated 13.5.2002 recorded by the police. In his cross-examination a contradiction has been proved to the effect that he had not attributed weapons to the accused in either of his statements dated 13.5.2002 or 14.5.2002. The witness has admitted having given a complaint and has also admitted the contents thereof. The witness has admitted having stated the facts in his complaint. In the complaint he has not named any accused, but has referred to the presence of Sindhis and Chharas. However, the witness is consistent insofar as he has implicated Bhavani, Dalpat Chara and Bipin Autowala, in his statement dated 13.5.2002. The acquaintance with accused No.44 Bipin Autowala has been brought out in the

cross-examination of the witness. Therefore, to that extent the witness appears to be credible. Thus, through the testimony of this witness, the prosecution has proved the presence of Bipin Autowala in the mob in the morning. However, considering the fact that this witness in his complaint-Exhibit 699, has not mentioned the names of any accused, but has named them only in his statement dated 13.5.2002, the court would look for corroboration as far as his testimony against Bipin Autowala (A-44) is concerned.

105. **PW-108 Iqbalhussain Amirmiya Kureshi**, aged 41 years, has been examined at Exhibit-702. This witness has deposed that in the year 2002, he was residing at *Pandit-ni-Chali, Next to S.T. Workshop at Naroda Patiya* and his family was comprised of his son Sabirhussain, daughters Sahistabanu and Shanabanu and his wife and grandmother.

105.1 The incident took place on 28.2.2002. On that day, there was a call for bandh. On the day of the bandh, at around 8:30 in the morning, he went for his work to Naroda GIDC. At his work place at GIDC, he received a phone call from his wife Sairabanu, at the factory, that the mobs had gathered near Patiya and hence, he should quickly come home. He, therefore, took his cycle and returned home. While coming home, he saw intense stone pelting at the Patiya Circle.

105.2 The witness has deposed that while he was passing, in the mob he saw **Pappu Sindhi, Manojbhai** (accused No.41) and **Bipinbhai** (accused No.44). Thereafter, while he was going, there was cross-stone pelting. Thereupon, he went home and to save the lives of his children, he went near

Hussainnagar with his family. At that time, his wife, two children, his grandmother and his sister and brother-in-law, were there with him.

105.3 The mob was coming forward and they (the witness and others) were going towards Jawannagar. At that time, there was stone pelting from the S.T. Workshop. He had heard the people in the mob addressing P.M. Shah and asking him to throw stones and rags on that side.

105.4 They went and hid in the house of Abdulbhai Ghadiyali in Jawannagar till 5 o'clock in the evening, when a huge mob came and there was stone pelting. Whereupon they escaped and went near the S.R.P. Quarters compound wall. Thereafter, they climbed on a terrace of Gangotri Society. They along with many people of their community, hid on the terrace. At 1 o'clock at night, a vehicle came from outside. After ascertaining as to whether it was a police vehicle by certain persons from amongst them, they went to the Shah Alam Relief Camp in that vehicle.

105.5 His mother and father were both lost in the incident and they found them after four days. His mother had sustained injuries on both her hands on account of some chemical being thrown on her and his father had sustained a stone injury on head. Both of them had taken treatment at the Shah Alam camp. He sustained a total loss of around rupees two lakh. The witness stated that whatever he has stated before the court, he had stated in his police statements which were recorded at the Relief Camp as well as at Naroda Patiya. The witness has stated that he can identify Manoj, Pappu and Bipinbhai. The

witness has identified both Bipinbhai (A-44) and Manojbhai (A-41). There is no accused by the name of Pappu.

105.6 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that his wife must have made a phone call to him between 9:00 to 9:30 in the morning. The distance between his home and the GIDC area is around two kilometres. While he was coming back from the GIDC on the date of the incident, from the Naroda Baithak to the thread factory, people had gathered in small groups. He has admitted that on that day, there were mobs at Naroda Patiya and Krushnanagar. The witness has voluntarily stated that Krushnanagar is a distant area, whereas the mobs were near Naroda Patiya and the S.R.P. Quarters. He has stated that when he came on bicycle, he was very frightened. His daughter, who was around six to seven years old, was lost and he was searching for her and he found her on another terrace, while he could not find his parents.

105.7 The witness has admitted that in his anxiety, he did not know as to from which direction, the mob was coming. The witness has voluntarily stated that he knows that much that Hussainagar is opposite S.T. Workshop and there was more stone pelting there. From there, they had gone to Jawannagar where the Muslims were hiding in a house, where they had also hidden.

105.8 They had stayed there till around 5 o'clock in the evening when a huge mob had come. The witness has stated that he knew that it was Abdulbhai's house, however, he cannot say as to how many people had taken shelter there, but

Abdulbhai's house is a big house.

105.9 The witness has admitted that from Jawannagar, they had gone to Gangotri Society, but has voluntarily stated that they had gone through the headquarters compound wall. The witness has admitted that when they went to Gangotri Society and took shelter there, none of the residents of Gangotri Society had caused them any injury. The witness has admitted that they were hiding on the terrace in such a manner whereby nobody could see them and has voluntarily admitted that the mob was on the other side and had not come inside Gangotri Society. The witness has admitted that there is a pit behind Gangotri Society which is at a distance of around half a kilometre. The witness has admitted that the terrace where they took shelter was towards S.R.P. Quarters. The witness has admitted that till 12.5.2002 when his statement was recorded, he has not stated these facts before anyone at the camp.

105.10 The witness has stated that when he returns from his factory, Naroda Patiya area comes prior to his reaching the chawl. The witness has admitted that at Naroda Patiya, there are roads going towards Naroda Gam, Kubernagar city and Narol. The witness has stated that in this area, he had firstly seen a mob at Naroda Patiya at S.T. Workshop. The witness has admitted that except for the mob at S.T. Workshop, he had not paid attention to any other mob. The witness has stated that from Naroda Patiya Circle, he had come through the mobs wherever he found space. He has stated that the mob was comprised of about ten to twelve thousand people and that the mob was spread around the entire circle.

105.11 The witness has admitted that some of the people in the mob had tied cloths around their faces and has denied that all the persons in the mob had tied cloths around their faces.

105.12 The witness is thereafter sought to be contradicted by his statement dated 12.5.2002 wherein he has stated that they had gone to Gangotri Society and at that time, the people in this mob had burnt people alive in their chawl and had hacked and thrown them. The people in the mob had covered their faces with cloths. [It may be noted that the witness, in his examination-in-chief, has not narrated any facts with regard to he having seen the mob burning anyone alive and hence, there was no question of putting any such a query to him. Therefore, when there was no contradiction, the extracted part of the statement recorded by the police could not have been put to the witness by way of contradiction.]

105.13 The witness has stated that while returning from the S.T. Workshop, he had not seen any firing taking place. The witness has further admitted that even at the time of going to the factory, he had not seen the firing.

105.14 The witness has stated that the persons whom he had identified were part of the mob at the S.T. Workshop. The witness has admitted that the statement recorded by the SIT at Naroda Patiya was as stated by him.

105.15 The witness is confronted with his statement dated 12.6.2008 to the effect that he has stated that he knows Manoj

Sindhi and Bipin Autowala very well and that they must have been in some other mob and that they were not in the mob which he had seen at the cross roads in front of the workshop. The witness has voluntarily stated that he had only stated that they were in the mob and that he had not stated that they were not in the mob which he at the cross roads opposite the workshop.

105.16 The witness has admitted that he had seen Manoj and Bipin Autowala in the morning mob and that thereafter, during the entire day, he had not seen them. The witness has voluntarily stated that he was engaged in hiding himself. The witness has stated that he does not know P.M. Shah. The witness has admitted that he had seen Bhavanising just standing near his house. The witness has denied that he does not know Pappu Sindhi. He has stated that an identification parade had been carried out in front of the Executive Engineer to identify Pappu Sindhi; however, he had not identified him. The witness has admitted that he himself had not personally seen P. M. Shah and that the mob was shouting about P. M. Shah and he does not know him. The witness has admitted that when he went from near Naroda Patiya in the morning, there was stone pelting from both the sides, viz., the Hindus and the Muslims, and that the time must have been around 9:30 to 9:45 in the morning. In the cross-examination of this witness, it has further come out that there was no traffic on the road on account of the mobs from all four sides.

105.17 In the cross-examination of this witness, it has further come out that after he reached home he had gone towards Hussainnagar at around 11:00 to 11:15 in the

morning. They had stopped on the road of Hussainnagar ni-Chali, where they stayed for about one to two hours. He has admitted that while they had stayed at Hussainnagar for two to three hours, none of them had sustained any injury or damage and that there was no other problem in the chawls till they were there. Thereafter, the mob had come from Hussainnagar to Jawannagar which was at around 3 to 4 o'clock. They must have stayed at Jawannagar for around two to three hours and till then, no one had sustained any injury and that till they were at Jawannagar, he had not seen any incident occur. Thereafter, upon the mobs coming at their side at around 5 o'clock, they had gone to the S.R.P. wall where they had stayed for approximately half an hour. The witness is cross-examined with regard to the topography of the area. The witness has stated that they had gone to the Jawannagar Khada at 5 o'clock in the evening, and that till 5 o'clock, he had not seen any incident in the Jawannagar Khada. The witness has denied that Manojbhai and Bipin Autowala were not there and that he was falsely deposing. The witness has admitted that he had relations of taking videos, with Manoj Videowala and his brother Pappu Sindhi and that Pappu Sindhi used to rent out videos and occasionally they used to call Pappu to their chalis with the video and cassettes. The witness has admitted that when they rented video, they were required to pay the rent and has denied that since Pappu was demanding money for the videos which he had rented on occasions, there were altercations and disputes. The witness has admitted that he had no relations with Manoj Videowala and his voluntarily stated that he is the owner of the video. The witness has admitted that he knows Manoj as the owner of the video and that he did not have any relations of talking with

Manoj and that on any personal occasion, he had not met Manoj. The witness has admitted that the entire management was carried out by Pappu Sindhi as per his information. The witness has denied that on account of the disputes with Pappu, he had wrongly implicated both Pappu and his brother Manoj and that he had not seen Manoj or Bipin in the mob. The witness has admitted that till date, the police had not got any test identification parade of Manoj or Bipin carried out through him and has further admitted that his family has not sustained any injury or loss of life. The witness has admitted that in the year 2002, there was no divider in the middle of the road and that there was nothing which could separate/divide the incoming and outgoing traffic on the road in the year 2002.

105.18 The witness has denied that in none of his statements he has stated that while returning he had seen that there was intense stone pelting at the Patiya circle and while he was passing by he has seen Pappu Sindhi, Manojbhai and Bipinbhai in the mob. The witness has voluntarily stated that he had stated so in one of his statements and thereafter he may not have stated so. It has been clarified that the contradiction is only as regards having seen the accused at Patiya circle.

105.19 The witness has admitted that in his police statement as well as the statement before the SIT, he has not stated as to which accused he had seen at what time. The witness has voluntarily stated that he has no exact impression of the time on the date of incident. He has denied that he has not stated which accused he had seen at which place and has stated that he has stated that he had seen them in the mob at

S.T. Workshop and the Patiya. The witness has stated that he has seen accused Manoj near the Patiya Circle, whereas he has seen Bipin on the side of Krushnanagar near the Auto Consultant shop. The witness has admitted that the mobs at Patiya Circle, Krushnanagar, Bipin Auto Consultant and S.T. Workshop were different. The witness has admitted that the mob from Krushnanagar was comprised of approximately ten to fifteen thousand people. He has stated that on the road near Sikandar Khabadi's place, near the S.R.P. Headquarters, there was a huge mob. The witness has stated that he has not seen that at that time, Bipin Auto Consultant Show Room was burning. The witness has admitted that the S.R.P. Headquarters, Patiya Circle and S.T. Workshop are different places and has voluntarily stated that all of them come in a large circle. The witness has stated that he has seen stone pelting against each other from the Noorani Masjid, the place where there is presently a Tent Chowky as well as Krushnanagar. The witness has admitted that except for Pappu, in none of his statements, he has given physical description or identification of any person and has voluntarily stated that he was answering whatever the officers were asking. In the cross-examination of the witness, he has further admitted that while he was returning, no one had stopped him on the road. The witness has denied that while coming from the Patiya, he had gone through the Noorani Masjid and has voluntarily stated that there were mobs near Noorani Masjid and hence, he had gone home from the said of the road. The witness has admitted that at that time, he had not seen any police firing at that spot. In the cross-examination, it has further come out that at the time when he saw Bipinbhai, his father had sustained a stone injury. Hence, he had gone there

and upon the mob coming nearby, he had seen Bipinbhai. His father was near Sikandar-ni-Kabadi, near Krushnanagar. The witness has stated that the distance from his house to Sikandar-ni-Kabadi is about five to seven minutes. The witness has denied that as the Muslim people of Jawannagar had attacked Gangotri Society, the society was empty. The witness has denied that the Muslims from Chetandas-ni-Chali, Hussainnagar, Pandit-ni-Chali and Jawannagar had gathered together and set Bipin Auto Consultant on fire and that he too was involved. The witness has stated that he knows Bipinbhai since many years; however, there was no occasion for him to go to his auto garage. The witness has admitted that the Islamic Relief Committee has given him a house at Citizennagar and he has not paid anything towards the same. The witness has denied that he had given the names as per the say of the Islamic Relief Committee and that at the Shah Alam Relief Camp, they had decided that the name of Bipin Autowala should be given and hence, he was giving his name and that he had not seen Bipinbhai on the date of the incident, despite which he was falsely giving his name.

105.20 To bring out the contradictions and omissions in the testimony of this witness qua his statement under section 161 of the Code, the defence has cross examined the concerned police officer.

105.21 PW-301, Devendragiri Himmatgiri Goswami, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness had stated before him that when they had gone to Gangotri Society, at

that time, this mob had burnt people alive in their chawls and had hacked them and that the people in the mob had tied cloths over their faces. The assignee officer has admitted that the witness has not stated before him as to where the people were in the mob.

105.22 The assignee officer has admitted that this witness has not mentioned before him that he had seen Pappu Sindhi, Manojbhai and Bipinbhai in the mob at the Patiya Circle. He, however, has clarified that the witness has stated before him regarding having seen three accused together with the other accused. The assignee officer has admitted that the witness has not stated before him as to where he had seen the accused and that he had also not stated before him that his mother and father had availed treatment at the camp as regards the injuries sustained by them.

105.23 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statements of this witness on 12.6.2008, 25.6.2008 and 18.10.2008. The Investigating Officer has admitted that this witness had stated before him that he knows Manoj Sindhi and Bipin Autowala very well. However, they must have been in some other mob and that they were not in the mob which he had seen opposite Workshop at the crossroads. He has further admitted that this witness in his statement dated 10.8.2002 had stated that the earlier statement recorded by the Crime Branch as well as recorded by the Investigating Officer have been read over to him and they are correct and proper. Once again, this part of the deposition is not admissible in evidence, as the same has not

in any manner used to contradict what is stated by the witness in his examination-in-chief.

105.24 The last part of paragraph 3 and the beginning of paragraph 5 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness had not stated before him that he had seen the accused at Patiya Circle. The Investigating Officer, however, has voluntarily stated that he had mentioned that they were in front of the Noorani Masjid and as described by the witness, he had mentioned that he has seen Manoj Sindhi, Bipin Auto and at the S.T. Workshop he had seen P.M. Shah as well as Bhavanisingh in the mob.

105.25 SUBMISSIONS: The learned counsel for the appellants-accused invited the attention of the court to various contradictions and omissions in the deposition of the witness. It was submitted that this witness has involved four persons in his examination in chief, but he does not know P.M. Shah, as admitted by him. It was submitted that there is no accused by the name of Pappu Sindhi, which leaves only two out of four accused named by him, namely, Manoj and Bipin. It was submitted that so far as these two accused are concerned the only allegation is that they were seen in the mob at Patiya Circle, however, at what point of time he had seen them is not coming on record. It was submitted that the witness wanted to convey that there was major stone pelting at Patiya Circle and he has seen all the three accused in that mob. It was submitted that however, the witness has not stated this fact either in his police statement dated 12.5.2002 or in his statement dated 12.6.2008 recorded by the SIT. It was

submitted that in his cross examination, the witness has very conveniently stated that all the three accused were seen in different mobs at different places, which contradicts the witness' evidence in his examination-in-chief. It was submitted that admittedly, no overt act is attributed to either of the accused, nor is any weapon is attributed.

105.26 Before the SIT, the witness has stated that he did not see Manoj and Bipin in the mob at the crossroad opposite to the S.T. Workshop, which destroys the prosecution case. As far as this witness is concerned it was submitted that even in his cross examination Bipin's presence near Bipin Auto is found even then it is natural and possible, because he is the owner of Bipin Auto.

105.27 It was submitted that insofar as accused-Manoj is concerned there was no acquaintance with Manoj as per the evidence of the witness and when the witness does not refer to the names of the accused in full, in the absence of a Test Identification Parade, it is doubtful whether he is referring to the same accused and that their identity is in question. It was submitted that this witness had never talked with Manoj, had no relations with Manoj, in these circumstances, he could not have identified Manoj in the mob.

105.28 It was submitted that the witness first says that he saw Bipin in a mob at Patiya Circle; thereafter he says that he saw Bipin in a mob at Krishnanagar. In his examination-in-chief he has stated that he saw Manoj and Bipin at Patiya Circle in the mob, whereas in paragraph 30 he says that he saw him in a mob at the S.T. Workshop. It was submitted that this witness

has not stated anything about any weapon in the hands of the named accused and has not referred to any overt act. Neither Bipin nor Manoj is the local resident and Manoj resides at Kubernagar, which is a far off place. It was submitted that though this witness was residing at Pandit-ni Chali since 32 years, he is not able to identify the local residents.

105.29 ANALYSIS: This witness in his statement dated 12.5.2002 recorded by the police has named Manoj Sindhi, Pappu Sindhi, Bipin Auto-consultant as well as P.M. Shah and Bhavani. In the cross-examination of the witness no material contradiction has been brought out as to his statement recorded by the police, except the spot where he had seen the accused. In his cross-examination the witness has explained that he has not stated the time when he had seen the accused, because on the day of the incident one would not have a clear idea about the time. Insofar as the acquaintance of the witness with the named accused is concerned, the same has been clearly brought out in the cross-examination of the witness.

105.30 In his examination-in-chief, the witness has stated that while he was passing, he had seen Pappu, Manojbhai and Bipinbhai in the mob. He has not specifically stated that he had seen them at Patiya circle. In his cross-examination, it has been elicited that he had seen Manojbhai near Patiya circle and Bipin near his auto-consultant shop. In the opinion of this court, the part elicited in his cross-examination does not, in any manner, contradict what has been stated by the witness in his examination-in-chief. Moreover, having regard to the fact that the witness has deposed before the court almost eight years after the incident, there are all chances of his not being

able to recollect certain facts with exactitude. The fact remains that he had seen the accused in the mob on the day of the incident and in that regard the witness is consistent right from the beginning. Insofar as the minor discrepancies brought out in his testimony, what weightage should be given to the same shall be considered while appreciating the evidence of the witness against individual accused as well as while appreciating the evidence on record as a whole. However, the evidence of this witness qua the named accused cannot be discarded. Insofar as the submissions advanced by the learned counsel for the appellants with regard to the contradictions about his father being with him at the time of the incident or not and when he met his father after the incident, are concerned the same have no direct bearing on the incident in question, and hence, would not dent the credibility of the witness.

105.31 In his statement recorded by the SIT on 12.6.2008, the witness has stated that he knows Manoj Sindhi and Bipin Autowala very well. However, he had not seen them in the mob opposite S.T. Workshop. From the cross-examination of the Investigating Officer, it has been brought out that the witness had referred to the presence of both the above accused in front of the Noorani Masjid. Thus, while there is a little discrepancy as to exactly where the witness had seen the accused, the witness is consistent regarding their presence in the mob on the road in the morning.

105.32 Through the testimony of this witness, the prosecution has proved the presence of Manoj Sindhi (A-41) and Bipin Autowala (A-44) in the mob on the road in the

morning.

106. **PW-109 Sarfarazkhan Maheboobkhan Pathan**, aged 37 years, has been examined at Exhibit-704. This witness has deposed that in the year 2002, he was residing at *Hussainnagar, Naroda Patiya, Ahmedabad*, with his family, which was comprised of his wife Rukshanabanu, son Shahbazkhan, daughter Gazalabanu and son Arbazkhan. He was residing at *Hussainnagar* since around the year 2000 and he had an auto rickshaw garage in the line of the S.T. Workshop. The incident took place in February, 2002. On the previous day, a call for bandh was given. On the day of the incident, he was at home. In the morning at around 9 o'clock, he came out on the road where there was a mob of around fifteen to twenty thousand people. The people in the mob had resorted to arson and violence and were burning everything. There were a lot of people in the mob. He returned home. Thereafter, he took his family and went towards Gangotri Society. They fled towards S.R.P. Quarters but were not given shelter there. Hence, they returned to Gangotri Society. At that time, night had fallen and a lot was burnt. They stayed hidden in the Gangotri Society. At around 11 o'clock at night, a police vehicle came and they came out. While coming out they heard screams and saw everything burning. The police vehicle took them to Shah Alam Camp.

106.1 The witness has deposed that when he came out of his house, there was a mob, wherein he could identify certain people. He had seen **Mugado Chhara (accused No.39), Jaybhavani Chhara, Sahejad Chhara (accused No.26), Manoj Videowala (accused No.41) and Suresh Langda**

Chhara (accused No.22) in the mob and had identified them. All five had weapons in their hands; however, he could not see the weapons from a distance. The witness has stated that out of the five accused, Jaybhavani had died and he can identify rest of the accused persons. The witness has, thereafter, correctly identified all the four accused.

106.2 CROSS EXAMINATION: In the cross-examination of this witness, certain queries are put to him with regard to the garage being run by him, his ownership thereof and the place where it is situated, etc. The witness is also cross-examined with regard to the topography of the area where the garage is situated as well as the general topography of the area. The witness is sought to be cross-examined with regard to his acquaintance with the accused named and identified by him. The witness has denied that none of the accused used to come to him for getting their rickshaws repaired and has voluntarily stated that out of the accused identified by him, only one person used to come.

106.3 The witness has denied that on the day of the incident he was at home till 9 o'clock in the morning and has voluntarily stated that he was at home till 8:00 to 8:30. The witness has stated that on the day of the incident, after he came out, he saw the mob and immediately returned home. When he came out of his house, he had only come to the corner of the S.T. Workshop where at present there is a tent chowky. When he came out there were mobs on both the sides, namely on the side of Kubernagar as well as on the side of Krushnanagar. In all, there were two mobs. The mob on the side of the Kubernagar was the same as the one towards the

Naroda Gam. Both the mobs were pelting stones on the Noorani Masjid. They first attacked the masjid and thereafter, attacked the people standing there. The witness has denied that the people standing near the Noorani Masjid had also pelted stones in defence. The witness has stated that when he reached there, he was standing at the S.T. Workshop gate. When he went there and was waiting, he had not waited there for five to fifteen minutes. The witness has admitted that he had waited there for less than five minutes and after seeing the mob he had returned. He has admitted that the mob was so crowded that people could not see each other's heads and, therefore, it was not possible to see as to which weapon was in whose hands.

106.4 The witness has admitted that he could not make out which weapon was in whose hands and in whose hands there were swords, pipes, dharias, etc. He has admitted that at that time there was police bandobust. He has admitted that the bandobust was comparatively less and that the people in the mob were far more. Hence, the police could not control the mob. The witness has stated that he does not know whether the police had tried to control the mob. The witness has admitted that the position was such that it was not possible for any vehicle to move on the road.

106.5 The witness has stated that the accused whom he has named were all in the mob opposite the masjid. The witness has denied that this mob was near the S.T. Workshop. He has denied that the mob from Kubernagar was near the Noorani Masjid and has voluntarily stated that the mobs from Kubernagar and Naroda Gam were near the masjid. The

witness has stated that he does not know whether there was any woman in police uniform at that place. The witness has denied that he was permanently staying there and has voluntarily stated that he was staying at that place since two years prior to the incident and that before that he used to reside at Saraspur. The witness has stated that he had seen the truck being pushed inside the Noorani Masjid. The witness has stated that he had himself seen it. He has admitted that he had not disclosed this fact to anyone in the camp or to the police or any one at any other place.

106.6 The witness has stated that at the relevant time, there was no divider on the road and he had not seen any people having snacks or drinking liquor on the divider. In the cross-examination of this witness, it has come out that while he was there, he had seen firing and teargas shells being lobbed. He has admitted that where there were mobs on both the sides, teargas shells were being lobbed at them and there was firing. He had seen one person being injured by the teargas at the corner near the S.T. Workshop gate. He had stood at the S.T. Workshop gate for one to two minutes and thereafter, immediately returned home. The witness has denied that the accused whom he has identified before the court were in the middle of the mob. The witness has voluntarily stated that they were in front of the mob. That they were in the forefront while the masjid was attacked and the mob was behind them.

106.7 The witness has admitted that at the time when he went to his house and from his house he went to Gangotri Society, it must have been around 4 to 5 o'clock in the

evening. The witness has denied that he was at home till 4 to 5 o'clock in the evening. The witness has stated that after he went to Gangotri Society at 4 to 5 o'clock, he had remained there till 11 o'clock at night.

106.8 The witness has admitted that his statement was recorded on 12.5.2002. He has denied that he had stated therein that they had gone to Gangotri Society and stayed hidden there. The witness has voluntarily stated that they might have gone one or two places further. The witness has been cross-examined with regard to the location of the house and the terrace on which they had taken shelter.

106.9 The witness has admitted that from the terrace where he was sitting he had not seen the Hussainnagar hutments. The witness has admitted that from the terrace where he was sitting, he could not see the house where he was residing. The witness has admitted that after he went on the terrace, he had not seen any incident. The witness has admitted that from the time he went from his house to the Gangotri terrace, he had not seen any incident except that stated by him.

106.10 The witness has admitted that out of the four accused named by him, one accused had come to his place and that the remaining three accused had not come to his garage. He has admitted that the accused whom he has identified has not visited him at home. He has admitted that except for the accused who came to his garage for repairing his rickshaw, he has no speaking relations with any of the accused. That out of the accused identified by him, he had no

social or other relations with them.

106.11 The witness has admitted that if a girl from his community marries a boy from any other community, he would not like it. He has admitted that a girl from their community has married Suresh Langdo Chhara (Accused No.22) and that they had a love marriage. The witness has denied that because Suresh Langdo had married a girl from the Muslim community, at the instance of the people from his community, he was falsely naming him. The witness has denied that the persons whom he has named and identified and the dead accused were not at the scene of the incident and that he is falsely implicating them at the instance of the people of his community.

106.12 PW-307 S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that the witness had stated before him that they had gone to Gangotri Society and had stayed there and had hidden themselves. He has admitted that the witness had stated before him that he was a resident of Jawannagar.

106.13 SUBMISSIONS: Mr. Y.S. Lakhani, learned counsel for the appellants submitted that this witness in his examination-in-chief has made vague and general allegations that in the morning at 9:00 a.m. when he came out on the road, he saw a mob of fifteen to twenty thousand people and again vaguely says that the mob was setting fire and resorting to violence. It was submitted that from the evidence which has come on record, it emerges that there was no violence at 9:00

a.m. in the morning.

106.14 It was submitted that though this witness is staying at Jawannagar, he has wrongly claimed to be a resident of Hussainnagar and even if it is believed that he had come there since just two years prior to the incident he had no acquaintance with any of the accused in any way. Hence, he could not have named any of them by either their community or profession and, therefore, when his statement is recorded only on 12.5.2002, that is, after more than seventy days of the incident, the possibility of naming the accused at the instance of somebody else cannot be ruled out.

106.15 It was submitted that despite the fact that he had no acquaintance with the accused, in a large mob of twenty to thirty thousand people, while standing on the other side of the highway, he could not have seen any person in the front lane opposite the Noorani Masjid, much less the accused persons, inasmuch as he has voluntarily stated in paragraph 35, that the entire mob was at the back side of these accused persons and he was on the other side of the road.

106.16 It was submitted that when the witness has nothing to show that he had a garage there, his testimony is completely under the shadow of doubt and just with a view to implicate the accused, he has named them before the police while he was in the camp possibly on hearing the names from others.

106.17 It was submitted that in view of his admission in paragraph 23 of his deposition that the crowd was so dense

that it was not possible to see the hands of the people and his further admission that even the weapons could not have been seen even if held by the people of the mob and he has said that he immediately turned back upon seeing the mob there on the road, it is not possible that he could have seen the accused and identified them. It was submitted that no overt act or weapons have been attributed to any of the accused.

106.18 It was submitted that this witness in paragraph 25 of his testimony has stated that the traffic was totally closed and no vehicle could move on the road, in view whereof, it is doubtful whether Mayaben's car or a police van could have come.

106.19 Mr. B. B. Naik, learned counsel for the appellants submitted that on a conjoint reading of paragraphs 23, 26 and 35 of the testimony of this witness, the facts that emerge are that he was hardly there for two minutes. It was submitted that the mob was facing the Noorani Masjid, whereas he was standing on the side of the S.T. Workshop and, therefore, it was not possible for the witness to identify the named accused, who were in front of the mob facing the Noorani Masjid, more so, considering the fact that the mob was comprised of fifteen to twenty thousand people and he was standing at a distance of 50 to 80 feet away. It was submitted that the version given by the witness is inherently improbable and it was not possible for him to identify the accused in the mob.

106.20 Mr. Prashant Desai, learned Special Public Prosecutor submitted that no material contradiction or

omission has been brought out in the testimony of this witness as to the statement dated 12.5.2002 recorded by the police. It was submitted that the minor discrepancies in the testimony of the witness regarding his having gone to Gangotri Society and thereafter having hidden themselves and in his examination-in-chief stating that he hid at Gangotri Society, is not a material contradiction, which goes to the root of the matter.

106.21 As regards, identification of the accused, it was submitted that it is an admitted fact in paragraph 35 of the cross-examination that these four persons were in the mob, in view of the suggestion put to the witness that they were not leading the mob but were in the middle of the mob. It was submitted that this witness is credible, reliable and truthful and can in no manner be said to be an unreliable witness. It was urged that the involvement of the four named accused persons who have been identified by the witness, is established beyond reasonable doubt.

106.22 ANALYSIS: From the testimony of this witness, it emerges that he had come out on the road at 9 o'clock and had seen the mob committing arson and assault. Thereafter, he went home and together with his family members went to the S.R.P. Quarters. However, they were not permitted to enter the S.R.P. Quarters, and hence, they took shelter on a terrace of Gangotri Society, where they remained till a police vehicle came at night and took them to the relief camp. From the testimony of this witness it emerges that when he went out on the road he had seen Mugdo Chhara (accused-39), Jaybhavani Chhara (deceased), Sehjad Chhara (accused-26), Manoj Videowala (accused-41) and Suresh Langda (accused-22) in

the mob. The witness has also stated that he had seen all of them with weapons, but from a distance, he could not identify the weapons.

106.23 In his cross-examination, it has been brought out that he had stood near the S.T. Workshop gate for a few minutes. The witness has admitted that he had seen a truck being rammed into Noorani Masjid. In his cross examination it has also come out that the accused identified by him were in front of the mob and were at the forefront in attacking the masjid. The witness has not seen any incident after going to the terrace of Gangotri Society.

106.24 Insofar as acquaintance with the accused is concerned, acquaintance with accused Suresh Langda is brought out in paragraph 44 of his cross examination. However, the witness does not specify as to which accused, out of the named accused, had come to his place with a rickshaw. Thus, the acquaintance of the witness with the accused is not very clear. However, the witness has been consistent in naming the accused as well as attributing the role played by them right from the inception and no contradiction has been brought out as to his statement dated 12.5.2002. Considering the fact that the acquaintance with the accused has not been properly established, the evidence of this witness qua the accused named by him needs to be closely scrutinized. Nonetheless, through the testimony of this witness, the prosecution has proved the presence of Mugdo Chhara (accused-39), Jaybhavani Chhara (deceased), Sehjad Chhara (accused-26), Manoj Videowala (accused-41) and Suresh Langda (accused-22) in the mob on the road in the morning,

but, the court would look for corroboration while considering his evidence against the individual accused.

107. **PW-110 Noormahammad Ismailbhai Mansuri**, aged 35 years, has been examined at Exhibit-707. This witness has deposed that he was residing at *Lane No.3, Hussainnagar, Naroda Patiya*, since about fifteen years prior to the date of his deposition and that in the year 2002 also, he was residing there. The witness has stated that the incident took place on the 28th in the year 2002. It was probably the month of February. There was a call for bandh on the date of the incident. He had warned his father not to go anywhere, despite which, he had gone and since that day, till date, there is no information regarding his whereabouts. On the day of the incident, he was at home at around 9:00 to 9:30 when shouts could be heard. There was commotion outside and people were shouting "hack hack". Hence, he came out of his house. His house was opposite Noorani Masjid. Upon coming outside, he saw that the areas next to Natraj Hotel, Krushnanagar and Noorani Masjid were heavily crowded and a lot of people had gathered there. Stone pelting was going on, hence, they all ran and went back to their chawls. Thereafter, after finding their families and making arrangements for their safety, they had kept all their children and women in one room. In the same room, other women from their chawl had also gathered and thereafter, they had come out, when there was a huge crowd and the police were outside. When they came out of their chawl, the police had resorted to firing against them and had not permitted them to come out of their chawls. In the shooting, a boy was injured on his waist with a bullet and had fallen down. They had picked him up and brought him to the

chawl and made him lie down on a platform. Another person had also sustained bullet injuries and he died on the spot. The police permitted the opposing public to enter their chawls and was firing at them and not permitting them to come out, hence, after coming back to their chawl, they started hiding at different places. They kept hiding at different places till 6:00 to 7:00 in the evening. With him, there were approximately 150 to 200 Muslims, and all of them had gone towards S.R.P. Quarters, where they were not permitted to go inside. The S.R.P. people had hit one person who was with him, with the butt of a gun and had told them that none of them would escape and that they should not enter inside and should go away. The witness has stated that after they were driven out from near the S.R.P. Quarters, they had gone further and ahead of the S.R.P. Quarters, where there is a wire fencing, and by jumping over such fencing, they had gone to the S.R.P. Quarters and they stayed there till 4 o'clock at night. At 2 o'clock at night, a vehicle came and took several people in it. At Krushnanagar, there was stone pelting and the driver of the vehicle turned the car back and brought it back to the S.R.P. Quarters. The driver and the police vehicle said that at present, it is not possible to provide for bandobust and that when the bandobust is made, they would be taken away. A second bus came at 4 o'clock in the morning and they had all gone to the Shah Alam through the airport. His family was with him, except his brothers and his father.

107.1 The witness has deposed that after his father was lost in the morning, he was not found thereafter and that later on, he had learnt that his father had gone to an acquaintance, one Dahiben's house at Hiravadi and was there for the whole

day. However, upon seeing the things on the road about Naroda Patiya on the T.V., his father had set out from there, but thereafter there was no news about him. At the relief camp, he and his brother had made a joint application which is in the nature of a complaint application produced along with List Exhibit-708. The witness has denied his thumb impression on the complaint application.

107.2 The witness has further stated that on the date of the incident, he had seen Janakbhai (accused No.36) and he knew him since childhood. He had shown them the way to the S.R.P. Quarters and had helped them. He had helped him. Along with him, about one hundred and fifty to two hundred people followed him and hence, they could come out safely. The witness has stated that it has not happened that before the police, he had stated the facts regarding a person whom he knew very well who was residing at Hirawadi, Mahavirnagar, who was in the Hindu mob with a pipe on the date of the incident and that he had seen such person with his own eyes.

107.3 CROSS EXAMINATION: At this stage, the learned Special Public Prosecutor has submitted that the witness was not supporting the prosecution case and that he is required to be declared hostile. The witness is thereafter cross-examined by the Special Public Prosecutor with regard to his acquaintance with Janakbhai Marathi. However, nothing has been elicited so as to implicate any accused.

107.4 ANALYSIS: From the evidence of this witness, it emerges that there was police firing wherein two persons were injured by bullets, one of whom died on the spot. The police

had let the mob enter the chawls, but had restrained the residents of the chawls from coming out. The Muslims tried to take shelter at the S.R.P. Quarters, but were not permitted to enter inside. Accused Janakbhai Marathi had in fact helped him and other Muslims to escape. Thus, this witness does not implicate any accused and on the contrary, says that accused Janakbhai Marathi helped him and many other Muslims to escape.

108. **PW-111 Mahebalahussain Munirahemad Shaikh**, aged 40 years, has been examined at Exhibit-709. This witness has deposed that he is residing at *Lane No.4, Jawannagar* and his native is Village Timapur, District Shahpur, Karnataka.

108.1 The witness has deposed that the incident took place on 28.2.2002 and at that time, he was at home with his family which was comprised of his parents and himself. His wife at the relevant time has died, thereafter, he has married again. From his previous marriage, he had a daughter Afreenbanu and a son Mohsin. Both of them have died in the riots that took place in Ahmedabad city in the year 2002 in connection with the Godhra incident and they were burnt to death. The witness has further stated that they are in all five brothers. He is the eldest, younger to him is Mahammadhussain, then Sabbirhussain, then Anwarhussain and the youngest is Sabirhussain. His younger brother Mahammadhussain's wife Noorjahanbanu and his brother's mother-in-law Maheboobbanu, also died in the incident. On the day of the incident, he had gone for his work at 8 o'clock in the morning. On that day, there was a call for Gujarat Bandh,

hence, the Manager had closed the factory and let them go and hence, he had returned home.

108.2 The witness has deposed that when he returned home, his father was not there. Hence, he went towards the Noorani Masjid, where he found his father and told him to go home. At that time, it was 9:30 in the morning and he was standing there on the road. At that time, the mobs shouting, kill, cut and pelting stones came from the direction of Natraj Hotel and Krushnanagar. At that time, there was shooting and tear gas shells were released and a bullet had injured a boy. He does not know the name of the boy who was hit by the bullet. They had lifted the boy who had sustained bullet injury and had taken him to Masjid-ni-Chali, behind the Noorani Masjid. On that day, the houses in the chawl were burning and it was not possible to come out on the road from the chawl. He had seen houses and corpses burning in the chawls. At around 10 o'clock at night, they had reached Gangotri Society which was behind their chawl and then, he had gone to the terrace of the Gangotri Society, where he found his father, his brother Mahammadhussain and his son Ahemadrazak and younger sister Hamidabanu. His mother had gone to the S.R.P. Quarters and his other family members had got separated. The witness has deposed that his son and daughter from his previous marriage were never found. He had not even found their dead bodies. On that day, till 1:30 at night, they had stayed on the terrace of Gangotri Society, whereafter the police had come and taken them to the relief camp. He along with his father, sister Hamidabanu, brother Mahammadhussain and his two sons were taken by the police in a vehicle to Shah Alam Relief Camp. He himself had not gone in the police vehicle, but was

looking for his children and had stayed back. Though he searched for his children a lot, but he could not find them. The witness has deposed that in the incident, his house was looted by the mob. From Gangotri Society, on that day itself, he had gone to the Masjid-ni-Chali at 1:30 night and stayed there at night. Thereafter, on 1st March, at around 1:30 at night, the police vehicle had come, wherein he had gone to Dariyakhn Ghummat, where he had stayed at the relief camp for two days. Thereafter, they were told to come to the Civil Hospital to identify the dead bodies. Hence, he had gone to the Civil Hospital; however, he could not identify the dead bodies of his children. At the Civil Hospital, he met his brother Sabbirhussain (PW-159), who was in a burnt condition taking treatment. His brother informed him that his both children, Mohsin and Afreenbanu, as well as his brother Mahammadhussain's mother-in-law Maheboobbi and his daughter Noorjahan were burnt in the incident, and accordingly, he had come to know that his children had died. The police had recorded his statement in connection with the incident at the camp; whereafter the SIT had recorded his statement.

108.3 CROSS EXAMINATION: In the cross-examination of this witness it has come out that out of his family members who had died in the incident, he had received the postmortem notes of his son Mohsin and his brother's wife Noorjahanbanu. The witness has admitted that he had received receipts from the kabrastan regarding burial of his daughter Afreenbanu and his brother's mother-in-law Maheboobbi. The witness has stated that he has received compensation for the death of his children and his brother's wife after due verification. He has admitted that on 28.2.2002 he had stayed at Masjid-ni Chali till

10 o'clock at night. He has admitted that after he took the person injured in the firing inside, he did not come out of the chawl. He has admitted that at 10 o'clock at night he had come out of Masjid-ni-Chali and crossed the road and had reached Jawannagar through the S.T. Workshop road. He has further admitted that after reaching Jawannagar he had again gone to the terrace of Gangotri Society. The witness has stated that his house is in the last lane of Jawannagar and Gangotri Society is adjoining it. They had gone from that way to the terrace.

108.4 He has admitted that on that day there were around two hundred to three hundred people on the terrace and all of them were sitting and hiding in a manner that no one could see them from outside and some of them were lying down. He has admitted that he has not seen any disturbances from the terrace. He has also stated that the S.R.P. compound wall comes after leaving two houses from his house.

108.5 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness is a local resident of Jawannagar. He went on the road, but has not implicated any accused including the local residents. He is the brother of PW-76 and PW-159. Referring to paragraph 16 of his cross-examination, it was submitted that the witness has stated that after he took the person who was injured by bullet inside, he had not come out of the chawl.

108.6 ANALYSIS: From the testimony of this witness, it emerges that he had seen mobs near Natraj Hotel as well as on the side of Krushnanagar and the Noorani Masjid pelting

stones. The police was firing and was not letting them come out of their chawls. In the firing, one person was injured who was lifted and taken inside and made to lie down on an ota (a platform). Another person was also injured by a bullet and died on the spot. According to this witness, the police was letting the public from the opposite party enter their chawls and was not letting them come out, therefore, they started hiding. At around 6:00 to 7:00 in the evening, they had gone to the S.R.P. Quarters, but were not permitted to enter inside. While several members of his family have died in the incident, this witness has not deposed any fact regarding the main incident or any incident and has not named any accused. Nothing, therefore, really turns upon the testimony of this witness for the purpose of establishing the prosecution case against any accused.

109. **PW-112 Fatmabibi Mahammadyusuf Shaikh**, aged 47 years, has been examined at Exhibit-717. This witness has deposed that she was residing at *Hukamsing-ni-Chali* in the year 2002. At that time, her family was comprised of her husband, her mother-in-law, her three daughters, one son, one son-in-law, son-in-law's daughter and daughter's son. All ten of them were residing together. She used to run a flour-mill and her husband had a tube-light shop. Her daughter was engaged in making night lamps and her husband's tube-light shop was situated near their house. Her flour-mill was situated next to her house.

109.1 The incident took place on 28.2.2002. On that day, there was a call for bandh. She was at her flour-mill on that day and her family members were at home. On that day at around 9:30, her maternal aunt's daughter who resides in that

area had come to her mill and told her that a huge mob has come from the direction of Natraj Hotel and the Noorani Masjid and hence, she also went on the road to see. When she went out on the road, she saw that there were people wearing khakhi shorts and undershirts in the mob and that they had tied saffron bands on their heads and they were shouting slogans of "Jay Shri Ram" and had attacked the masjid and vandalized it and set it on fire. The people in the mob were armed with swords, hockey sticks, diesel, petrol, etc. She had seen the Pesh Imam (the person who reads the namaaz) of the Noorani Masjid being injured in the riots. The people in the mob were looting the neighbouring gallas (cabins) and setting them on fire. Upon seeing all this, she returned home and told her family members about the incident on the road and hence, her family members also came out. The Muslims had gathered there and were watching the incidents that were taking place. Her husband had also come out to see the incident and while he was watching the incident, the police had beaten him, which she had seen with her own eyes. The police had beaten him on both the hands and had fractured both of his hands. On that day, the Hindu mobs were attacking the Muslims. They were pelting stones and such Hindu mobs were coming towards their Muslim chawls. However, the police was asking them (the Muslims) as to why they were coming out and told them to go inside. The police was firing at them and was releasing tear gas and was not saying anything to the Hindu mob. By this time, she was standing in front of her flour-mill. The witness has deposed that in front of her eyes, Abidali Hamidali Pathan had sustained bullet injury and had died on the spot. At that time, the boys from their chawls put him in a rickshaw and took him towards the field. At that time, it was

approximately 11:00 to 11:30. Thereafter, after a little while, Mustaqbhai Razakbhai, Pirubhai and Khalidbhai were also injured with bullets within a short span of time. While all the time when the firing went on, she was nearby. After these three persons were injured with bullets, the Hindu mob started looting and entered their chawls. At that time, many frightened Muslims had come inside her house and she too was frightened and with a view to save their lives, they had all gone together to Hussainnagar to her brother-in-law's house. Her brother-in-law's name is Akhtarhussain and they had stayed there for about an hour. Thereafter, stone pelting started from S.T. Thereafter, all those who had gone there as well as her brother-in-law's family went towards Jawannagar. They had heard that a Muslim by the name of Rana Kadir had been hacked and burnt alive. Thereafter, in a little while, they had gone towards Gangotri Society. At that time, an AMTS driver by the name of Jaybhavani had met them and had asked her "*Aapa, what happened?*", to which she replied that their children were crying, they were hungry, they were hungry since morning and their house is looted and set ablaze, whereupon Jaybhavani told them to wait and that he would make arrangement for their meal. Thereafter, he went at a little distance and gestured to the Hindu mob which was standing in the khada (pit), towards them. The mob came towards them, wherein she had seen **Bhavanisingh Chhara**, **Guddu Chhara** with sword in his hand, **Sahejad Chhara** with a hockey in his hand and **Suresh Chhara** with a gupti in his hand. At that time, Jaybhavani was shouting, "*Kill the miyas*". At the place where they were standing, there was a house of a Hindu woman and they went inside her house and sat there for about an hour and the Hindu woman had given chappatis

(rotis) to their crying kids. At this time, a Darbar woman residing next to her house came there and asked her (the Hindu woman), as to why she had allowed Muslims to sit there, as her house will also be set on fire. Hence, this woman had also driven them out of her house.

109.2 When they came out of this house, a person by the name of **Tiwari**, who was working as a conductor in the AMTS and a policeman in uniform were standing there, and they (the witness) had requested them to take them to a safe place and give them shelter, whereupon they had told that arrangement is made for them towards the khada and told them to go there. She, together with her family had stayed there, whereas other persons had gone to the place shown by these persons. She was standing at a place from where it was visible and towards the open ground she saw a mob armed with petrol, diesel, swords, etc. All those persons who had separated from them and had gone on that side, the policemen who were standing there, had not permitted them to come out and they had gone and hidden in the passage near the water tank of Gopinath Gangotri Society. She had turned back towards Gangotri Society where there was wire fencing near the S.R.P. Quarters and two policemen were sitting there. She had asked these two persons to let them go, whereupon they had said that there was an order for them from above, and that there was no chance of their escaping. They had also told them "*you are not supposed to say Allah, you say Ram*". She said "*why should we say Ram*" whereupon they said "*look at what you have done in Godhra*", so she said "*the Patiya Muslims were not there at Godhra, then why are you punishing us*". Still however, they did not permit them to go inside. They had told them to go

away, however, they did not go and so, they started beating them with guns and sticks and tear gas shells were released at them, as a result, they started rubbing their eyes and had gone to the terrace of Gangotri Society and hidden there. At this time, it must be around 7:00 to 7:30 in the evening. While they were hiding on the terrace, they could hear the sounds of screams and cries for help from the passage near the water tank where Muslims who had got separated from them were hiding. They looked towards their side and saw that these Muslims who were hiding there were hacked with swords and dharias and were set ablaze. Fire was ignited by throwing petrol and diesel on the bodies of the people. There were small innocent children who had not got a glass of water to drink since morning and were asking for water and they were making them drink diesel and petrol. After a little while, the shouting increased and cries were heard to protect their chastity and young girls were seen in a naked condition. Thereafter, in a little while, there were many sounds of screaming and in front of their eyes, the Muslims who had separated from them, were being hacked. Under the impression that everyone had died, the Hindu mob, thereafter, started whistling and playing songs, saying everyone is dead, all finished. She had heard them shouting like that.

109.3 The witness has further deposed that they were bringing gas cylinders from Uday Gas Agency and were setting the houses on fire with the gas cylinders. They were looting and had looted all the household articles and had not let anything remain and were acting as they please. Late at night, the police vehicles came and took them to Shah Alam camp. At night when they were going to sit in the vehicle, they had seen

many dead bodies lying on the road. At that time, in the moonlight, they had crossed over corpses and had reached the vehicle. When they sat in the vehicle and set off, their house was still burning. They were taken to the Shah Alam Relief Camp. When they reached the camp, a girl who was the daughter of a battery seller, had told her that her (the witness's) sister Kudratbibi was hacked and burnt. She has further told her that her sister had given the persons in the mob all the money and jewellery which she had, despite which, they had thrown away the same and burnt her sister. Her house was set on fire wherein all the household goods, ornaments, cash, etc. as well as her flour-mill, tube-light shop, scrap shop, etc. were all burnt and in all, they had sustained a total loss of rupees ten lakh. In the incident, she had sustained an injury on her head with a stone in connection which she had received compensation of Rs.1,25,000/-. She had availed of treatment at Shah Alam camp. Her husband had sustained fractures on both of his hands; however, he had not availed of treatment at the relief camp and had treated himself by way of home remedies. She had got compensation of in all Rs.26,000/- in respect of the scrap shop, tube-light shop, flour-mill etc. that were burnt. Eight persons from the family of her sister Kudratbibi had died. Two of her (Kudratbibi's) children had escaped and had presently come to her house for vacation and both these children have been kept for studies in a hostel for studies at Raigarh in Maharashtra. A lady by the name of Padmaben, who at the time of incident used to sell vegetables, had also come to the relief camp and was staying there with them. She had returned after around six days. The witness has stated that whatever she has stated before the court, she had stated the same facts before the SIT. She came to know from

the newspaper that whoever wants their statement to be recorded, can go to the SIT. She is not educated and she heard the same from someone in the chawls. She had got an application for going to the SIT written by a boy in the chawl. After the application was written, the same was read over to her and she had signed it in Urdu. The witness has stated that even at the relief camp where she stayed for seven months, the police had come to record her statement. The witness has stated that out of the accused whom she has named in the examination-in-chief, she can identify them if they are present in the court. As per her information, Guddu Chhara and Bhavanisingh Chhara are dead. She has stated that she can identify Suresh Chhara (A-22), Sahejad Chhara (A-26) and Tiwari (A-25) and has correctly identified them before the court. The witness is shown her application made before the SIT, which has been exhibited at Exhibit-718.

109.4 CROSS EXAMINATION: The witness is cross-examined with regard to the daughter of battery seller as regards her age and as to whether she knows the battery seller. She has stated that she knows battery seller's wife, namely, the mother of the girl who was with her in the relief camp. She has admitted that if any talk took place between her sister Kudratbibi and this girl in connection with the incident, she was not present at that time.

109.5 The witness has admitted that her statement recorded by the SIT was true and correct and that she has not made any complaint in that regard. The witness has stated that she has got police protection. She has admitted that she has not received any threat from the accused and has

voluntarily stated that she herself was afraid. The witness has admitted that her husband was injured by the police and he has not taken treatment anywhere and that she had received compensation of Rs.1,25,000/- towards the injury sustained by her.

109.6 The witness has stated that she does not know whether Abidali Hamidali Pathan, Mustaq Razakbhai, Khalidbhai and Pirubhai had sustained bullet injuries in police firing. She has admitted that Abidali Hamidali Pathan was injured in police firing at around 11 o'clock and that she had seen Abid being injured in police firing.

109.7 The witness has admitted that while she was standing outside at 11 o'clock, the riots were going on. She has denied that at that time, the police were firing and releasing tear gas at those who were rioting. The witness has voluntarily stated that on that day, the police were given all freedom and that the police were firing at them, but was not doing anything to the rioters.

109.8 The witness has denied that at that time, there was a Hindu mob and similarly, there was also a Muslim mob and the police had fired more at the Muslim mob. Thereafter, Mustaqbhai Razakbhai, Khalidbhai Alibhai and Pirubhai Allabax were injured with bullets. The witness has stated that she does not know and she has not seen where the firing was carried out by the police. The witness is sought to be contradicted by her statement before the SIT, wherein she has stated that the Hindu mob had continued with damaging and arson and a Muslim mob also having gathered, the police had resorted to

firing wherein from the Muslim mob: (1) Mustaqbhai Razakbhai, (2) Khalidbhai Alibhai and (3) Pirubhai Allabax were injured by bullets.

109.9 The witness has stated that she does not remember whether her statement was recorded on 19.4.2002, but has voluntarily stated that she is aware that her statement was recorded at the Shah Alam camp. The witness has admitted that prior to her statement being recorded on 19.4.2002, she had not lodged any complaint with regard to the injuries sustained by her and her husband and the damage caused to her house or flour mill.

109.10 The witness has stated that on the day of the incident, she was at home till 12:30 and has voluntarily stated that her house and her flour mill are situated next to each other. The witness has denied that on the day of the incident, all the members of her family had gone to Gangotri Society at 1:30 and had stayed there till 6 o'clock in the evening and that they were on the lower level of the society. The witness has voluntarily stated that when they went there, they were on the terrace.

109.11 The witness has admitted that at that time, a huge mob came from the side of the canal. She has denied that the mob was comprised of around five to ten thousand people. She has denied that she could not identify anyone from the mob which came from the side of the canal and has voluntarily stated that she had seen the named people in the mob. She has stated that she cannot specifically say as to whether the accused whom she had identified were in the mob which came

from the direction of the canal and has voluntarily stated that the mobs were coming from all sides. The witness has admitted that one mob had also come from the Uday Gas Agency road from the open ground from the direction of Jawannagar and another mob had come from the canal. She has denied that the other mob came from the direction of the chawls and the S.R.P. Quarters and from Krushnanagar as well as Naroda Patiya. The witness has voluntarily stated that while they were there, the mobs had not come from these places. The witness has voluntarily stated that if one is talking about Gopinath Society and Gangotri Society, then on the main road outside, there were mobs from all four sides and those mobs had surrounded them.

109.12 The witness has admitted that in the evening at 6 o'clock, they had gone near S.R.P. Quarters, Group-2. She has admitted that after they reached the S.R.P. Group-2, the Muslim chawls were set on fire. She has denied that from there, she had heard the Muslim victims shouting and screaming, and has voluntarily stated that she had heard it from the terrace. The witness has denied that in her statement recorded at the camp, she had stated that in the afternoon at 1:30, all the members of her family had gone to Gangotri Society and were hiding and sitting there till 6 o'clock in the evening on the lower level of the society. However, upon seeing the huge mob of Hindus coming shouting from the direction of canal and another mob coming from the direction of the road, all of them immediately went near the S.R.P. Group-2. In the evening at around 6 o'clock, suddenly, their Muslim chawls were set on fire and looting had started and people were screaming and shouting. They went to Gangotri.

Immediately the police released teargas, they had gone to the terrace of Gangotri. The witness is cross-examined as regards the location of the terrace of Gangotri and the time when they stayed there. The witness has admitted that from 6:00 in the evening till the police vehicles started coming, they were on the terrace of Gangotri. In her cross-examination, it has come out that she was injured by a stone on her head and was bleeding. The witness is confronted with her statement recorded at the Shah Alam camp, wherein she had stated that no member of her family had sustained any injury or suffered any loss of life.

109.13 The witness has stated that she does not know that out of the mobs which had come from all four sides, in which mob she had seen Guddu Chhara. She has admitted that she cannot say as to in which mob she had seen Suresh, Bhavani, Sahejad and Tiwari and has voluntarily stated that she had certainly seen them. The witness has denied that she knows Suresh because he is lame and has voluntarily stated that she knows him right from the time she was staying there. The witness has stated that she had seen Suresh Langda near the water tank where the people were burning. She has admitted that she had seen Suresh Langda near the water tank. She has stated that she had also seen Guddu Chhara there and has voluntarily stated that the rest of the accused as well as these two were also roaming around nearby.

109.14 The witness has denied that while they were roaming around like this, it had become dark. The witness has admitted that there was no light and has voluntarily stated that it was not so dark that they could not see anyone. She has

stated that she cannot say as to from what distance she has seen the accused. She has admitted that she had seen them from the terrace. She has voluntarily stated that the terrace was very close by. The witness has admitted that she was not on the terrace of the water tank and has voluntarily stated that they were on the terrace near the tank. The witness has admitted that at that time, Guddu and Suresh had weapons in their hands.

109.15 The witness has admitted that when her statement came to be recorded at the camp, she knew that Guddu and Suresh had weapons in their hands. The witness is confronted with her statement recorded at the Shah Alam camp, wherein she has stated that she had seen Guddu Chhara and Suresh Langda Chhara in the riotous mob. At present, she does not remember as to which weapon they had.

109.16 The witness has admitted that on the day when her statement was recorded at the camp, she was aware that Sahejad, Bhavani and Tiwari were also in the mob. She has denied that she has not stated the facts stated by her regarding Sahejad, Bhavani and Tiwari as deposed in her examination-in-chief in the statement recorded by the police and has voluntarily stated that if she gives the names and the police does not write, what can she do, she herself is illiterate.

109.17 The witness has stated that Sahejad lives in Hussainnagar. She has stated that she does not know that he has a Mataji's temple in his house. She does not know where Bhavani and Tiwari are residing. She has admitted that she has no talking relations with Sahejad, Suresh, Guddu, Bhavani and

Tiwari, and does not have any social or other relations with them and she has never personally talked to any of them.

109.18 The witness is cross-examined with regard to the application Exhibit-718 as to who had written it down and the manner in which it was written. The witness has stated that she does not know that Abid and the others, who were injured by bullets, were injured near Noorani Masjid. The witness has stated that Abid was standing at the corner of the S.T. Workshop and was injured by a bullet there. She has admitted that the remaining persons were also injured by bullets near the corner of the S.T. Workshop. The witness has admitted that she has not seen the incident of Rana Kadir and that she had heard about it. The witness has admitted that there were people wearing khakhi shorts and undershirts in the mob and has voluntarily stated that there were people in ordinary dress like pant-shirt also. In her cross-examination, she has stated that she has not seen Uday Gas Agency, but had seen someone go to Uday Gas Agency. She does not know whether the gas cylinders were filled or empty. She has deposed that they were lifting the cylinders on their shoulders and bringing them. They were bringing the gas cylinders from Uday Gas Agency towards their chawl. She had not seen them taking the gas cylinders on the highway. She has stated that the people who took the gas cylinders were those wearing khakhi shorts and undershirts as well as in ordinary clothes.

109.19 The witness has stated that the name of her maternal aunt's daughter, whose incident which she had seen from the flour mill, was Noorjahanbanu. The witness is cross-examined regarding not having stated that she was at the flour

mill as well as the fact regarding a huge mob having come from Natraj Hotel to Noorani and hence, she had gone to the road to see it, etc. in her statement recorded by the police.

109.20 The contents of paragraph 13 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in the statement recorded by the police. The contents of paragraph 14 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in the statement recorded by the police. The court has made a note below that the learned advocate for the defence has stated that the contradiction is not as regards the presence of the accused, but regarding their presence with weapons and that the names of Bhavanisingh and Sahejad are not mentioned.

109.21 The witness is sought to be contradicted as regards the first line of paragraph 15 of her examination-in-chief to the effect that in her statement recorded at the camp, she had not stated that when Bhavani Chharo was shouting, "*kill the miyas*".

109.22 The contents of paragraphs 16, 17 and 18 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in the statement recorded by the police. The contents of paragraphs 19, 20 and 21 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in the statement recorded by the police. The witness has voluntarily stated that she had stated all these facts when her statement came to be recorded at the camp, however, what could she do if they did not write it

down.

109.23 Certain extracts of paragraph 22 as well as the contents of paragraphs 23 and 24 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in the statement recorded at the camp. The contents of paragraph 25 of her examination-in-chief, from fourth line to the sixth line, wherein she has stated that at that time, in the moonlight, they had crossed over corpses and had reached the vehicles, are read over to the witness, to the effect that she has not stated such facts in the statement recorded at the camp.

109.24 The contents of paragraph 28 of her examination-in-chief are read over to the witness to the effect that she had not stated the fact regarding she being injured on the head with a stone and her husband's both hands being fractured and having not taken any treatment at the camp, have not been stated by her in the statement recorded at the camp. The witness is also confronted with the contents of paragraph 29 of her examination-in-chief to the effect that she has not stated these facts in the statement recorded by the police.

109.25 The witness has admitted that no test identification parade has been carried out through any authority for the purpose of identifying the accused whom she has named and whom she has identified for the first time before the court. She, however, has voluntarily stated that she already knew the accused.

109.26 The witness has denied the suggestion that during

this entire period, she was at home and has not seen any incident and that she has not seen any of the accused whom she had identified and at the instance of the people of her community, she is falsely naming the accused and that she has not sustained any injury in the incident and has concocted false facts, and hence, she has not taken any treatment.

109.27 The witness has denied that before the SIT, she has stated that her statement dated 19.4.2002 recorded by the police was correct and proper. The witness has admitted that her statement recorded at the camp was read over to her and has voluntarily stated that she had stated that the statement is incorrect and that they should write down the correct statement which she would now dictate. The witness has admitted that she had stated before the SIT that the contents of her application, Exhibit-718 are correct.

109.28 The witness is sought to be contradicted as to her statement recorded by the SIT to the effect that the facts stated by her in the first two sentences of paragraph 24 of her examination-in-chief, wherein she has stated that they were bringing gas cylinders from Uday Gas Agency road and were setting the houses on fire with the gas cylinders. The witness is further confronted with the contents of the fourth line to the seventh line of paragraph 25 of her examination-in-chief to the effect that she had not stated before the SIT that at that time, in the moonlight, they crossed over the corpses and reached the vehicle.

109.29 The contents of paragraph 31 of her examination-in-chief from the second line to the last line are read over to the

witness to the effect that she has not stated such facts in her statement recorded by the SIT. The witness has admitted that she has not stated such facts in her statement and has voluntarily stated that the SIT had not asked her about it, and, therefore, she had not stated so. The witness has denied that the field which she had referred to in her examination-in-chief where Abid was taken in a rickshaw, is after Gopinath and Gangotri Society. She has admitted that this field is between their chawl and Gangotri Society. The witness has admitted that it is a big field and has denied that there is a well in the field. The witness is also cross-examined with regard to the topography of the area.

109.30 The contents of paragraph 17 of her examination-in-chief are read over to the witness to the effect that she had not mentioned the word “khada” (pit) in the statement recorded by the SIT. It appears that in the statement before the SIT, she had referred to the word “well”. The witness has denied that reference to the word “khada” in her examination-in-chief is to the Jawannagar pit. She has stated that the word “pit” is with reference to the place which Tiwari had pointed out with his finger. The witness has voluntarily stated that when she has mentioned the words field, well, pit, etc., she means the same thing. She has stated that this place comes after Gangotri Society and Gopinathnagar.

109.31 The witness has denied that she and the people who were with her had gone towards the pit and has voluntarily stated that she had remained at the same place, whereas the other people who were with her had gone on the other side and at that time, upon a mob coming from the

opposite direction, they had entered the passage of the water tank. She has admitted that from where she was standing, she could not see the pit, but could see the people coming from the opposite side.

109.32 The witness has admitted that the people who were coming from the opposite side had weapons and has admitted that she was afraid and had moved back. She has voluntarily stated that at this time, she had taken shelter in the Hindu woman's house.

109.33 The witness has admitted that the Muslim mob which was with her had gone towards the well and from that direction, a Hindu mob came towards the Muslim chawls from the open ground and upon the mob charging at the Muslims who had gone towards the well, the Muslim mob returned towards their chawl from the well. The witness has voluntarily stated that thereafter, the mob had gone inside the passage of the water tank.

109.34 The witness has denied that the mob of Muslims which had gone towards the chawls was followed by the mob which came behind them from the direction of the well and the open field. She has stated that when the Muslim mob went inside the passage of the water tank and the Hindu mob was following them, she was standing on the side near the house of the Hindu woman who had given her shelter. She was standing on the road of the chawl. She has admitted that the Hindu mob which was coming from behind, had not attacked her and has voluntarily stated that she had gone inside the house. The witness has stated that she does not know whether this house

was in Gopinath Society or Gangotri Society. The witness has stated that she does not know as to whether the mob started the massacre after she went inside, because she was inside. She has admitted that out of fear, she must have stayed inside for about an hour. The witness has denied that after being driven out of the house, they had gone to the terrace of Gangotri Society and has voluntarily stated that thereafter, they had gone to Tiwari. The witness has admitted that from the time she was driven out and till she went to the terrace of Gangotri Society, she had not seen any mob and no mob had seen her. She has denied that she had not seen any incident and that at the instance of leaders of her community, she was falsely deposing before the court.

109.35 The omissions and contradictions in the testimony of the witness qua her statement recorded under section 161 of the Code have been sought to be proved by the defence through the cross-examination of the concerned Investigating Officer.

109.36 PW-178 Shri P. N. Barot, the Investigating Officer has admitted that he has recorded the statement of this witness on 19.4.2002. The Investigating Officer has admitted that this witness had stated before him that at 1:00 to 1:30 in the afternoon, all the people of their house had gone to Gangotri Society and were sitting and hiding there. Till 6 o'clock in the evening, they were in the lower level of the society, however, upon seeing a huge Hindu mob coming shouting from the side of the canal and upon a similar mob coming inside from the direction of the road, all of them immediately went near S.R.P. Group-2. At around 6 o'clock in

the evening, their Muslim chawls were suddenly set ablaze, looting commenced and the people were shouting and screaming. No person in her family was injured and there was no loss of life. Out of the people in the riotous mob, she had properly seen Guddu Chhara and Suresh Langda. At present, she does not remember which weapons they had. The Investigating Officer has admitted that the witness had stated these facts before him.

109.37 The contents of paragraphs 14, 15 and 17 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that the witness in the statement recorded by him, has not stated any facts regarding Sahejad, Bhavani and Tiwari and that three of them were in the mob.

109.38 The Investigating Officer has admitted that this witness has not stated before him that on that day, she was at the flour mill and huge mobs had come from Natraj Hotel towards the Noorani Masjid due to which, she had gone on the road to watch and the witness and her brother-in-law had stayed there for one hour and that the witness was also afraid at that time, have not been stated by the witness in the statement recorded by him.

109.39 Certain extracts of paragraphs 13 and 14 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that such facts have not been stated by the witness in the statement recorded by him.

109.40 The Investigating Officer has admitted that the witness has not stated before him that Bhavanisingh Chhara was shouting "*kill the Miyas*". The contents of paragraphs 16, 17 and 18 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

109.41 Certain extracts of paragraphs 19 to 21 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

109.42 The contents of paragraphs 22, 23 and 24 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. Certain extracts of paragraphs 28 and 29 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness has not stated such facts before him.

109.43 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 28.5.2008. He has admitted that this witness had stated before him that upon a Hindu mob continuing with the damaging and arson, a Muslim mob had also gathered. The police had resorted to firing wherein from the Muslim mob (1) Mustaqbhai Razakbhai, (2) Khalidbhai Alibhai, (3) Pirubhai Allabax were injured by bullets

(Para 42). The Investigating Officer has admitted that this witness had stated before him that her statement dated 19.4.2002 recorded by the police was correct and proper. Certain extracts of paragraph 24 of her deposition are read over to the Investigating Officer, wherein the witness had stated that they were bringing gas cylinders from the Uday Gas Agency road and were burning houses with the gas cylinders. The Investigating Officer has admitted that the witness has verbatim not stated these facts in her statement. She, however, has stated that the owner of Uday Gas Agency which is situated nearby had given gas cylinders from the Gas Agency for the purpose of burning. Part of the contents of paragraph 25 of the deposition of the witness are read over to the Investigating Officer wherein the witness has stated that in the moonlight, they had crossed the dead bodies and reached the vehicles, which had come to pick them up. The Investigating Officer has admitted that these facts have not been stated by the witness. However, the witness had stated that late at night, the police vehicles came and took them to the relief camp at Shah Alam.

109.44 Certain parts of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that all this time, she was standing in front of her flour mill. The Investigating Officer has denied that the witness has not stated these facts before him. The witness in her statement had described that on the date of the incident she was at her flour mill which makes it clear that this witness has stated such facts in her statement. The Investigating Officer has admitted that the witness had not mentioned the word, "khado" (pit) in paragraph 17 but had

used the word “kuvo” (well).

109.45 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has a tendency of giving exaggerated testimony before the trial court which finds no corroboration whatsoever from the evidence on record. It was submitted that the averments pertaining to fractures sustained by her husband and him not taking any treatment for the same, children being made to drink petrol and diesel, having heard individuals talking in the mob from a far away distance, are examples of how highly exaggerated and unreliable, the testimony of the said witness is.

109.46 It was submitted that this witness has implicated accused No.22, 25, 26 as well as Jay Bhavani and Guddu Chhara before the trial court. Pertinently, in her statement recorded by the local police in the year 2002, the accused persons viz., accused No.26, 25 and Jay Bhavani were not implicated. It was pointed out that the improvements made by the said witness regarding the weapons attributed to accused No.22 and Guddu Chhara, have also been brought on record by the defense.

109.47 It was urged that this witness has made averments in her deposition pertaining to events, which she has never seen and which can be termed as hearsay evidence. That, the incident pertaining to Kudratbibi, which she had heard from the daughter of one Battery Cellwala, has not been seen by her and even the incident pertaining to Rana Kadir has not been seen by her. It was pointed out that in fact, there is no evidence on record pertaining to the death of an individual by

the name of Rana Kadir in the said incident.

109.48 It was submitted that this witness has also been cross-examined as regards her written application made to the SIT below Exhibit-718, in response to which, the witness has categorically admitted that the said application has not been written by her and as a matter of fact, the contents of the said application are added by the author of the said application as per his own will and with whom she has no prior acquaintance. It was argued that this averment made by the said witness is suggestive of the fact that the applications made to the SIT as well as the statements recorded thereafter are tutored and concocted and at the behest of certain individuals and organizations.

109.49 It was urged that this witness has not stated true and correct facts before the trial court, which can be gathered from the fact that in her testimony she has stated that one Abid was injured due to police firing. It was submitted that on a perusal of the postmortem note of Abid (Exhibit-393) produced on record through the deposition of PW – 47 Dr. Rameshchandra Bhagubhai Shah, it appears that Abid had died due to burn Injuries and not because of firing. Thus, there are two sets of evidence on record of police and private firing as regards to the firing incident that had taken place in the morning, in which, Abid and others have received injuries.

109.50 It was further submitted that two statements of this witness have been recorded. The first statement was recorded on 19.4.2002 by PW-178 and the second statement was recorded on 28.5.2008 by PW-327. The attention of the court

was invited to the omissions and contradictions in the testimony of the witness to submit that except for the names of Guddu and Suresh Chhara, there is complete omission on facts in the statement dated 19.4.2002 including the name of Sahejad and the weapons qua all the three accused. It was submitted that this witness has implicated five accused out of whom two have passed away. The remaining three are accused No.26 Sehjad, accused No.25 Premchand Tiwari and accused No.22 Suresh Chhara. It was submitted that these three accused have not been named in the first statement recorded on 19.4.2002, and have been named for the first time in the statement recorded by the SIT. It was submitted that even before the SIT, the role attributed to Sahejad is that he was seen as a part of the mob which came near Gangotri Society after Jai Bhavani gave a signal. It was submitted that this story against Jai Bhavani was not there in the police statement. Not only that, the story as regards Jai Bhavani and various other facts mentioned from paragraphs 5 to 29 in the examination-in-chief were not there in her police statements. It was submitted that insofar as accused No.25-Premchand Tiwari is concerned, the only allegation was that when the witness had requested for shelter, he directed them towards the khada (pit). It was submitted that before the SIT the witness has mentioned 'kuva' (well) and not 'khada (pit). Moreover, there is no allegation beyond this. No weapon has been attributed to Tiwari.

109.51 It was submitted that insofar as accused No.22-Suresh Chhara is concerned, though he has been named in the statement dated 19.4.2002 as well as before the SIT, no weapon has been attributed in the police statement and no

overt act has been attributed to him by the witness, beyond the fact that he was part of the mob. The attention of the court was invited to the contents of paragraph 88 of the cross-examination of the witness, wherein the witness has admitted that the Muslim mob with them had gone towards the well and the mob of Hindus came from the open ground towards the Muslim chawls and upon the mob charging towards them, the Muslims who were going towards the well, returned back. The witness has voluntarily stated that the mob went into the passage of water tank. It was submitted that the fact stated in this paragraph as well in the paragraphs subsequent thereto, are irreconcilable, which shows that she is not stating the correct facts. It was submitted that what is stated by the witness in paragraphs 86 to 88 of her cross-examination demolishes what has been stated by her in paragraphs 15 to 19 of her examination-in-chief. It was submitted that there are major contradictions in the deposition of the witness on vital issues as well as contradictions in her police statements and her deposition before the court, which render her evidence completely unreliable. It was contended that the witness has not seen any incident at all and whatever she has stated before the court is what she had heard from others or was tutored before recording her statement before the SIT. It was submitted that the evidence of this witness does not inspire confidence and cannot be relied upon.

109.52 ANALYSIS: This witness is the sister of Kudratbibi, who died in the incident. In her examination-in-chief, the witness has named Guddu Chhara (deceased), Suresh Langda (A-22), Sahejad (A-26), Bhavani (deceased) as well as Premchand Tiwari (A-25). Various omissions and contradictions

in the testimony of this witness have been brought on record as is reflected from the cross-examination of the witness. While the witness has named Guddu Chhara and Suresh Langda in her statement recorded at the camp on 19.4.2002, she does not remember which weapon they had.

109.53 Considering the proved omissions and contradictions, what emerges from the testimony of this witness is that on the day of the incident, in the morning she had come out on the road at around 9:30 and had seen the mobs which had attacked the Noorani Masjid and were damaging it and setting it on fire. The people in the mob were armed with weapons and the mob had also resorted to looting and arson on the nearby cabins. Subsequently, her family members had also come out on the road. According to this witness, the Hindu mob was attacking the Muslims and was pelting stones and was coming towards the Muslim chawls, but the police were not doing anything about it and were asking them (Muslims) as to why have they come out and were telling them to go inside. The police were firing at them and also lobbing teargas shells. In her testimony, the witness has also referred to Abid Ali being injured in the police firing. She, however, has also stated that he was lifted by youths from their chawl and put in a rickshaw and taken towards a field, which is a version that has not been stated by any of the witnesses, inasmuch as, majority of the witnesses have stated that Abid died on the spot. The witness has also seen Mustaq, Razak, Pirubhai and Khalid being injured by bullets within a short span of time. At the time when the firing took place she was near the spot.

109.54 From the testimony of the witness, it further comes out that after the firing, the Hindus entered their chawls and started ransacking them, and hence, the witness and others went towards Hussainnagar. After staying at Hussainnagar for around an hour, there was stone pelting from the S.T. Workshop, and hence, all of them went towards Jawannagar, after which she had seen a mob wherein she had seen Guddu Chhara and Suresh Langda. Thereafter they had taken shelter on a terrace of Gangotri Society and could hear screaming and shouting.

109.55 From the testimony of this witness it is apparent that while she is consistent in part, there are improvements in her statement to the extent that she has named more accused than those named by her in her police statement and has attributed specific weapons to them. The witness, however, is consistent regarding the presence of Guddu Chara (deceased) and Suresh Langda (A-22) in the mob, and in her cross-examination it has been elicited that she had seen both these accused near the water tank, where the people were set ablaze.

109.56 It has further come out in the cross-examination of the witness that the accused were very close to the terrace on which she had taken shelter and that the terrace was near the water tank. While it was dark, it was not so dark that they could not recognize anyone. However, insofar as accused No.26 Sahejad, accused No.25 Premchand Tiwari and Jaybhavani (deceased) are concerned, the witness had not named them in her statement dated 19.4.2002. The names of

these three accused have cropped up for the first time in her statement recorded by the SIT on 28.5.2008, viz. after more than six years from the date of the incident. Considering the fact that the police while recording the statement of this witness on 19.4.2002 has, in fact, recorded the names of two of the accused, there is no reason to believe that they would have not recorded the names of other three accused, namely, accused No.26 Sehjad Chara, accused No.25 Premchand Tiwari and Jaybhavani (deceased). Therefore, when these accused are named for the first time only before the SIT, after a period of six years, it would be hazardous to place reliance on the testimony of this witness for the purpose of establishing the complicity of such accused.

109.57 While it is true that there are certain improvements and embellishments in the testimony of this witness, there is no reason to discard her entire testimony and to the extent the witness is consistent in her version, her testimony deserves to be accepted. Through the testimony of this witness, the prosecution has duly established the presence of accused No.22 Suresh Langda near the water tank, where the people were set ablaze.

110. **PW-113 Jainulabedin Mohmedkhwaja Shaikh** has been examined at Exhibit 719. This witness has deposed that at the relevant time he was residing at *lane No.2 Hussainnagar*. His native place is Ranganpet, district Gulbarg, Karnataka State.

110.1 The witness has further deposed that in the year 2002 as well as at present he is earning his living by doing

tailoring work. He is residing at Naroda Patiya since his birth. He is illiterate. In February 2002, he was residing with his mother, wife Saliyabibi and his children. Two sons named Khwajahussain and Subhan and daughter Muskan.

110.2 The incident took place on 28.2.2002. On that day, there was a call for bandh. The call had been given by the Vishwa Hindu Parishad in the context of the incident that took place on 27.2.2002. On that day, he and all his family members were at home and he had not gone for his work.

110.3 In the morning at around 9:30 he had gone to the corner of the lane near their chawl near the S.T. Workshop when he came to know that a mob of Hindus was standing near the S.T. Workshop gate. They were shouting "kill, cut". Suddenly, they started advancing forward. The witness and others tried to prevent them and one or two persons even pelted stones to stop them, whereupon there was police firing from the opposite side. Three people were injured in the firing. Abid died on the spot. Piru and Mohmed also sustained bullet injuries.

110.4 Due to all this, they were frightened and went towards their house. At that time the mob also entered inside. It was around 12:00 in the afternoon.

110.5 The mob had become violent and was burning everything. Therefore, he took his wife and children and went towards Jawannagar.

110.6 He saw the mob as well as the people in the mob.

The people in the mob were armed with weapons like swords, pipes, pistol, etc. They could hear sounds of gas cylinders bursting. In the mob he recognised one person, viz., **Manoj Videowala**. He was saying "*Cut the miyas*". The mob was advancing towards the chawl. Thereafter he went home and from there he took his wife and children and went towards Jawannagar.

110.7 From Jawannagar there is a road for going inside the S.R.P. Quarters and he took his family and went in that direction. There the S.R.P. people did not let them enter. Thereafter, from there they went to Gangotri Society. It must have been evening time. There is a passage near Gangotri Gopinath and there were several Muslim women and children, etc. there and they too went there.

110.8 There, suddenly there was an attack. They were inflicting blows with swords and burning people alive after pouring petrol and kerosene. He ran away from there. His wife and children were burnt in front of him. He saw them all burning.

110.9 In this mob, he had seen **Bhavanisingh (deceased), Manu (A-28) and Guddu Chhara** in the mob. Manu had a pipe in his hand, Bhavani had a sword and he had not seen any weapon in the hands of Guddu Chhara. The persons who were burning were crying for help but no one was helping them. He too was standing there and when everyone was set on fire, he fled from there at which point of time someone hit him on his leg with a pipe. Thereafter he went inside S.R.P.

110.10 In this incident, his niece Noorjahan age 21 years, his sister's father-in-law Adamali, his wife Saliyabibi, his daughter Muskan age 4 years, his son Subhan age 3 months and his other niece Shahjahan, his nephew Shahrukh and his son Khwajahussain had been set ablaze. Out of whom, his son Khwajahussain, his niece Shahjahan and nephew Shahrukh escaped with injuries, whereas all the others died in the incident. His niece Noorjahan died on the spot. Similarly, his sister's father-in-law, his wife, his daughter Muskan and son Subhan also died on the spot.

110.11 Thereafter, he went towards the S.R.P. Quarters. At that time it had become dark and at that time he had gone inside the S.R.P. Quarters. At that time at night he could hear shouts of people from Jawannagar that those who are hiding should come out as vehicles have come to take them. Upon hearing this he too came out and went to Jawannagar and went to the Shah Alam camp in a vehicle. At the camp, he met his younger sister Shamim and she told him that his son Khwajahussain was badly burnt and that someone had put him in a vehicle. His legs, his back, his face and his ears had been burnt by somebody and he had sustained burn injuries. At that time, he too had sustained injury on his leg and had taken treatment at the camp.

110.12 His son told him that his niece, wife, etc., all of them, were dead. The witness has deposed that they had died in his presence, but his son also told him about it.

110.13 After a day or two he went to the Civil Hospital and

met his niece and nephew who had been admitted in a burnt condition and they too informed him that his relatives were dead.

110.14 Thereafter he had gone to the Civil Hospital once, to identify the dead bodies, but the bodies were not in an identifiable condition, and hence, he could not identify them. His house was vandalised and his things looted. He had received compensation for the damage as well as towards the death of his wife and children. He had also been given police protection. He had given a complaint at the camp which is produced with the list Exhibit 720. He had made an application to the SIT for recording his statement. He has identified his signature thereon. The contents are read over to him and he has admitted them to be true. The application is exhibited as Exhibit 721. Bhavani and Guddu are dead and the witness has identified both the other accused namely Manu and Manoj Videowala.

110.15 CROSS EXAMINATION: In his cross examination the witness has stated that Jawannagar is referred to as Khada by them. He has seen it. In the Jawannagar Khada after some houses there is an open ground. At that time the boundary of the S.R.P. Quarters was comprised partly of wire fencing and partly by a wall.

110.16 The witness has stated that he has seen the water tank and there is no large ground near it. There is a blind alley/passage. He does not know the measurement of the passage but says that it is neither too big nor too small. He has admitted that this passage is between Gangotri and Gopinath

Societies.

110.17 In his cross-examination, it has been elicited that from the water tank, he had gone towards the S.R.P. Quarters. Shahjahan, Shahrukh and Khwajahussain were near the water tank. He has admitted that he had left them and gone away. He had not entrusted the children to anyone. At that time all were being burnt in the fire. He had protected his life and fled.

110.18 In his cross-examination, it has further come out that he had visited the children at the Civil Hospital and after returning from there he had made a complaint application. He does not remember whether he had named any accused in the application Exhibit 721, but states that he had made it at Gandhinagar. The witness has been cross-examined as regards the manner in which the application was made.

110.19 The witness has admitted that his statement dated 19.4.2002 was read over to him when he went to record his statement before the SIT. He has voluntarily stated that the statement recorded by the SIT is true and correct.

110.20 The witness is sought to be contradicted qua the statements made by him in his examination-in-chief wherein he has referred to accused Manu being in the mob in the evening, as against his police statement dated 19.4.02 wherein he had stated that Manu Harijan resides at Gangotri and they were standing in front of his house and he had not let them stand there and had chased them from there. He had not let them take shelter there, and hence also, he believed that he was involved in the offence and had implicated him in the

mob.

110.21 The witness has denied that on the day of the incident he had gone near Manu Vaghri's house. He has stated that he does not know where his house is. He had denied that he had told him not to stand near his house and told him to move away. He has denied that while he was running towards Gangotri he had met Manu's family members. The witness is confronted with his statement dated 19.4.2002 wherein he had stated that upon their running towards Gangotri Society, Manubhai Vaghri's wife had told them to go away from there and from there they had gone and hidden in the passage of the water tank between Gangotri and Gopinath Society.

110.22 In his cross examination the witness has stated that in his application Exhibit 724 he had not named any Balwant and has voluntarily stated that by mistake the word Balwant had come out of his mouth. The witness has admitted that he had also given the names of the accused identified by him to the person who wrote the application. He has stated that the persons whom he has identified before the court were in the mob on the day of the incident. They were not looting his house.

110.23 The witness has admitted that he had not named any of the accused whom he had identified in the court in his complaint application Exhibit 724. The witness has voluntarily stated that this was because Exhibit 724 was merely an application and that he had stated everything at the Naroda Police Station but he does not know as to what they had recorded. The witness has further admitted that at the time

when Exhibit 724 was written he knew the name of Manu. The loss damage analysis form is given Exhibit 725. The witness says that he cannot say as to whether in the loss damage analysis form he had asked for punishing anyone as at present he does not remember what he had stated at the camp. He has voluntarily stated that at that time he was very disturbed and his mental balance was not being maintained and he does not clearly remember what was being written.

110.24 The witness has admitted that he has identified a person as Manu Vaghri. He has stated that he does not know that Vaghri and Harijan are different castes. He has denied that Manu Vaghri and Manu Harijan are different persons and has asserted that both are one and the same.

110.25 The witness has admitted that on the date of giving the complaint Exhibit 724, he knew Manu, Manoj, Bhavanisingh and Guddu by name. He has stated that he does not know if he has given their names in the complaint application Exhibit 724 and has voluntarily stated that at that time he was very disturbed and even today he does not remember what he had stated before the police and in his application but he remembers having given his statement before the SIT.

110.26 The witness does not remember as to whether he had given the names of Manoj Videowala and Bhavanisingh in his statement dated 19.4.2002. [Below this part the trial court has made a note to the effect that in the opening part of the statement dated 19.4.2002 the name of Balwant Chharo is written and the statement bears the signature of Shri P.N. Barot below and thereafter in the same paper in the recorded

statement it is clarified that Balwant Chhara is not the correct name and that the correct name is Bhavani and as per the clarification in the statement it can be seen that Balwant Chhara is Bhavani. Moreover, in the beginning of the statement there is a description of the physical features of Balwant Chhara and the fact that he was in the mob and the witness can identify him has been recorded. There is a further note that in this very statement there is reference to the wife of Manubhai Vaghri and there is also reference to Manu Vaghri.]

110.27 Thus, the trial court has referred to the contents of the police statement which is clearly contrary to the provisions of section 162 of the Code. Moreover, by adopting this approach, the trial court has sought to explain what has come out in the cross-examination of the witness with reference to the statement under section 162 of the Code, instead of leaving it to the prosecution to re-examine the witness to explain such circumstances, which is highly unfortunate. Firstly, because it is in complete breach of the provisions of section 161 and 162 of the Code, and secondly, in view thereof, the prosecution may be led into believing that since the explanation has already come on record, there is no need to re-examine the witness to explain the circumstances brought out in the cross-examination.]

110.28 In his cross-examination, the witness has stated that he does not know as to whether when he made reference to Balwant in Exhibit 724, he was aware that his name was Bhavani because he does not remember anything in that regard. The witness has voluntarily stated that as stated by

him earlier, by a slip of tongue he has stated Balwant instead of Bhavani. The witness has admitted that when he gave the complaint Exhibit 724, he knew Bhavani as well as his name.

110.29 In his further cross-examination, the witness has stated that he had seen Manoj on that day in the morning between 9:00 to 10:00. He had seen Manu at 6:00 in the evening at the scene of offence at Gangotri. Bhavani was also part of the mob in which Manu was there. He had also seen Guddu at Gangotri. The witness has admitted that he had seen all these three persons at Gangotri and nowhere else and he had seen Manoj in the morning and except for that he had not seen him.

110.30 In his cross-examination, the witness has stated that he cannot say as to whether he had seen the mob pelting stones from a distance of 100 to 150 feet. He has stated that this stone pelting was at people of their community. He has admitted that in defence against the stone pelting by the Hindu mob, some of the people belonging to their community had also pelted stones. The witness has denied that the police were firing where there was stone pelting and has voluntarily stated that the police was only firing at them. The witness has denied that the police firing was only where there was stone throwing by the Muslims and has voluntarily stated that it was the Hindu mob which was pelting stones. The witness has admitted that to oppose, the Muslims were also throwing stones and has voluntarily stated that with a view to resist the Hindus, one or two Muslims had pelted stones. The witness has denied that the police have fired only at those one or two Muslims who had retaliated against the stone pelting by

pelting stones.

110.31 The witness has stated that the police firing took place at around 9:00 to 10:00 in the morning. The witness is confronted with the following part of his police statement dated 19.4.2002 wherein he has stated that “... On 28.2.2002, I was at home. My brother together with the family members was also at home. In the morning at around quarter to ten, upon coming to know that huge mobs of Hindus started gathering on the highway opposite Noorani Masjid and were pelting stones at their Muslim colony, the people of their chawls out of fear started running helter skelter and everyone came out of their houses into the lanes of their chawls. From the road one could hear sounds of commotion, shouting, police firing and bursting of gas cylinders. At around twelve o'clock in the afternoon, from the side of the highway road, a huge armed mob comprised of thousands of people entered their chawls through the S.T. Workshop compound wall lane with weapons and petrol and kerosene cans. At that time the mob of Hindus was pelting stones at their chawls and to resist the same, the people of their chawl resorted to cross stone pelting and at that time during the police firing, three Muslim youth were injured. A youth named Abid died on the spot. Pirubhai sustained a bullet injury on his leg and Mahammad on his hand.....” The witness has stated that the facts recorded are partly correct and the rest of the facts have been written down by the writer on his own. The witness has stated that he had not narrated any facts about the mobs having entered the lanes. The witness has stated that many facts not stated by the witnesses were being written down and in the complaints of many persons false facts have also been written.

110.32 The witness has stated that he does not know whether he has stated that the mob of Hindus came near the S.T. Workshop at 9:30 in the morning. The witness has admitted that the mob had not come to their chawls before 12 o'clock and that till then no incident had taken place in their chawls. The witness has denied that there was stone throwing from the chawls and has stated that the stone pelting took place at the corner.

110.33 The witness has admitted that when the mobs entered, the police were also amongst them. The witness has stated that he does not know as to from the mob who had fired. The witness has denied that Abid was hurt by a bullet in the chawl.

110.34 In his cross-examination, an omission has been brought out as to his police statement dated 19.4.2002, to the effect that the witness had not stated that "*in this mob I had seen a person they were coming forward towards the chawl*" as stated in paragraph 10 of his examination-in-chief in his police statement. The witness has stated that since these facts were not recorded, he was required to go to the SIT.

110.35 The witness has admitted that on that day he was at Jawannagar till 6 o'clock in the evening. The witness has stated he does not know where Navyug School is situated. He has not seen as to whether this school is in the Khada. The witness has admitted that they had fled from Jawannagar to Gangotri and that from there he had gone and hidden in the passage behind the water tank of Gangotri Society. The

witness has denied that he had stated that at that time a mob in thousands had rushed from the direction of Navyug School.

110.36 The witness has denied that he was not beaten with a pipe and that he had twisted his leg. He has denied that in his statement dated 19.4.2002 he has stated that his leg was twisted.

110.37 The attention of the witness has been drawn to certain portions of his statement dated 19.4.2002; however, such part of his statement is not referred for the purpose of contradicting anything stated by the witness, and hence, is not admissible in evidence. A specific question has been put to the witness as to where he had seen Balwant Chhara, in response to which he has stated that he had not seen Balwant but had seen Bhavani. The witness has further stated that he does not know if Balwant Chhara was residing in Gangotri Society. He has admitted that he had stated that Balwant Chhara is fat in appearance and keeps long moustaches and that if he is shown to him, he can identify him, but has voluntarily stated that he had thereafter said Bhavani and not Balwant.

110.37 The witness has been confronted with his statement dated 19.4.2002 to the effect that he had not stated that the S.R.P. people had not permitted them to enter. A further contradiction is sought to be brought on record in connection with the last two lines in paragraph 13 of this deposition, to the effect that he had not stated before the police that thereafter he had gone inside S.R.P.

110.38 The witness has stated that he does not know

whether the Muslim chawls had been burnt after 6:00 in the evening and has voluntarily stated that he does not know because he was at Jawannagar. The witness has admitted that one cannot see the Gangotri Society passage from Jawannagar and that from the place where the incident took place, one cannot see his chawl.

110.39 The witness has stated that he does not know whether the incident at the chawls took place between 6:00 to 8:00 in the evening but has voluntarily stated that the incident at Gangotri took place between 6:00 to 8:00. The witness is then sought to be confronted with his statement dated 19.4.2002, to the effect that he had stated therein that during 6:00 to 8:00 in the evening the incident of setting on fire the houses in the chawls took place. It may be noted that the witness is not sought to be contradicted as regards anything stated in his primary statement. The witness was first put a general question in the cross-examination and was then sought to be confronted with his statement under section 161 of the Code, and by this manner of cross-examination, the defence had sought to bring on record the facts stated by the witness in his statement recorded by the police, which is impermissible in law, in view of the bar contained in section 162 of the Code.

110.40 To bring out the omissions and contradictions in the testimony of this witness, the defence has cross-examined PW 178 Shri P.N. Barot the then Investigating Officer.

110.41 Shri P. N. Barot the Investigating Officer has admitted that he has recorded the statement of this witness on

19.4.2002. The Investigating Officer has admitted that this witness had stated before him that they were standing in front of the house of Manu Harijan, who resides at Gangotri Society, but he had not let them stand there and had driven them away from there. Since he did not let them take refuge there, under the belief that he was also involved in the mob, he had given his name in the form. Thereafter, while they were trying to flee from Jawannagar towards Gangotri Society, on the way Manubhai Vaghri's wife told them to go away from there, and from there, they had gone and hidden in the passage of the water tank between Gangotri and Gopinath. Several other people were wearing khakhi shorts and they had swords, pipes, sticks, rags and cans of petrol in their hands. Out of the people in the mob, he does not know any person by name. The Investigating Officer has admitted that this witness has stated such facts in the statement recorded by him.

110.42 Various other extracts of the police statement of the witness have also been put to the Investigating Officer; however, since such facts have not been put to the witness to contradict any part of his primary statement, the same are not admissible in evidence.

110.43 The Investigating Officer has denied that this witness in his first statement recorded by him had not named Bhavani and had given his name in the subsequent statement. The Investigating Officer has stated that his statement was recorded on the same day and below the statement, the explanation of the witness was recorded wherein he had clearly given the name of Bhavani. The Investigating Officer has clarified that the witness had stated before him that the

correct name is Bhavani and not Balvant Chhara.

110.44 The Investigating Officer has admitted that he has not verified as to whether Balvant is the same as Bhavani for the reason that he did not find it necessary as the witness had clarified that the correct name was Bhavani and, therefore, there was no need for him to make any inquiry in that regard.

110.44 The Investigating Officer has admitted that no test identification parade of Bhavani was carried out through this witness. He has also admitted that this witness has not named Manoj in the statement recorded by him. The Investigating Officer has admitted that this witness in the statement recorded by him had not stated that he had seen Guddu in the evening mob.

110.45 The contents of the first two lines of paragraph 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The Investigating Officer has admitted that in the statement recorded by him, the witness has not stated the facts stated by him from the fifth line to the eighth line of paragraph 10 of his examination-in-chief, wherein he has stated that in the mob he had seen one person, that is, Manoj Videowala, who was saying "*hack the Miyabhais*", the people in the mob were going towards the chawls. The Investigating Officer has further admitted that the witness had not stated before him that they were not permitted by the S.R.P. people to enter inside and that thereafter he had gone to S.R.P.

110.46 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), in his cross-examination has admitted that he has recorded the statement of this witness on 30.5.2008. Certain extracts of paragraph 100 of the deposition of the witness are read over to the Investigating Officer, wherein the witness had stated that at around 9:00 to 10:00 in the morning, he had gone near the S.T. Workshop gate. The Investigating Officer had admitted that the witness had not stated such facts in the statement recorded by him. Insofar as this part of the testimony of the witness is concerned, it has been brought out in the cross-examination of the witness. Under the circumstances, the witness could not have been contradicted in connection with what was elicited in his cross-examination, and hence, the question of proving such contradiction through the testimony of the Investigating Officer would not arise.

110.47 SUBMISSIONS: The learned counsel for the appellants submitted that the witness has been residing at Naroda Patiya since birth, viz. since twenty nine years prior to the incident. It was submitted that this witness has stated that particularly in the chawls of Hussainnagar and Jawannagar as well as Jawaharnagar Khada, till the evening hours, viz. 5:30, no major incident of killing people had taken place. As far as accused-Manoj is concerned, for the first time before the SIT, the witness has shown the presence of Manoj uttering certain words which are offensive to the other community. It was submitted that the witness has merely referred to having seen Manoj in the mob either in the morning or noon. No other role has been attributed to him. It was pointed out that from cross-examination of the witness it has come out that he had seen Manoj only in the morning at the S.T. Workshop gate from 9:30

to 10:00. Manoj has not been named in the evening incident

110.48 It was submitted that this witness has involved, in all, four persons, out of whom two are dead; that leaves Manoj-accused No.41 and Manubhai-accused No.28. It was submitted that the witness has filed printed complaint Exhibit 724 and the contents of the complaint according to this witness were stated by him as per paragraphs 40, 45 and 56 of his deposition, wherein he refers to one Balwant, whereas accused No.41 and accused No.28 were not named.

110.49 Referring to the contents of paragraph 13 of the examination-in-chief of the witness, it was submitted that he has referred to Manu without further description like the name of his father, surname, etc. Reference was made to the contents of paragraph 44 of his cross-examination, wherein the witness has been confronted with his statement dated 19.4.2002, which indicates that he had named Manu based only upon inference or doubt as stated therein.

110.50 It was submitted that insofar as Manoj is concerned, the very fact of the witness going to the road at the corner of the S.T. Workshop has not been stated by him either before the police on 19.4.2002 or before the SIT and this fact of his having gone on the road and seen something near the S.T. Workshop has come for the first time before the court. It was submitted that the witness has admitted that he had seen Manoj between 8:00 to 10:00 near the S.T. Workshop road (in paragraph 68), and the role that he has attributed to him in the examination-in-chief is that he had seen Manoj in the mob and he was uttering words like 'cut the Miyas'. It was pointed out

that such allegations made in paragraph 10 of his examination-in-chief, were not stated by the witness before the police, which the witness has admitted in paragraph 77 of his cross-examination. It was submitted that this fact has come for the first time in the statement recorded by the SIT. It was submitted that even if these allegations are to be believed, it pre-supposes a situation where he had gone on the road. If he had not gone on the road he could not have seen him. This line before the SIT is therefore, false, for the reason that the first line of paragraph 7 of his examination-in-chief has not been stated before the police or before the SIT.

110.51 Referring to paragraph 72 of his cross-examination, it was submitted that before the police, the witness has not mentioned about having gone on the road, which omission has been proved through the testimony of the Investigating Officer. Therefore, as far as Manoj is concerned, the witness is apparently making an incorrect statement about his having seen him uttering words.

110.52 It was submitted that it is highly doubtful that the witness has gone on the road and hence he could not have seen accused-Manoj. It was submitted that while this witness has not attributed any weapon to Manoj, PW-104 has stated that Manoj had a revolver and had resorted to firing. Therefore, there are major discrepancies in the testimonies of the witnesses. It was submitted that there are material contradictions between his deposition before the court and the police statement dated 19.4.2002, complaint Exhibit 724, and statement dated 30.5.2008 recorded by the SIT, regarding his presence near the S.T. Workshop wall, near the highway. It was

submitted that it is also relevant to note that the witness has not stated anything about the attack on the Noorani Masjid and burning of tea stalls and other cabins around the Noorani Masjid and the direction from which the mobs came, which clearly shows that he was not present at the place where he, in his examination-in-chief, claims to be during the morning incident. It was submitted that insofar as the evening incident is concerned, it is highly doubtful whether he had seen any of the accused at the passage at the time of the incident, because in his deposition in paragraph 12 he has stated that he immediately ran away from the place once the attack started with swords and burning of people. It was submitted that the witness also does not say from where the mob came and started the sudden attack. It was submitted that in light of his statement in paragraph 68 of the deposition, it is apparent that he saw all these three accused at Gangotri and not at the passage. It was submitted that the witness has not alleged any overt act against any named accused. Therefore, his evidence cannot be relied upon to implicate the accused named by him, either in the morning incident or in the evening incident.

110.53 ANALYSIS: The record of the case reveals that two statements of this witness came to be recorded, one on 19.4.2002 by Shri P.N. Barot and the second by the Investigating Officer (SIT). This witness has named, in all, four accused, out of whom two viz. Bhavani and Guddu are dead. The two other accused named by him are Manoj Videowala (A-41) and Manu Harijan (A-28). He has also identified them before the court. Insofar as the complicity of these two accused in the offence in question is concerned, the witness has admitted that in his police statement dated 19.4.2002, he

had not stated the facts stated by him in paragraph 10 of his examination-in-chief wherein he has stated that in the mob he had seen one person; viz., Manoj Videowala who was saying "*Hack the miyabhais*"; the people in the mob were advancing towards the chawl. Thus, an omission amounting to a contradiction has been brought out that the witness had not named accused No.41 Manoj Videowala in his first available police statement. Thus, this accused has been named by the witness for the first time in his statement recorded by the SIT in the year 2008.

110.54 Insofar as the role of Manu Harijan is concerned, it has been brought on record in his cross-examination that this witness in his police statement had stated that since Manu had chased them away and not let them stand in front of his house, he had thought that he too must be involved in the mob. Thus, the witness has involved this accused on the basis of presumption and not because he had seen him commit any offence. In his cross-examination it has been elicited that he had seen Manu at 6 o'clock in the evening at Gangotri Society and Bhavani was also in the same mob. He had also seen Guddu at Gangotri and that except for seeing these accused near Gangotri, he had not seen them anywhere else. It is a matter of record that accused No.28 Manu is a resident of Gopinath/Gangotri Society, therefore, his presence at the spot, in the absence of any criminality being attributed to him, can be said to be natural. Therefore, the testimony of this witness would not help the prosecution in proving the charge against the named accused. However, insofar as the testimony of this witness regarding the manner in which the incident had taken place and he having witnessed his wife and children being

burnt to death by the mob is concerned, no contradictions have been brought out as to his previous statement recorded by the police. Therefore to extent the witness has deposed regarding the spot where the incident took place and the manner in which the offence was committed by the mob, the version given by the witness deserves to be accepted.

111. **PW-115 Ibrahim Chhotubhai Shaikh**, aged 43 years, has been examined at Exhibit-747. This witness has deposed that he is residing at *Lane No.3, Hussainnagar, Next to S.T. Workshop, Naroda Patiya* since his birth. He used to drive a luxury bus.

111.1 At the time of the incident, he, together with his wife Shamimbanu and their five daughters were residing there. His mother and his younger brother used to stay together, while his father had passed away long years ago.

111.2 The incident took place on 28.2.2002. At around 9:30 in the morning, he was at home when his wife woke him up and told him that a mob had come outside and was shouting, kill, cut. Thereafter, he went out on the road near the S.T. Workshop to watch. There he saw that a mob of Hindus had gathered there. The mob had gathered near Noorani Masjid and the persons in the mob had resorted to vandalizing near the masjid and inside the masjid and were shouting, kill them, hack them.

111.3 This mob was led by **Bipin Autowala (accused No.44)**, **Murli Sindhi (accused No.2)** and **Guddu Chhara**. All these three persons were instigating the Hindu mob and

were shouting, "*kill, cut*". On seeing this, he was frightened and hence, he went back to home. At home, he heard the sounds of firing. The mob entered their chawl. They were burning the shops on the road near his house.

111.4 After returning home, he went and sat in the house of Jadikhala in the opposite chawl and stayed there till 1:30 in the afternoon.

111.5 Thereafter, upon the mob coming inside the chawls, he took his family and went and sat in the two storeyed house of one Pinjara. He stayed there till the night, and at night, he, together with his family, went in the vehicle which came to take them to the Shah Alam relief camp.

111.6 At the Shah Alam relief camp, the police had recorded his statement in connection with the incident. Thereafter, he was called by the SIT, where his statement was again recorded.

111.7 The witness has stated that he can identify the persons he had seen in the mob. Since Guddu Chhara is dead, the witness has identified Murli Sindhi (accused No.2) and Bipin Autowala (accused No.44) before the court.

111.8 CROSS EXAMINATION: The witness is cross-examined with regard to his acquaintance with Ismailbhai Chhotubhai and Habibkhan alias Asif alias Raju Achhankhan Pathan. The witness has admitted that Ismailbhai Chhotubhai is his brother. He has stated that he does not know any Ranjitsing Nathusing Chauhan. He has admitted that a case

was conducted against Ismailbhai Chhotubhai and Habibkhan alias Asif alias Raju Achhankhan Pathan for the charge of murder at the Uday Gas Agency pit area on 28.2.2002. He has stated that he does not know that Shivendra Nathusing was the complainant in this case. The witness has denied that on every date in the case, he used to go to the court to meet his brother at the court. He has stated that he knows that his brother and Habibkhan have been acquitted by the court. He does not know whether the Government has preferred an appeal against such decision. The witness is cross-examined with regard to the said case and the arrest of his brother and Habibkhan in connection with the said offence.

111.9 The witness has stated that he was not with Ismailbhai and Habibkhan at the relief camp and that he was at the camp with his family and not with the families of Habibkhan and Ismailbhai and that they were residing separately in the camp. The witness has voluntarily stated that after his marriage, he is residing separately and he does not have good relations with his family members.

111.10 The witness is cross-examined with regard to the topography of the area. The witness has stated that on the day of the incident, he had not seen his brother Ismailbhai on the Uday Gas Agency road, near the S.T. Workshop or near Noorani Masjid, and that during the entire day, he had not seen his brother except when he met him at the camp at night. In his cross-examination, it has come out that he came to know about the murder of Ranjit around two months after the day of the incident and prior thereto, he had no talk with his brother with regard to the murder. The witness is cross-examined with

regard to a Muslim recklessly driving a truck wherein two Hindus died after Ranjit's incident and has voluntarily stated that he had only heard about it. The witness is shown a complaint application Mark 720/2 and he has admitted his signature thereon, but does not know when and where he had signed it. The witness has admitted that he had signed it when he was at the Shah Alam camp. The complaint application is given Exhibit-749.

111.11 [It may be noted that the witness has only identified his signature on the application and the contents thereof are not read over to him, nor has he admitted the same despite which the entire application has been exhibited.]

111.12 The witness does not know as to whether the complaint application was addressed to the Police Commissioner and as to who had brought this printed complaint application to him and that he does not know as to who got his signature thereon. He has admitted that he had not read anything that was printed or written in the complaint application Exhibit-749 and that he had not tried to understand or read what was written in the application.

111.13 The witness has admitted that except for his signature, he does not know the contents of the application, Exhibit-749.

111.14 The witness has stated that he does not know how to read, and therefore, has got the application written without reading it. The contents of the application Exhibit-749 are read over to the witness who has stated that he has not made any

such complaint application. He has admitted that none of his family members have sustained any kind of injury in the incident.

111.15 The witness has admitted that when he left Jadikhala's house, at that time, Jadikhala also found that there was risk to her life, and hence, she had left her house together with her family members. He has denied that after coming out from there, they had all gone to the Pinjara's house and has voluntarily stated that only he and his family had gone to the Pinjara's house. The witness has deposed that he does not know as to where Jadikhala had taken shelter thereafter. He has stated that after he reached the camp, he did not have any conversation with Jadikhala for the reason that she was dead.

111.16 The witness has stated that he does not know as to whether anything had happened to Jadikhala till 1:30, for the reason that when they went to her house, her son was at home. The witness has voluntarily stated that at that time, they were so confused that they could not understand what to do and what not to do. The witness has admitted that after 1:30 to 2:00 in the afternoon, he had not seen Jadikhala. He has admitted that the police came to question him at the Shah Alam relief camp and has also stated that he had no complaint against the police. The witness has denied that he had started taking steps for making an application for compensation and has voluntarily stated that he had not made any application and that the people from the Collector's office had come and recorded his statement and he had received compensation.

111.17 The witness has stated that he had not gone to Gandhinagar for recording his statement by the SIT and that his statement was recorded in their area. He does not remember whether he had made any application to the SIT. He has stated that the SIT officers had recorded their statements at a school by the name of Ikra which is Nazir Master's school.

111.18 The witness has denied that Nazir Master had come for recording the statement and has stated that the police had called him.

111.19 The witness is confronted that his statement dated 18.6.2008 recorded by the SIT to the effect that he had stated that his earlier statements dated 13.4.2002 and 11.6.2002 were read over to him and that they were correct and proper. The witness has voluntarily stated that he remembers that in all the statements read over by the SIT, certain names were incorrect and he had not stated such names and he had also stated all the facts stated by him in the earlier statement. The witness has admitted that in the statement he has not stated that he had seen Sahejad Chhara and Bhavani Chhara in the mob and has stated that somebody in the camp must have written it down. [This part of the statement of the SIT could not have been brought on record as the same does not contradict anything which is stated by the witness in his evidence.] The witness has admitted that while he was standing near the S. T. Workshop, the Muslims from their chawl had gathered together and were attempting to pelt stones in defence.

111.20 The witness has denied that except for the stone pelting incident, he had not seen anything else and has

voluntarily stated that the mob had resorted to arson and he had seen everything else. They were burning the mutton shop which is next to Noorani Masjid. He had also seen that they were causing damage and were shouting "kill, cut". The witness has admitted that except for this, he had not seen anything else.

111.21 The contents of the sixth, seventh and eighth lines of paragraph 3 of the examination-in-chief of the witness are read over to him, wherein he had stated that this mob had gathered near Noorani Masjid and the people of this mob were damaging near and inside Noorani Masjid, to the effect that these facts have not been stated by him in the statement recorded by the police.

111.22 The witness has admitted that he has not seen the mob inside the Masjid. The witness is confronted with his previous statements dated 13.4.2002 and 11.6.2002 to the effect that he has not named accused Murli Sindhi in those statements.

111.23 The witness has admitted that he does not have any social or other relations with Guddu Chhara and Murli and does not have any kind of business relations with him and had no occasion to talk with each other. He has admitted that no test identification of these three accused have been carried out by the police and that he had no occasion to identify the accused prior thereto.

111.24 The witness has denied that in his police statement, he has not stated the exact place and time and which accused

he had seen.

111.25 In the cross-examination of this witness it has come out that after he left his house at 11 o'clock, he had not seen the mobs. After 11 o'clock, he was at Jadikhala's house, and from there, he had gone to the Pinjara's house and was sitting there. The witness has admitted that he had not seen the accused named by him after 11 o'clock. He has admitted that the mob from the direction of Krushnanagar had pelted stones at them and that they too had resorted to cross-stone pelting.

111.26 The witness has stated that in his cross-examination, it has further come out that he had seen all the accused in the mob in the morning. He had seen Bipin Panchal leading the mob from Krushnanagar and was shouting "kill, cut". He had seen Murli Sindhi in the Naroda Patiya mob and he had seen Guddu Chhara in the Krushnanagar mob. He has stated that these accused were all in forefront of the mob. The witness has admitted that the accused named by him had taken a lead and were pelting stones at Noorani Masjid. He has admitted that they were in the front of the mob which was pelting stones. The witness has admitted that in this mob, he had seen the people wearing shorts and undershirts with yellow or saffron bands on their heads with "Jay Shri Ram" written on it.

111.27 The witness has denied the suggestion that he has not seen any incident as stated by him in his examination-in-chief with his own eyes and that he had not seen the accused named by him at the spot, and that at the instance of the people of his community, he was falsely implicating the

innocent persons.

111.28 The witness is cross-examined at length on the topography of the area and the direction from which the mobs came. The witness is also cross-examined with regard to the rickshaw which he was driving prior to the incident, etc.

111.29 The defence has cross-examined the concerned Investigating Officer/assignee officer who recorded the statements of this witness, to bring out the omissions and contradictions in the testimony of the witness.

111.30 PW-178 Shri P. N. Barot, the Investigating Officer, has admitted that he has recorded the statement of this witness on 13.4.2002. Certain extracts of paragraph 3 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein it has been stated that this mob had gathered near Noorani Masjid. The people in the mob were ransacking near the masjid and inside the masjid. The Investigating Officer has admitted that the witness has not stated such facts before him. He has further admitted that the witness has not named Murli Sindhi in the statement recorded by him. The Investigating Officer has denied that the witness had not stated the exact place and time when he had seen the accused. The Investigating Officer has stated that it is clear that the time was 10 o'clock in the morning, whereas he had seen Guddu Chhara and Bipin Auto Centrewala at the corner of the S.T. compound wall.

111.31 PW-282 Shri K. S. Desai, the assignee officer has, in his cross-examination admitted that he had recorded the

statement of this witness on 11.6.2002. The assignee officer has admitted that when he went to record his statement, he had not gone with his complaint, nor had he recorded the statement of the witness in the context of such complaint because he had not received any such instructions.

111.32 The contents of the deposition of this witness, wherein he had stated that thus, the mob had gathered near Noorani Masjid and the people in the mob were causing damage near the masjid as well as inside the masjid, are brought to the notice of the assignee officer, to the effect that such facts have not been stated by him in the statement recorded by him. The assignee officer has clarified that such facts were not stated by the witness in the statement recorded by him, because the witness had only given a statement regarding the loss/damage sustained by him. The assignee officer has admitted that this witness has not named any accused before him.

111.33 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), in his cross-examination, has admitted that he has recorded the statement of this witness on 18.6.2008. He has admitted that this witness had stated before him that his statements dated 13.4.2002 and 11.6.2002 were read over to him and that they are correct and proper. That the witness had received police protection which still continues and that he was not threatened by any accused or any other person. In the opinion of this court, these facts stated by the witness in the statement recorded by the Investigating Officer, have not been referred to contradict any part of the testimony of the witness, and therefore, this part of the evidence of the Investigating

Officer is hit by the provisions of section 162 of the Code is not admissible in evidence.

111.34 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is the brother of one Ismail Chhotubhai, who along with one Habibkhan alias Asif Acchankhan Pathan (PW-213) was tried for committing the brutal murder of Ranjitsinh Nathusinh. In the said incident, Ranjit was dragged into the chawls by the members of the minority community and his body was mutilated, his face was cut and eyes were gorged out and his body was thrown on the road along with the incident of deliberate attack on the members of the Hindu community by ramming a Tata 407 truck, wherein a person was killed and some persons were injured which served as a catalyst for fomenting trouble. It was submitted that this witness has claimed knowledge about the occurrence of this incident. It was submitted that this witness in his statements recorded by the police, has not mentioned the name of accused No.2 Murli Sindhi and has only named Guddu and Bipin as having instigated the mob. However, before the SIT, he has improved the version and new facts are stated and Murli Sindhi's name is added. It was submitted that the witness is cross-examined as regards the complaint Exhibit-749 dated 6.3.2002 which is a printed complaint where his signature thereon is admitted, but the witness has pleaded complete ignorance about the contents thereof. It was submitted that this clearly indicates that if read in juxtaposition with the testimony of the other witnesses, attempts were made to take the signatures of the victims on some printed documents which are projected as the victim's complaint without such complaints having been dictated by

the victims themselves. Such attempts obviously are made at the instance of third parties, NGOs and voluntary organizations to incorporate false facts and to implicate some selected persons who they wished to be tried.

111.35 It was pointed out that this witness has categorically stated that he had given about fifty signatures to different individuals; however, he has no knowledge as to which document he has signed or what were the contents thereof. It was submitted that this goes to show as to how the victims like the present witness as well as similarly situated persons were misled by certain individuals and organizations. It was submitted that this witness has categorically stated in his statement before the SIT that the names of two individuals, viz., Sahejad Chhara and Jaybhavani were never given by him, but someone at the camp may have added such names, which further goes to suggest that the names of accused persons were added at the whims of certain individual organizations. It was submitted that this witness is an accused in the complaint given in connection with the incident of burning of the showroom of accused No.44 Bipin Panchal on the day of the incident.

111.36 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that reference to Ranjit and the involvement of this witness's brother in his murder would not be of any advantage to the accused and is also in no manner relevant so far as the prosecution case is concerned. It was submitted that at the most, the incident of Tata 407 may be a circumstance which may have aggravated the feelings of the members of the mob and therefore, they may have taken rapid

action of damaging the properties of Muslims. It was pointed out that in the statement dated 13.4.2002; the witness has named two of the accused. It was submitted that the cross-examination to discredit the version of the witness was not in accordance with law inasmuch as the procedure as provided under section 145 of the Evidence Act was not duly complied with. It was submitted that insofar as the statement recorded by the SIT is concerned, no omission has been brought out qua the said statement and therefore, there is no omission in accordance with law. It was submitted that the witness may not have named two accused before the police, but he has ultimately named him before the SIT and therefore, the omission as to the police statement cannot be said to be an omission proved in accordance with law inasmuch as such omission is without reference to the further investigation made under section 173(8) of the Code.

111.37 It was submitted that in his statement dated 13.4.2002, the witness has specifically stated that Bipin and Guddu were in the mob at around 10 o'clock in the morning, while in his statement dated 17.6.2008, he has also named accused No.2 Murli. It was argued that therefore, there is no major contradiction about seeing the mob in the morning, damaging the properties and out of three accused, names of two accused are also given while the same thing is clarified and one name is added in 2008 during further investigation. It was submitted that therefore, it cannot be said to be a material contradiction going to the root of the matter.

111.38 It was submitted that no major contradiction has been brought out in the testimony of this witness and his

deposition is truthful and consistent. It was submitted that except not naming accused No.2 Murli in the year 2002, the version given by the witness is totally consistent and credible.

111.39 ANALYSIS: This witness is the brother of Ismail Chotubhai Shaikh, an accused in the Ranjit murder case. After considering the omissions in his police statement dated 13.4.2002, from the testimony of this witness it emerges that he came out on the road in the morning and saw a mob and he saw **Bipin Autowala** and **Guddu Chhara** leading and instigating the mob. Being afraid, he went back home where he heard sounds of firing. The mob entered their chawl and the shops near his house on the road were being set ablaze. He first went to Jadikhala's house. Upon the mobs entering the chawls, he took shelter in the Pinjara's house. He has seen the mob only in the morning when he came on the road and not thereafter. The witness has not named Murli Sindhi at the relevant time and has named him for the first time before the SIT. Considering the fact that the police have in fact taken down the names of the other two accused, there is no reason to believe that they had not written the name of Murli Sindhi though stated by the witness. Therefore, to the extent the witness implicates Murli Sindhi, his testimony cannot be accepted. However, insofar as his testimony to the extent noted hereinabove is concerned, the same is consistent and credible.

111.40 Through the testimony of this witness, the prosecution has established the presence of Bipin Autowala (A-44) and Guddu Chhara (deceased) who were leading and instigating the mob on the road in the morning on the day of

the incident.

112. **PW-116 Lalabhai Nizambhai Luhar**, aged 45 years, has been examined at Exhibit-753. This witness has deposed that in the year 2002, he was residing at *Lane No.3, Hussainnagar, Next to the S.T. Workshop, Naroda Patiya, Ahmedabad*. At the relevant time, he was working as a blacksmith near the Naroda Kabrastan. He was residing with his family at Naroda Patiya since about ten years prior to the incident.

112.1 At the time of the incident, he was residing there with his family which was comprised of his wife Rukshana, his four daughters, viz., Rizvana, Rehana, Heena and Simran and his son Rizvan, in all five children.

112.2 He was residing in a house of his ownership which was comprised of two rooms with tin sheet roof.

112.3 The incident took place on 28.2.2002. On the day of the incident, there was a call for bandh and he was at home. At around 9:00 to 9:30 in the morning, he came out to the corner of the S.T. Workshop, outside his chawl, where there was a big mob which was shouting, "Shut down! Shut down!" and were forcibly getting the shops near the masjid closed. Thereafter, the mob started pelting stones whereafter, he returned home to his children.

112.4 The witness has deposed that he took his children and went to the lane behind. Being afraid that the mob would come there, he had locked his house and gone away. He took

his wife and children to the lane on the rear side and was hiding there. Thereafter, at around 12:30, the mob came and started looting, assaulting and burning. Thereafter, they went from there to the lanes on the rear side. They kept on running and the mob kept following them and they kept hiding.

112.5 In this manner, they reached the society. By then, it was around 5:00 to 5:30 in the evening. Thereafter, they went on a terrace and sat there with the family. After going on the terrace, he saw the mob coming from the side of the highway. There were many persons in the mob, however, he knew twelve persons in the mob and identified them.

112.6 Some of the persons in the mob had spear, some had swords, some had kerosene for burning, some had pipes and some had sticks in their hands.

112.7 In this mob, he saw **Ganpat Chhara (accused No.4), Vikram Chhara (accused No.5), Rajesh Pangalo (accused No.6), Champak Barot (accused No.7), Amrut Chhara (accused No.9), Suresh Langdo (accused No.22)** and **Kaptan Chhara (accused No.11)**. There were also other people, whose names he does not remember now since a long time has passed. In case, he remembers their names, he would give such names. The witness has stated that he had clearly seen that Suresh Langda had a spear and Champak Barot had a stick.

112.8 The persons in the mob were beating, looting and burning. On all four sides, there were a large number of people and they were very frightened and hence, they remained at

the terrace. In this manner, it became 11:00 to 11:30 at night, when the police vehicles came and took them safely to the Shah Alam camp.

112.9 His house had been burnt by the persons in the mob and his household goods had been looted by them.

112.10 One and half months after the riots, the police had recorded his statement by calling him to the Naroda Police Station.

112.11 He had stayed in the relief camp for about four to five months, whereafter, he had returned home. It appears that the witness together with his family has thereafter gone back to Rajasthan.

112.12 The witness has stated that he can recognise the persons whom he had seen in the mob. However, he has stated that in view of the fact that eight to nine years have passed and there are physical changes in their appearance, he cannot identify any of the accused.

112.13 CROSS EXAMINATION: The witness has initially been cross-examined with regard to the topography of the area. The witness has denied that he had only heard about the incident that took place on the road. The witness has admitted that on that day when he came to the corner of the S.T. Workshop and he had seen the mob, he had stayed there for only two to five minutes. He has admitted that during these two to five minutes, the people in the mob had not come towards him. The witness has voluntarily stated that destruction was going

on and he had not gone ahead.

112.14 The witness has denied that when he locked his house and went away, at that time the mob had not come. The witness has voluntarily stated that upon coming to know that the mob was coming inside, he had left his house. He has stated that he has left his house at around 11:30. He has admitted that till they were hiding in the lanes, his house was not damaged.

112.15 The witness has admitted that when they came out, the mob was very huge and they could not identify any one and that they were concerned with protecting their lives. He has stated that with a view to protect themselves from the mob, after 11:30 in the afternoon, they were hiding under the stair case and were changing lanes and were hiding in the corners. He has voluntarily stated that he cannot specifically say as to how many families were hiding with him at that time, but he has stated that there were young and old people.

112.16 The witness has admitted that when he left Hussainnagar at around 11:30, at that time and thereafter none of his family members was injured. He has voluntarily stated that there were incidents of other people being killed and burnt; however, he was concentrating on protecting his family members. The witness has stated that he cannot say as to how many people were there in the mob, but he could only see people and people in the mob.

112.17 The witness has stated that the mob was very large and has voluntarily stated that he did not fall in their hands

and that had he come within their reach ,they would have killed him. The witness has admitted that the mob was even coming to the place where they were hiding and he has voluntarily stated that therefore, they kept on changing places. Till 3 o'clock they kept on hiding like this and thereafter they went to the society. The witness has stated that at present he cannot say as to in which society they had hidden themselves, but it might be Gopinath Society. They had hidden on the terrace with the family.

112.18 The witness has admitted that the residents of the society did not do anything to them and he has voluntarily stated that they were afraid of the mobs and not of the residents of the society. The witness has stated that he cannot say as to how many people had taken shelter on the terrace, but he has stated that the entire terrace was filled with people, who had come to take shelter. He has admitted that from that terrace one could see the open ground on the rear side.

112.19 The witness has denied that he was on the terrace for one or two hours and he has voluntarily stated that they had climbed on the terrace at around 5:00 to 5:30 and till the police vehicles came to take them at 12 o'clock at night, they had remained on the terrace. He has admitted that while they were on the terrace no person from the mob had come on the terrace. The witness has voluntarily stated that there were disturbances on all the sides and they could hear sounds of gas cylinders bursting and women shouting 'help, help'. He has stated that for their safety, till the police arrived, they did not get down from the terrace. The witness has denied that he had not seen any incident as stated by him on the day of the

incident and has admitted that no test identification parade of the accused was conducted by the police.

112.20 The witness has denied that he has falsely named ten to twelve accused in his statement and that he does not know the accused whom he had named in the examination-in-chief. The witness has voluntarily stated that he had given names of those persons whom he had seen in the mob to the police.

112.21 SUBMISSIONS: The learned counsel for the appellants submitted that the witness has named several accused persons, but has failed to identify any of them before the court. It was submitted that out of the seven persons named by him, he has attributed weapons to two persons and as far as five persons are concerned, neither has any weapon nor any overt act been attributed to them except that they were present in the mob in the morning. It was submitted that this witness in paragraph 25 of his deposition has stated that the residents of the society did not harm them and that they were afraid of the mob and not the people of the society. Thus, though the witness knew the residents of the society he does not attribute any role to them. Moreover, though he is a local resident, he has not named any of the local residents.

112.22 It was pointed out that insofar as accused No.5 Vikram Chhara is concerned, apart from this witness, it is only PW 149 Faridabibi Abdulkadir Khalifa, who has named him. It was submitted that PW 149 had not named this accused in any of the police statements, despite which he has been convicted by the trial court.

112.23 ANALYSIS: From the testimony of this witness, it emerges that on the day of the incident he had gone on the road for a few minutes and had seen the mob. Though the witness had named several accused in his examination-in-chief whom he had also named in his police statement recorded at the time when the incident took place, due to lapse of time, he was not in a position to identify any of them. The statement of this witness was recorded on 13.4.2002 and no omission or contradiction has been brought out in the cross-examination of this witness qua such statement. However, as noted hereinabove, though the witness has named several accused, he has failed to identify any of them.

112.24 Thus, all that emerges from the testimony of this witness is that at around 9:00 to 9:30 in the morning, there were huge mobs which were forcibly getting the shops near the Noorani Masjid shut down and the mob was pelting stones. The mobs came in at around 12:30 in the afternoon and started ransacking and burning the houses. At around 5:00 to 5:30, the witness went on the terrace from where he saw the mob coming from the side of the highway wherein he recognized twelve persons, viz. **Ganpat Chhara (accused No.4), Vikram Chhara (accused No.5), Rajesh Pangalo (accused No.6), Champak Barot (accused No.7), Amrut Chhara (accused No.9), Suresh Langdo (accused No.22)** and **Kaptan Chhara (accused No.11)**. However, in the absence of identification of the accused persons named by the witness, his testimony would not in any manner support the prosecution in establishing the charge against the named accused.

113. **PW-117 Anishbhai Nasirbhai Mansuri**, aged 45 years, has been examined at Exhibit-754. This witness has deposed that in the year 2002, he was residing at *Jawaharnagar* which is also known as *Jawannagar*. His family was comprised of his wife Rukshanaben, four children, viz., Shanumahammad, Heenabanu, Shabanabanu and Imran Mahammad, and they were residing there together since five years prior to the incident. He was working in a brick kiln, behind Dinesh Chambers and his duty hours were from 8:00 in the morning to 5:00 in the evening.

113.1 The incident took place around eight years prior thereto. On the 28th day, which was a Thursday, but he does not remember the month. On that day, there was a call for bandh. Hence, he had not reported on duty and was at home.

113.2 On that day, at around 9:30 in the morning, there was disturbance on the road near the Noorani Masjid. A mob of around ten to fifteen thousand people had come from all four sides, towards the Noorani Masjid. He too went to look. There he saw that stones were being pelted, shops were looted and there was firing. Hence, out of fear, he returned to his chawl.

113.3 They took their children and went towards the S.R.P. compound and started entering, however, they were not permitted to enter. Thereafter, they had returned. But in the disturbances, he had not locked his house and he had left his house open.

113.4 The witness has stated that they are Mansuris. Their

women wear sarees and put sindoor (vermilion) along the parting of their hair. On that day, he had left his house and was going with his wife and children. When they came out on the road, there were mobs on all four sides and the mobs under the impression that they were Hindus, let them to go. They went to Kathwada village on foot and on the way, they had seen that killing and looting was going on.

113.5 In the mob, he had seen **Bhavani (deceased), Guddu Chhara (deceased) and Ganpat Chhara (accused No.4)**. Ganpat Chhara had an open sword and was assaulting people.

113.6 The witness has further deposed that his house was looted and burnt on the day of the incident. They stayed for a night at Kathwada, whereafter they were sent to Bahiyal village. They stayed in the said village for around fifteen to sixteen days. Thereafter, upon the curfew being relaxed, they returned to the Bapunagar relief camp. The police had recorded their statements at Bapunagar.

113.7 The witness has stated that he had learnt that Guddu Chhara and Jaybhavani have died and has further stated that he can identify Ganpat. The witness, however, has not identified the said accused and has said that that since many years have passed, he would not be in a position to identify him and therefore, he did not go near him.

113.8 CROSS EXAMINATION: The witness is sought to be contradicted by his statement recorded by the police to the effect that before the police, he had stated that he had gone to

Kathwada village from the open fields behind. In the cross-examination of this witness, it has come out that he had seen Ganpat Chhara even prior to the incident. The witness has further admitted that he had no occasion to interact with him or have a tea with him nor had they visited each other houses. The witness has admitted that he cannot say as to how many persons by the name of Ganpat reside in the Naroda Patiya area.

113.9 The defence has cross-examined PW-292 Rajeshkumar Chinubhai Pathak, the assignee officer to prove the omissions and contradictions in the testimony of the witness as to the statement recorded by him. The assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 18.3.2002. He has admitted that the facts stated by the witness in paragraph 12 of his examination-in-chief, wherein he has stated that he had gone from the open field on the rear side to Kathwada village, have been stated by him in his statement. The assignee officer has denied that this witness had not given the name of accused Ganpat before him.

113.10 SUBMISSIONS: Mr. Yogesh Lakhani, learned counsel for the appellants submitted that this witness has named three accused, namely, Jaybhavani, Guddu and Ganpat Chhara. It was submitted that Jaybhavani and Guddu have passed away and the witness could not identify Ganpat, the sole living accused.

113.11 It was submitted that in his only statement dated 18.3.2002 recorded by the police, when the witness has stated

and it is proved that he had gone to Kathwada through the open fields on the rear side, his claim in the examination-in-chief that he had come on the road and seen ‘killing and looting’ while going to Kathwada is contradictory and cannot be believed. It was submitted that when the witness says in paragraph 7 of his deposition that Ganpat had an open sword and was killing people, that fact does not get support for two reasons. Firstly, that no witness has stated that in the morning on the road at about 9:30, any person had received any injury by sword or that anybody has died because of such injury. Secondly, it is not the case of the prosecution that any witness has stated regarding any such incident of causing injury by any weapon has taken place in the morning on the road. It was submitted that the accused has not been identified, and hence, his evidence qua the said accused, namely, Ganpat Chhara is of no use. It was submitted that the witness has referred to the accused merely as Ganpat, which is a general name and he did not have any acquaintance with him and, therefore, not holding of a test identification parade to identify the accused, also assumes importance.

113.12 ANALYSIS: From the testimony of this witness, all that emerges is that he went on the road in the morning and saw stone pelting and looting as well as firing. Out of fear, the witness returned home and then went to the S.R.P. compound with his children. However, they were not permitted to enter inside, and hence, they went to Kathwada. The witness has stated that in the mob, he had seen Bhavanisingh, Guddu Chhara (both deceased) and Ganpat Chhara, but has failed to identify Ganpat Chhara. The witness has named Ganpat Chhara in his statement dated 18.3.2002 as well as in his

deposition and is therefore, consistent insofar as naming the accused is concerned. However, the witness has failed to identify accused Ganpat Chhara in the dock and hence, his evidence would be of no avail to the prosecution to establish the charge against him.

113.13 In the cross-examination of this witness, no omissions or contradictions have been brought out as to his statement dated 18.3.2002. Therefore, the contents of the examination-in-chief of the witness are required to be accepted, except to the extent of the involvement of accused No.4 Ganpat Chhara as the witness has failed to identify him.

XIV MOBILE GROUP WITNESSES

114. The learned counsel for the appellants has thereafter referred to the Mobile Phone Group witness, viz. witnesses whose testimonies are recorded in the context of the mobile phone recovered by PW 135 Hussainabanu Asgharkhan Pathan. In all, reference has been made to the testimonies of the following ten witnesses:

115. **PW-135 Hussainabanu Asgarkhan Pathan** has been examined at Exhibit-879. This witness has deposed that she can understand Gujarati and speak a little Gujarati but she would find it convenient to depose in Hindi.

115.1 The witness has deposed that after the riots of 2002, she has come to reside at Alifnagar and since then she is residing there. In the year 2002, she was residing at

Hussainnagar at Naroda Patiya in the third lane. At the relevant time, she was residing with her husband and brother in her house.

115.2 Her husband was serving in a company by the name of Universal at GIDC, Naroda, and at present is serving at Shah Alam. Her father's name was Mohbeali Mirza and he was a resident of Khambhat. He had died prior to the riots of 2002. Her husband's native place is Padna, District Agra, Uttar Pradesh.

115.3 She has two sons and a daughter. Her eldest daughter's name is Nazimabanu and her eldest son's name is Raeeskhan and youngest son's name is Salmankhan, who is slightly handicapped. All her three children reside with her mother at Khambhat and are studying there.

115.4 At the time of the incident, she was residing with her husband on the first floor of Salimbhai's house at Hussainnagar, on rent. She was residing there with her brother Hasan Ali Mirza and her husband. At the relevant time, her brother was involved in the business of selling ice balls. He had two carts. He used to sell the ice balls at Masjid-ni-chali, behind Noorani Masjid. Her brother was married and two years prior to the incident he was divorced and hence, he was residing with them.

115.5 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. On that day, she, her husband and her brother were at home. At 7 o' clock in the morning, she had prepared tiffin for her husband and he had

taken it and gone for his service. On that day, in the morning at around 8:00 to 8:30, there were shouts of “cut the Muslims” and hence, the people of the chawls started coming out. She also left her house and went towards Noorani Masjid, at that point of time, her brother was at home. On the road, many people were burning tyres and there were a large number of people who were shouting “cut and kill the Miyas”. The people in the mob were also pelting stones. At this time, she was standing at the place where one Padmaben used to sell vegetables next to a Government’s tap in front of Rashidbhai Channelwala’s house. At that time, a mob had also come from the direction of Krushnanagar. That mob was advancing forward and another mob had also come from the direction of Natraj. The mob from the direction of Natraj was advancing forward and was going towards Noorani Masjid. The people in the mob had damaged Noorani Masjid. The Muslim brothers came forward to protect Noorani Masjid. At this time, there was cross stone pelting. The stone pelting was between the Hindus and the Muslims. At this time, the Muslims had approached to the police and told them that *“you were telling us that these people will not do anything, but they have attacked the masjid”*.

115.6 The witness has further deposed that thereafter the mob crossed the road and came towards Hussainnagar. At this time, the people in the mob started ransacking Hussainnagar. They had damaged the masjid. The people in the mob climbed on Rashidbhai Channelwala’s house. They had damaged the goods belonging to the Channelwala. Thereafter, they set Rashidbhai Channelwala’s house on fire. Upon the burning of this house, which is the first house in Hussainnagar, there was

no longer any place for them to stand and hence, they fled and went to their house.

115.7 Salimbhai was the owner of her house. This Salimbhai had taken his family members and gone away. By the time they returned, the mob had spread over their entire chawl. She and her brother went on the terrace of their house and had hidden there. The mob started burning and damaging their chawls. In the meanwhile, the people in the mob had rampaged throughout their chawl. Her brother told her that they should close the door otherwise the people in the mob would kill them. She also opened the door and saw. However, thereafter she closed the door and she secured the stopper from inside.

115.8 With a view to save their lives, she decided to once again go to the terrace to see if the people of the mob had gone away and hence, she went to the terrace. She saw that the people in the mob were on all four sides and hence, she came down along with her brother.

115.9 Thereafter, the people in the mob had broken the door of their closed house with axes and dharias. The mob had broken in all three doors of their house, namely, the front door and the back door and a door in the middle, which led to the staircase. After breaking the door the people in the mob entered their house. They were four or five persons. Out of these four or five persons, one person had a police baton in his hand. With this baton that person started beating her brother. At that time, she had intervened to save her brother and had beseeched them not to kill her brother. However, a person

wearing a pink shirt and a brown pant started beating her brother.

115.10 The persons in the mob, who had come inside her house, pulled her brother and took him out. About fifteen to twenty people in the mob thereafter took her brother to the compound of Jaadi Khala's house. When the people in the mob were pulling her brother and taking him out, she also followed behind and begged them not to beat her brother. She had gone to save her brother.

115.11 The people in the mob surrounded her brother and the first blow with a sword was inflicted on her brother's neck and the second blow was inflicted on his hand, all of which had happened in front of her eyes. A cot was lying in Jaadi Khala's compound. The people in the mob put the cot upside down and made her brother lie down on it. Thereafter both her brother's legs were tied to the cot. The people in the mob had thereafter poured acid over her brother. A person had handed over the acid from over the S.T. Workshop wall and another person had taken it from outside. This acid was poured over her brother. These people thereafter placed a cotton mattress over her brother. A boy named Abid had sustained a bullet injury and he was placed on this mattress and this mattress was blood stained and the same mattress was placed on her brother. She does not know what they had brought in the bottle, whether it was petrol or kerosene, but the people in the mob poured it over her brother's body and set him on fire.

115.12 At this time, she was present there. The mobile phone of the person, who committed atrocities over her

brother, fell down from his pocket. She picked up the mobile phone and went away and hid in a toilet for the reason that her brother had been tied up and set ablaze, and hence, under the impression that they would surely kill her brother and her brother would surely die, she moved away from there.

115.13 After a little while, when the mob went away, she came out. Thereafter she saw that her brother's dead body was burning. The witness has deposed that the toilet in which she was hiding was in the house owned by one Javed Bhaiya. A drum of water had been filled for Javed Bhaiya's house, which was lying there. She took five buckets and poured it over her brother's burning dead body. The witness has deposed that after all these years, even today there are marks of the flames having scorched her fingers. The witness has deposed that thereafter, she came out from there. She had deposed that the people in the mob had beaten her and her brother very badly and that even today there are effects of such beating on her leg.

115.14 The witness has deposed that at this time, it was around 4 o'clock. She had gone to the fourth lane of Hussainnagar. One Mansuri's house was situated in lane No.4 where around three hundred to four hundred Muslims had stayed to protect their lives. They were on the terrace of the house. She had stayed at the terrace till 1:30 to 2:00 at night. At around 1:30 to 2:00, the police vehicle arrived. Pursuant to the police calling, she had come down and had gone to the police vehicle. In this vehicle, she and others were taken to the Shah Alam camp.

115.15 The witness has deposed that when her husband returned from his job in the evening, their houses in the chawl were burning and looting was going on. The mob had also chased her husband, who had saved his life and in some manner reached GIDC, Mudhiya village. Thereafter, her husband had come to Shah Alam camp to inquire about them. Her husband had gone to her paternal aunt's place and upon coming to know from there, he had come to inquire about them in the camp. She had told him everything.

115.16 The witness has further deposed that about seven days after coming to the relief camp, one Sultanbhai of their village Khambhat had come to meet her. At that time, she had the mobile phone which she had found on that day and she could not understand as to what to do with the phone and hence, she had told Sultanbhai about the incident that had taken place with her brother. This Sultanbhai was engaged in the business of selling samosas. She told him about how she had found the mobile and all the facts about her brother's incident, at which point of time, he had told her that he was going for his business and that he would again come to meet her, in the evening.

115.17 He came to meet her in the evening and took her to one Mohsinbhai Vakil. She gave the mobile phone which was with her to Mohsinbhai. She had informed Mohsinbhai Vakil about all the facts.

115.18 On the next day at 9 o'clock in the morning, Haiderbhai (PW-237) from her village Khambhat, who is her relative, met her with Sultanbhai at the Shah Alam camp door.

She narrated the facts regarding the incident that took place on that day at Naroda Patiya to Haiderbhai. She also told him about having deposited the mobile phone with Mohsinbhai. Haiderbhai told her to take him to Mohsinbhai and thereafter she took him to Mohsinbhai Vakil's place.

115.19 Mohsinbhai Vakil gave the mobile to her relative Haiderbhai and told him that both the cases relating to the Naroda Patiya incident and the finding of the mobile phone are to be conducted separately. Haiderbhai thereafter gave the phone to Nadeembhai (PW-245). Thereafter, Nadeembhai took the mobile phone to the office of the Police Commissioner and deposited it there.

115.20 Thereafter, few days later Nadeembhai came to meet her and informed her that he had deposited the phone with the Police Commissioner. Thereafter, Nadeembhai and Haiderbhai took her to the Police Commissioner. The witness has deposed that she had gone to the Police Commissioner's office to verify as to whether Nadeembhai had deposited the mobile. At that time, she had personally narrated the incident to the Police Commissioner. He (the Police Commissioner) had asked her to identify the mobile, out of the mobiles lying there, and she had identified the mobile.

115.21 She had identified the mobile phone in the presence of the Police Commissioner. Thereafter, Nadeembhai and Haiderbhai brought her back to the camp. During this time, the police had come to the Shah Alam camp where she had stated the facts about her complaint to the police. About a month thereafter, the Crime Branch had also come and recorded her

statement.

115.22 In that incident, her entire house was looted. She had incurred loss in respect of the cash lying in the house, jewellery, household goods, etc., in all, amounting to about rupees two to two and a half lakh. The witness has deposed that she did not know as to whom the mobile belonged. Thereafter, on the basis of the facts stated in the newspaper, the people in the camp had told her that the mobile phone was belonging to Ashok Sindhi (A/38), however, she did not know to whom the mobile phone belonged. However, she can identify the person who had committed atrocities on her brother. Thereafter, she had received summons from the SIT, and there also she had given her statement. She had narrated all the facts there.

115.23 The witness has further deposed that she had given the complaint while she was in the relief camp given after about two months after the incident, for the reason that the police came after two months. One month thereafter, the Crime Branch had recorded her statement. After residing at the relief camp for seven to eight months, upon the camp being closed down, she had returned home. From the camp, she had gone to her house at Alifnagar and had not returned to Hussainnagar.

115.24 While she was at Alifnagar, the Gheekanta police had called her for the purpose of identifying the accused, namely, the person whose mobile phone she had deposited. A test identification parade was carried out there and she had identified the accused. That person was **Ashok Sindhi**. The

witness was shown a copy of her complaint, which she was unable to read as she is illiterate but she has identified her thumb impression thereon. The complaint was read over to her and she had admitted the contents thereof, except to the extent it is stated therein that her husband had gone to bring ice; the facts regarding her children; as well as the fact that Nadeembhai is an Advocate; which according to her, she had not stated before the police. The complaint, except to the aforesaid extent, has been exhibited as Exhibit-880.

115.25 The witness has deposed that she went to the Magistrate's Court, where she had identified the person whose mobile phone had fallen down and who had committed atrocities on her brother. The witness has deposed that even today she can identify the said person; however, since a long time has elapsed she can try to identify him. The witness, however, could not identify the accused correctly and has instead identified accused No.58 Santoshkumar Kodumal Mulchandani as Ashok Sindhi. The witness has thereafter stated that she would be in a position to identify the mobile phone which was deposited by her. At this stage, the mobile phone at item No.9 of Muddamal list Exhibit 139 was taken out from the cover in the open court and was shown to the witness, who stated that the mobile which she had deposited had a black cover, however, this mobile does not have a black cover and hence, she cannot say that this is the very same mobile. She has further stated that that mobile was smaller. Thus, the witness has not been able to identify either the accused, or the mobile phone.

115.26 CROSS EXAMINATION: In her cross-

examination, the witness has been is cross-examined with regard to the location of the house where she was residing in Hussainnagar. The witness has been cross-examined with regard to the name of the owner of the house in which she was residing at Hussainnagar as well as the general topography of the area and the persons residing in the vicinity. The witness has also been cross-examined with regard to her education as well as her parents' education and the language spoken at their house. The witness has admitted that from time she was born till date, she has not acquired any education and that she understands Gujarati to a certain extent but she cannot read it.

115.27 The witness has been further cross-examined with regard to the time when she must have made the complaint after she went to the camp and as to whether she had lodged the complaint. The witness has admitted that she gave an application form for obtaining compensation to the Collector and has further admitted that together with this application for compensation she had informed the Collector about her brother's murder. The witness has been cross-examined with regard to the contents of the complaint and she has categorically stated that the same was written, as stated by her. In the cross-examination, it has further come out that the complaint Exhibit-880 given by her was recorded by the Crime Branch.

115.28 In her cross-examination, it has also come out that when she had gone with the police, she had shown the damage caused to the house as well as the place where her brother was burnt. She has further admitted that the procedure carried out on that day was recorded. The witness

has admitted that she had firstly shown the police the place where her house was looted and thereafter she had shown the place where her brother was burnt. The witness has admitted that the police had taken samples of earth from the place where her brother was burnt. The witness has admitted that whatever was written down was in her presence and that the same was read over to her. The defence has thereafter sought to bring on record the panchnama Mark 134/66, which has been exhibited as Exhibit-888. In the cross-examination of the witness, it has come out that Inayat Ali's house where her brother was burnt is situated in the lane about five to seven houses after her house. She has admitted that Inayat Ali's house is enclosed by a compound wall and that the house has a gate. The witness has stated that she had gone to Inayat Ali's house after opening the gate and has voluntarily stated that the gate was open. The witness has admitted that her brother was killed and burnt in the compound of Inayat Ali's house and that she had stated such facts to the police in the presence of two persons.

115.29 The witness has further admitted that her brother Hasan Ali was alone and has further admitted that she had taken rupees five lakh which was given by way of compensation towards his death. She, however, has voluntarily stated that she had given the money to her mother and that the compensation cheque was drawn in favour of her mother and that she had only helped her mother in getting the compensation.

115.30 In her cross-examination, it has come out that on the day of the incident her husband had taken the tiffin and

gone for his job in the morning at 7 o'clock. Various other suggestions are made to the witness including the fact that she was aware of what she has stated in paragraphs 6 and 7 of her examination-in-chief, then also she did not mentioned these facts at the time when she had lodged the complaint Exhibit 880 and has voluntarily stated that at that time, it was not possible to give so many details.

115.31 The witness has thereafter been cross-examined with regard to the time when she had seen the mob on the road and the direction from where the mobs had come and where they had gone and the timings in respect thereof. The witness has admitted that a Muslim had taken a truck and fled from there. She, however, has stated that she is not aware as to whether one or two persons were killed by the truck. She has stated that she had seen the truck going. The witness is further cross-examined with regard to the time she stayed at the road, the place where she was, etc. However, considering the fact that this witness has been examined mainly in connection with the incident where her brother was done to death by the mob, it is not necessary to refer to the same in detail. The witness has admitted that at the time when there was recess in the S.T. Workshop, the mobs had entered their chawls. The witness has voluntarily stated that they were coming from one house to the other. The witness has admitted that the mob had come to her house immediately after the recess and that the mob had attacked her house, at which point of time they had gone upstairs and after two to five minutes they had come down from the terrace. The witness has denied that the mob had immediately pulled her brother and taken him away and has voluntarily stated that after the

entire chawl was burnt, they had come to their house. The witness has admitted that what she means to say is that after the entire third lane where she was residing was burnt; they had come to her house. The witness has denied that when the entire chawl was burnt, till then, she was sitting at home and watching everything and has voluntarily stated that they had hidden themselves to protect their lives and when they came out, she had come to know that the lane had been set ablaze.

115.32 The witness has denied that there are about forty to fifty houses in Lane No.3 and has voluntarily stated that on both sides, there were about seven to eight houses. The witness has been cross-examined at length with regard to the direction from which the mob came, at which point of time the mob had come, etc. The witness has admitted that after her brother was pulled out he was beaten up outside her house. She has further stated that her brother was taken to a place after leaving four to five houses and was assaulted with a sword. The witness has admitted that when her brother was pulled out, she too was there and has stated that when they were dragging him, she had also followed. The witness has stated that she too was beaten badly outside her house and that both brother and sister were beaten and that the mob was pulling them and beating them. The witness has admitted that she too was dragged by the mob and that on account of the same, her clothes were torn and she was bruised and was bleeding and her leg was fractured. The witness has been cross-examined with regard to the number of blows given to her brother with the sword, etc.

115.33 In her cross-examination, it has further come out

that the mob was engrossed in burning her brother and she was not burnt like her brother. She has further stated that the mobs had gathered around where her brother was being beaten in the compound and that while her brother was killed, she was there in the compound. The witness has stated that the incident of her brother must have taken place at around 1:30 to 2:00 in the afternoon and has admitted that she did not know the name of any of the persons in the mob who had killed her brother and she could not identify anyone.

115.34 Certain parts of her statement recorded by the SIT are put to the witness, which in the opinion of the court, could not have been brought on record as the same are not in the nature of contradictions. The witness has been minutely cross-examined with regard to the place where she had hidden and as to whether she could have seen the incident from such place. In her cross-examination, it has further come out that the person whose mobile phone had fallen down had poured acid over her brother.

115.35 The witness has stated that when Abid had sustained a bullet injury, everyone was taking his name and, therefore, she knew him. The witness has stated that she came to know that Abid had sustained bullet injury when people had brought him there and placed him on a cot in Jadi Khala's house. The witness has further stated that she does not know as to what time Abid was brought to Jadi Khala's house, but has stated that she had seen him in her compound. The witness has admitted that at that time she had not gone with the Muslims who had gone to meet the police and had voluntarily stated that the police were beating the people who

went to meet them, therefore, who would go to the police? The witness has stated that she knows who had gone to meet the police and has stated that it was Shahidabanu, Ibrahimbai, Razakchacha, etc. and that they had met the police near the Government water tap.

115.36 The witness has been cross-examined as to the complaint lodged by her and she has admitted that she has not stated the facts stated in paragraph 9 of her examination-in-chief in her police complaint. Various other contradictions have been sought to be brought on record, however, none of them are in the nature of material contradictions. The witness has been cross-examined as regards what she has stated in paragraphs 6 and 7 of her examination-in-chief to the effect that she has not stated the same in her complaint as well as in her statements dated 14.4.2002, 4.5.2002, 25.6.2002 and 29.5.2008, which she has admitted.

115.37 It may be noted that despite the fact that the witness has admitted the suggestion put to the witness, the court in a note below the same has referred to the contents of the complaint as well as the statement recorded by the SIT to explain as to what had exactly been stated by the witness.

115.38 Certain omissions are sought to be brought out to the effect that she had not stated the fact regarding her brother being pulled out by a mob of around fifteen to twenty persons and taken to the compound of Jadi Khala's house as stated in both her police statements as well as her complaint Exhibit-880. The witness is further sought to be contradicted as to her statements as well as complaint except the statement

recorded by the SIT to the effect that she had not stated the facts stated in paragraph 14 of her deposition with regard to the people in the mob having surrounded her brother and inflicted blows with a sword on his neck as well as on his hand, in front of her eyes and having put him on an upside down bed in Jadi Khala's compound. However, it appears that the entire part with which the witness is sought to be contradicted is not correct, inasmuch as, certain facts thereof had been stated by her in her complaint Exhibit-880 and her statement dated 8.5.2002.

115.39 Various other questions have been put to the witness as regards the manner in which she had witnessed the incident. The witness has denied that she has referred to her children being present with her on the day of the incident and has asserted that her children were residing with her mother and did not reside with her. The witness has admitted that her children right from the beginning were residing at Khambhat and has further admitted that before the SIT she had stated that she has seen the incident from the toilet of Javed Bhaiya's house and has voluntarily clarified that till her brother was set ablaze by igniting a matchstick, she had seen the incident at the site and thereafter, she had moved from there and gone to the toilet of Javed Bhaiya's house and the subsequent part of the incident was witnessed by her from the toilet.

115.40 The witness has denied that she had stated before the panchas while drawing the panchnama Exhibit-888 that the people in the mob had pulled her together with her brother, however, she had wriggled out and gone and hidden in Javed Bhaiya's house from where she had seen the incident

of her brother being burnt. Various other suggestions have been put to the witness to suggest that the earlier version given by the witness was to the effect that she had seen the incident from the toilet and not at the site, which the witness has denied.

115.41 In the cross-examination of the witness, it has come out that she had come to know Mohsinbhai Vakil after she went to the camp. The witness has stated that when she had gone with the mobile to meet Mohsinbhai, she had talked about the incident with him and had stated everything that she had stated before the court to him. She has admitted that thereafter Mohsinbhai had told her that her complaint would be required to be lodged. The witness was shown several documents Mark 644/1, 644/2, 644/6, 644/11, 644/17 and 644/19 and upon asking her whether the thumb marks on the said documents were hers, the witness has stated that even after looking at the same, she cannot say as to which of the documents bears her thumb impression. Mark 644/17, which is an application made to the SIT has been exhibited as Exhibit-896. The witness has admitted that as she is not educated she cannot identify her thumb print thereon. (Despite the fact that the contents of the application are neither read over to the witness, nor has she admitted her thumb mark thereon, the same has been exhibited as Exhibit-896. Since the contents of the document have not been proved in accordance with law, the same cannot be read into evidence.)

115.42 In her cross-examination, it has further come out that she has not had any quarrel with any person in connection with this case, but has voluntarily stated that a person with his

face covered had attacked her when she was to go to the SIT office at Gandhinagar. They had come to her house with a revolver with their faces covered. She has stated that she had informed the people at Gandhinagar about it after which she was provided police protection by the SIT.

115.43 In her cross-examination, it has come out that she had not given the mobile phone to any one at the Shah Alam camp and that she had given the mobile to Mohsinbhai. Mohsinbhai had kept the phone with himself for one night and that she had taken back the phone on the next day. The witness has stated that she does not know as to for how many days Nadeembhai had kept the phone. She does not remember as to for how many days the phone was with Haiderbhai. The witness has voluntarily stated that after about eight days, he had informed him that he had deposited the phone in the Commissioner's office. The witness has stated that the duration between her getting the phone and the same being deposited with the police is about fifteen days. The witness has admitted that for the period during which the phone was with Mohsinbhai, Nadeembhai or Haiderbhai, she does not know as to what they did with the phone and to whom it was given. The witness has stated that she does not know if either of the three had, during this period, used the phone for any purpose.

115.44 The witness has further been cross-examined with regard to the people residing in the area and whether she was acquainted with them. The witness has stated that at present, she is residing at Alifnagar, in a house which has been given by the Islamic Relief Committee for which she has not paid any

consideration. The witness has denied that because the Islamic Relief Committee has given her the house without any consideration, she had lodged a false complaint and had given false statements.

115.45 To prove the omissions and contradictions in the testimony of this witness as to her previous statements recorded by the police, the defence has examined the concerned Investigating Officers and/or the assignee officer of the concerned Investigating Officer.

115.46 PW 291 Mukundsinh Balvantsinh Raj, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 25.6.2002. The contents of paragraph 11 and the contents of paragraph 13 from the second line to the fourth line of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that she has not stated such facts in her statement recorded by him. The contents of paragraph 14 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that the witness has not stated such facts before him, but has clarified that the witness has stated that the Hindu mob had tied her brother Hasan Ali on an iron cot and had assaulted him with sword and poured kerosene and burnt him. The contents of paragraph 17 from the fourth line to the sixth line of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness has stated that there was a drum filled with water lying near Javedbhai's house and she took five to six buckets and threw it over the burning corpse. The assignee officer has

admitted that the witness has not stated such facts before him. The assignee officer has admitted that the witness had not stated before him that she had seen the mobs coming from Natraj Hotel while standing near a government tap and that the mob was damaging the masjid and that the witness crossed the road from the Noorani Masjid and was coming to the chawl.

115.47 PW-307, S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 4.5.2002. The contents of paragraph 11 and certain extracts of paragraph 13 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness before him. The contents of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that the people in the mob thereafter surrounded her brother and the first blow with the sword was given on her brother's neck and the second blow on his hand, all of which had happened in front of her eyes. A cot was lying in the Jadi Khala's compound. Thereafter, the people in the mob had put her brother upside down on the upside down cot. The Investigating Officer has denied that all the contents of paragraph 14 have not been stated by the witness before him and has stated that the witness had stated that her brother was given a blow on the neck with a sword and another blow with a sword was given on his hand and thereafter, other people in the mob had tied him to a cot. The other facts have not been stated by the witness before him.

115.48 From what is stated by the witness in the examination-in-chief and what is stated by her in her statement dated 4.5.2002, it is evident that what is stated in the examination-in-chief is a slightly more elaborate version of what she had stated before the police and therefore, in no manner, can be said to be a contradictory to what is stated in her statement under section 161 of the Code.

115.49 The contents of paragraph 17 of the examination-in-chief of the witness had been read over to the Investigating Officer, wherein she has stated that after a little while when the mob went away, she came out. She saw that his brother's dead body was burning. The name of the owner of the house in the toilet of which she was hiding was Javedbhai. There was a drum filled with water lying in Javedbhai's house and she had taken five buckets out of it and poured it over her brother's burning corpse. Even today, there are signs of flames that have scorched her fingers. The Investigating Officer has denied that this witness has not stated such facts before him, and has stated that she had stated that she had poured four to five buckets of water on her brother's dead body.

115.50 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 29.5.2008. He has admitted that this witness had stated before him that the other person had inflicted blows with a sword on her brother's neck and hand, which she had seen with her own eyes (paragraph 116). The Investigating Officer has admitted that this witness has not stated before him that on the day of the incident, she was standing near the Government/ public tap and there she

had seen the mob which came from the side of Natraj Hotel. The Investigating Officer has admitted that this witness has not stated before him that she had seen the mob demolishing Noorani Masjid. However, she had stated before him that at 8:00 to 8:30 in the morning, mobs of people had gathered near Noorani Masjid and S.T. Workshop and were shouting "kill" "cut" and had burnt tyres on the roadthe people of the Hindu community were attacking Noorani Masjid and were damaging it and burning it. The Investigating Officer has admitted that the witness has not verbatim stated that the people in the mob were crossing the road from Noorani Masjid and going to the chawl but had stated that at this time, the people in the mob had entered their chawls.

115.51 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants submitted that this witness has categorically stated that after she had gone to the relief camp within ten to fifteen days she had made a complaint to the Police Commissioner. There is also a reference of such complaint in her written complaint dated 14.4.2002 (Exhibit 880). No such complaint is coming on record and that no such complaint is brought on record by the prosecution, nor is there any attempt on the part of the prosecution to say that this witness is telling the truth. Therefore, an adverse inference can be drawn about the facts stated therein and that these facts which are stated after forty five days are not there in the complaint given to the Police Commissioner (paragraph 148). It was submitted that the injuries sustained by the witness, having regard to the manner in which the incident is stated to have occurred according to her, would be serious, but there is no medical certificate coming on record to substantiate and corroborate

her say, which also apparently indicates her absence at the place of incident, or makes her presence at the scene of offence doubtful.

115.52 It was submitted that if the witness was there and she was beaten along with her brother then she would not have been left alive as, according to her, she intervened and tried to save her brother.

115.53 It was contended that except for the bare say of the witness that it has come in the newspapers that she learnt from the people in the camp that it was Ashok Sindhi whose phone she had found, that the name was revealed, the person who had given her such information has not been examined. It was pointed out that while the witness has identified Ashok Sindhi in the test identification parade, she has failed to identify him before the court. It was submitted that witness has not named the accused in the complaint and nothing is brought on record as to how she came to know that the mobile phone belonged to Ashok Sindhi.

115.54 It was submitted that there are two Ashok Sindhis, namely, accused No.38 and accused No.45, but the prosecution has failed to demonstrate as to how the police arrested accused No.38 and not accused No.45 when both of them are known as Ashok Sindhi. It was submitted that there is nothing on record on the basis of which the identity of accused No.38 could be fixed before his arrest. It was submitted that the sim card in the mobile phone is not a postpaid sim card, whereby even from the sim card the identity of the owner thereof could be fixed. It was submitted

that it was a pre-paid card and no document has been produced regarding its purchase so as to fix the identity of such person. It was submitted that the ownership of the instrument is not established on the basis of any bill, invoice or the receipt or by producing any document or examining any person who is stated to have sold it. It was submitted that as regards fixing the identity of the mobile in the court, the witness, as is clear from paragraph 38 of her deposition, has not identified that this is the same instrument which she had found. Thus, the witness has not proved the identity of the instrument. It was submitted that, according to the witness, the instrument had a black cover, whereas it is nobody's case that the black cover of the mobile phone has been removed by anybody.

115.55 It was submitted that this witness is not at all a reliable and credible witness and the whole story of her brother having been tied to cot, and the manner in which he was injured and set ablaze and in the process, the witness having also been severely beaten and injured, are facts which are completely in the dock of doubt and cannot be said to have been proved beyond reasonable doubt.

115.56 It was submitted that there are serious contradictions as to from where the witness had seen the incident and whether her children were present with her at that time. Attention was invited to the location of the toilet at Javed Bhaiya's house to contend that the same was situated on the rear side, and hence, it was not possible for the witness to have seen the incident from the toilet of Javed Bhaiya's house. It was submitted that as to at what time the witness

had gone into the toilet and whether she went inside with or without the phone and whether she could at all see any incident while inside the toilet, are all facts which the prosecution has failed to establish.

115.57 It was submitted that the entire story, as narrated by the witness, the sequence of events and facts are not supported by the testimonies of other witnesses, namely, PW-237 and PW-245. It was submitted that, therefore, no credence can be attached to the testimony of this witness and the testimony of the witness is required to be discarded in toto.

115.58 Mr. Prashant Desai, learned Special Public Prosecutor submitted that this witness is relevant for the reason that the entire riots have taken place with the motive of killing Muslims, destroying their properties and their religious places and to subserve their motive, a conspiracy was hatched and this is evidence to show that in furtherance thereof, a Muslim man was brutally killed, which is part of a larger criminal conspiracy. It was submitted that the incident of killing her brother cannot be said to be not believable and that all the facts stated by the witness in her examination-in-chief are in consonance with the statements earlier given by her.

115.59 ANALYSIS: From the testimony of this witness, it emerges that her brother Hasan Ali was done to death by the mob by dragging him out of their house into the compound of Jadi Khala's house where he was inflicted blows with a sword and tied on an upside down cot, where kerosene or other inflammable substance and acid had been poured on him and

a mattress soaked with inflammable substance was placed on him and he was set ablaze. The complaint by the witness was lodged belatedly after the mobile phone was handed over to the Police Commissioner. It may be noted that after the occurrence of the incident, the witness was taken to the relief camp where she had narrated the incident and the fact regarding finding the mobile phone at the site to one Sultanbhai from her village Khambhat. Sultanbhai introduced her to an advocate by the name of Mohsinbhai, whom she had handed over the phone. Thereafter, after she met Haiderbhai, she had taken back the phone from Mohsinbhai and had handed it over to Haiderbhai. Haiderbhai had later on, taken her to meet Nadeembhai, who used to deal in mobile phones and was conversant with their working and the phone was handed over to Nadeembhai, who kept it with him and tried to trace out the owner. When Nadeembhai came to meet her, he told her that he had deposited the phone with the Police Commissioner. Thereafter, she, along with Haiderbhai and Nadeembhai had gone to the office of the Police Commissioner before whom she had narrated the incident and had identified the mobile phone out of the mobile phones lying there.

115.60 A test identification parade came to be carried out wherein the witness identified accused No.38 Ashok Sindhi. However, before the court she has failed to identify Ashok Sindhi and has identified one Santosh Kodumal Sindhi (accused No.58), instead. She has also failed to identify the mobile phone recovered by her at the scene of incident.

115.61 Various contentions have been raised as regards the place from where the witness had seen the incident,

however, for the reasons that follow while discussing the evidence regarding the murder of Hasan Ali and the complicity of accused No.38 in the offence, it is not necessary to dilate upon the same, including the contentions regarding the infirmities in the test identification parade.

115.62 Upon appreciating the overall evidence of this witness and after taking the omissions and contradictions brought out as to her previous statements recorded by the police, it can be seen that right from the inception, the witness has stated that she had seen the incident. There are no omissions or contradictions as regards the testimony of the witness regarding her having gone on the road and seen the mob damaging the Noorani Masjid and having returned home; the fact regarding she and her brother having hidden in their house and the mob ransacking and committing arson in their chawl; the people in the mob entering their house, dragging her brother and the witness following them to save her brother; her brother's legs being tied to an upside down cot and acid being poured on him and a mattress being placed on him and some inflammable substance being poured on him and he being set ablaze; and the witness moving away from there. There is also no contradiction regarding the witness having taken refuge in one Mansuri's house in lane No.4 of Hussainnagar at around 4 o'clock in the evening. Though there is an omission regarding the facts stated in paragraph 12 of her examination-in-chief as to her police statements, what is stated in her deposition finds support in the panchnama of the scene of offence Exhibit 888. Therefore, to the extent the witness has described the incident and the manner in which it has taken place, she comes across as a credible and truthful

witness and there is no reason to disbelieve the version given by her.

115.63 The testimony of this witness is significant mainly for the purpose of establishing the fact regarding the recovery of a mobile phone belonging to accused No.38 Ashok Sindhi and the presence of the accused at the scene of offence by the witness. In this regard, as noted hereinabove, there is no evidence to connect the phone produced before the court by way of muddamal with the phone handed over to the Police Commissioner. Most importantly, the witness has failed to identify the mobile phone as well as accused No.38 Ashok Sindhi, though she had identified him in the test identification parade. Since it is the identification before the court which is the substantive evidence, it cannot be said that the witness has established the identity of the accused. Moreover, the ownership of the mobile is not established by bringing any cogent and credible evidence on record to link accused No.38 with the mobile phone.

116. **PW-237 Haiderali Najafali Mirza**, aged 61 years, has been examined at Exhibit-1669. The witness has deposed that he knows how to read, write and speak in Gujarati. He has passed the old matric. His native place is *Khambhat*. Since birth, he is residing in Gujarat. He will give his deposition in Gujarati.

116.1 The witness has deposed that he was working as a meter reader in Ahmedabad Electricity Company and has retired in the year 2008 upon attaining superannuation.

116.2 He knows Hussainabanu as she is his niece Guddi's sister-in-law. On 28.2.2002, there were riots during the call for Gujarat Bandh. He had learnt that many people belonging to the Muslim community had sustained immense loss to life and property, which had occurred at Naroda Patiya.

116.3 As per his knowledge, Hussainabanu used to reside at Hussainnagar at Naroda Patiya. Her brother, whose name was Hasanali, used to reside with her and was doing the business of selling shaved ice balls.

116.4 About four to five days after the incident, a person named Akilmahendi Mogal who is also from Khambhat, made a phone call to him and informed him that from amongst Hussainabanu's brother, Hussainabanu and her husband who reside at Naroda Patiya, the Hindu mob has assaulted and hacked down Hasanali with a sword and burnt him. He also told him that he should inquire about what happened to Hussainabanu and her husband and inform him. Akilmahendi who had telephonically called him, used to work as a mechanic in the S.T. Workshop, Chandola.

116.5 After this, he had searched for these people and he learnt that they had been taken to the Shah Alam camp. Thereafter, he had gone to the Shah Alam relief camp to meet Hussainabanu and he had found her there. She told him that on the day of the incident, a huge mob of Hindus had come and ransacked their house and set their house on fire. The people in the mob had pulled her and her brother and they had inflicted blows on her brother with a sword, tied him to a cot, poured acid and petrol on him and burnt him. In the

meanwhile, she tried to save her brother. While she was trying to save her brother, a mobile phone of one of the persons in the mob fell down, which she had picked up and thereafter, she fled from there and hid herself. Thereafter, she was brought to the Shah Alam relief camp.

116.6 The witness has further deposed that after telling him the above, she had shown him the mobile phone. She gave him the mobile phone and requested him to do the needful. She had said that she did not know how to operate the mobile and upon inquiring from her acquaintances, she came to know that the phone should be shown to a person who knows the functions of the mobiles and has knowledge about it. He had taken the mobile phone and thereafter, returned home.

116.7 About ten to twelve days thereafter, he came to know that one Nadeem Saiyed who sells mobile sim-cards knows how to operate mobile phones. This Nadeem was residing at Juhapura. He contacted him. He gave the mobile to Nadeem and told him that it was necessary to find out as to whom the mobile belonged and that the holder of the mobile had played a role in killing Hussainabanu's brother.

116.8 Nadeem started the phone and returned it to him and told him that he should keep the phone with him for four or five days and to pick up the phone if there is any incoming call from anyone. In the phone calls coming on the mobile, there were requests to return the phone and except for that, he was not saying anything. He could not understand anything.

116.9 After two to three days, he called Nadeembhai and personally handed over the phone to him. Nadeembhai told him that the number of this mobile was 98250 54777 and that the phone belonged to some Sindhi person. He (the witness) returned the phone to him.

116.10 On 12.4.2002, Nadeem told him that they should give the mobile to the office of Police Commissioner to investigate.

116.11 He, Hussainabanu and Nadeembhai took the phone and went to the office of the Police Commissioner. They handed over the phone to the Police Commissioner.

116.12 Four or five days thereafter, the police recorded his statement. The witness has stated that he can identify the mobile instrument which he, together with Nadeem, had given in the office of Police Commissioner.

116.13 The witness is shown the muddamal which is a Motorola Company's mobile phone. The witness has stated that it is the same phone which Hussainabanu had given. [In a note below, the trial court recorded that the mobile phone has been seized as muddamal property in an unsealed condition in Sessions Case No.235/2009.]

116.14 The witness has further deposed that he, Nadeem and Hussainabanu had gone to the office of Police Commissioner and had deposited the mobile phone which is shown to him.

116.15 CROSS EXAMINATION: In the cross-examination of the witness, it has come out that when they went to deposit the mobile phone in the office of Police Commissioner, they were not issued any receipt in connection therewith. At that time, the police authorities did not show them any mobile phone out of several phones with them. The witness has admitted that when they went to deposit the phone, they had not made any noting as to of which company the mobile phone was. They had also not noted the size and the colour of the phone.

116.16 The witness has further stated that Nadeem had not written down and given him the mobile number of the phone. When they deposited the phone, there was no black cover on it. The witness has denied that the phone which they had deposited was smaller than the muddamal phone.

116.17 The witness has denied that he, Nadeem and Hussainabanu had gone together to deposit the phone in the office of the Police Commissioner and that he was falsely deposing in this regard and that no phone had been deposited in his presence.

116.18 The witness has further deposed that when they went to Police Commissioner's office, Shri P. C. Pande was present there and three other officers were also present. They had given the phone to Police Officer Shri Pande. The witness has admitted that the phone was given to Shri Pande on 12.4.2002.

116.19 In the cross-examination of the witness, it has

further come out that he had gone to the camp about seven to eight days after the incident. One Sultanbhai Samosawala had informed him that Hussainabanu was in the camp. The witness has admitted that on the very day, he went to the camp, Hussainabanu had given him the phone. The witness has admitted that Hussainabanu had given him the phone at the camp itself. He never had to go to any manager or person of their Jamaat for the phone. It has not happened that he had to go to any other person to take the phone.

116.20 In the cross-examination of the witness, it has further come out that he does not know any Mohsinbhai advocate. He has voluntarily stated that he is a manager of the camp. The witness has denied that he had any occasion to go to Mohsinbhai's house or that he had taken the phone from Mohsinbhai's house. The witness has stated that he has not gone to Mohsinbhai's house or office and that he did not have to go to Mohsinbhai's house or office to take the phone for Hussainabanu.

116.21 The witness has admitted that it has not happened that Mohsinbhai had given any advice or instructions in connection with the phone. The witness has further admitted that in his statement before the police, he has not stated that after the phone was started, the incoming phones were only regarding request to return the phone and they were not talking about anything else. It has further come out that the phone had remained with him for about fifteen days. After he gave phone to Nadeembhai, it was left with Nadeembhai. He does not know as to for how many days the phone remained with Nadeembhai. The witness has denied that the phone

deposited by Nadeembhai was a different phone and that the phone which all three had gone to deposit, was a different one. The witness has stated that it was only this one phone which all three of them had gone to deposit.

116.22 In the cross-examination of the witness, he has admitted that he alone, in the absence of Hussainabanu had handed over the phone to Nadeembhai. He has denied that Nadeembhai alone had deposited the phone with the Police Commissioner. The witness has denied that he had subsequently learnt that Nadeembhai alone had gone and deposited the phone. The witness has denied that he and Nadeembhai had gone to meet Hussainabanu and informed her that they had deposited the phone. The witness has stated that it has not happened that they had told Hussainabanu that they had deposited the phone and that she can come with them if she wants to verify it.

116.23 The witness has admitted that when he handed over the mobile phone to Nadeembhai, it was switched off. The witness has stated that the mobile phone which he had seen might be available in the market, but he is not aware of it. He has further admitted that after handing over the phone in the year 2002, he never had any occasion to see it again. The witness has stated that he is able to say that this is the same mobile on the basis of the aerial of the instrument as well as because it has Motorola written on it.

116.24 SUBMISSIONS: The learned counsel for the appellants-accused submitted that the sequence of events and facts as stated by this witness are different from the facts as

stated by Hussainabanu (PW-135). It was submitted that such phones with a Logo "M" on it and Company Motorola are easily available in the market. The articles are not such as can be said to be a distinct article which no one else could have possessed. It was submitted that therefore, the identity of the phone is itself in question. It was submitted that this witness admits that when they deposited the phone, there was no black cover on it. He has stated that all the three had gone and deposited the phone and not as projected by Hussainabanu. It was submitted that physical handing over of the phone took place on 12.4.2002 and at that point of time, no panchnama was prepared, nor was any receipt passed over by the police to the witness. It was submitted that the Police Commissioner Shri P.C. Pande has not been examined. This witness is able to identify the phone only from the antenna which would not fix the identity, particularly when there was no black cover as claimed by Hussainabanu.

116.25 ANALYSIS: From the testimony of this witness it emerges that Hussainabanu had handed over the mobile to him when he went to visit her at the camp. About ten to twelve days thereafter, he had contacted Nadeembhai (PW 245) and handed over the phone to him. Nadeembhai has switched on the phone and had given it back to him and had instructed him to receive any phone call. According to the witness, the phone calls received by him were by a person asking him to return the mobile phone. After three to four days, he handed back the phone to Nadeembhai who told him that the number of the phone was 9825054777 and it belongs to some Sindhi. Thereafter, on 12.4.2002, Nadeembhai suggested to him that they hand over the phone to the Police Commissioner. He,

Hussainabanu and Nadeem went to the office of the Police Commissioner and handed over the phone to him. The witness has also identified the phone. From the cross-examination of this witness it has been elicited that no receipt was executed or panchnama drawn when the mobile phone was handed over to the Police Commissioner. He has denied having gone to Mohsinbhai advocate's office with Hussainabanu and has stated that the phone had remained with him for about fifteen days.

117. PW-245 Nadeem Mahammadali Saiyed, aged 38 years, has been examined at Exhibit-1712. The witness has deposed that he knows Gujarati. He was residing at *Juhapura* in the year 2002. He has studied upto Standard 12th in Gujarati medium. In the year 2002, he was dealing in buying and purchasing mobile phones as well as dealing in sim-cards.

117.1 The witness has stated that he knows Mirza Haiderali. This Mirza Haiderali had met him in the year 2002. He had contacted him through an acquaintance. He had contacted him because in the communal riots of 2002, a person had died whose name probably was Hasanali. At the time when the incident took place, a lady picked up a phone which had fallen down from one of the persons involved in the incident and in connection with the said mobile phone, Haiderali had met him.

117.2 Since he himself was dealing in mobile phones, the moment the mobile came in his hands, he had seen the condition of the mobile. The mobile phone was switched off. He had started the mobile phone. From the said mobile phone, he

dialed his own number so that he can come to know the number of that mobile phone which Haiderali had given him. The number of such mobile phone was 98250 54777.

117.3 Thereafter, he noted all the numbers which were saved in the mobile phone directory on a piece of paper. He had made a note of all the calls received and missed calls from the record of the mobile instrument. However, at the relevant time, the received calls and missed calls were not being registered separately and could be seen as a common list, which also he had noted.

117.4 He had stated all this in his statement recorded by the police. This mobile instrument came in his hands on 18.3.2002 and remained with him till 12.4.2002.

117.5 From 18.2.2002 to 12.4.2002, many phone calls came on this telephone. He had attended the incoming phone calls. The people who made calls on this phone were asking whether Ashokbhai was there. Ashokbhai himself had also made phone calls to him. He had taken his telephone number, namely, the landline number of his house and had also given the same in his statement. During the course of talk regarding the mobile phone, Ashokbhai was asking to return the phone. The control room number of the office of Police Commissioner was also there in the mobile phone and phone calls were also received on this mobile from that number. The control room numbers, from which the calls were received, were landline numbers – 5630999 and 5630995. From the office of the control room, one Balvantsinh used to talk on the phone. This Balvantsinh was searching for Ashokbhai and was, therefore,

making the phone calls. He had thought that this phone number was of Ashokbhai Sindhi.

117.6 A phone call was also received from a slaughter house on this number. The person who made the phone call was also asking for Ashokbhai.

117.7 At the relevant time, the situation in Ahmedabad city was tense. At the relevant time, he had formal acquaintance with the Police Commissioner of Ahmedabad city and hence, he got an appointment and on 12.4.2002, he took the phone and went to the Commissioner's office with Haiderali. The name of the then Police Commissioner was Shri P.C. Pande.

117.8 He met the Police Commissioner and gave him the phone and informed him that the phone appears to be of Ashok Sindhi and also given him the chit. In the chit, he had mentioned the noted telephone numbers from which the phone calls were received for Ashok Sindhi and which he had noted down.

117.9 When he and Haiderali were present with the Police Commissioner, at that time itself, the Police Commissioner had called Shri Tandon. Since Sector-2 falls under the jurisdiction of Shri Tandon, Shri Pande handed over the mobile instrument to Shri Tandon.

117.10 Thereafter, he had received a phone call from A.C.P. Shri Rana, "G' Division and he had informed him that he was required to meet him in connection with the mobile phone

given to the Police Commissioner. Thereafter, he had met Shri Rana who had recorded his statement on 16.4.2002.

117.11 After his statement was recorded on 16.4.2002, he had received a phone call on his mobile on 28.4.2002. This phone call was from a number 2289 and he does not remember the subsequent numbers from memory, but he had received a phone call from such number and he had given such number in his statement recorded at the relevant time. He had received this phone call from Ashok Sindhi, who wanted to meet him. The witness has stated that he had not met him and that he had disconnected his phone. Thereafter, he had immediately made a phone call to the Police Commissioner Shri Pande and he had informed him that in connection with the phone which he had given him, instead of investigation being carried out, the concerned person is directly calling him on his mobile phone number.

117.12 Shri Pande had thereafter handed over the investigation to the Crime Branch. After 2.5.2002, the Crime Branch had recorded his statement. Thereafter, on 13.6.2008, the SIT had recorded his statement.

117.13 The witness has deposed that the mobile phone with the sim-card which he had deposited with the Police Commissioner was a Motorola Company mobile. It was submitted that if the same is shown to him, he can identify it.

117.14 Item No.9 of the muddamal list, Exhibit-139 is a mobile phone which is wrapped in a paper and a waxed thread is tied upon it. The waxed thread was opened in the open court

and the paper was removed and the instrument was shown to the witness. The witness has stated that upon seeing the instrument, he identifies the same as the mobile instrument belonging to Ashok Sindhi.

117.15 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that when the mobile was given to him, he had the information that it is in connection with the incident that took place on 28.2.2002. The witness has denied that he did not know as to how the telephone came in the hands of the person who gave it to him. The witness has admitted that no one other than Haider had given the phone to him.

117.16 The witness has stated that he does not know any advocate by the name of Mohsin Kadri and that it had not happened that Hussainabanu had handed over the phone to him in the presence of Mohsin Kadri. The witness has further admitted that from 18.3.2002 to 12.4.2002, he had kept the phone in a running condition. The witness does not remember as to whether he had made any outgoing calls from this phone. The witness does not remember as to whether he had made any phone calls to Delhi, Khambhat and Mumbai. The witness has denied that from the said telephone, he had made phone calls to the advocates of Delhi or Mumbai and the N.G.O. The witness has stated that he does not remember as to whether he had used the mobile instrument for making any phone calls on any Ahmedabad number.

117.17 The witness has stated that he does not know any Raiskhan Pathan of Ahmedabad.

117.18 The witness has admitted that on 18.3.2002, the Manager of the Shah Alam camp had not handed over the phone to him.

117.19 The witness has admitted that prior to 12.4.2002, he had desired to deposit the phone with the Police Commissioner. The witness has voluntarily stated that, however, the situation in Ahmedabad city and Juhapura was extremely tense and he had to take an appointment from Shri Pande and after the same was fixed, he wanted to deposit the phone with him.

117.20 The witness has been cross-examined with regard to the police chowky or police station near Juhapura and as to whether he did not deem it fit to deposit the phone there.

117.21 The witness has admitted that in the year 2002, he also used to sell the mobile pre-paid cards and that any person who came with money, was sold the pre-paid card. The witness has admitted that in the year 2001-02, the pre-paid card could be obtained very easily without any formalities. The witness has voluntarily stated that he, however, used to maintain a register in his business and he used to keep a note as to who had purchased the pre-paid card from him.

117.22 The witness has further deposed that he does not have personal relations with Shri P.C. Pande, but he was acquainted with him. The witness has admitted that prior thereto, he had met Shri Pande once or twice. The witness has admitted that he is also acquainted with some other police

officers other than Shri Pande. Amongst the officers other than Shri P.C. Pande are Shri Sureliya, Shri Rahul Sharma, etc. However, he does not have any personal relations with any of these officers and that as a social worker, he may have met them in connection with some work. The witness has admitted that at the relevant time, he had not thought of handing over the phone to the other two officers because considering the prevailing situation in Ahmedabad at the relevant time, he did not deem it fit to handover the phone to any officer below the rank of Police Commissioner of Ahmedabad city because he did not trust anyone.

117.23 The witness has stated that he does not remember whether at the time of handing over the mobile phone to Shri P.C. Pande, he had asked for any written receipt regarding his having received the mobile phone.

117.24 In the cross-examination of this witness, it has further come out that on the day when he went to deposit the phone, Hussaina was not present before the Police Commissioner. The witness has denied that after he, Hussaina and Haider deposited the phone, they had gone for drawing a panchnama of the mobile phone at the police station. The witness has denied that after he deposited the phone with Shri Pande on 12.4.2002, till his statement was recorded on 16.4.2002, he had not gone to meet any police. The witness has stated that after 12.4.2002, he had gone to meet Shri Pande on one occasion. At that time, he, Hussaina and Haiderali, all three had gone.

117.25 The witness has stated that he does not know as to

when the panchnama of the mobile phone was made.

117.26 The witness has further deposed that he had met Shri Sureliya in connection with the mobile phone. The witness states that he does not remember as to whether he had given Shri Sureliya any C.D. or cassette in this regard and has voluntarily stated that he had given this C.D. to the SIT.

117.27 The witness has further stated that he does not remember as to whether there was a black cover of mobile when he received it. The witness has admitted that in the year 2002, mobile phones of Motorola Company like the muddamal telephone were available in the market. The witness has stated that he does not remember whether he had taken out the sim-card from the mobile and seen it. The witness has stated that he came to know that it must have been a pre-paid card by checking the balance of the phone.

117.28 The witness has denied that the phone which Hussaina or Haider had given him was not the muddamal article phone, but it was a smaller phone than that and that this muddamal phone was not given to him by Hussaina or Haider. The witness has denied that a fabricated story is got up by him with a view to help the police.

117.29 In the cross-examination of this witness, it has further come out that from 18.3.2002 to 12.4.2002; the phone was solely in his custody. The witness states that he does not remember as to whether during that period, he had returned the phone to Haider. The witness has stated that what he wants to state is that he (Haider) had given him the phone as

an expert of mobile phones and as per his knowledge, he had found out the details as stated by him in his examination-in-chief. The witness has stated that he does not know whether without his knowledge, the mobile phone had been used by anyone.

117.30 The witness has denied that he and Hussaina had gone to meet the manager of the Shah Alam camp and he had obtained the phone from the manager.

117.31 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness has stated that he has noted down all the numbers of the mobile phone directory and also noted down the numbers of the received and missed calls. However, no such documentary evidence has been brought on record. It was submitted that this list given to the Police Commissioner has not been brought on record. Referring to the contents of paragraph 7 of his examination-in-chief, it was submitted that the witness has stated that Ashokbhai had made phone calls to him and he had obtained his landline number and given the same in his statement. However, no such number of Ashokbhai's landline has come on record. It was submitted that no call details have come on record regarding the calls made by Ashok Sindhi. There are no scientific details in this regard. It was submitted that the identity of Ashok Sindhi has not been fixed. It was submitted that this witness in paragraph 7 of his examination-in-chief states so on an inference as some Balvant from the Control Room was looking for Ashok Sindhi. It was submitted that nothing has been established that the phone numbers referred to in paragraph 7 are numbers of the Control Room. Referring

to the contents of paragraph 12 of his deposition, it was submitted that the Police Commissioner Shri P.C. Pande had handed over the phone to Shri Tandon, however, Shri Tandon has not been examined. Referring to the contents of paragraph 13 of his deposition, it was submitted that the facts stated by the witness have not been proved on record and in fact, the identity of Ashok Sindhi itself has not been established. It was submitted that this witness has referred to a sim-card; however, there is no investigation in this regard.

117.32 ANALYSIS: From the testimony of this witness, it emerges that he had been given the phone on 18.3.2002 and it remained with him till 12.4.2002. In the interregnum he had monitored the phone calls coming on the phone and had attended all the incoming calls. As per the testimony of this witness, the caller would ask for Ashokbhai. According to the witness, Ashokbhai had personally called him and he had obtained his land line number from him. Ashokbhai was asking him to return the phone to him. The witness has maintained a statement of all the calls received on the phone and some such persons have also been examined by the prosecution, however, they have not supported the prosecution case. As per the version given by this witness, he and Haiderbhai had gone to the office of the Police Commissioner Shri Pande and had given the phone to him. In their presence, the Police Commissioner had handed over the phone to Shri Tandon. The witness has identified the mobile phone in the court. Thus, from the testimony of this witness even if taken at face value, the mobile phone belonged to one Ashok Sindhi, whose land line number had been obtained by him. However, there is no investigation on this aspect to establish that the mobile phone

is owned by accused No.38 and that the land line number given by the witness is in any manner connected with him.

118. The learned counsel for the appellant/accused have placed stress on the discrepancies in the testimonies of the three witnesses, viz. PW-135, PW-237 and this witness to submit that all the three witnesses have given different versions regarding handing over the phone to the Police Commissioner. However, in the opinion of this court, much weight cannot be attached to these discrepancies considering the length of time after which the witnesses were deposing before the court. Insofar as the core of their testimonies, viz. Hussainabanu having found the phone, handed it over to Haiderbhai and he in turn having handed it over to Nadeembhai is consistent. All three witnesses are consistent regarding the fact that the mobile phone was handed over to the Police Commissioner. The problem which arises is as regards the manner in which the police have handled the matter thereafter.

119. **PW-270 Shankarsinh Mangalsinh Parmar**, aged 52 years, has been examined at Exhibit-1805. The witness has deposed that at present, he is discharging duties as Senior Police Inspector at Gaekwad Haveli Police Station.

119.1 In the year 2009, he was discharging duties at Khadia Police Station.

119.2 In the year 2002, he was discharging duties as a Police Sub Inspector at Vatva Police Station. At that time, as per the instructions of Joint Police Commissioner, Sector-2,

Ahmedabad city – Shri M. K. Tandon, to prevent the offences of theft of vehicles in Sector-2 area as well as to detect such offences, he was discharging the duties with him in the office of the Police Commissioner.

119.3 On 17.4.2002, he was present at the office of the Police Commissioner, Shahibaug. At that time, in the morning at around 8:30 to 9:00, the Joint Police Commissioner Shri M. K. Tandon had called him to his office and a lady was present there, whose name was Hussainabanu. This Hussainabanu had given a mobile to Shri Tandon and had informed him that she had found this phone near Naroda Patiya. Shri Tandon had told him to take the mobile phone and given it to the Assistant Police Commissioner, “G” Division. Shri Tandon had given him a Motorola Company mobile phone with instructions to personally hand it over to the Assistant Police Commissioner Shri M.T. Rana. Hence, he had gone to the office of Shri M.T. Rana, Assistant Police Commissioner who was present there. He informed him about the facts and thereafter, Shri M.T. Rana had called two persons as panchas and had drawn a detailed panchnama in respect of the Motorola mobile phone and taken possession of the same.

119.4 The witness has stated that he would be in a position to identify the mobile phone, which she had presented. The witness is shown the Motorola Company mobile phone which is listed as muddamal article No.9 in the list, Exhibit-139 after opening the cover. The witness has taken the mobile phone in his hand and has stated that it is this very mobile which he had personally handed over to Shri M.T. Rana on that day and deposited the same.

119.5 The witness is shown Mark 134/70 which is a two page panchnama which is handwritten on three sides. The panchnama is dated 17.4.2002 and has been drawn between 10:00 to 11:00 in the morning. The witness has stated that he had gone to deposit the Motorola Company mobile during this period. The witness has stated that upon seeing the panchnama, it is the panchnama which was drawn when he deposited the phone.

119.6 The witness has deposed that the facts stated by him before the court have also been stated by him in his statement recorded by the SIT.

119.7 CROSS EXAMINATION: This witness in his cross-examination has admitted that in connection with the Motorola mobile his only and first statement was recorded by the SIT on 4.2.2009 and no statement was recorded in the year 2002. The witness has denied that the phone was given to him directly by Shri Tandon. The witness has voluntarily stated that the phone was given to him in the presence of Hussainabanu. The phone had reached Shri Tandon on 17.4.2002. The witness has admitted that when the phone was produced before Shri Tandon, at that time, no muddamal receipt was prepared and no panchnama was drawn for seizing the phone.

119.8 Shri Tandon had not given him any information about the sim card and the number of the phone and he had only instructed him to deposit the Motorola phone with Shri Rana. The phone had not remained in his possession for a single day and he had immediately deposited the phone.

119.9 The witness has denied that the phone which Shri Tandon had given to him is not the Muddamal Article No.9 phone and that the phone instrument which was given to him was a smaller phone. The witness has denied that when the phone was given to him, it had a black cover on it.

119.10 The witness has denied that at the instance of the SIT Officers, he had given a false statement which was different from his statement dated 17.4.2002. The witness has admitted that Shri Tandon had not given him any seizure memo, receipt of panchnama with the mobile phone.

119.11 SUBMISSIONS: The learned counsel for the appellants-accused submitted that this witness has stated that on 17.04.2002, he was called by Shri Tandon. A lady was present and she handed over the phone to Shri Tandon, who in turn gave it to him. Referring to paragraph 12 of his deposition, it was submitted that the phone was given to this witness by Shri Tandon in the presence of Hussainabanu and the phone had reached Shri Tandon only on 17.4.2002. It was submitted that PW-237 Haiderali Mirza in paragraph-11 of his deposition has stated that on 12.4.2002, Nadeem had told him that they should give the phone to the Police Commissioner. He, Hussainabanu and Nadeem, all three went to the Police Commissioner. He does not refer to the Police Commissioner handing over the phone to Shri Tandon. It was submitted that apart from the fact that as to whether any such incident of Hasanali had taken place at Jadikhala's house, was seen by Husseinabanu, one of the facts with regard to the phone having travelled has not established.

119.12 ANALYSIS: The testimony of this witness is relevant to the limited extent that he claims to have been handed over the muddamal phone by Shri Tandon in the presence of Hussainabanu, which he immediately handed over to Shri M.T. Rana by drawing a panchnama in that regard. However, the version given by this witness does not find support in the testimony of Hussainabanu who does not even mention the name of Shri Tandon. None of the three witnesses, who were instrumental in handing over the mobile phone to the Police Commissioner, have made any mention of the phone being handed over by Shri Tandon to this witness. The only witness who states that the mobile phone was handed over to Shri Tandon is PW 245 Nadeem, but he too is silent about the same being handed over to the witness.

120. **PW 34 Mohammadyunus Abbaskayum Mansuri** has been examined at Exhibit-233. This witness has deposed that during the period 9.4.2002 to 31.10.2004, he was discharging duties as an Executive Magistrate in the Ahmedabad City Metropolitan Magistrate Court No.1. The witness has further deposed that during the discharge of his duties, he is required to perform the task of making affidavits, recording dying declarations, drawing inquest panchnamas, conducting test identification parades, etc.

121. The witness has further deposed that on 30.9.2002, while he was on duty, Head Constable Ganpatsinh Samatsinh from the Ahmedabad City Crime Branch had come at 12:05 in the afternoon and submitted a yadi for the purpose of fixing a date and time for conducting a test identification parade in

connection with the Naroda Police Station I-C.R. No.100/2002. Upon receipt of the yadi, he fixed the time for conducting the test identification parade of 3.10.2002 at 16:00 hours in the evening. The witness has further deposed that he had made his endorsement in writing on the yadi and had informed the police that the test identification parade in this case is kept in the court room of Executive Magistrate, Court No.1 and that the accused should be covered with a burkha and produced and that the accused should be produced first and thereafter, the witness should be produced. The witness has stated that he had given a copy of the yadi to the police, whereas the original yadi was in his custody. The witness has stated that he had obtained a signature from the police regarding the contents of the endorsement made on the yadi. The witness has produced the original yadi together with his list. The list is exhibited as Exhibit-234. Together with the list, the witness has produced the yadi and has identified his handwritings as well as his signature thereon. The witness has stated that the yadi Mark 234/1 was in the matter of holding a test identification parade of accused Ashok Sindhi through the witness Hussainabanu and a yadi containing the brief details of the offence, had been received by him. The witness has deposed that he had received the yadi during the course of his routine of his work. The yadi has been exhibited as Exhibit-235.

121.1 The witness has further deposed that at the time fixed as per the endorsement in the yadi, he had carried out the test identification parade at the said time i.e. on 3.10.2002 at 16:00 hours. Upon the police producing the accused, he had asked him his name and he had informed that his name was

Ashokbhai Hundaldas Sindhi and he had also obtained his age and address from him. The witness has deposed that while carrying out the verification of his name and age, the accused was made to sit in the court room, whereafter the doors of the court room were closed.

121.2 The witness has stated that thereafter, he had called for five dummy persons through his peon from outside and in this manner, he had also called two panchas through his peon. The witness has deposed that dummy persons called by him were similar in looks and height to the accused. He has further deposed that on that day, as the accused had refused to the police, he was produced by the police in the court room without his face being covered. Thereafter, two panchas, namely, Vikramchand Mangilal Pande and Devjibhai Maganlal, were called. He had read over the yadi which was sent to him by the police (Exhibit-235) and explained the procedure for conducting the test identification parade to them. They voluntarily agreed to act as panchas. Thereafter, the names of the five dummy persons who were called from outside were recorded and they were made to stand in a line in the court room. The court room where the test identification parade procedure was carried out was on the ground floor and it had three doors and all the details about the court house had been described in the test identification parade.

121.3 During the course of test identification parade, no person from outside was present. He had thereafter informed the accused to stand at a place of his choice in the line where the dummy persons were standing and also told him that he may change his clothes if he so wishes. Upon informing him as

above, the accused Ashok Sindhi had exchanged his shirt with the dummy person who was standing at serial No.2. Thereafter, the accused went and stood between the persons standing at serial No.4 and 5 in the line.

121.4 Thereafter, the witness was called to the court room through his peon. The witness was asked her name and address and the same were written down and she has stated that her name was Hussainabanu, wife of Ajgarkhan Gafurkhan Pathan, whereafter she was acquainted with the procedure of the test identification parade. He had told Hussainabanu that if amongst the people standing in the line, the accused is present, and if she can recognize him, she should catch the accused by his hand and bring him out. The witness has thereafter gone near the persons standing in the line and out of those persons, she took out one person and upon asking the person his name, he had informed that it was Ashok Sindhi, which name was recorded by him. The witness has identified that this person is the accused in this case. The witness had taken the accused out of the line and said that on the day of the incident, there were ten to fifteen people with this accused. The mobile phone of this accused had fallen down at the place of offence, and hence, she was identifying him. Thereafter, the witness was permitted to go out of the court and he made all the notings as mentioned in his examination-in-chief in the form of test identification parade below which, he obtained the signatures of the panchas. The procedure was carried out in the presence of panchas and he too had signed before him. The original panchnama Mark 232/4 is produced by the witness and he has stated that the same is in his handwriting. The test identification parade panchnama which is handwritten on four

sides is in his own handwriting. The panchnama is in his handwriting and bears his signature as well as the signatures of the panchas which he has identified. The witness has stated that the contents of the test identification parade panchnama are correct and the same is given Exhibit-236.

121.5 The witness has deposed that the test identification parade was carried within closed doors in the brightness of the lights. The witness has stated that he had taken care to see that there were no police or any other person from outside in the court room at that time. After drawing the panchnama, which had two copies wherein below Exhibit-236, there was a carbon copy. The witness has stated that he had handed over the carbon copy of the test identification parade panchnama which bore his signature as well as the signatures of the panchas. The witness is shown the carbon panchnama Mark 134/84 and he has stated that this is the panchnama which he had given to the police.

121.6 At this stage, the learned advocate for the defence raised an objection to the exhibiting of the test identification parade panchnama as the panchas to the panchnama have not been examined. The trial court has recorded findings whereby it has rejected the objection raised by the defence on the ground that when the Executive Magistrate who had conducted the proceedings has been examined by the prosecution and he has proved the contents of the document, the same is admissible in law.

121.7 **CROSS-EXAMINATION:** In his cross-examination by the learned advocate for the defence, the witness has

admitted that he has recorded all the conversation that he had with the witness and the accused during the course of drawing of the test identification panchnama and all the details thereof had been recorded in the panchnama. The witness has admitted that he has not conducted any procedure which is not mentioned in the panchnama. The witness is thereafter cross-examined with regard to the procedure for inwards any communication received by his office. The witness has admitted that at the relevant time, there was a small steel roller gate from which one person could enter inside his office, which at the relevant time was situated opposite the gate of the Metropolitan Magistrate's court. The witness has voluntarily stated that this was on the rear side of his office and it was also on the rear side of the Collector's office. The witness is examined with regard to the topography of the office and the location of the court room where he had conducted the test identification. The witness has admitted that he would not be in a position to say as to from which way the accused had been brought to the court room as well as he cannot say as to from which way the witness has been brought to the court room. The witness has voluntarily stated that he had asked the accused as to how he was brought and from where he had come and the accused had told him that he was brought from the police station in a police van. The witness has admitted that at page 2 of the panchnama Exhibit-235, the accused has refused to cover his face with a burkha, but he has not stated that the accused had refused to the police. The witness has admitted that by the endorsement he had informed the police about the date and time of the test identification parade and has further admitted that he had not informed the witness lady about the date and time. The witness has admitted that if the

test identification parade is not conducted in accordance with the endorsement made in the yadi, the test identification parade cannot be said to be successful.

121.8 The witness has admitted that by the yadi Exhibit-235, he was aware of the caste of the accused. He had not asked the police about the looks, height, weight, etc. of the accused. The witness has admitted that he has not marked the facial features, weight and height or other special features of the accused. The witness has admitted that if there are any special signs / marks on the face of an accused, he is required to note the same; however, he has failed to do so. The witness has voluntarily stated that what he wants to say is that if there are any special marks, the same are to be noted. However, in the case of this accused, there were no special marks. The witness has stated that he had seen the accused clearly at the time of the test identification parade. The witness has admitted that the persons called as dummies should be people who are similar in description of the accused. The witness has not agreed with the suggestion that only persons having the same age as the accused are required to be called. The witness has admitted that he had declared the age of the accused to be 41 years old, whereas all the dummy persons were younger than the accused. He has admitted that the ages of the dummy persons were 35, 34, 28, 28 and 32.

121.9 The witness has stated that he remembers that at the relevant time, one Shri Parmar was his peon. The witness has stated that he had instructed Shri Parmar as to what kind of persons should be brought as dummies. The witness has voluntarily stated that he had instructed him in the context of

the age, height and looks of the accused. The peon has produced dummies before him in around twenty minutes. When the dummies came, the accused was in his court room. He had also examined the dummies. The witness has voluntarily stated that a panchnama was drawn in that regard too. The witness has admitted that he had come to know that all the dummy persons were Sindhis and they belonged to different areas. The witness has admitted that he had not instructed the peon that all the dummies that he brings should be Sindhis. The witness has admitted that he has not noted the description of the clothes worn by the dummies at that time. He has admitted that even as on date, he cannot say as to what kind of clothes were worn by the dummy persons. The witness has admitted that the witness lady had come five minutes after 16:05. The witness has voluntarily stated that when she had come outside the court at that time the peon had informed him about this fact. He was informed about this before the five dummy persons had come. The witness has stated that at that time, he had two peons, one was his peon and the other was a peon in the court nearby.

121.10 The witness has stated that he has not investigated as to whether the five dummies who were called there, knew the accused. He has further stated that he had not asked the witness lady as to whether she knew any of the dummy persons. The witness has stated that he had not asked the police personnel who had given the yadi as to where the accused is at present and in whose custody he is. He had not asked the police as to how they were going to bring the accused. The witness has voluntarily stated that he has noted the same in his endorsement. The witness has admitted that

as on date, he cannot identify the accused and has voluntarily stated that since a long time has elapsed, he cannot recognize him.

121.11 The trial court has made a note that the learned advocate for the defence wanted to confront the witness with the looks of the accused and requested for permission to call the accused, whereupon the accused came and stood in front.

121.12 The witness has admitted that the accused who is shown to him has a mark on his right cheek and there is an injury mark on his forehead and there is a mark below his right eye. The witness has voluntarily stated that at present, he cannot say as to whether these marks are such as can be seen only from very close quarters. He has stated that at present, he cannot say as to whether this person was called as a dummy because he has not recorded the description of the dummies. The witness has stated that he had only called for people with the physical structure of the accused. He has admitted that the accused has two moles on his right cheek. The witness has voluntarily stated that he does not know as to whether they were there when the test identification parade was conducted. The witness has stated that he had asked the accused as to whether he had refused to wear the burkha or cover his face. The witness has admitted that there is no note with regard to he having asked the accused about this in the panchnama. The witness has denied that at the instance of the police, he had drawn the panchnama of the test identification parade as stated by the police and that he has not carried out the test identification parade in an impartial and legal manner and only for the purpose of helping the prosecution, he had

conducted the test identification parade.

121.13 SUBMISSIONS: The learned counsel for the appellants-accused submitted that from the testimony of this witness, it emerges that though he had instructed the police to produce the accused with a burkha, the same was not complied with. It was pointed out that in the panchnama Exhibit-236, it has not been recorded that he had refused to put on a burkha to the police. It was argued that the possibility that his face was not covered to show him to Hussainabanu cannot be ruled out. It was pointed out that the Executive Magistrate has stated that if the instructions given by him are not followed, the test identification parade cannot be said to be successful. Referring to the Chahera Nishan Patrak, it was pointed out that this accused had injury marks on his forehead and mole on his right cheek. It was submitted that the dummies did not have any such marks, and hence, the accused could be easily identified. It was pointed out that while the age of the accused was 41 years, the dummies were younger to him and therefore, on all three counts, namely, that the accused was not produced with his face covered; he had specific identification marks, and the age of the dummies was not the same as his, the identification cannot be said to be proved.

122. **PW-277 Madansinh Takhatsinh Rana:** The detailed testimony of this witness is referred to along with the testimonies of the police witnesses. At this stage reference is made to the testimony of this witness, only to the extent the same relates to the mobile phone recovered by Hussainabanu and the investigation made pursuant to the first information

report lodged in that regard. This witness has deposed that representations had been made to the Human Rights Commission that rapes were committed on Muslims on the day of the incident and hence, he had received instructions from Shri Tandon to investigate in that regard. Hence, he had recorded the statements of several Muslim witnesses at the relevant time.

122.1 During this time, Shri Tandon had instructed him to record the complaint of Hussainabanu Asgarkhan Pathan (PW-135). Hence, he had gone to the relief camp and recorded her complaint. The complaint so taken was registered as Naroda Police Station I – C.R. No.238/2002. The witness has deposed that he had carried investigation into the offence till 30.4.2002 and had recorded the statements of the concerned witnesses. During the course of investigation, the scene of offence panchnama came to be drawn and upon Police Sub Inspector Shri S.S. Parmar producing a mobile phone in his presence, the custody of such phone was taken over by drawing a detailed panchnama.

122.2 The witness was shown Exhibit-880 which was the original complaint and the witness has deposed that he has signed below the complaint and Hussainabanu has put her thumb impression in his presence and that he identifies the signature on the complaint.

122.3 The witness has further deposed that in connection with the complaint of Hussainabanu, he had drawn a panchnama. The panchnama was of the scene of offence which was identified by Hussainabanu, from where they had

collected burnt ashes and the control sample. The panchnama was of 15.4.2002.

122.4 The witness is shown the panchnama Exhibit-888 and he has stated that he had taken possession of the mobile under this panchnama and has identified his signature as well as the signatures of the panch on the panchnama. The witness has further deposed that on 17.4.2002, from 10 o'clock to 11 o'clock in the morning, he had drawn another panchnama, whereby Shri S.M. Parmar had produced the mobile phone before him. The witness has deposed that the panchnama was drawn in the presence of both the panchas and has identified his signature as well as the signatures of the panchas on the panchnama and has admitted the contents thereof. The panchnama is given Exhibit-1868.

122.5 The witness was thereafter shown the mobile phone which was seized under the panchnama, Exhibit-1868 which was without a seal and he has admitted that this is the same mobile phone which he had taken possession of.

122.6 The witness has stated that he does not remember, at present, as to whether his higher officer had given him in writing or an oral order to investigate into Crime Register No.282/02. The witness has denied that he had drawn the panchnama of seizing the Mobile Exhibit-1868 without calling the panchas. The witness has stated that this mobile was not received in a sealed condition. The witness has stated that he had sealed the mobile at the time of drawing the panchnama and thereafter, he had not opened the seal.

122.7 The witness has admitted that during the course of his investigation, he had not ascertained from the complainant Hussainabanu that this was the very mobile which she had deposited. He has stated that when he received the phone it did not have any black cover over it.

122.8 The witness has stated that in the context of Crime Register No.238/02, he had sent a yadi to the Talati-cum-Mantri to draw a map of the scene of offence; however, he had not received any such map during the time when the investigation was with him. The witness has stated that in the investigation of C.R. No.238/02, he had not received any information to the effect that the mobile phone had been produced by the managers of the camp. The witness has stated that Shri Tandon had not given him any instructions that the mobile phone had been produced by the managers of the camp. The witness has stated that the information regarding from whom, when and how the mobile phone was recovered, may be available in the statements.

122.9 The witness has denied that while investigating into C.R. No.238/02, he had recorded the statements of only important witnesses when the investigation was with him, for the reason that sometimes even not very significant statements are recorded during the course of investigation. The witness has admitted that when the investigation was with him, statements of important as well as unimportant witnesses may have been recorded. The witness has denied that he has recorded several statements during the course of the Naroda Patiya investigation. The witness has voluntarily stated that he had performed the task entrusted to

him by Shri Tandon. However, he had never taken charge of the investigation of this offence.

122.10 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has recorded the complaint Exhibit 880 under the instructions of Shri Tandon. It was submitted that at the instance of this witness two panchnamas came to be drawn viz. the panchnama of the scene of offence Exhibit 888 dated 15.4.2002 and the panchnama of seizure of the mobile phone Exhibit 1868 dated 17.4.2002. Referring to the panchnama Exhibit 888, it was submitted that all the damaged articles found in the house were on the first floor, and also in the house of Salimbhai on the ground floor and some were found in the open space of Inayatali's house which is about 65 feet away from Hussainabanu's house wherein the alleged incident of her brother had taken place. However, no supporting article, much less, the iron cot has been found lying in a burnt condition in the compound. The attention of the court was invited to the postmortem report Exhibit 404 to submit that this report as per the prosecution is the postmortem report of Hasanali, and that this relates to one of the dead bodies referred to in the inquest panchnama Exhibit 662, wherein the inquest of fifty eight bodies has been conducted. It was submitted that the prosecution case is that these fifty eight bodies were recovered from the passage of the water tank where these persons are alleged to have been burnt alive. Therefore, the entire case of Hasanali having been assaulted and burnt in the compound of Jadikhala's house does not appear to be true. It was urged that no definite evidence has come on record as to where the incident had taken place inasmuch as the house

where the incident took place and as to from where Hussainabanu picked up the mobile phone, has not been identified. It was contended that the prosecution has to corroborate its theory with some circumstantial evidence if the direct evidence is found to be either not reliable or not found credit worthy to the satisfaction of the court. It was submitted that the prosecution has to come out with a case that either immediately after the incident or during the intervening period of forty five days, the important article connected with the offence has been moved from its original place either by the Government agencies, including the police, or by the witnesses or their relatives. However, from no corner have such facts providing the connecting link have been adduced and proved by the prosecution.

122.11 ANALYSIS: This witness was also in charge of the investigation in connection with offence registered as Naroda Police Station I C.R. No.238 of 2002, which subsequently came to be merged with Naroda Police Station I C.R. No.100 of 2002, from which the present case arises. Insofar as the evidence of this witness concerning Hasanali's case is concerned, he has drawn two panchnamas, one of the scene of offence and another regarding receipt of the mobile phone. He has also recorded the complaint lodged by Hussainabanu, viz. the first information report registered vide Naroda Police Station I C.R. No.238 of 2002. As per the testimony of this witness, the mobile phone was handed over to him by Shri Tandon in the presence of Hussainabanu; however the same is not supported by the testimony of Hussainabanu and considering the evidence of the other witnesses, who have been examined in connection with the mobile phone, there is no material

corroborating the version of this witness that the mobile phone was handed over to him in the presence of Hussainabanu. Thus, as rightly submitted by the learned counsel for the appellants, the link between the handing over of the phone to the Police Commissioner Shri P.C. Pande and the phone having travelled to this witness through Shri Tandon is missing. It is difficult to comprehend as to why the prosecution has not examined Shri P.C. Pande and Shri Tandon in this case, which reflects on the manner in which the entire case has been prosecuted, despite the fact, that further investigation was carried out by the SIT and it was the SIT which was assisting the Public Prosecutors during the course of the trial. Thus, not only were the officers who were part of the investigation at the first stage negligent and unwilling investigators, it appears that the SIT also has merely paid lip service and carried out the further investigation in a perfunctory manner, without making any serious attempts to gather evidence to establish the prosecution case. At this stage, this court can merely express its anguish at the manner in which the investigation and prosecution has been carried out at all stages. If this is the kind of investigation that is carried out pursuant to the directions of the Supreme Court, the less said the better. Another aspect of the matter is that though we are in the twenty first century and boast of world class facilities, the nature of the investigation in most cases, is not even up to the level of the investigation that was being carried out by the developed countries in the nineteenth century.

122.12 Insofar as the evidence of this witness as an eyewitness is concerned, the same shall be discussed along with the evidence of the police witnesses who are also eye

witnesses.

123. **PW 17 Shantilal Budharmal Kevlani** has been examined at Exhibit.184. This witness is stated to be a panch of the panchnama whereby a Motorola mobile phone is said to have been handed over by a P.S.I. Shri S.M.Parmar in the chamber of Shri Rana. The said witness has not supported the prosecution case and has denied his signature on the panchnama Mark 134/70. He has also denied any such panchnama having been drawn in his presence. The witness has been declared hostile to the prosecution case and has been cross-examined by the learned Special Public Prosecutor; however, nothing has been elicited in support of the prosecution case.

124. **PW 194 Prakashbhai Balchand Gordasani** has been examined at Exhibit.1332. The prosecution has examined this witness as a panch to the panchnama, whereby a P.S.I. has handed over a mobile phone in the chamber of Shri K.T. Rana. The witness has not supported the prosecution case and has denied any such panchnama having been drawn. The witness is shown the document Mark 134/70. He, however, has denied any such document having been signed by him, but has admitted his signature thereon. The witness has denied any such panchnama having been drawn and has been declared hostile to the prosecution and has been cross-examined by the learned Special Public Prosecutor. However, nothing worthwhile has been elicited in his cross-examination and therefore, nothing turns upon the testimony of this witness.

125. **PW-252 Jayesh Vrajlal Makwana**, aged 45 years, has

been examined at Exhibit-1737. The witness has deposed that in the year 2002, there was a landline telephone in his shop having No.2110251 and his residential telephone number was 53509052 and during the same period, he also had a mobile phone No.98250 14456, which was registered in his name.

125.1 The witness has denied that on 26.2.2002, he had a talk with the person having mobile phone No.98250 54777.

125.2 The witness has stated that he does not know Ashokbhai Sindhi. He has denied that Ashokbhai had asked him to lend Rs.50,000/- to him on interest, which he took along with him and went to Santoshinagar at about 4 o'clock, but as he could not meet Ashokbhai, he called him on his mobile No.98250 54777 and talked with him, whereafter he had come and taken the money. The witness has admitted that the police had recorded his statement.

125.3 The witness has been declared hostile as he does not support the prosecution case.

125.4 The witness is sought to be examined to establish the fact that the mobile No.98250 54777 belonged to accused Ashok Sindhi and that the witness had a talk with him.

126. **PW-253 Balvantsinh Kalubha Jadeja**, aged 58 years has been examined at Exhibit-1738. The witness has deposed that in the year 2002, he was working with Reliance and part time he used to run a cold drinks and ice-cream parlour by the name of Jay Ashapura.

126.1 In the year 2002, the landline telephone number of his parlour was 2820106. The witness has denied that on 26.2.2002, he had called from his landline on mobile No.98250 54777. The witness has denied that as he was required to recover Rs.1,350/-, he had called Ashok Sindhi on this mobile number for recovery of such amount.

126.2 The witness has admitted that the police had recorded his statement in connection with his having made a telephone call. The witness has been declared as hostile to the prosecution case as he has not supported the prosecution case. This witness has been examined to establish that the mobile phone No.98250 54777 belongs to Ashokbhai Sindhi.

127. FINDINGS ON WITNESSES OF MOBILE PHONE:

From the evidence of the witnesses as referred to hereinabove, it is noteworthy that though the mobile phone, which was recovered from the scene of incident as the same had fallen out of the pocket of the accused, was handed over to the Police Commissioner, the Police Commissioner did not deem it fit to take custody of the mobile phone in the presence of panchas by drawing a panchnama in accordance with law. He simpliciter took the custody of the mobile phone, and thereafter, handed it over to Shri M. K. Tandon, who, in turn, handed it over to a Police Sub-Inspector named S.M. Parmar, to hand over the phone to the Investigating Officer Mr. M.T. Rana. Mr. S.M. Parmar handed over the mobile phone to Mr. M.T. Rana on 17.4.2002 in his (Mr. Rana's) chamber and a panchnama Exhibit 1868 came to be drawn. Thus, there is no evidence on record to establish that the mobile phone was

handed over to the Police Commissioner, and that it was that very phone which had travelled up to the Investigating Officer Mr. M.T. Rana. Moreover, neither the Police Commissioner Mr. P. C. Pande, nor Mr. M. K. Tandon, to whom he had handed over the mobile phone, has been examined as witnesses. Mr. P.C. Pande is not even cited as a witness and Mr. M.K. Tandon, though cited as a witness, has been dropped to avoid repetition of evidence. From the evidence of the witnesses noted hereinabove, it can be seen that many witnesses who are not witnesses to any of the incidents have been examined, however, unfortunately an important witness like Shri Tandon, whom it was absolutely necessary to prove the chain of events that had taken place has been dropped. To make matters worse, no inquest panchnama of the dead body of Hasanali has been pointed out to the trial court during the course of trial to show that the dead body of Hasanali was recovered from an upside down cot. It may be noted that an inquest panchnama Exhibit 402 is found in the case papers, which has been brought on record at the instance of the defence. The panchnama has been drawn on 2.3.2002 at 16:00 hours. The said panchnama is of the corpse of a male person lying in the compound of the last house in lane No.4 of Hussainnagar. As per the panchnama a dead body is lying in the open compound of a house and the description of the dead body is given. This panchnama clearly is the inquest panchnama of deceased Hasanali; however, this fact has not been brought to the notice of the trial court. Before this court also, the learned counsel for the appellants had asserted that no dead body has been recovered from Jadi Khala's house, which has been tied to an upside down cot. Even at that time, the learned Special Public Prosecutor assisted by the learned Assistant Special Public

Prosecutor, who had conducted the case before the trial court, was not in a position to point out to the court that in fact an inquest panchnama had been drawn, despite the fact that such a panchnama in fact existed on the record. It is only when the court, on a perusal of the case papers, and the inquest panchnamas, noticed that there was an inquest panchnama which matched with the description with Hasanali's incident, and the same was pointed out to the learned counsel for the respective parties, that the learned counsel became aware of the existence of such a panchnama. This reflects the sorry state of affairs as regards the manner in which the entire case was prosecuted before the trial court and also reflects upon the perfunctory manner in which the SIT has investigated the case. Another glaring fact regarding the weak investigation is evident from the panchnama of the scene of offence Exhibit 888, which merely says that they have remained present in front of the Hussainabanu's house, without so much as referring to the proper address of the place, viz. house number or lane number. All that is recorded is that they have come to the house of Hussainabanu resident of Hussainnagar.

127.1 Another disturbing aspect is that on the basis of the complaint lodged by Hussainabanu, a first information report came to be recorded being Naroda Police Station I C.R. No.238 of 2002, the investigation whereof was entrusted to Shri M.T. Rana. Later on all the first information reports registered in connection with incidents that had taken place at Naroda Patiya came to be clubbed together and merged with Naroda Police Station I C.R. No.100 of 2002 and the case papers of the concerned first information report came to be kept along with the investigation papers of I C.R. No. 100/02. A perusal of the

case papers of I C.R. No.238 of 2002 shows that there is a paper cutting of a newspaper report which contains a black and white photograph of the dead body of a man in a badly burnt condition, lying on an upside down cot. It appears that his newspaper cutting was placed with the investigation papers as it was a photograph of the dead body of Hasanali, but during the course of trial no efforts have been made to bring the same on record. It may be noted that on the internet coloured photographs of the dead body of Hasanali in the compound of Jadi Khala's house are available, which match exactly with the description of the dead body as described in the inquest panchnama Exhibit 402; however, none of this has been brought on record by the investigating agencies. The fact that the dead body is lying in Jadi Khala's house is apparent when one sees the coloured photographs of the deceased and the photograph of Jadi Khala's house which are produced on record by the prosecution. All this reflects on the kind of the investigation that has been carried out by the first investigating agency as well as by the SIT.

127.2 Be that as it may.

XVI. OTHER WITNESSES:

128. The testimonies of the other eye-witnesses examined by the prosecution are as follows:

129. **PW-136 Basirkhan Nannekhan Pathan** has been examined at exhibit 898. This witness has stated that he can understand Gujarati, but finds it more convenient to speak in

Hindi and hence he will depose in Hindi.

129.1 In the year 2002, he was residing in Lane No.3, Hussainnagar at Naroda Patiya. He was residing in his house with his family and his two brothers and their families. His to elder brothers are named Munnabhai Nannekhan and Nathubhai Nannekhan. All the three brothers share the same kitchen and business. At the relevant time he used to bring labourers to the submersible pump spare parts factory and used to prepare production and did such work on contract. Such factories were at Hirawadi, Nava Estate and Kirti Estate.

129.2 His parents were residing at their native place, viz. village Arethi, Madhya Pradesh. He has two elder sisters, both of whom are married and are residing at their matrimonial home.

129.3 In the year 2008, he used to do embroidery work and sell ready-made clothes, whereas at present he has an egg stall at Naroda Patiya. He has continuously been residing in Lane No.3 at Hussainnagar.

129.4 The incident took place on 28.2.2002. On 27.2.2002 when he was at his work place, he received a phone call from his brother-in-law Sarfaraz, saying that a train has been burnt at Godhra due to which the atmosphere is bad, and hence he should go home. Therefore, he had gone home. When he was going home, his employer told him that on the next day as there was call for bandh, there would be a holiday. He came home at night and went to sleep.

129.5 On 28.2.2002, he woke up at around 8 to 9 o'clock in the morning. At that time there was commotion outside. He had come out of his house. He came out from the lane on the road. He saw that there was a mob of people in the open ground of the S.T. Workshop as well as in front of Natraj Hotel. Several people were wearing khaki pants and T-shirts. They had tied saffron bands on their heads or around their necks.

129.6 Near the S.T. Workshop, there were several Hindus as well as Muslims also. At the relevant time, his age was eight years lesser than what it is today and since his age was less at the relevant time, people were telling him that the atmosphere is bad and that he should go home. The people standing there in Hindu mob had spheres, hockey sticks, swords, pipes, etc. The police were also standing there.

129.7 The Muslims had told the police that the mob had advanced so much further, so they should do something. However, they did not take any steps. The people in the mob were assaulting the Muslims. At this time the Muslims had retreated. He escaped and reached near gate No.1 of the S.T. Workshop. At that time the situation was not out of control and he had hoped that the police would control the situation. There were police vehicles and the police were also present at the scene of incident.

129.8 A police vehicle was standing near the corner of the S.T. Workshop where a white car came. Mayaben alighted from it and she talked with some police officers standing there. Thereafter, after a little while the police started indiscriminately firing upon the Muslims. The police were

walking in front of the Hindu mob. The police were releasing teargas and the Hindu mob was coming behind them. Hence they were frightened because the situation had deteriorated tremendously. They (the Muslims) started retreating and at this time he was injured by a bullet on his left shoulder. When he was struck by the bullet, it was around 10 o'clock in the morning.

129.9 In the incident, a boy, named, Mustaq from the next chawl, was also injured on the neck by a bullet, another boy named Khalid was injured by a bullet on his private parts. He and another boy dragged Mustaq and Khalid and took them near their chawl towards the interior lanes. The police were coming in front and were firing and Hindu mob was continuously coming behind the police.

129.10 The mob of Hindus first looted and burnt shops near Noorani Masjid. Thereafter they came towards their population and entered Hussainnagar. At this time they were terrified. Their family members came to fetch them. They took them on the rear side towards Jawannagar and Gangotri Society. They had stayed at Jawannagar; there also S.R.P. people were not letting them to enter.

129.11 The people belonging to their Mansuri community and other Muslims, many of whom were his relatives, decided to go towards the pit.

129.12 The witness has further deposed that women in the Mansuri community wear sarees. They had also made other women wear sarees. At the relevant time he used to wear

jeans and a shirt and if he was in a Hindu group, his appearance was such that he would look like a Hindu. On that day he had also put a *tilak*, and accordingly, on that day they looked like Hindus. There from Narodagam they went through the fields to Kathwada. One Iqbal Mansuri had a submersible bore opposite the kabrastan at Kathwada. All of them went there. They went there and exchanged formalities and introduced themselves as Muslims and told him that they had come from Naroda Patiya as well as all the facts regarding the circumstances in which they had come. They spent the night of 28.2.2002 there.

129.13 Including the aged and children, they were in all, forty five people. Those people told them that Kathwada was a small village and that it was possible that the situation in the village might also deteriorate. Hence, they told that they would leave them at Bahiyal village and, accordingly, they dropped them at Bahiyal. At Bahiyal village, he had obtained treatment for his left shoulder where he had sustained bullet injury through a private doctor. At that time they were in hurry to get well as soon as possible, hence he had not obtained any certificate.

129.14 They had stayed at Bahiyal village for around fourteen days. At that time upon the situation becoming slightly peaceful, they went to the Bapunagar camp at Ahmedabad.

129.15 In the mob which he had seen near the S.T. Workshop, he had seen **Sahejad Chara (A-26), Bipin Autowala (A-44) and Guddu Chara (deceased)**. They were

leading the mob.

129.16 The Bapunagar police had come to the camp where they were staying. The Bapunagar police recorded his statement on 18.3.2002. The police had taken his statement in all four to five times. The S.I.T. had also recorded his statement on 27.5.2008.

129.17 In the incident, his house was damaged. His house was also set on fire. He has incurred loss of around Rs.6,00,000/-.

129.18 Khalid has become handicapped on account of the injury sustained by him in the incident, whereas Mustaq died on account of the injury sustained by him in the incident.

129.19 The witness has deposed that in fact his surname is Mansuri. However, while recording his statement at the relief camp, the surname of many of the people whose statements were recorded by the police before him, was Pathan and hence the police had mechanically written down his surname as Pathan, but in fact his surname is Mansuri. At the relevant time, the police were in a great hurry and tried to finish off the work hastily.

129.20 The witness has stated that he has come to know that Guddu Chara has died. He has stated that he knows Mayaben, Bipin Autowala and Sahejad Chara and can identify them. The witness has identified Sahejad Chara, Bipin Autowala and Mayaben correctly. He has stated that in the incident of arson near Noorani Masjid, he had seen Guddu,

Sahejad and Bipin. They were kindling the fire and he had seen Mayaben at the corner of the S.T. Workshop. He had seen all the four on the day of the incident. The witness has identified all the four accused.

129.21 The witness has deposed that he has stated all these facts before the SIT.

129.22 CROSS EXAMINATION: In his cross examination, the witness has admitted that his first statement was recorded on 18.3.2002 and his statement before the SIT was recorded on 27.5.2008. The witness does not remember that on 27.3.2002, two more statements of his have been recorded and that on 10.4.2002 as well as on 16.5.2002, in all, four statements of his have been recorded or not.

129.23 The witness was shown the documents produced along with the purshis-exhibit 903 and is shown the signature at the end of the document. Upon looking at the document the witness has stated that the signature is his. The witness has admitted that the writing shown to him having been made when he had gone to his house after the riots for the purpose of looking at the damage caused. The document is exhibited as exhibit 904.

129.24 The witness has been extensively cross-examined with regard to the accounts of the contracts that he used to enter into, and as regards his income at the relevant time.

129.25 The witness has denied that his mobile was lost on the day of the incident and has voluntarily stated that his

mobile was in his house. He has denied that he had given his mobile to Nadeem.

129.26 The witness has admitted that on 18.3.2002, Shri Pathak of the DCB Police Station has recorded his statement. The witness has stated that he cannot say with certainty that they had left their house at 1 o'clock in the afternoon on that day. The witness has voluntarily stated that the day was such that the exact time was not within his notice. However, it is certain that they had left in the afternoon.

129.27 The witness has denied that in his statement dated 18.3.2002 recorded by Shri R.C. Pathak, Police Inspector, DCB, he had stated that they were at home. On 28.2.2002 in the morning at 10:15, people belonging to the Hindu mob, thousands in number, with swords, sticks, spheres, cans filled with kerosene and petrol, bottles had surrounded the Muslim area in which they were residing and started pelting stones on the Muslims residing in the chawls. The enraged Hindu mobs thousands in number with weapons came from all four sides. They could hear shouts of 'cut and kill the Miyas'. Upon the police firing, a boy named Inayat, who was living in their neighbourhood, was injured by a bullet. At this time it was around 1.00 in the afternoon. There was strong attack on their chawl from all sides and they were afraid and at that time their families stealthily went through Jawannagar and fled through the open fields and reached Kathwada village on foot. The witness has voluntarily stated that the police were not listening to them and writing down their statements as per their own whims and were not writing down what was stated by them. He has also stated that before the police also he had given a

statement as stated by him before the SIT.

129.27 The witness has denied that in his statement dated 18.3.2002 he had not stated the fact regarding his being injured by a bullet. The witness has voluntarily stated that he has stated such facts and that he had also informed the police about the part of his body on which he was injured by the bullet; however, they were not writing it down.

129.28 The witness has admitted that he does not know Inayat and that he has not stated any fact regarding Inayat being injured by a bullet in his statement. The witness has denied that he has not stated before the police as to on whose bore they had gone at Kathwada and exactly where they had gone. The witness has voluntarily stated that he has stated so, but the police had not written it down. The witness has denied the fact that they had gone from Kathwada to Bahiyal village and at Bahiyal village he had availed treatment from a private doctor for his injury, has not been stated by him before the police and has voluntarily stated that he has in fact so stated, but the police had not written it down.

129.29 The witness has admitted that he does not know the name of the doctor from whom he had availed of treatment at Bahiyal village. The witness is cross-examined with regard to the nature of the treatment availed by him. The witness has stated that he had not paid any amount to the doctor towards treatment and has voluntarily stated that the village people were incurring expenditure of their food, medicine, etc.

129.30 The witness has admitted that they had stayed at

one place for ten days and he had obtained treatment at one place only. He has stated that he does not know the name of the person at whose house they had stayed in Bahiyal village. He had stated that every day they used to have meals at houses of different people. He has stated that he has not noticed as to whether there was a name plate of the doctor where he used to go for treatment.

129.31 The witness has denied the suggestion that he was not injured by any bullet and that he had concocted such facts.

129.32 The contents of paragraph 7 of his examination-in-chief are read over to the witness, who denied that except for the date 28.2.2002 stated in this paragraph, none of the facts have been stated by him in his statement dated 18.3.2002 because no such incident had occurred.

129.33 The contents of paragraph 8 of his examination-in-chief are read over to him to the effect that he has not stated such facts in his statement dated 18.3.2002, because he had not seen the same and such incident had not occurred, which the witness has denied. The witness is further confronted with his statement dated 18.3.2002 to the effect that first three lines in paragraph 9 of his examination-in-chief have not been stated by him in such statement.

129.34 The witness is further confronted with the contents of paragraph 9, from the 4th line to the end of his examination-in-chief to the effect that he had not stated such facts in his statement dated 18.3.2002, which the witness has denied.

129.35 The contents of paragraphs 10, 11, 12, 13 and 14 of his examination in chief are read over to the witness and he is confronted with his statement dated 18.3.2002 to the effect that such facts have not been stated by the witness in his statement, which he has denied. The witness is further confronted with his statement dated 18.3.2002 to the effect that he has not stated the facts stated by him in paragraphs 15 and 16 of his examination-in-chief in such statement. The witness has denied that he has not stated that he had seen the mob near the S.T. Workshop as stated by him in paragraph 17 of his examination in chief in his statement dated 18.3.2002. The witness is further confronted with statement dated 18.3.2002 to the effect that what is stated by him in paragraph 19 of his examination-in-chief, namely, that there was cash amount of Rs.3,50,000/- lying in his house which he had kept for his business was not stated by him in his statement dated 18.3.2002. In the opinion of this court such omission cannot, by any means, be said to be a material omission so as to amount to a contradiction, and hence, such a question ought not to have been permitted to be put to the witness.

129.36 The witness is further confronted with his statement dated 18.3.2002 to the effect that the facts stated by him in paragraph 20 of his examination in chief regarding Khalid and Mustaq being injured have not been stated by him. The witness has stated that he came to know regarding Khalid becoming handicapped and about Mustaq's death, later on. The said incident of Mustaq's death took place one and half years after the incident, during which period, he was under treatment. He came to know that Khalid had become handicapped while he was at the relief camp at Ahmedabad.

The witness is further sought to be contradicted as to his statement dated 18.3.2002 to the effect that the facts stated by him from the 3rd line to the 7th line of paragraph 23 of his examination-in-chief, have not been stated by him before the police.

129.37 The witness has denied that he had not stated the facts regarding the presence of Mayaben, etc., in his statement dated 18.3.2002 and has voluntarily stated that he had stated such facts, but they were not writing them down. The witness has denied that he has not seen any of the incidents that took place in the chawl on the day of the incident wherein he had not seen anyone being burnt, killed, set ablaze or being burnt after pouring inflammable substance and that people in houses of the chawls were set on fire, has not been seen by him and that he had come to know about such facts during the course of conversations and that he had stated such facts in the form of deposition before the court.

129.38 The witness has denied that in his statement dated 18.3.2002 he has stated that at present he is taking shelter at the camp at Aman Chowk in Bapunagar. He has not gone to see any chawl, but has come to know that Hindu mobs have taken many Muslims to one place and have poured inflammable substances like kerosene or petrol and have burnt them together at one place, and have set the houses of Muslims in the chawls on fire and caused damage and have looted their properties. The witness has said that on the day of the incident he was at home, but he does not know the exact time, but till 8:00 to 8:30 in the morning, he was at home. He has admitted that on that day there was a holiday in his

factory, on account of the call for bandh. The witness has further stated that he was at home and till then his wife, his elder brother, sister-in-law and their children were at home. He has denied the suggestion that on that day till 3:00 in the afternoon he, his brothers, namely, Munnabhai and Nathubhai were present at home. He has denied that the mob had come at 3:00 in the afternoon on that day. He has denied that he has left his house at 3:00 and that at that time the Hindu mob had entered their chawl and till then the Hindu mob had not come to their chawl.

129.39 The witness is confronted with the contents of his statement dated 27.3.2002, which is stated to have been recorded by some A.S.I. It has come on record that this ASI who is stated to have recorded such statement has not been identified, and therefore, has not been examined. Under the circumstances, when the witness has denied that any such statement of his was recorded, and the person, who has recorded the statement, is not identified, no cross-examination in respect of such statement ought to have been permitted by the court. The witness is also cross-examined with regard to the statement exhibit 904 recorded by some A.S.I. of Naroda Police Station, which again the witness had denied having given and the person who has recorded such statement is not identified. Therefore, the entire cross examination in respect of statement dated 27.3.2002 and exhibit 904 is not admissible in evidence.

129.40 The witness has denied that on the day of the incident he had locked his house at around 3 o'clock and had gone to Bahiyal. The witness has stated that he does not

remember that the police has recorded his statement on 10.4.2002 and has denied that he has stated therein that on the day of incident at around 2:30 in the afternoon he had locked his house and gone to Bahiyal. It appears that the statement dated 10.4.2002 is in the nature of a loss and damage analysis form, that has been filed by many of the witnesses. The witness has admitted that on the day of the incident, till he left for Kathwada, no damage had been caused to his house. He has admitted that till his statement dated 18.3.2002 came to be recorded, he had not gone home and that till his statement came to be recorded, he did not know the extent of damage caused to his house. He has admitted that he had mentioned a loss of Rs.6,00,000/- to his house in his statement on the basis of facts that he had heard. Such facts he had heard from his brother. He has admitted that on 10.4.2002 he knew the extent of damage caused to his house.

129.41 The witness is not aware that any statement of his was recorded on 16.5.2002. He has admitted that if any such statement dated 16.5.2002 of his has been recorded, then at that time he knew the accused whom he has identified before the court. He has denied that on 16.5.2002, though he knew the accused, he has not named them before the police. The witness has voluntarily stated that he was giving names, but the police was not writing them down. The witness has denied that on that day he has not seen any mob and has not seen any person in the mob. He has denied that in his statement dated 16.5.2002, he has stated that he has learnt that many people in the mob had killed other people and burnt them and he does not know any person in the mob.

129.42 The witness is cross-examined with regard to the topography of the area and the people residing in the neighbourhood. He has stated that he does not remember the exact time, but after he left his home in the morning he has returned at around 12 o'clock. The witness has denied that on that day mobs were coming from Natraj, Krushnanagar and Kalupur and has voluntarily stated that the mobs that he had seen were coming from Natraj Hotel, viz. from the direction of Naroda. He has stated that he has seen the mob from open ground of the S.T. Workshop. This ground is outside the gate and that the police were also there. The witness has denied that the mob was comprised of ten thousand to fifteen thousand people and said that there were one hundred to one hundred and fifty persons in the mob. He has admitted that till he was there he had seen a mob of only one hundred to one hundred fifty people and that he has seen that the mob had come towards Noorani Masjid. He has stated that he was surrounded on all four sides by the mob. He has admitted that the mob had gone towards Noorani Masjid. The witness has denied that he had seen this mob of one hundred and fifty people at Noorani Masjid from the open ground of S.T. Workshop and has voluntarily stated that upon the mob coming near the masjid, they had retreated and had come near the lane, viz. near the main lane. He had seen the mob from the main lane. He has denied that he had seen the accused whom he had identified, from near his lane. He has stated that he had seen them from Noorani Masjid. The witness has denied that from where he was standing, namely, from near his lane, he had seen the accused whom he has identified in the mob standing near Noorani Masjid. The witness has denied that there was cross stone-pelting between Muslims

and Hindus.

129.43 In his cross examination, he has stated that he saw the mob for the first time from the S.T. Workshop open ground. He had not seen a white coloured Maruti in the mob. He has seen white coloured Maruti for the first time from the corner of S.T. Workshop road. He does not know the time when he saw the car. However, he had seen the car prior to the riots escalating. The witness does not remember as to whether he had seen the car at the time of the firing for the reason that they were busy trying to protect their lives. He has seen one Mayaben coming out of the car.

129.44 The witness has admitted that Mayaben is the MLA of their ward and hence he knows her. The witness has admitted that he has no relationship of personally talking to any of the four accused whom he has identified and that he has no social or other relations with them and that he has identified them for the first time in the court. The witness has denied that on that day he has seen all the four accused for the first time near the S.T. Workshop. The witness has voluntarily stated that he knew them prior to the incident. He has admitted that except for near the S.T. Workshop, in the context of the incident, he has not seen the named accused anywhere on the day of the incident. The witness has denied that the police had resorted to firing against the rioters near the S.T. Workshop and has admitted that till he was at the S.T. Workshop no one was injured by bullets. The witness is cross-examined with regard to the clothes that he was wearing when he was injured by bullets and what had happened to those clothes. The witness is further cross-examined with regard to

the treatment availed by him, and as to whether or not a prescription has been given by the doctor, etc. The witness has denied that at the instance of people of his community he had concocted false facts regarding Bahiyal, the hospital, Kathwada and his having sustained a bullet injury, etc. and that from Gangotrinagar he was directly taken to the camp in a police vehicle. In paragraphs 84 and 85 of his deposition, the witness is confronted with the contents of his statement dated 16.5.2002, which he had denied.

129.44 In the cross-examination of this witness, it has further come out that he had met the police for the first time after the incident of 18.3.2002 at the camp. The witness has denied that any of his statements recorded by the police have been read over to him. He has stated that for the first time, all these statements had been read over to him when he went to SIT's office. The witness has voluntarily stated that they used to come and record statements and go away. The witness has also voluntarily stated that he had drawn their attention to the fact that what was stated by him was not written down in the statement. The witness has admitted that till the statements were read over to him in SIT's office he was not aware of the contents thereof.

129.45 In the cross-examination of this witness it is brought out that he had made an application to the SIT after which his statement was recorded. The witness is cross-examined with regard to the application made by him as to who had taken down the same. The application is shown to the witness and is exhibited as Exhibit 907. In his cross-examination, the witness has stated that he had not read his application and has

voluntarily stated that the application was made only for the purpose of his statement being recorded by the SIT and hence he did not deem it fit to read the same. He has stated that he had studied upto the 8th standard in Hindi and that nobody had read over or explained the application to him. The object behind the application was that he wanted to give his statement before the SIT.

129.46 The witness has admitted that prior to giving the application Exhibit 907; he had already initiated proceedings for availing compensation. He has admitted that no person in his family has died and no one has been injured and has voluntarily stated that he himself was injured. He has admitted that in connection with his injury he has not lodged any complaint or taken any action against anyone.

129.47 The witness has admitted that when he was standing at the gate of the S.T. Workshop, at that time, policemen and police vehicles were standing at the corner of Natraj Hotel, which he had seen. At that time Mayaben had come to the corner of Natraj Hotel. He had seen Mayaben coming to the corner of Natraj Hotel and talking about something with the police. In his cross-examination he has denied that on that day there were police vehicles at Natraj Hotel corner and he has voluntarily stated that such vehicles were parked between the S.T. Workshop and Natraj Hotel. He has admitted that on that day there were policemen and police vehicles at Natraj corner.

129.48 The witness has denied that the first time when he came out, the mob from Natraj Hotel was pelting stones at

Noorani Masjid. He has not seen that any mob had come from Krushnanagar and was pelting stones at their chawl.

129.49 The witness has admitted that despite the fact that the police were releasing teargas against them and were firing and the Hindus were pelting stones, he had stood on the road. The witness has voluntarily stated that he was standing at the corner of the lane. The witness has denied that on 28.2.2002 he has not seen any of the accused. He has denied that for that reason in the application Exhibit 907 made to the SIT, receipt dated 27.3.2002 Exhibit 904 and in his statements dated 27.3.2002, 10.4.2002 and 16.4.2002 he has not named any of the accused whom he has identified before the court. The witness has voluntarily stated that in all his statements he has given name of the accused; however, the police were not writing them down. (It appears that in his statement dated 18.3.2002 the witness has named the accused).

129.50 The witness is confronted with his statements dated 27.3.2002, 10.4.2002, 19.5.2002 and Exhibit 904 to the effect that he has not stated the first three lines of paragraph 9 of his examination-in-chief in those statements.

129.51 The witness is confronted with his statements dated 18.3.2002, 27.3.2002, 10.4.2002 and 16.5.2002 as well as Exhibit 904 and receipt dated 27.3.2002 to the effect that the first three lines of what is stated by him in paragraph 10, page 4 of his deposition have not been stated by him in those statements. The contents of paragraph 10 of his examination-in-chief from the 3rd line to the end are read over to the witness to the effect that in his statements dated 18.3.2002,

27.3.2002, 10.4.2002 and 16.5.2002 as well as exhibit 904 he has not stated such facts. The witness has denied that except for his statement before the SIT, in none of his statements he has stated the facts stated by him in paragraph 11 of his examination-in-chief. The contents of paragraph 14 of his examination-in-chief are read over to the witness and he has denied that he has not stated such facts in his statements dated 27.3.2002, 10.4.2002, 16.5.2002 and 27.5.2008. The witness is further confronted with the contents of paragraph 15 of his examination in chief to the effect that except for the statement recorded by the SIT he has not stated such facts in any of his police statements. Similarly, the witness is also confronted with the facts stated by him in paragraph 16 of his examination-in-chief to the effect that he has not stated such facts in his statement dated 16.5.2002.

129.52 The witness has admitted that the facts stated by him in paragraph 17 of his examination-in-chief wherein he has clearly mentioned that he had seen them in the mob near the S.T. workshop has not been so stated by him in any of his statements including the statement recorded by the SIT. (It appears that in statement dated 27.5.2008 recorded by the SIT as well in his statement dated 18.3.2002 the witness has stated that in the mobs which were there in the riots he has seen Bipin Autowala (A-44), Sahejad Chara (A-26), and Guddu Chara (deceased). The witness is further confronted with the contents of paragraph 19 of his examination-in-chief to the effect that he has accepted before the SIT that he has not stated such facts. (It appears that all these facts relate to the loss incurred by him and hence the same cannot be said to be an omission which is so material, as to amount to a

contradiction).

129.53 The witness is confronted with the contents of the 3rd line to the last line of paragraph 23 of his examination-in-chief. The witness has admitted that in all his statements he has not referred to such facts and has voluntarily stated that the S.T. Workshop corner and Natraj Hotel corner are one and the same, and therefore, whether he says S.T. Workshop corner or Natraj Hotel corner, he is saying one and the same thing. The witness is further cross-examined with regard to the topography of the area and the population of Muslims and Hindus in the area. In his cross-examination he has admitted that on 27.2.2002 while he was at his job, because his brother-in-law made a phone call he came to know about the Godhra incident. He has also come to know that an ST bus was set on fire near Soni-ni-Chali. He has admitted that on 27.2.2002 no incident had taken place at Naroda Patiya and has voluntarily stated that on 27.2.2002 there was news in the television which would evoke anger amongst the people. He has stated that at the time of the TV news, he had not felt any fear.

129.54 The witness has admitted that on the day of the incident there was a police point for protection at Naroda Patiya and that prior to the incident taking place police vehicles had been placed there. The witness has admitted that he knew Bipin Autowala (A-44) prior to the incident. The witness has denied that in the complaint lodged by Bipin Autowala his name was also there and hence he was falsely naming him. He has denied that he had burnt Bipin Auto Centre and therefore, he was giving his name before the court.

129.55 To bring out the omissions and contradictions as to his previous statements, the defence has cross-examined the concerned Investigating Officer/assignee officer who had recorded such statement.

129.56 PW-279, Shri B. J. Sadavrati, the assignee officer has admitted that he had recorded the statement of this witness on 16.5.2002. He has admitted that this witness had not given the names of any accused before him. He has admitted that he had orally examined the witness and recorded his statement. The assignee officer has admitted that the witness had not made any grievance regarding recording of his earlier statements. The assignee officer has admitted that this witness had stated before him that he had seen the people in the mob killing many other people and burning them and that he did not recognize any people in the mob.

129.57 The assignee officer has admitted that this witness had stated before him that on 28.2.2002, there was a call for Gujarat Bandh, he had not gone for his business and was present at home, his brothers were also present at home with their families and in the morning at around 10 o'clock, mobs belonging to the Hindu community gathered near their chawls and had pelted stones at their chawls and in defence, they had also pelted stones against them; however, this mob had become very violent and had entered their chawls and started torching their houses and burning people alive due to which, out of fear, they had fled towards the rear side to Gangotri Society and there, since the houses were closed, they had climbed on the terrace of the houses and hid there, where they stayed till 11 o'clock at night and at around 12 o'clock at night,

the police vehicles came and the police had called them and told them that they would leave them wherever they wanted to go and upon their saying that they wanted to go to Bapunagar, they were dropped at Aman Chowk and they had stayed there. No one in his family was injured or had died in the incident. His house is safe and has not been damaged or burnt.

129.58 The contents of the first three lines of paragraph 9 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that such facts are not stated by the witness in the statement recorded by him. The contents of first three lines of paragraph 10 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness has stated that a police vehicle was standing near the corner of the S.T. Workshop, a white car came there, Mayaben came out from the car. The assignee officer has admitted that the witness had not stated such facts in the statement recorded by him.

129.59 The contents of paragraph 11 of the examination-in-chief of the witness are read over to the assignee officer, wherein reference is made to Mustaq and Khalid being injured by bullets and they having taken them on the interior side, etc. The assignee officer has admitted that such facts have not been stated by the witness in the statement recorded by him. The contents of paragraphs 14, 15 and 16 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that except for stating that they had gone to Bapunagar camp, none of the other facts have been stated by the witness in the statement recorded by him. The assignee officer has admitted that this witness has not stated before

him that S.T. corner and Natraj Hotel corner are one and the same.

129.60 PW-292 Shri R. C. Pathak, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 18.3.2002. The assignee officer has admitted that this witness had stated before him that they were present at home, on 28.2.2002, when at around 10:15 in the morning, a Hindu mob, thousands in number, came with swords, sticks, spears, cans filled with kerosene and petrol and bottles and surrounded all the Muslim areas, where they were residing and resorted to intense stone pelting on the Muslims residing in the chawls. The enraged Hindu mobs which were thousands in number had swarmed upon the national highway road and shouts of "kill, cut the Miyas" could be heard from all four sides. Upon the police resorting to firing, a boy named Inayat residing in their neighbourhood was injured by a bullet. At this time, it was around 1 o'clock in the afternoon. Upon there being a forceful attack on their chawls from all sides, they were frightened and at that very time, together with their family, they stealthily went from Jawannagar through the open fields and fled to Kathwada village. The assignee officer has admitted that this witness in the statement recorded by him has not stated the fact regarding his being injured by a bullet. He has also admitted that the witness had not stated before him as to on whose bore, they had gone to Kathwada and had stated that the witness had told him that together with his family, he had gone to Kathwada. The assignee officer has admitted that the witness had not stated before him that they had gone from Kathwada to Bahiyal village and that he had availed of treatment by a private doctor. The assignee officer

has further admitted that this witness had not stated before him that certain people in the mob were wearing khakhi pants and T-shirts and had tied saffron bands on their heads or around their necks. He has admitted that the witness had not stated that he had woken up in the morning at around 8:30 to 9:00 and there was commotion outside. The assignee officer has admitted that the witness has not stated before him that the mobs of people were standing on the S.T. Workshop ground and opposite Natraj Hotel, but has clarified that the witness had stated that a mob of thousands of enraged Hindus had swarmed upon the national highway.

129.61 The contents of the first five lines of paragraph 8 of the examination-in-chief, the contents of first three lines of paragraph 9 of the examination-in-chief, the contents of paragraph 9, from the fourth line to the last line of the examination-in-chief, as well as the contents of paragraphs 11, 12, 13 and 14 of the examination-in-chief of this witness, are read over to the assignee officer who has admitted that all these facts have not been stated by the witness in the statement recorded by him. The assignee officer has admitted that the contents of first four line to the last line of paragraph 10 of the examination-in-chief of the witness, have not been stated by him in the statement recorded by him. The contents of paragraphs 15 and 16 of the examination-in-chief of the witness and the contents of paragraph 17, to the extent the witness has stated that he had seen the mob near the S.T. Workshop, are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. He, however, has clarified that as regards the contents of paragraph 17 of the

examination-in-chief, the witness had stated that he had seen the mob on the highway and that the S.T. Workshop is also situated on the highway. The assignee officer has denied that there is a service road after the S.T. Workshop and thereafter, there is an open space and thereafter, the highway starts. The assignee officer has admitted that the witness has not stated before him that he had kept rupees three and a half lakh in cash for his business at home. The assignee officer has admitted that this witness had not mentioned that Khalid and Mustaq were injured, in the statement recorded by him.

129.62 The contents of paragraph 23 of the examination-in-chief of the witness from the fourth line to the sixth line are read over to the assignee officer, wherein the witness has stated that when the incidents of arson near Noorani Masjid took place, he had seen Guddu Chhara, Sahejad Chhara and Bipin Autowala, they were setting the things on fire. He had seen Mayaben at the corner of the S.T. Workshop. The assignee officer has admitted that such facts are not stated in the statement recorded by him, but the names of the accused have been given by him. The assignee officer has admitted that the witness has not named Mayaben in the statement recorded by him.

129.63 The assignee officer has admitted that the witness had stated before him that at present, he is taking shelter at the camp situated at Aman Chowk in Bapunagar and that he had not gone to see the chawl, but had learnt that the Hindu mob had taken many Muslims at one place and had poured inflammable substances like kerosene and petrol and had burnt all of them together at one place and had set houses of

Muslims in the chawl on fire and had looted their goods and properties.

129.64 PW-178 Shri P. N. Barot, the Investigating Officer has admitted that he has recorded the statement of this witness on 10.4.2002.

129.65 The Investigating Officer has admitted that this witness had not given the name of any accused in the statement recorded by him. The Investigating Officer has voluntarily stated that the statement recorded by him was an additional statement only for the purpose of recording loss and damage. He has admitted that the statement of this witness was earlier recorded by Shri R.C. Pathak.

129.66 Certain extracts of paragraphs 9, 10, 14 and all the facts stated in paragraph 11 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that these facts have not been stated by the witness in the statement recorded by him. Considering the fact that, as clarified by the Investigating Officer, the statement of this witness as recorded by him, was only for the purpose of loss and damage, there was no necessity for the witness to state facts regarding the incident in such statement.

129.67 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 27.5.2008. He has admitted that this witness had not stated before him that Mayaben had come in a white car, but had stated that she had come in a car. The Investigating Officer has further admitted

that the witness has not stated that a police vehicle was standing at the corner of the S.T. Workshop where Mayaben had come. However, the witness has stated that at that time, police and police vehicles were standing at the Natraj Hotel corner, at that time, Mayaben Kodnani had come there.

129.68 Certain extracts of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that the facts regarding the Muslim women wearing sarees and he having worn jeans and put on tilak and that they look like Hindus. The Investigating Officer has admitted that such facts were not stated by the witness in his statement.

129.69 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has deposed that he had received a bullet injury on his left shoulder at around 10:00 a.m. on the day of the incident. However, in his cross-examination, it has come out that he has not obtained any certificate or prescription from any doctor so as to corroborate it.

129.70 It was submitted that this witness in his first available statement dated 18.3.2002, statement recorded by the SIT, has named three accused, viz., accused No.26, accused No.44 and Guddu, without mentioning any specific overt act. It was submitted that this witness has referred to the presence of these accused in the mob at about 9:00 a.m. near the S.T. Workshop and thereafter though he was present in Hussainnagar till the afternoon before he left for Kathwada with his family, he did not see any of these three accused.

129.71 It was submitted that insofar as accused No.37 Mayaben Kodnani is concerned, the witness has not given her name with any role whatsoever till his statement was recorded by the SIT. Even before the SIT, he has not made any reference to a white car. Moreover, there is also a contradiction about the place, where he had seen her, whether at the corner of the S.T. Workshop or at Natraj Hotel, which are situated on different sides of the highway. It was submitted that though the witness was there till the afternoon, he has not seen any incident occurring in Lane No.2 of Hussainnagar where he resides and that the version given by this witness creates a complete doubt about the version given by PW-135 Hussainabanu about the incident of her brother Hasanali, as also about her house being ransacked by a crowd of persons. It was submitted that it is only this witness who says that he saw Mayaben at the corner of the S.T. Workshop, whereas no other witness has stated so. Moreover, the witness does not say where Mayaben had gone thereafter. It was submitted that though the witness has stated that he has been injured by a bullet, there is no medical evidence about his injury, nor has any witness given the name of this witness as a person who was injured in the firing. It was submitted that PW-104 Mahammad Salim Hussain Shaikh gives a different version altogether. It was submitted that an altogether new story has come up in the testimony of this witness which is not corroborated by any witness. It was submitted that though this witness has referred to an incident of 10 o'clock, nothing had happened at 10 o'clock and the mobs had not started entering the chawls till 11:30. It was submitted that though this witness is stated to have availed of treatment for a period of ten days,

he has stated that he does not remember the name of such doctor. It was argued that it is highly improbable that the witness would not remember the name of the doctor who had treated him and the people who had helped him.

129.72 Referring to the contents of paragraphs 72 and 73 of his cross-examination, it was submitted that the witness has stated that there were about one hundred to one hundred fifty people in the mob and he does not refer to the mob from Krushnanagar. It was submitted that the witness could not have seen the accused from the distance as indicated in paragraph 73, more so, when the accused were stated to be attacking Noorani Masjid. It was pointed out that from the cross-examination of this witness, it has been brought out that he had no acquaintance with the accused. It was submitted that veracity of this witness becomes more doubtful when he admits that he does not even know the name of the person at whose place he had stayed for a period of ten days at village Bahiyal after the incident. It was submitted that the evidence of this witness is not credible and convincing and is per-se contradictory and unreliable.

129.73 ANALYSIS: The evidence on record shows that two statements of this witness have been recorded, one on 18.3.2002 by the assignee officer PW-292 Shri R. C. Pathak and another on 27.5.2008, by the Investigating Officer (SIT), Shri V. V. Chaudhary. The learned counsel for the appellants have pointed out various omissions and contradictions in the testimony of this witness, who has deposed that he had seen Sahejad Chhara (Accused No.26) and Bipin Autowala (Accused No.44) and Guddu Chhara (deceased) leading the mob near

the S.T. Workshop and that, at that time, they were indulging in arson. The witness also claims to have seen Mayaben Kodnani at the S.T. Workshop and has identified all the four accused in the dock.

129.74 If the evidence of the witness is considered, after considering all the omissions and contradictions as to his statement dated 18.3.2002, what remains is that the witness had stated regarding having seen Sahejad Chhara, Bipin Autowala and Guddu Chhara in the mob. While there are numerous omissions in the testimony of the witness, there is no omission qua the names of the above referred accused. However, insofar as the fact regarding the witness having seen Mayaben on the day of the incident is concerned, there is no reference to Mayaben in his statement dated 18.3.2002. It appears that one more statement of this witness was recorded on 27.3.2002, which is stated to have been recorded by an A.S.I. However, such A.S.I. has not been identified and consequently, not examined. Therefore, the fact regarding the witness having made any such statement has not been proved. Another statement of the witness was recorded on 10.4.2002, which apparently relates to loss and damage analysis. One more statement of this witness came to be recorded on 16.5.2002.

129.75 In the cross-examination of the witness, an admission has been brought out that though the police was releasing teargas against them and was firing at them and the Hindus were pelting stones, the witness stood on the road at the corner of the lane. The witness, in paragraph 123 of his cross-examination, has clarified that the S.T. Workshop corner

and Natraj Hotel corner are one and the same. As regards the prior acquaintance with Bipin Autowala, an admission has been obtained in the cross-examination of the witness (paragraph 135).

129.76 Thus, from the testimony of this witness, it emerges that the witness had gone on the road in the morning and had seen the above three accused in the mob. This part of the testimony of the witness is consistent with his first available police statement and hence, deserves to be accepted.

129.77 Insofar as the witness claims to have seen Mayaben near the S.T. Workshop in the morning is concerned, in all his prior statements recorded by the police, the witness has not named this accused. For the first time, the name of Mayaben has come up in the statement dated 27.5.2008 recorded by the SIT. The witness has stated that Mayaben alighted from a car and talked to some police officers standing near the corner of the S.T. Workshop, whereafter the police started firing indiscriminately at the mob. The witness does not refer to Mayaben having spoken to the mob or having instigated them. Thus, all that emerges from the testimony of this witness insofar as Mayaben (A-37) is concerned is that she came to the corner of the S.T. Workshop in the morning and talked to some police officers standing there. He does not attribute any criminal act to her. As to what evidentiary value should be attached to a statement of this nature, which has also come at a belated stage, shall be considered at the time of considering the culpability of accused No.37, while discussing the evidence of all the witnesses who have named this accused.

129.78 From the uncontroverted part of his evidence, it emerges that on 28.2.2002; the witness had come out on the road and seen mobs. In the riotous mobs, he had seen the above named three accused and out of fear, he together with his family members had gone to Kathwada. In his statement dated 18.3.2002, the witness had stated that at around 1 o'clock in the afternoon there was a forceful attack on their chawl and out of fear, they along with their families had stealthily gone to Jawannagar and then to Kathwada through the fields. While the witness claims to have been injured in the police firing, he has failed to produce any material in support thereof. Though the witness claims to have availed of treatment from some doctor at Bahiyal, apart from the fact that he is not in a position to produce any medical case papers or certificate, the witness is not even in a position to give the name the doctor who treated him. Therefore, the fact regarding the witness having been injured in police firing is a bit doubtful, more so, when none of the witnesses present at the spot have stated regarding this witness having sustained any injury in the police firing.

129.79 Much significance cannot be attached to the fact that the witness does not remember the names of the persons in whose house they had stayed at Bahiyal, for the reason that the witness was deposing more than eight years after the incident and it is quite possible that due to lapse of time, he may have forgotten their names. However, there is no reason to disbelieve the witness when he says that he went from Kathwada to Bahiyal, inasmuch as, the witness has no reason to lie about this fact.

129.80 The testimony of this witness to the extent he has stated that he had seen the three accused viz. Sahejad Chhara (A-26), Bipin Autowala (A-44) and Guddu Chhara (deceased) in the mob, is consistent with his police statement dated 18.3.2002 and hence, to this extent deserves to be accepted. This witness is a witness of only the morning incident when the mobs had gathered and indulged in rioting.

129.81 Thus, through the testimony of this witness, the prosecution has established the presence of Sahejad Chhara (A-26), Bipin Autowala (A-44) in the riotous mob that was present on the road in the morning on the day of the incident.

130. **PW-138 Mahammadbhai Abdulhamid Shaikh**, aged 49 years, has been examined at Exhibit-928. This witness has deposed that in the year 2002, he was residing at *Lane No.4, Hussainnagar, Naroda Patiya*, with his family in rented premises. He was residing there since fourteen years prior to the incident. His family was comprised of his wife Khatunbibi and three sons, viz., Mahammadrashid, Khurshidalam and Mahammadrafiq.

130.1 When he was residing at Naroda Patiya and also at present, he carried on the business of colour work and making and selling furniture. He is a native of Maler Kotla Village, District-Sagarur, State-Punjab.

130.2 The witness has deposed that the incident took place on 28.2.2002. On account of burning of a train at Godhra, there was a call for bandh. This call was given by the

Vishwa Hindu Parishad. On that day, he had breakfast in the morning and had gone at 8 o'clock for his whitewashing work to the house of one Sardarji Parmeshwarsingh. The Sardarji's house was at Kubernagar and he reached his house at 8:30 in the morning. The Sardarji told him that since there was a call for bandh, he should not start the work on that day. However, he told him that bandhs are always declared and said that he would start working. However, thereafter he had not started working and in the morning at around 9:00 to 9:30, the Sardarji's son came to drop him on his scooter, at which point of time, people wearing khakhi shorts and white undershirts were performing something like aarti near Natraj Hotel. They also had weapons. The Sardarji's son came to drop him till his house and left. He went home and immediately came to know that stone pelting had commenced, and hence, he immediately came from his house to the Noorani Masjid to watch. When he came out, he saw that stones were being pelted on the Noorani Masjid and as well as on their chawls. At that time, some of the Muslim boys had asked the police to help them. However, the police did not help them. The police had fired bullets in which a boy named Abid was injured. The police had also released tear gas shells. Abid had fallen down on the spot. Upon seeing this, their people were frightened and in the stampede, he had fallen down. At that time, a lot of people had passed over his right leg and he had sustained a fracture.

130.3 Thereafter, their Muslim people took him to a three storeyed building and made him sit on the terrace of the third floor. While sitting on the terrace, he had seen the S.R.P. people throwing stones. The witness has thereafter corrected himself and stated that what he wanted to say was that the

S.T. Workshop people were throwing stones. They were throwing stones at their chawls. The witness has stated that several people from the S.T. Workshop had removed the wire fencing from the walls and jumped and came towards their houses and set their rickshaws and houses on fire.

130.4 In the afternoon at about 2 o'clock, Dalpat, Guddu Chhara and Sahejad came to his house. When they came to his house, rupees forty thousand in cash was lying in his house and since he was engaged in the business of making safes, they took away the safes. There were other people with these three people and all of them looted five safes and Rs.40,000/- in cash lying in his house. They had also looted all the household articles in his house, which he saw while sitting on the terrace, from where, he could see the tin roof of his house. There was a huge hole on the tin and the front part of his house was open.

130.5 He sat on the terrace till 1 o'clock at night whereafter, the police vehicle came. Four to five Muslims took him from the terrace to the police vehicle and at that time, Shri Mysorewala, P.I. of the Naroda police station said "*How could so many people escape?*" Upon inquiry, he found that the person who uttered these words was Shri Mysorewala. He was seated in the police vehicle and taken to the Shah Alam camp.

130.6 The witness has stated that he had taken treatment in connection with the fracture at the relief camp and that he had sustained a loss of rupees two lakh in the incident due to the damage caused to his house.

130.7 The witness has stated that since Dalpat, Guddu and Sahejad reside in his area, he knows them very well. He has further stated that Dalpat's brother-in-law Pravin, is his close friend and he has visiting relations with him. The witness has stated that the Crime Branch has recorded his statement in connection with the incident and that he had stayed at the camp for six months. Subsequently, the SIT had also recorded his statement.

130.8 The witness has stated that he has learnt that Dalpat and Guddu have died and has accordingly identified accused No.26 Sahejad in the dock.

130.9 The witness has further deposed that on 14.5.2002, he was called by the police at around 12 o'clock in the afternoon to act as a panch and there was another panch by the name of Abdul Majid and they were called to draw the panchnama of Abdulkarim's house which was situated in Kumbhaji-ni-Chali. The witness has then deposed with regard to the contents of the panchnama and has admitted the contents thereof. The panchnama is exhibited at Exhibit-929.

130.10 The witness has further deposed that on 25.6.2002, at around 2 o'clock in the afternoon, the police had called him to Hussainnagar, Lane No.2 to the house of Hasanbhai, where the panchnama of the house was drawn. The witness has admitted his signature on the panchnama which is exhibited at Exhibit-931 and has also admitted the contents thereof.

130.11 CROSS EXAMINATION: This witness, in his cross-examination, has admitted that he has been given a

house in Yatimkhana Vasahat. He has admitted that this house has been given to him by the people of their Jamaat. The witness has admitted that he had not paid any consideration for the house. The witness has denied that he had gone to Naroda Patiya and got his house repaired. The witness has voluntarily stated that the Islamic Relief Committee had got it repaired for him. He has stated that fifteen days after they had gone to Naroda Patiya, they had started the work of repairing their house. The witness has denied that when he went back to Naroda Patiya, the repairing work of his house was over. The witness has stated that after he left his house at Naroda Patiya and returned back, his house had not been repaired.

130.12 The witness has stated that there was no shop adjacent to his house. He used to do the work of making safes by keeping skilled workers. He used to make full size steel safes. He used to keep the stock of five to ten safes at home. Each safe weighed about 30 kilograms or could be even 45 kilograms and also 52 kilograms. The measurement of the safe would be 3 x 6 feet, 3 ½ x 6 ¼ feet or 3 x 5 ½ feet also. The witness has admitted that one person alone cannot lift these safes. The witness has admitted that to take out the safe from his house for giving it to a customer, it would take at least ten to fifteen minutes.

130.13 In his cross-examination, the witness has stated that he had met accused Sahejad whom he has identified before the court, several times prior to the incident, for the reason that he used to live nearby, and hence, he used to see him on a daily basis. The witness has admitted that he had financial relations with Sahejad and that he had taken a loan of

Rs.15,000/- from him. The witness has denied that till date, he has not returned the loan amount to Sahejad and has voluntarily stated that he has returned the entire amount. The witness has admitted that he was required to pay interest on the money advanced to him by Sahejad and has voluntarily stated that he has paid the entire interest amount. The witness has admitted that he had no occasion to talk with Dalpat and Guddu and he had no financial relations with him and had no occasion to visit their houses.

130.14 The witness has stated that after he went to the camp, the police met him for the first time at the camp. The witness has admitted that tables had been arranged at the Shah Alam camp for giving complaints and that service oriented workers, people of their Jamaat and advocates used to sit at the tables. The witness has denied that they used to guide them as regards what facts they should state and has voluntarily stated that they (the witnesses) were stating facts regarding whatever they had seen.

130.15 The witness has stated that in connection with the incident, the police have recorded his statements on two occasions. One statement was recorded at Ahmedabad and the other statement was recorded at Gandhinagar. The witness has admitted that he has no complaint with regard to his first statement, which was recorded at Ahmedabad. The witness is read over the contents of paragraph 4 of his examination-in-chief to the effect that he had not stated such facts in his statement dated 12.5.2002.

130.16 The contents of paragraphs 5 and 6 of his

examination-in-chief are read over to the witness to the effect that he has not stated these facts in his statement dated 12.5.2002.

130.17 At this stage, the learned Special Public Prosecutor has pointed out that in the statement it has been mentioned that the witness had come home through the mob and when he reached near his house, stone pelting started thereafter. At this stage, the learned counsel for the defence has raised an objection that no note can be made regarding such sentence in the statement. The learned Special Public Prosecutor submitted that he had drawn the attention of the court to bring on record true facts. The court has recorded findings which as translated into English read thus:

“It is true that the witness has not stated any fact regarding stone pelting having started after he reached near his house in his examination-in-chief. However, it requires to be noted that the case at hand is a special kind of case wherein firstly, the trial has been going on since a very long time, the incident is of the year 2002 and presently in the year 2010, the trial is going on. Secondly, one investigating agency had investigated in the year 2002 and another investigating agency has investigated in the year 2008. In this case, it may be stated that there are very unusual circumstances as there are various statements of different witnesses.

The task of the court is mainly to ascertain the truth and in the quest of truth, in the entire procedure, with a view to see that it is very convenient for the person who reads the

depositions and so that there is clarity in the record and different statements are not required to be read and no reader has any kind of confusion or misunderstanding, with such a noble object, in this case, the court has made notes. These notes would make it very convenient and would facilitate every person as well as every officer concerned with the legal procedure. Such notes are very welcome in this case. In this case, instead of technicalities, it is absolutely necessary that the procedure for dispensation of justice is carried out in a beautiful and concrete manner, and hence, the court, after thoughtful consideration and with a totally noble object, has placed necessary clarifications on the record so that the person who reads the testimony gets a clear picture and the future readers of the testimony do not face any inconvenience and can obviate the inconvenience of having to keep different statements together and turn their pages. Prior to recording the testimony of PW-138, the defence has never raised any such objection, which is self-speaking. These notes have been made to give a clear picture of the facts recorded in the statements.

In the aforesaid context and in the larger interest of justice, the court is of the clear and firm opinion that there is no illegality in making such notes. Not only that, upon considering the entire facts of the case, such a procedure is absolutely welcome, facilitating and would make things easy.

130.18 The witness is read over the contents of paragraphs 7 of his examination-in-chief to the effect that in

his statement dated 12.5.2002 he has not stated the facts stated therein except for stating that they were pelting stones at their chawl.

130.19 The learned advocate for the defence has stated that a contradiction has been put to the witness primarily because the witness has not stated the words, "terrace on the third floor" and the fact regarding, certain people of the S.T. Workshop having jumped over the barbed wire of the wall and come towards their house and having set their rickshaws and houses on fire. At this time, the learned Assistant Special Public Prosecutor invited the attention of the court to the fact that in the statement it has been stated that thereafter, near their house, there is Umrudin's house with a terrace, and he was lifted and taken there.

130.20 The contents of paragraph 8 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in the statement dated 12.5.2002. The trial court has made a note below that in the statement the witness has stated that at that time, Chhara people had entered his house and had taken away Rs.40,000/- and five safes and at the bottom of the statement, he has stated that from the people in the mob, he had recognized Dalpat, Guddu and Sahejad. In the opinion of this court instead of making such a note, the trial court ought to have disallowed the question inasmuch as except for a different manner of expression, there is no actual contradiction.

130.21 The contents of paragraph 9 of his examination-in-chief are once again read over to the witness, who has denied

that in his statement dated 31.5.2008 recorded by the SIT, he had not stated such facts regarding being on the terrace on the third floor and that several people had jumped over the barbed wire and come towards their houses and set their rickshaws and houses ablaze.

130.22 A further omission is sought to be brought out as regards the statement recorded by the SIT to the effect that the words, "*at around 2 o'clock in the afternoon*" mentioned by him in paragraph 8 of his examination-in-chief have not been stated by him in his statement recorded by the SIT. The witness is also sought to be contradicted with regard to the contents of last line of paragraph 9 of his examination-in-chief to the effect that he had not stated such facts in the statement recorded by the SIT. It may be noted that the omission which is sought to be brought out that he was taken in a police vehicle to the Shah Alam camp. In the opinion of this court, what is stated by the witness cannot be said to be in the nature of an omission amounting to a contradiction, and hence, the trial court should not have permitted such questions to be asked to the witness.

130.23 The witness is thereafter cross-examined with regard to the topography of the area. The witness has admitted that the mobs from Kubernagar and Kalupur had pelted stones at the Noorani Masjid and their chawl. The witness has denied that the people from these mobs had entered their chawl and pelted stones and has voluntarily stated that they were pelting stones from outside the chawls. The witness has denied that Abid was injured by a bullet inside the lanes and has voluntarily stated that he was injured by a

bullet outside. The witness has admitted that Abid was not injured by a bullet on the National Highway but on the S.T. Workshop lane road. The witness has denied that at this time, the mob from Kubernagar which he saw wearing khakhi shorts and undershirts had come to their chawl. The witness has stated that the mob was the same, however, after firing bullet the police was coming and the people in the mob were coming behind the police. The witness has admitted that thereafter, the people in the mob had entered all the chawls and Hussainnagar. The witness has admitted that the people of these mobs had damaged, burnt and killed, etc.

130.24 In the cross-examination, it has come out that Umrudhin's house is next to his house and he was made to sit on the terrace on the second floor of the house. The witness has admitted that the entrance door of his house faces towards the chawl and Umrudhin's entrance door also faces towards the chawl. The witness has stated that the terrace where he was, had a parapet. There was a common wall between the two houses. The witness has admitted that his house had a tinned roof and one floor, whereas Umrudhin's house had two floors and was higher than his house. The witness has admitted that if someone comes out of his house, he can see his back and his head. The witness has denied that the safe from his house cannot be taken out unless there are three to four people and has voluntarily stated that two people can easily take out safe from his house. The witness has admitted that for two persons to take out the safe from his house, both would have to stay in front and behind the safe. The witness has denied that they would have to take out the safe by lifting such safe on their heads or their shoulders and

has voluntarily stated that they can be lifted with the hands and taken out. The witness has stated that it took them about fifteen minutes to take out all the five safes. The witness has voluntarily stated that they were twelve to fifteen people, and hence, it would take them only this much time.

130.25 The witness has stated that there were around 200 to 250 people including children and women on the terrace at that time.

130.26 The witness has stated that he reached home at around 9:30 and upon reaching home, he immediately came to know that there were riots, and thereafter, he came out of his house. The witness has admitted that when he came out of his house, the other people of his chawl had also come out. The witness has admitted that Abid had not come out with him and has voluntarily stated that he lives on the outer side. The witness has stated that after coming out on the road, he had stayed there for about five to seven minutes. He was standing near the S.T. Workshop compound wall, however, no one had assaulted him nor had any one pelted stones at him. Upon Abid being injured by a bullet, they had fled from there. When Abid was injured by a bullet, he (the witness) was standing near the S.T. Workshop wall. At that time, nobody had helped Abid. The witness has voluntarily stated that in the stampede, everyone was trying to protect his own life. Hence, there was no question of going to help Abid.

130.27 The witness has stated that while he was running towards his house, a little before Hussainnagar-ni-Chali, he had fallen down. Many other people were running with him. It must

be around fifty to a hundred people. He alone had fallen down and at that time, there was a mob of fifteen to twenty thousand people behind him. The witness has stated that when he fell down, it was the Muslims who had passed over his leg.

130.28 The witness has admitted he and others had got frightened because of the police firing at that time and that the mob was not behind them. After he fell down also, he had heard gun shots. The witness has voluntarily stated that he had also heard the sounds of teargas.

130.29 The witness has admitted that five to seven minutes after he fell down, the people had taken him to the terrace. The witness has stated that after he went on the terrace, he got down only after the police had come. The witness has admitted that he could not bear the pain on account of the fracture and has admitted that he was lying on the terrace near the wall and that no medicines were given to him at that time.

130.30 The witness has denied that at the instance of the people of his community he was falsely giving the names of the accused. The witness has admitted that in respect of the fracture injury sustained by him, he has not produced any medical certificate before the SIT. The witness has denied that he has not presented such a certificate because he had not sustained any fracture. The witness has stated that he was tied a bandage because of the fracture, which was kept for three months. The witness has admitted that for three months he could not do any work.

130.30 To prove the omissions and contradictions in the testimony of the witness as to the statements recorded by the assignee officer/Investigating Officer, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statements.

130.31 PW-301 Devendragiri Himmatgiri Goswami, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. Certain extracts of paragraph 4 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated these facts in the statement recorded by him. From the extracts put to the assignee officer, only a part which relates to his having seen people wearing khakhi shorts and white undershirts on the road near Natraj Hotel doing something like aarti, who also had weapons with them, can be said to be a material omission, however, the remaining part of the contents of paragraph 4 which are put to the witness cannot be said to be so material as to amount to a contradiction and as such, only a specific contradiction should have been put to the witness and not a general omission, as has been done in this case.

130.32 Certain extracts of paragraph 5 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that the extracts of paragraph 5 have not been stated by the witness in the statement recorded by him, but he has denied that all the facts stated in paragraph 6 of his examination-in-chief have not been stated in the statement recorded by him. He had stated that the witness had stated

before him that he was lifted on Umruddin's terrace, other than that, nothing has been stated by him. It may be stated that what is stated in paragraph-6 of the examination-in-chief of the witness is that thereafter, their Muslim people took him to a building nearby which had three to four floors and made him sit on the terrace at the third floor. In the opinion of this court, therefore, it cannot be said that there is any contradiction in what is stated by the witness in the statement wherein he has clearly stated that he was taken to Umruddin's terrace.

130.33 The contents of paragraph 7 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness had stated regarding his having witnessed the people from the S.T. Workshop pelting stones and having jumped over the barbed wire and come towards their house and burnt the rickshaws and houses, which the assignee officer has admitted that the witness had not stated before him. The assignee officer has admitted that the witness had stated that the stones were being pelted at their chawls, other than that, the witness had not stated other facts mentioned in paragraph 7 of his deposition.

130.34 The contents of paragraph 8 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that all the facts stated therein have not been stated by him in the statement recorded by him. He, however, has stated that the witness had stated before him that Chhara people had entered his house and had taken away Rs.30,000/- and five safes and that in the mob, he knows Dalpat, Guddu and Sahejad.

130.35 Certain extracts of paragraph 9 of the examination-in-chief of the witness have been read over to the assignee officer, wherein the witness has stated that he was on the terrace till 1 o'clock at night. Thereafter, the police vehicles came and four to five Muslims took him till the police vehicle and seated him there and at that time, the then Police Inspector of Naroda Police Station Shri Mysorewala had said "*How did so many people escape?*". Upon inquiring, he had come to know that the person who spoke this was Shri Mysorewala. The assignee officer has admitted that this witness has not stated such facts in the statement recorded by him, but had stated before him that he had sat on the terrace till 10 o'clock and the police vehicle had come at 10 o'clock and they were taken in the police vehicle to the Shah Alam camp; however, the remaining facts mentioned in the said paragraph have not been stated by him. The assignee officer has admitted that this witness, in the statement recorded by him, has not stated that he knew Dalpat's brother-in-law (sister's husband) Pravin and that he was his close friend, and hence, he was well acquainted with Pravin.

130.36 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 31.5.2008. The attention of the Investigating Officer is drawn to the words "at around 2 o'clock in the afternoon" in paragraph 8 of the examination-in-chief of the witness. The Investigating Officer has admitted that the witness has not stated the time in his statement. In the statement, the witness has stated that it was around 9:00 to 9:15 in the morning, after which, he came out

of his house and thereafter the witness has narrated the incident sequence wise and has stated that at around 1 o'clock at night, they were taken to the camp in police vehicles. That is, in the statements, the sequence of events is from 9:30 in the morning to 1 o'clock at night. The rest of the contents of paragraph 8 are there in his statement. The Investigating Officer has admitted that the witness had not stated before him that apart from Dalpat, Guddu and Sahejad, other people had also come to his house, but he has clarified that he has clearly named the three accused.

130.37 SUBMISSIONS: The learned counsel for the appellants-accused invited the attention of the court to the omissions and contradictions in the testimony of the witness, to submit that almost all the facts stated by the witness before the court have not been stated by him in his only statement dated 12.5.2002 recorded by the assignee officer PW-301 Shri Devendragiri Himmatgiri Goswami. Reference was made to the contents of paragraph 7 of the examination-in-chief of the witness to submit that before the Investigating Officer, the witness has stated that he was at Umrudin's house. It was submitted that all the facts stated by the witness in paragraph 7 have not been stated before the police and even otherwise, such facts are not possible and it is also not the case put forth by the prosecution.

130.38 Referring to the contents of paragraph 8 of his examination-in-chief, it was pointed out that the entire paragraph including the name of the accused and the fact regarding the witness having seen them committing the offence, are not stated in his statement dated 12.5.2002 and

such omission is proved through the testimony of PW-301 Shri Devendragiri Himmatgiri Goswami.

130.39 It was submitted that the omission in paragraph 9 of his examination-in-chief has also been proved through the testimony of PW-301. It was submitted that from the evidence which has come on record, there is nothing to indicate that the witness has sustained any fracture. It was submitted that if the witness had not sustained any injury, there was no reason for him to be lifted and consequently, no reason for him to have seen the incident of three persons looting from the terrace. It was submitted that this witness has stated so many facts like coming back from the Sardarji's house, seeing the mobs doing *aarti*, he having fallen down and sustained fracture, he being put in a three to four storeyed building, the people from the S.T. Workshop pelting stones, some people from the S.T. Workshop removing the fence and jumping over the walls and coming towards their house, setting on fire rickshaws and houses, and the fact regarding Mysorewala uttering as to how so many people have escaped; these six important facts have not been stated by any witness, nor is such a case put forward by the prosecution. It was submitted that the safes which the witness alleges to have been taken away by the accused are heavy and cannot be lifted by one person. It was submitted that even after arresting the accused, no such articles have been discovered or recovered from accused No.26. It was pointed out that in the cross-examination of the witness, the motive for falsely implicating Sahejad Chhara has been brought out.

130.40 It was submitted that except for committing loot,

there are no allegations made or any overt act attributed to the accused. It was urged that having regard to the overall facts and the evidence of this witness, it is really doubtful as to whether (1) he has seen any such incident, and (2) these three persons could have taken away five big safes, particularly when they are not found, recovered or discovered.

130.41 The attention of the court was invited to the contents of paragraphs 52 and 63 of the cross-examination of the witness, to submit that even if there was a hole in the roof, he could not have identified the persons who were inside. It was submitted that no other witness has stated about having seen anyone taking away safes. It was submitted that there were witnesses who were on the ground floor of Mansuri's house, but no one has said that they saw anyone taking away safes from the house of this witness. It was submitted that in view of the discrepancies in the police statement and the deposition of the witness, he is not a reliable witness and no part of his evidence can be relied upon.

130.42 Mr. Prashant Desai, learned Special Public Prosecutor submitted that this witness is a witness as regards two incidents, viz., the morning and noon incident, and is consistent in his version and there is no contradiction as regards the identity of the accused. Therefore, this witness is believable and credible. It was submitted that there is a charge of looting against some of the accused and through the testimony of this witness, the charge is proved beyond reasonable doubt.

130.43 ANALYSIS: This witness, in his examination-in-chief,

has named three accused, namely, Dalpat, Guddu Chhara and Sahejad as having come to his house and looted Rs.40,000/- in cash as well as having taken away the safes from his house. The witness has also stated that since the three accused reside in their area, he knows them. Various contradictions and omissions have been brought out in the testimony of this witness. However, since the contradictions have not been clearly spelt out, it was difficult to understand the exact nature of the contradictions. In these circumstances, the court was required to look into the original police statement dated 12.5.2002 recorded by the police to ascertain the exact nature of the contradictions. Considering the testimony of the witness, other than the part which has been contradicted, it emerges that the witness had returned from Kubernagar at 9:30 in the morning and upon returning home, there was stone pelting at his chawl. On account of seeing the mob, he was frightened and fell down. Upon his falling down, the people nearby lifted him and took him to the house nearby. From the terrace, the witness has seen the mob including Dalpat, Guddu Chhara and Sahejad entering his house and taking away Rs.40,000/- as well as the safes from his house. Thus, so far as naming the accused in the offence in question is concerned, the witness has been consistent right from the beginning and has also clearly attributed a specific role to them regarding looting his house.

130.44 Out of the three accused, Dalpat and Guddu Chhara have passed away. The witness has identified accused No.26 Sahejad in the dock. The acquaintance with accused No.26 has been clearly brought out in the cross-examination of the witness wherein he has stated that he had an occasion to see

him daily as he was residing nearby. In the cross-examination, it has also been brought out that he had some monetary transactions with the said accused. Insofar as acquaintance with Guddu and Dalpat is concerned, the same is not relevant as both of them are dead.

130.45 In the cross-examination, it has been brought out that the house where he was taken is the house of Umruddin, which is next to his house and that there is a common wall. That the terrace had a parapet and Umruddin's house was a two storeyed house, which was higher than his house from where he had seen the accused looting his house. On behalf of the appellants, it has been submitted that there is nothing to indicate that the witness had sustained any fracture as deposed by him, and hence, there was no reason for him to be lifted, and consequently, from the terrace, he could not have seen the incident of the three persons looting.

130.46 In this regard, it may be noted that what is stated by the witness in his deposition appears to be merely an elaboration of his police statement, wherein he has stated that he had fallen down and was lifted and taken to Umruddin's house. Therefore, there is no reason to disbelieve the testimony of the witness insofar as he having stated that he had fallen down and sustained injury and was lifted and taken to Umruddin's house.

130.47 Insofar as the contention that the safes stated to be looted from the house of the witness are heavy and cannot be lifted by one person and that there is no discovery or recovery of such articles from the accused is concerned, it may be noted

that the entire investigation in this case suffers from gross negligence and no steps have been taken by the concerned Investigating Officers to bring on record any material to corroborate the evidence of the witnesses. Nonetheless, merely because the police has not recovered any such articles from the accused, is no reason to disbelieve the testimony of this witness, who is consistent in his version right from the inception. Therefore, to the extent of the evidence discussed hereinabove, the version given by the witness deserves to be accepted. The witness comes across as a credible witness and despite a lengthy and searching cross-examination; the defence has failed to dent his credibility.

130.48 Through the testimony of this witness, the prosecution has proved that three of the accused, namely, Dalpat (deceased), Guddu Chhara (deceased) and Sahejad (A-26) came to his house and looted Rs.40,000/- in cash as well as took away the safes from his house.

131. **PW-140-Shakurbhai Tajubhai Shaikh**, aged 62 years, has been examined at Exhibit-948. This witness has deposed that in the year 2002, he was residing at *Lane No.4, Jawannagar, Near S.T. Workshop, Naroda Patiya*. His native is Village Sojat, Marvad Junction, Rajasthan.

131.1 In the year 2002 also, he used to drive a rickshaw and was residing with his family at Jawannagar. At the relevant time, his family was comprised of his wife Barkatbibi, daughters Shahjahanbibi, Reshma, Bilkish and sons Firoz, Safar, Safar's wife Mumtaz, his daughter Shahjahan's children

– Wahid, Harun and Kajal, etc. were residing with him. Thus, in the year 2002, there were in all fourteen members in his family. Both his sons were also used to ply rickshaws.

131.2 The witness has deposed that the incident took place on 28.2.2002, on which day there was a call for bandh and he was at home. He had gone to the Noorani Masjid to offer namaz at 6 o'clock in the morning. He came out of the masjid at 7:30. When he went home from the masjid, his wife told him to bring paan for her. So, he left his home to get paan from the paan cabin near the Noorani Masjid, where he purchased paan worth five rupees. At that time, it was around 9:00 to 9:30.

131.3 When he went to get paan, he had seen a mob coming from the side of Krushnanagar. At that time, he was near the S.T. Workshop. He had also seen a mob near Natraj Hotel on Naroda road. There was also a tanker. Somebody had taken the tanker and attacked the masjid and the tanker was rammed into the masjid. Other people in the mob had come near the masjid and had created a commotion and they were breaking the masjid with hammers. The people in the mob were shouting, "*Maromaro...*" Seeing all this, out of fear, he went home.

131.4 He went home and told his family members that there were disturbances outside, and hence, they should go towards the S.R.P. He sent his wife Barkatbibi, Shahjahan, Bilkisbanu, Reshma, Harun, Wahid and Kajal to the S.R.P. Quarters and he, his son Safar and his wife Mumtaj and son Firoz stayed at home.

131.5 While he was at home, at around 1:30, they could hear many sounds and there was a stampede, and hence, he came out of his house and through Gangotri Society, he went to the fields. It must have been around 2 o'clock in the afternoon at that time.

131.6 The witness has further deposed that from the fields, he had gone towards the S.R.P. Quarters, where there is a wire fencing. His family members, who were sitting inside the S.R.P. Quarters, had advised him not to come inside as the policemen would shoot him, and hence, he had not gone inside. Out of the fear, he was roaming around and hiding. In this manner, he reached Abeda's house, which had a terrace and cement windows. At that time, it was around 5 o'clock in the evening. At that time, he saw that Ayub had jumped from the terrace and upon his jumping, **Guddu Chhara** had struck him with a dharia, other persons had also hit Ayub with rods. Kerosene and petrol were sprinkled on Ayub and he was put in a rickshaw belonging to him (the witness), which was lying near the S.R.P. Quarters and set ablaze. The number of his rickshaw was 4487.

131.7 He was lying down on the terrace and he could see the events taking place; however, his position was such that while he could see from the terrace, nobody could see him. At that time, tear gas was being released. When he reached the fields through Gangotri Society, there were other Muslim women and men with him.

131.8 In the field, he saw that there was a mob coming

from the direction of Parshwanath and another mob was also coming from Naroda Gam. At that time, he went through the wire fencing into the S.R.P. Quarters, where he met his family members.

131.9 The witness has deposed that when he went inside the S.R.P. Quarters in this manner, he had seen that his daughter Kashmira had also sustained injuries caused by tear gas and she had sustained injuries on her chest. He had learnt that his son Safar was also beaten up and kerosene was sprinkled on him and he had sustained injuries on his body, still he could escape. Thereafter, he had remained at the S.R.P. Quarters only.

131.10 Subsequently, at 2:30 at night, a police vehicle had come. While the vehicle was taking them towards Krushnanagar, he had seen that there was a mob of around ten to fifteen thousand people. The people in the mob were saying "*stop the vehicle*"; however, the driver did not stop the vehicle. But, when the driver took a big turn and took the vehicle back, the people in the mob had pelted stones at the vehicle. The vehicle was brought back to the S.R.P. Quarters.

131.11 Thereafter, in the morning, five to six police vehicles came to the S.R.P. Quarters and they were taken to the Shah Alam camp. His son Safar and daughter Kashmira had availed of treatment at the camp. His house was looted and burnt and all the household articles were set on fire and were looted. In this incident, in all three rickshaws, namely his rickshaw, as well as two rickshaws belonging to his son, were set on fire. The police had recorded his statement in

connection with the incident at the camp as well as at the Gaekwad Haveli. Prior thereto, a survey of his house was carried out. His statement in connection with the incident was also recorded at Gandhinagar. The witness has stated that he knows Guddu Chhara, who had killed Ayub and that at present he is dead.

131.12 CROSS EXAMINATION: In his cross-examination, this witness has admitted that his first statement was recorded by the DCB Crime and thereafter, the SIT had recorded his statement at Gandhinagar. The witness has admitted that in between, a panchnama of his house had been drawn. The witness has admitted that in the presence of panchas, he had stated the facts regarding his rickshaw, the loot committed at his house as well as burning, to the police. The witness has admitted that he had stated the fact regarding Ayub Allabax being burnt in his rickshaw No.4487 to the police. The witness has admitted that in the panchnama of his house, he has stated the fact regarding the loot and he had also shown the rickshaw in which Ayub was burnt to the police. The witness has admitted that the police had collected samples from his rickshaw in which Ayub's incident had taken place. The witness has admitted that Ayub's burnt corpse was found from his rickshaw. The panchnama is produced with a purshis Exhibit-949. The witness has admitted that during the entire period for which the panchnama of his house was drawn, he was present at home and whatever was stated by him in the presence of panchas, the police had written down. At this stage, a panchnama dated 8.5.2002 is shown to the witness which is given Exhibit No.950. In the panchnama, there are details regarding auto-rickshaw GRS-8 and auto-rickshaw

No.4487. The contents of the panchnama are read over to the witness, who has admitted the same except to the extent that there is reference to Lane No.13 Jawannagar, whereas actually it is Lane No.4.

131.13 Another panchnama is produced with a purshis Exhibit-951. The panchama is read over to the witness who has admitted that this is a panchnama of his rickshaw No.440 at Gaekawad Haveli. The contents of the panchnama are read over to the witness, who has admitted the same and it is given Exhibit No.952. The witness has denied that towards the south of Jawannagar Lane No.4, towards Narol, after leaving a space of 4 to 5 feet from Jawannagar, there is a barbed wire fence of the S.R.P. Quarters. The witness has admitted that there was a constructed compound wall of the S.R.P. Quarters and that towards the direction of the field, there was barbed wire fencing instead of a compound wall.

131.14 The witness has admitted that on that day, at about 6:15, he along with other Muslims had gone to the S.R.P. Quarters. The witness has admitted that some of his family members had gone to the S.R.P. Quarters before him. The witness has admitted that no one had prevented them from going inside the S.R.P. Quarters. The witness has admitted that at around 6:15 in the evening, after he had gone to the S.R.P. Quarters, he had not come out. The witness has admitted that from the S.R.P. Quarters he had not gone to any chawl or lane and that he had gone to the camp.

131.15 The witness is shown a document Mark-644/5, which is an application and he has identified his signature at

the end of such document. The contents of the application are read over to the witness, who has stated that the application was written by a person named Master but it was not Nazir Master. The contents of the application Mark 644/5 are read over to the witness, who has admitted the same and it is exhibited as Exhibit No.953.

131.16 The witness has admitted that he had not stated any fact to the master to the effect that Shri Chudasama, Shri Mysorewala or any accused had threatened him or were obstructing him.

131.17 The witness has denied that when Allabax's son Ayub was burnt in his rickshaw, it was night time and he had not seen the persons who had set him ablaze. The witness is confronted with his statement dated 8.5.2002 recorded by the police wherein he had stated that in that rickshaw, Allabax's son Ayub, who was residing in their chawl, was set ablaze. He could not see the faces of the persons who set the boy ablaze because it was evening time.

131.18 The contents of paragraph 5 of his examination-in-chief from the second line to the last line as well as the contents of paragraph 6 of his examination-in-chief except the last line are read over to the witness to the effect that he has not stated such facts in his statement dated 8.5.2002. The contents of paragraph 8 of his examination-in-chief as well as the contents of the last four and a half lines of paragraph 9 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in his statement dated 8.5.2002. The contents of paragraphs 10, 12 and 13 of his

examination-in-chief are read over to the witness to the effect that he has not stated such facts in his statement dated 8.5.2002.

131.19 The contents of last two lines of paragraph 14 of his examination-in-chief are read over to the witness wherein the witness has stated that his son Safar and daughter Kashmira were provided treatment at the camp, to the effect that he has not stated such fact in his statement dated 8.5.2002. In the opinion of this court, whether the witness's children have been provided treatment at the camp can hardly be said to be a fact which has any direct relation with the incident, and hence, non-mentioning of such facts in the statement can hardly be said to be an omission, much less, an omission amounting to contradiction.

131.20 The witness has denied that his son Safar and daughter Kashmira had not sustained injury. The witness is confronted with his statement dated 8.5.2002 recorded by the police, wherein he is alleged to have stated that at 7 o'clock in the evening when they came out of Gopinath Society, his son Safar and wife got separated, whom he met at night at the relief camp. In the riots, none of them were injured and no person from his family was injured or missing. All the members of his family were safe and sound at the relief camp.

131.21 The witness has denied that the facts stated by him regarding Ayub are totally false, that he has not seen any such fact and he was stating such facts at the instance of the people of his community.

131.22 In paragraph 49 of his cross-examination, the witness is confronted with certain parts of his statement dated 28.5.2008 recorded by the police to the effect that certain facts stated by him in paragraphs 6, 9, and 10 of his examination-in-chief have not been stated in such statement.

131.23 The witness has denied that at around 10:00 to 10:15 in the morning he had sent his wife and children to the S.R.P. Quarters and has voluntarily stated that he had sent them at 7:30 to 8:00 in the morning. In his cross-examination, it has come out that he had no occasion of talking to Guddu. The witness has voluntarily stated that he was residing in the neighbourhood. He had no monetary relations with Guddu and had never visited Guddu's house. The witness has stated that on one occasion Guddu had come to his house for five to seven minutes.

131.24 The witness has denied that when he came out of his house and went to the S.R.P. Quarters, in the meanwhile, he had not gone to Gangotri Society. The witness has voluntarily stated that one can go there through Gangotri Society. The witness has denied that at that time, he had not stayed at Gangotri Society. The witness has admitted that Abeda and Abdulmajid's houses are in his lane. The witness has stated that he has not seen any incident except the incidents in his lane.

131.25 The witness has denied that he is falsely deposing before the court and that he has not seen any incident and that he has not seen any of the accused in the incident and no damage has been caused to his house and that to falsely avail

of compensation, he was falsely deposing before the court and has got false panchnamas prepared and that no incident of Ayub in a rickshaw had taken place.

131.26 PW-278 Shri R.B. Joshi, the assignee officer in his cross-examination has admitted that this witness in his statement recorded by him had stated that in the said rickshaw, Ayub son of Allabax, who was residing in their chawl was burnt the persons, who burnt the boy, since it was evening time, he could not see anybody's face.

131.27 The contents of the second line till the last line of paragraph 5 of the examination-in-chief of this witness are shown to the assignee officer, wherein the witness has stated that in the morning at 6 o'clock, he had gone to offer namaz at the Noorani Masjid. He had come out of the masjid at around 7:30. From the masjid, he had come home where his wife had told him to bring some paan. He went from his house to get paan to the paan galla near the Noorani Masjid. From there, he had purchased plain paans for five rupees at that time it was 9:00 to 9:30. The contents of paragraph 6 except for the last line are read over to the assignee officer wherein the witness has stated that when he went to take paan he had seen that a mob had come from Krushnanagar. At that time, he was near the S.T. Workshop. At Natraj Hotel, on Naroda road also he had seen a mob. A tanker was also there. Somebody took the tanker and attacked the masjid and dashed the tanker against the masjid. The other people in the mob came near the masjid and there was commotion. They were breaking the masjid with hammers. There the people were shouting "kill" "cut". The assignee officer has stated that the witness has not stated

these facts in the statement recorded by him.

131.28 In this regard, it may be noted that insofar as the contents of paragraph 5 of the examination-in-chief of the witness are concerned, the same can hardly be said to be material omissions so as to amount to contradictions and can be said to be an elaboration of facts, and hence, such questions ought not to have been permitted to be put either to the witness or to the assignee officer.

131.29 The contents of paragraph 8 and paragraph 9 except for the last four lines of paragraph 9, are read over to the assignee officer, who has admitted that this witness has not stated such facts in the statement recorded by him. He has admitted that this witness in his statement recorded by him has not stated that he had seen Ayub's rickshaw incident from Abeda's terrace. The assignee officer has admitted that he has not ascertained as to whether such incident could be seen from Abeda's terrace and has voluntarily stated that the Investigating Officer had not given him any such instructions and, therefore, he had not done it.

131.30 The contents of paragraph 10 of the examination-in-chief of this witness are read over to the assignee officer, wherein the witness has stated that he could see the incidents that were taking place while lying down on the terrace; however, his position was such that he could see from the terrace but nobody could see him. At that time, teargas was being released. At that time, he had reached a field from Gangotri Society and there were other Muslim women and men with him. The assignee officer has admitted that the witness

has not stated such facts before him. He has also admitted that in this case, he has not carried out any site inspection because he did not have any such instructions.

131.31 The contents of paragraphs 12 and 13 of the examination-in-chief of this witness are read over to the assignee officer, who has denied that all the facts stated therein have not been stated by the witness in the statement recorded by him. The assignee officer has stated that the witness has stated that at around 7 o'clock in the evening, he was going to the S.R.P. Quarters where he found his wife, daughter, etc. and he had stayed with them till late at night. Then they were taken with a police escort to the Shah Alam relief camp. The other facts have not been stated by him.

131.32 The last two lines of paragraph 14 of the examination-in-chief of the witness are read over to the assignee officer, wherein he has stated that his son Safar and daughter Kashmira had taken treatment at the camp. The assignee officer has admitted that such facts have not been stated by the witness in the statement recorded by him. In the opinion of this court, the fact regarding his son and daughter having taken treatment at the camp, cannot be said to be a relevant fact insofar as the commission of the offence is concerned, and hence, omission of such fact in his statement before the police cannot be said to be a material omission so as to amount to a contradiction.

131.33 The assignee officer has admitted that this witness in the statement recorded by him has stated that when at 7 o'clock they came out of Gangotri Society, his son Safar and

his wife got separated and they had met him on that night in the relief camp. In the riots, they had not sustained any injury and there was no death in his family and no one was missing. All the members of his family are safe and sound in the relief camp. In the opinion of this court, the aforesaid part of the statement of this witness could not have been put either to the witness or to the assignee officer inasmuch as the same has not been put to contradict any part of the examination-in-chief of the witness, and, therefore, to that extent, the same is inadmissible in evidence.

131.34 The assignee officer has admitted that this witness has not stated before him that, in all, three of his rickshaws have been burnt. He has stated that the witness had mentioned regarding two of his rickshaws being burnt. The assignee officer has denied that there is no mention of any living person having been burnt in either of the two rickshaws.

131.35 The assignee officer has admitted that this witness in his statement has stated that he had sent his wife Barkatbibi and his daughter Shahjahanbibi, Bilkis and Reshma and Shahjahan's children to the S.R.P. Quarters, which is situated near their chawl, at around 10:00 to 10:15 in the morning. The assignee officer has admitted that this witness has not stated that he had sent his family members at around 7:30 to 8:00 in the morning.

131.36 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 28.5.2008. Certain extracts of paragraph 6 of the examination-in-chief of

the witness are read over to the Investigating Officer, wherein he has stated that they were breaking the masjid with hammers; there, the people in the mob were shouting, "kill" "kill"; extracts of paragraph 9 of the examination-in-chief are read over, wherein the witness has stated that there were cement windows and an extract of paragraph 10 wherein the witness has stated that he could see the events taking place while lying down on the terrace but his position was such that he could see from the terrace, but nobody could see him; at that time, teargas was being released. The Investigating Officer has admitted that this witness has not stated the above facts stated by him in paragraphs 6, 9 and 10 of his examination-in-chief in the statement recorded by him. However, the witness has stated that he was on the terrace and from there he had seen the incident.

131.37 SUBMISSIONS: The learned counsel for the appellants invited attention to the omissions and contradictions in the testimony of the witness as to his police statement as well as the statement recorded by the SIT. It was submitted that this witness has named only Guddu Chhara and no other accused. Reference was made to the panchnama Exhibit-950 to submit that the same shows the rickshaw to be in a totally burnt condition and that nothing was recovered to show that anyone was burnt in the rickshaw. It was submitted that this witness has gone to S.R.P. Quarters at 6 o'clock in the evening and hence, he must have seen the mob from the canal. It was submitted that this witness does not implicate any accused except Guddu. As regards Ayub who jumped from the terrace, it was submitted that the time given by the witness is contradictory to the time given by the other

witnesses and that burning of Ayub in a rickshaw has not been proved by the panchnama Exhibit-950. It was submitted that the story of this witness about the whole day does not inspire confidence due to conflicting versions.

131.38 ANALYSIS: From the testimony of this witness, it emerges that he went near the Noorani Masjid in the morning and saw the mobs damaging the Noorani Masjid. He, therefore, told his family members to go to the S.R.P. Quarters while he stayed at home with his son Safar and his wife and son. Subsequently, upon the mobs entering the chawl, the witness went to Abeda's house in Lane No.4 of Jawannagar which had a concrete terrace. He reached there at about 5 to 6 o'clock. The witness claims to have seen Ayub jump from the terrace and Guddu attacking him with a sword while others assaulted him with swords. According to this witness, petrol and kerosene was sprinkled on Ayub and he was put in the witness's rickshaw bearing No.4487, which was lying near the S.R.P. Quarters and was set ablaze. The witness has further stated that when he saw the mobs coming, he went to the S.R.P. Quarters through the wire fencing. From the cross-examination of this witness, it has come out that the witness's family was able to go inside the S.R.P. Quarters in the morning and he too managed to enter the S.R.P. Quarters in the evening without anyone stopping him.

131.39 This witness has only implicated Guddu Chhara (deceased) in the incident of Ayub. Since Guddu Chhara is dead, the testimony of this witness does not in any manner further the prosecution case. Though the witness is consistent

with regard to the presence of Guddu in the mob in the evening, however, Guddu has passed away. Nothing much, therefore, turns upon the testimony of this witness except to the extent that he claims to have seen the incident of Ayub, which will be considered while considering the testimonies of other witnesses who have narrated the incident in which Ayub is stated to have been killed.

132. **PW-143 Dildar Umrao Saiyed**, aged 55 years, has been examined at Exhibit-975. The witness has deposed that in the year 2002, he was residing at *Naroda Patiya* and that since thirty five to thirty six years prior thereto, he was residing in the same area. In the year 2002, his family, including him, was comprised of fourteen members.

132.1 On 27.2.2002, Kar Sevaks were burnt in a train at Godhra in the context of which, on 28.2.2002, the Bajrang Dal and the Vishwa Hindu Parishad had give a call for bandh. In view of the bandh, on 28.2.2002, they had woken up in the morning at around 8:30 and at around 9:00, he and his sons Anwar and Akbar decided to change the tyre of his Eicher vehicle. He has forgotten the registration number of his Eicher vehicle. At that time, all three of them were changing the tyre of his Eicher vehicle in the Panchvati Estate which is situated in Jawannagar Khada. At around 11:30 to 11:45, Muslims were coming, shouting "*Mari nakhya! mari nakhya!*" ("Have been killed"), whereupon he had climbed over the Jawannagar wall and had seen that the Muslims from Hussainnagar were running towards Jawannagar. At that time, he could see the flames and smoke in Hussainnagar. Thereafter, he came near

his Eicher vehicle and stood there. It must have been around 11:45 then.

132.2 The witness has further deposed that he was standing near his vehicle when he saw Police Inspector Shri Mysorewala coming from the Uday Gas Agency road in his jeep. He stopped his vehicle near Panchvati Estate and together with him, four to five policemen alighted from the jeep. Ten minutes thereafter, a white coloured Maruti car arrived. This car came and stopped next to the jeep. **Mayaben Kodnani (A-37)**, who is their MLA, got down from the Maruti. She was wearing a white coloured saree and had tied a saffron band around her head. Thereafter, from the Maruti, **Bipin Panchal (A-44)**, **Murli Sindhi (A-2)** and **Guddu Chharo** (deceased) also alighted. A mob comprising of around twenty thousand people was coming behind the Maruti. The door of the car was opened and the swords were taken out and distributed. At this time, **Bipin Panchal** saw him and had chased him and told him to go away from there, or else he would hack him down; whereupon, he ran and went into the house of a Maratha. In this house of the Maratha, an old man and woman were present. The people in the mob tried to start his vehicle; however, they could not start it. Thereafter, they pushed the vehicle and broke the Jawannagar wall, whereafter they burnt the vehicle. He saw all this from the house of Maratha. Thereafter, taking shelter against the S.R.P. compound wall, he jumped over the wall and went home. Upon going near his house and looking, sounds of gas cylinders bursting could be heard. The houses of Muslims had been burnt. It must have been around 2 o'clock in the afternoon at that time.

132.3 Thereafter, he took his family members and went to the S.R.P. compound wall, where there were around four hundred to five hundred other people. There, they had requested the S.R.P. Commando Dantaniya to let them go inside, whereupon, he told them "Today, you are to die and no one is to go inside!" At that time, there were already about two hundred to three hundred people inside the S.R.P. wall, who belonged to their Muslim community. As Dantaniya had told them to sit near the wall, they sat down near the wall. It must have been around 2:30 to 3:00 in the afternoon. They must have sat there for around two and a half to three hours.

132.4 The witness has further deposed that at around 5:30 to 6:00 in the evening, they were near the S.R.P. compound wall, when three mobs came from the fields and Gangotri, wherein he had seen **Guddu Chharo, Murli Sindhi and Govind, that is, Govind's son Tiniyo**. Guddu, Murli and Tiniya had swords and the people in the mob had weapons like trishuls, sticks, dharias and pipes.

132.5 The mob was at a distance of about twenty to twenty five feet from him. At this time, the S.R.P. men released tear gas where they were sitting. They had picked up that tear gas shell and thrown it back at them. Due to the tear gas, the people ran hither thither and they made some of the people climb on Gauri's terrace which is situated in Jawannagar near Gangotri Society.

132.6 While trying to flee, somebody struck him on his right leg with a sword, due to which, his leg was bruised. At

that time, he went and sat on a nearby staircase. In this incident, out of fear, Ayub had jumped from the terrace and both his legs were fractured. Dantaniya, Bipin, Murli and Guddu lifted Ayub and put him in a rickshaw lying there and from a kerosene can which Tiniya had brought, they poured kerosene on the rickshaw and set it ablaze along with Ayub. During this incident, he was near the staircase.

132.7 He had seen this incident himself. The incident had taken place at around 6:15 to 6:30. He was sitting on the steps of the staircase at that time. Thereafter, Dantaniya came and hit him with the butt of the revolver, on the same spot on his leg where he had earlier sustained a fracture.

132.8 At around 6:45 to 7:00 in the evening, he climbed on the terrace, where he remained till 12 o'clock at night. At 12 o'clock, the police vehicles came and took them to the Shah Alam camp.

132.9 He took treatment for the injuries sustained by him at the Shah Alam camp. He was not seriously injured.

132.10 In the incident, his vehicle, rickshaw, bike and house were burnt. He also sustained loss and damage of his goats, ornaments and household goods, etc.

132.11 Over and above the injuries sustained by him, his son Akbar was also injured on the hand.

132.12 The police had come to the camp and recorded his statement on 4.5.2002. Thereafter, a panchnama of his house

was drawn, in respect of which, his statement had been recorded. The SIT had also recorded his statement on several occasions.

132.13 At the time of the incident, Guddu was residing in the last house in his line. Guddu has passed away, but he knew him.

132.14 Since Bipin Panchal has his Bajaj Showroom opposite his premises, he also knows him. He also knows Murli Sindhi, who drives a loading rickshaw on rent and has worked with him on a few occasions. He can also recognise Mayaben as she is the MLA of their area and he has seen her on several occasions. Tiniyo resides in the S.R.P. line and therefore, he knows him also. The witness has stated that he can identify all of them and has correctly identified accused No.44, 37, 2 and 55.

132.15 The witness has further deposed that when he returned from the relief camp, the SIT had recorded his statement and prior thereto, he used to receive threats. Murli Sindhi had threatened him and told him to remove his name, or else, he would not be in a position to stay there. Thereafter, in another incident, Murli Sindhi had come on a bike to the tent chowky along with his driver and had threatened him to remove his and Mayaben's names, or else, he would not be able to stay there. He has stated that he has narrated these facts to his advocate, but he has not lodged any complaint in this regard as no one was recording his complaint.

132.16 CROSS EXAMINATION: In the cross examination of

this witness he has stated that the vehicle described by him was a DCM Eicher. The witness has stated that Dantaniya was an SP in the S.R.P. When he had beaten him, he (Dantaniya) was outside the S.R.P. compound. There were around twenty to twenty five S.R.P. personnel. The witness has admitted that from the place where he was changing the tyre of his vehicle, one cannot see Krushnanagar and has voluntarily stated that one can only see the highway. The witness has stated that at the time when he had changed the tyre it was around 11 o'clock. There is no chawl near Panchvati estate. The Muslims, who were fleeing from Krushnanagar to Jawannagar, were not required to go to the chawls and they had come through the road next to the S.T. The witness has been extensively cross-examined with regard to the topography of the area as well as the residents of the chawls.

132.17 The witness has admitted that when Dantaniya told him to sit near the compound wall, no mob had arrived till then. The witness has stated that when teargas shells were released, their eyes were burning. He has voluntarily stated when he picked up the shell and threw it, his hands were burnt. The teargas shell had been thrown at them, which he had lifted and thrown back at them. The witness has stated that his family was with him at that time. When the teargas was released, the Hindu mob was present. The witness has stated that when he sat on the staircase, he had made all his family members climb on the terrace. At that time Hindu mob was on all the three sides.

132.18 The witness has denied that though he was at a distance of twenty to twenty five feet, the people in the mob

had not assaulted him or set him ablaze, and has voluntarily stated that this was because he kept on running around. The witness has stated that he was sitting on the staircase for hardly five to seven minutes and at that time no one in the mob had attempted to assault him. The witness has voluntarily stated that at that time a rickshaw was burning and hence the mob had not come very near.

132.19 The witness has admitted that his first statement was recorded on 5.4.2002. He has stated that he knew Tiniya since about five to seven years prior to the incident. He knew him, because his father used to come to his scrap shop to sell scrap. The witness has denied that in his statement dated 4.5.2002 he has not named Tiniya that in his statement dated 9.5.2002 also he has not named Tiniya. The witness has stated that in his statement dated 3.6.2008 he has given the name of Govindbhai by mistake and that he was in fact, giving Tiniya's name.

132.20 The witness is thereafter cross-examined with regard to his acquaintance with the Jan Sangharsh Manch and its office bearers, including Shri Mukul Sinha and others.

132.21 The witness has admitted that he had gone for drawing the panchnama of his house on 8.5.2002. At the time of drawing the panchnama, he had not told the person who was drawing the panchnama that his son was injured. The witness has voluntarily stated that he had only stated facts about the loss caused to him.

132.22 In his cross-examination it has been elicited that at

Gangotri Society, the witness was sitting on a terrace. The witness has stated that he is not aware about any huge hall in Gangotri Society or regarding any incident having taken place there. The witness has stated that he does not know whether any incident had taken place in the passage of Gopinathnagar and Gangotri Society.

132.23 In the cross-examination of the witness, it has further been elicited that his goats were stolen in the year 2008. He, however, has denied that at the time when his goats were stolen he had suspected that Dinesh and his father had taken them away and has asserted that that there was no question of suspicion as he had caught them red-handed with two slaughtered goats in their house. The witness has denied that he had a dispute with Dinesh's father on account of the goats and has voluntarily stated that Govind, namely, Tiniya's father had paid him the price of goats. The witness has denied that Govindbhai had given him Rs.4000/- towards the goats, whereas he wanted Rs.7000/- and threatened him that if he does not pay Rs.3000/- he would implicate him in some other case. The witness has denied that two days prior to 3.6.2008 he has called Govind's father and threatened him if he did not give him the money it would not augur well, and that, he had told him that he was going to Gandhinagar and would also implicate him. The witness has denied that since Rs.3000/- was not paid by Tiniya, he had kept a grudge against him and had falsely given his name before the SIT. The witness has thereafter been examined in the context of his statement recorded by the SIT. It may be noted that in general almost every witness has been cross-examined in this regard to bring out the fact that SIT had carried out a video recording at the

time when statement of the witness was read over to them. The witness has further been cross-examined with regard to treatment availed by him for the injury sustained by him.

132.24 The witness has denied that he had not seen a boy named, Ayub falling from terrace with his own eyes. The witness has denied that before SIT he had stated that Muslims from Naroda Patiya were saying that to save himself Ayub had jumped down from the terrace. The witness has admitted that Ayub had sustained a fracture on his leg, when he fell down from the terrace. He has stated that in his statement he had stated that Ayub had sustained fractures on both his legs.

133.25 The witness has admitted that he had not stated any facts about any incident having taken place on the terrace to the SIT authorities. The witness has denied that on the day of the incident he had seen Ayub for the first time at 2 o'clock. The witness has admitted that on the day of the incident he had gone home at 2 o'clock in the afternoon. The witness has stated that he had seen Ayub for the first time between 5:00 to 5:15 on the day of the incident. The witness has stated that he does not know as to who had lifted Ayub and brought him there. The witness has admitted that he had stood near the S.R.P. wall for about two to three hours.

132.26 The witness has denied that the police vehicle came to pick them up from the S.R.P. Quarters and has voluntarily stated that at 12 o'clock at night when they were on the terrace of Gangotri, the vehicle had come. He has further stated that he had gone from the S.R.P. Quarters to the terrace of Gangotri Society at around 6.45 to 7.00 in the evening. The

witness has admitted that till then he was hiding near the S.R.P. compound wall.

132.27 The witness has denied that while they were at Gangotri Society till then, he had not seen any incident that took place at the Jawannagar-ni-Chali. The witness has denied that from the place where he was hiding near S.R.P. Quarters, it is not possible to see the Jawannagar pit and has voluntarily stated that since the wall had fallen down, the pit could be seen.

132.28 The witness has denied that from the spot of the S.R.P. Quarters where he was hiding, he had not witnessed any incident that took place at Jawannagar. The witness has denied that from the S.R.P. Quarters compound wall he cannot see Guddu's or his own house. The witness has denied that if the wall had not been broken, his house could not have been seen. The witness has voluntarily stated that since they were standing near his house, he could obviously see it. The witness has admitted that Guddu's house is in Lane No.2 and his house is also in Lane No.2. Guddu's house is on the opposite side of the lane from his house and there is road between their houses.

132.29 The witness has admitted that at the time when they were standing near the S.R.P. Quarters compound wall there was no mob near his house. The witness has voluntarily stated that there were mobs in Jawannagar, Lanes No.1, 2 and 3. The witness has denied that the mob was comprised of two thousand to three thousand people and has voluntarily stated that the mob was very huge. The witness has admitted that

one mob had come on the side of the S.R.P. compound wall and another mob had come from the direction of Uday Gas Agency from the fields.

132.30 The witness has denied that the mob did not attack them and has voluntarily stated that the mob had attacked the public. He has admitted that the mob, which came from the side of the S.R.P. compound wall, had pelted stones at where they were sitting. The witness has denied that they had fled because of stone pelting and has voluntarily stated that over and above the stone pelting, teargas shells had been lobbed, and hence, they had fled from there. The witness has denied that at the time when the incident of stone pelting and lobbing of teargas shells took place he was on Gauri Apa's terrace and has voluntarily stated that he was sitting on the staircase and had sent his family members to the terrace. The witness has stated that he must have been sitting on the staircase of Gauri Apa's terrace. The witness has admitted that the staircase is situated in Jawannagar, Lane No.4 and that he had reached this staircase at around 6:30. The witness has stated that till then he had not resorted to cross stone pelting. The witness has stated that he had thrown the teargas shell back at the police at around 5.30 to 6.00.

132.31 The witness has thereafter been extensively cross-examined with regard to his acquaintance with advocate Shri S.H. Iyer and regarding the application made by him before the Gujarat High Court for cancellation of the bail granted to Jaideep Patel and Mayaben.

132.32 The witness has denied that in his application

before the High Court he had stated that the Police Inspector Shri Mysorewala was standing near Mayaben; thereafter, Mayaben had immediately left the spot and had gone in her car towards Narodagam. The application made before the Gujarat High Court has been shown to the witness, who has identified his signature in the affidavit. The application has been exhibited as Exhibit 976. The witness has thereafter, been cross examined with regard to the contents of the application made before the High Court, etc.

132.33 The witness has denied that when he was sitting near the S.R.P. Quarters compound wall, mobs had come from all the four sides, and has voluntarily stated that mobs came from three sides. The witness has denied that as soon as the mobs came, the police had lobbed teargas shells at the mob. The witness has voluntarily stated that teargas shells were lobbed at Muslims. The witness has thereafter, been cross-examined with regard to answers given by him to the SIT at the time of recording his statement, which is directly hit by the bar contained in section 162 of the Code of Criminal Procedure and is, therefore, not admissible in evidence. The witness has been further cross-examined with regard to his acquaintance with the officer bearers of the Jan Sangharsh Manch and certain applications made by him through them,

132.34 A first information report dated 28.2.2002 and a panchnama dated 7.7.2002 of his vehicle have been produced by the witness, which are given combined exhibit No.982. The witness has also been cross examined with regard to his connections with the Jan Sangharsh Manch mainly to bring out the fact that the witness was influenced by the office bearers

thereof. It appears that the SIT, while recording the statements of the witness has also interrogated him with regard to the applications made by him through the Jan Sangharsh Manch. Considering the overall nature of statements recorded by the SIT, it appears that irrelevant questions, which have no direct connection with the offence in question have been put to the witness by the SIT and no attempt has been made to bring the correct facts on record. It appears that the witness has made application to the High Court for cancellation of the bail granted to Mayaben and others and made further applications also seeking certain reliefs in connection with this case. The SIT appears to have put questions to him in this regard and all those facts as well as the acquaintance of the witness with the concerned advocates, etc., are sought to be brought on record through the cross-examination of this witness. It appears that in all, eight statements of this witness have been recorded on 8.5.2002, 9.5.2002, 3.6.2008, 14.9.2008, 2.1.2009, 4.10.2009, 5.10.2009 and 30.11.2009. The witness had also made application dated 17.6.2009 to the SIT (Exhibit 981). The witness had also made an application under section 183(8) of the Code being Criminal Misc. Application No.650 of 2010 as well as an application being Criminal Misc. Application No.2015 of 2009 before the Gujarat High Court (Exhibit 976).

132.35 In the cross-examination of this witness, it has been elicited that at 8:00 to 8:30 in the morning, he was at home with his sons Anwar and Akbar. After 8:30, he had gone with them to the Panchvati Khada (pit). The witness has voluntarily stated that they had gone at 9:00 to 9:30. The witness has denied that when he was near his vehicle, at around 9:00 to 9:30, a mob comprised of ten thousand to fifteen thousand

people had come there. The witness has voluntarily stated that there was no mob at that time and that at 9:00 to 9:30 on that day, no commotion was heard nor was there any stampede. The witness has denied that Anwar and Akbar had also seen what he had seen at Panchvati Khada. The witness has voluntarily stated that upon the police vehicle coming near the Panchvati Khada he had sent his sons home at around 11 o'clock, after which, he alone was standing at the Panchvati Khada with his vehicle. The witness has admitted that in his presence, on that day, a mob had come to the Jawannagar Khada. The witness has stated that his vehicle was not parked in the Jawannagar Khada and has denied that any truck or vehicle of his ownership was in the Jawannagar Khada and was attacked there. The witness has denied that his truck or vehicle was standing in the Jawannagar Khada and Jawannagar wall was broken with it. The witness has denied that, in this manner, on that day, Bipin of Bipin Automobile had come with the mob and he had seen him and told him to go away from there. Thus, in his cross-examination the witness has stated facts which are directly contrary to what has been stated by him in paragraph 7 of his examination-in-chief.

132.36 The witness has been confronted with his statement dated 4.5.2002, wherein he had stated that in the meanwhile a huge mob of Hindus from the side of Krushnanagar came towards Jawannagar and entered the field and the mob attacked the truck of his ownership, which was parked in the open field, and with the help of the truck, had broken the Jawannagar wall and upon Jawannagar wall being broken, they started setting the houses in Jawannagar on fire and in this mob, Bipin of Bipin Automobiles was there, who told him to go

away from there. Consequently, he and his family members locked their house and fled towards the S.R.P. Compound wall to save their lives. The witness has further been confronted by the very same statement to the effect that he had stated therein that all the other people there had also started fleeing towards the S.R.P. Compound wall and the Muslim mob stayed there for two to two and a half hours. However, at around 5:30, a huge mob, which was armed with weapons, came on this side from near the S.R.P. Group, which pelted stones and all of them fled from there and climbed on the terrace of a house in Gangotri Society wherein two thousand to two thousand five hundred people must have hidden. At 11.30 to 12.00 at night, the police came with about five or six buses and took the people who were hiding on terrace to save their lives, to the Shah Alam camp. The witness has denied having stated such facts in his above referred statement.

132.37 The witness has been further confronted with the statement recorded by the Crime Branch to the effect that he had stated that moreover his DCM Toyota truck No.5067 of his ownership, worth Rs.90,000/- had been set ablaze by the riotous mob. The witness has voluntarily stated that when he refers to DCM Toyota or truck or Eicher as his vehicle, he refers to one and the same vehicle.

132.38 In his cross-examination, it has further been elicited that he had seen the Muslim mob firstly at around 11:30 in the morning on the day of the incident. He had seen the mob by jumping over the Jawannagar wall. This mob was comprised of Muslims, who were fleeing from Hussainnagar.

132.39 The witness has denied that in his statements dated 4.5.2002 and 9.5.2002, he had not given the names of Murli, Mayaben, Guddu and Tiniyo in the context of the incident.

132.40 The contents of paragraph 6, the first seven lines of paragraph 7 as well as last two words of 8th line of paragraph 7 are read over to the witness, to the effect that he has not stated these facts in his statements dated 4.5.2002 and 9.5.2002, which the witness has denied.

132.41 The trial court has made note below, that in his statement dated 6.5.2002, the witness has mentioned that upon the Jawannagar wall breaking, they had started setting the houses in Jawannagar on fire and Bipin of Bipin Automobiles was present in this mob. In his statement dated 9.5.2002 also the witness had stated that the Hindu mob was comprised of around fifteen thousand to twenty thousand people, of which, Bipin Automobilewala had taken the leadership and he had a hockey stick in his hand.

132.42 It may be noted that this part of his examination-in-chief is sought to be confronted only as to his statement dated 9.5.2002 and not his statement dated 4.5.2002. In the opinion of this court, once the witness has stated something in his first statement dated 4.5.2002, the statement dated 9.5.2002 being only a further statement, the facts stated in statement dated 4.5.2002, are not required to be mentioned therein. Therefore, not mentioning certain facts which have been stated in first statement dated 4.5.2002 in the subsequent statement dated 9.5.2002 cannot be said to be an omission. The trial court, therefore, should have disallowed such

question being put to the witness.

132.43 The contents of the first two lines of paragraph 8 of his examination-in-chief are read over to the witness, wherein he had stated that this vehicle was pushed and the Jawannagar wall was broken, to the effect that he has not stated these facts in his statement dated 9.5.2002. Once again, such omission is only as to the subsequent statement and hence, cannot be said to be an omission.

132.44 The witness has been confronted with the facts stated in the third line to the last line of paragraph 8, the third line to the eighth line of paragraph 9 and the third line to the last line of paragraph 10 of his examination-in-chief, to the effect that he has not stated these facts in his statement dated 4.5.2002 and 9.5.2002.

132.45 [The trial court has made a note below that in his statement dated 9.5.2002, the witness has stated that at 6:30, Guddu Chara had come with another mob and was pelting stones. However, the witness has not mentioned names of Murli and Tiniya.]

132.46 The contents of paragraph 11 of the examination-in-chief of the witness are read over to him to the effect that he has not stated these facts in his statement dated 4.5.2002 and 9.5.2002.

132.47 [The trial court has made a note below that in his statement dated 9.5.2002 the witness has stated that the S.R.P. people were releasing teargas and they had gone

towards Gopinath Society and were sitting on the terrace there. In his statement dated 4.5.2002 the witness has stated that in the evening at around 5:00, huge mob armed with weapons came near the S.R.P. and upon the mob pelting stones at them, they had fled and had climbed on a terrace in Gangotri Society]

132.48 The contents of paragraph 12 of his examination-in-chief are read over to the witness to the effect that he had not stated these facts in his statement dated 4.5.2002 and 9.5.2002, which the witness has denied. The contents of paragraphs 13, 15 and 19, except to the extent he has stated that Guddu has passed away, as well the contents of paragraph 20 of his examination-in-chief are read over to the witness, to the effect that he has not stated these facts in his statements dated 4.5.2002 and 9.5.2002, which the witness has denied.

132.49 The sixth line of paragraph 10 of his examination-in-chief, wherein the witness has stated that Tiniya had a sword, is read over to the witness to the effect that he had not stated such facts in his statement dated 3.6.2008 recorded by the SIT, which the witness has denied.

132.50 The witness is further confronted with statement dated 9.5.2002 to the effect that he had stated therein that at that time at 12:00 in the afternoon, Muslims from Krushnanagar and Jawaharnagar Colony were running and coming towards the S.R.P. Camp, and hence, upon inquiring from them, they had told them riots were going on ahead, and the Hindu mob was coming on that side; thereafter, a mob of

about one thousand five hundred to two thousand people came from the side of the S.R.P. compound wall, the leadership whereof was taken over by Bipin Automobileswala, who had hockey in his hand; this mob had come where he was doing repairing work and he and his son had fled and jumped towards the wall and gone to Jawannagar; at this time, Bipin had dealt blows with a hockey stick on his matador and had broken the glass of his vehicle and thereafter burnt it; subsequently, their chawls were also set ablaze, which the witness has denied.

132.51 In his cross-examination it has further been elicited that on the day of the incident he had seen Guddu for the first time with Mayaben. The witness has admitted that on that day he had not seen Mayaben at 6:00 in the afternoon. The witness was confronted with his statement dated 9.5.2002, wherein he had stated that there, at 6:30 in the evening, Guddu had come with another mob; he does not know how huge the mob was; they were pelting stones and at this time upon the S.R.P. people bursting teargas shells, they had gone to Gangotri Society and were sitting on the terrace there; which the witness has denied.

132.52 The witness has denied that during the period between 2002 to June 2008, he had not stated any facts about Mayaben, Murli and Tiniyo in the context of the incident, before any authority. The witness has denied that till June 2008, he had not made any complaint before any authority that Mayaben, Murli and Tiniyo had threatened them.

132.53 In his cross-examination, it has been elicited that he

does not know Tiniya's father Govind, very well. The witness has denied that Tiniya's father used to come to sell scrap at his place. The witness has stated that Murli had a loading rickshaw. He (the witness) was involved in the scrap business. The witness has denied that Murli used to take his scrap in his rickshaw to Mehsana. The witness has admitted that at times Murli used to transport his scrap at Ahmedabad. The witness has admitted that prior to 2002, Murli had transported scrap for him in his rickshaw. The witness has denied that since Murli was transporting scrap for him, his monthly accounts were pending and has voluntarily stated that the accounts were immediately settled. The witness has denied that he was required to pay Rs.7000 to Rs.8000/- to Murli towards carting for the period prior to 2002 and that such amount was outstanding payable to him. The witness has voluntarily stated that after 1996 he had closed down his scrap business and that his shop had gone in the road-cutting in the year 1996.

132.54 The witness has denied that he was required to pay some amount to Govind also and, therefore, with a mala fide intention, he had wrongly given his son's name. The witness has stated that he is not aware as to whether the old Marathi man referred to by him was Govind.

132.55 The witness was shown his signature on the application Mark 644/46 made to the SIT. He has identified his signature thereon. The application was given Exhibit No.1051. The witness was thereafter examined with regard to the application made to SIT, as to who had written it down and where, etc.

132.56 The witness has been further cross-examined with regard to the contents of the paragraph 23 of his examination-in-chief to the effect that he has not stated these facts in any of his statements or affidavit or applications. In the opinion of this court, considering the contents of paragraph 23 of the application, not mentioning of such facts in the statement recorded by the police, cannot be said to be an omission in the nature of a contradiction.

132.57 Since there are several accused in this case, who are represented by different learned advocates, the learned advocates for different accused have cross examined the witness wherein there is also reiteration of the cross examination.

132.58 To prove the omissions and contradictions in the testimony of the witness as to his statements recorded by the assignee officer/Investigating Officer, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

132.59 PW-278 Shri R. B. Joshi, the assignee officer has admitted that he has recorded the statement of this witness on 9.5.2002. He has admitted that this witness in his statement had not given the names of accused Tiniya, Murli and Mayaben nor did he mention any act committed by them. The contents of paragraphs 6 and 7 of the examination-in-chief of this witness are shown to the assignee officer, who has denied that all the facts stated in paragraphs 6 and 7 have not been stated by the witness before him. He has stated that the witness in his statement dated 9.5.2002, had stated that there was a

Hindu mob, which was led by Bipin Automobileswala, who had hockey in his hand. The other facts have not been stated by the witness. Moreover, he has also stated that Guddu Chhara had come with a mob. The assignee officer has admitted that this witness had not stated any fact regarding Guddu Chhara and Bipin Panchal alighting from a Maruti van. The assignee officer has further admitted that this witness had not stated before him that the Jawannagar compound wall was broken by ramming his vehicle into it.

132.60 The attention of the assignee officer was drawn to the third line to the last line of paragraph 8 of the examination-in-chief of this witness, who has admitted that this witness has not stated such facts before him. The contents of paragraph 9 from the third line to the eighth line are put to the assignee officer, who has denied that the witness has not stated all the facts stated therein. The assignee officer has stated that the witness has stated that thereafter their chawl was also set on fire. Subsequently, he had gone behind the S.R.P. compound wall together with his family members, and sat there. Except this, no other facts have been stated.

132.61 The attention of the assignee officer has been drawn to the contents of paragraph 10 from the third line to the last line of the examination-in-chief of the witness, who has denied that all these facts have not been stated by the witness. He has stated that in his presence, the witness has stated that at 6:30 in the evening, Guddu Chhara had come with another mob and they were pelting stones. Other than that no other facts have been stated.

132.62 The contents of paragraphs 11 and 12 of the examination-in-chief of the witness are put to the assignee officer, who has denied that all the facts stated in paragraph 11 have not been stated by the witness. He has stated that the witness has stated that upon the S.R.P. people were releasing teargas they had gone to Gopinath Society and had remained seated on a terrace. Other than that, none of the other facts have been stated by him. The assignee officer has admitted that all the facts stated in paragraph 12 of the examination-in-chief of the witness, have not been stated by him in the statement recorded by him.

132.63 The contents of paragraphs 13, 15 and 20 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

132.64 In his cross-examination, the assignee officer has admitted that in the statement recorded by him, the witness had given the name of Guddu, but had not stated as to where he was residing. The assignee officer has admitted that before him, this witness has stated that on 28.5.2002, after waking up early in the morning and drinking tea, he and his son Anwar had gone to the pit near the S.R.P. camp behind Jawannagar and were repairing his DCM Matador. The previous part of the number he does not remember but the latter part of the number is 5067. The assignee officer has voluntarily stated that his writer had by mistake written down 28.5.2002 instead of 28.2.2002, whereas in other places in the statement there is reference to 28.2.2002. The assignee officer has further admitted that this witness has stated before him that at this

time at around 12 o'clock in the afternoon, people belonging to the Muslim community from Hussainnagar and Jawaharnagar colony were coming running towards the S.R.P. camp. Hence, upon asking them, they had told him that there are disturbances on the front side and that a mob of Hindus was coming on that side. Thereafter, a mob of fifteen hundred to two thousand Hindus came from near the S.R.P. camp compound wall, which was led by Bipin Automobileswala, who had a hockey in his hand. This mob had come to where he was doing the repairing work, whereupon, he and his son, fled and jumped over the compound wall and went to Jawannagar. At this time, Bipinbhai had broken the glass of his Matador with a hockey stick and set it ablaze. Thereafter they had set their chawl on fire. The assignee officer has admitted that this witness had not mentioned that he was changing the tyre of his vehicle, but had mentioned that he was repairing his vehicle.

132.65 The assignee officer has admitted that this witness has stated before him that there at 6:30 in the evening, Guddu Chhara had come with another mob. He does not know how big the mob was and that they were pelting stones. At this time, the S.R.P. people were releasing teargas and they had gone to Gopinath Society and had sat on a terrace. The assignee officer has admitted that this witness has stated before him that his house did not catch fire and no damage was caused to it. The assignee officer has voluntarily stated that the witness has said that household articles and other goods had been stolen.

132.66 PW 307 Shri Sukhdevsinh S. Chudasama, the

Investigating Officer, has admitted that he has recorded the statement of this witness on 4.5.2002. He has denied that he had also recorded a statement of this witness on 9.5.2002. He has admitted that on 4.5.2002, the witness had not given the name of accused No.55 Tiniya before him.

132.67 PW 327 Shri V.V. Chaudhari, the Investigating Officer (SIT), has, in his cross-examination admitted that he has recorded the statements of this witness on 3.6.2008, 14.9.2008, 2.1.2009, 4.10.2009, 5.10.2009 and 3.11.2009. The Investigating Officer has admitted that this witness in his statement dated 5.10.2009, has stated that wherever he signs, he also puts his thumb impression. That, before the SIT came to be constituted, the officers of the Crime Branch had recorded his statements, wherein his statements dated 4.5.2002 and 9.5.2002 were read over to him, which were recorded as stated by him and were correct and proper. The people at Naroda Patiya were talking about Ayub having jumped from the terrace to save himself. At that time, he had sustained a fracture and was sitting near his house; both his legs were fractured; at around 1 to 2 o'clock on the day of the incident, he ran and went to his house, at that time, he had seen Ayub. Two three of them lifted him and made him sit near the people of their community who were sitting there near Guddu's house. Thereafter he had come and stood near the S.R.P. compound wall. The Investigating Officer has admitted that this witness in his statement dated 5.10.2009 has not stated that at that time, he and his son were injured. He has admitted that in his statement dated 4.10.2009; the witness had stated that Mukul Sinha had told him and Imtiyaz that the bail granted to Mayaben and Jaydeep Patel's was

required to be cancelled; their signatures were taken on a readymade affidavit, they had personally gone with Mukul Sinha and deposed in Waghela Saheb's court; and on account of their affidavit, on 27th Mayaben and Jaydeep Patel's bail were cancelled; at the time when their signatures were taken, advocate Samsadbhai or Tirmizi had not explained either in Hindi or in Gujarati as to what was written in the application; on that day, Shri Mukul Sinha came to the office of the Jansangarsh Manch and asked advocate Samsadbhai and Shri Tirmizi as to whether the application files had been signed.

132.68 Certain extracts of paragraph 13 of the examination-in-chief of the witness are read over to the Investigating Officer wherein he has stated that thereafter Dataniya came and hit him with the butt of his rifle on that part of the leg where he had earlier sustained a fracture. The Investigating Officer has admitted that these facts were not stated by the witness in the statement recorded by him, but the other facts have been stated in his statement dated 3.6.2008. The Investigating Officer has admitted that in his statement dated 3.6.2008, the witness had stated that his statement dated 4.5.2002 relating to the incident at Naroda Patiya had been read over to him and that he had dictated the same, however, he wanted to say something more and in connection therewith, he had made an application dated 27.4.2008 to the SIT, which application, has been read over to him and he is deposing in connection therewith. The Investigating Officer has admitted that in his statement dated 3.6.2008, the witness has not stated that as his complaint was not being taken, he had not lodged a complaint. The Investigating Officer has admitted that except for his

statement dated 3.6.2008, the facts stated in paragraph 23 of his examination-in-chief, wherein the witness has stated that he was told to remove his and Mayaben's name or else he would not be able to stay there; that he had informed his advocate about this incident; and that he had not complained about these two incidents as no one was taking his complaint; have not been stated by him in the statement recorded by him. The Investigating Officer has clarified that these facts were stated by the witness in the main statement dated 3.6.2008 and in the statement dated 14.9.2008, the witness has clarified as to whether he had seen the accused. That the statement dated 2.1.2009 was for clarifying as to whether he had seen the accused. The statement dated 4.10.2009 was related to his application. The statement dated 5.10.2009 came to be recorded when the SIT officer made a site visit. The statement dated 30.11.2009 was regarding the treatment taken by the witness as he had stated that Shri Dataniya of the S.R.P. had beaten him with the butt of his rifle on the spot where he had an old fracture.

132.69 The Investigating Officer has admitted that he had recorded the statement of this witness on 4.5.2002. He has admitted that this witness has not given the name of accused No.55 Tiniya in the statement recorded by him. The Investigating Officer has admitted that this witness had stated before him that in the meanwhile, a huge mob of Hindus from Krushnanagar came towards Jawaharnagar and entered the field and the mob attacked a truck of his ownership which was parked in the field worth approximately rupees ninety thousand, and with the help of the truck, broke the Jawannagar compound wall and upon the Jawannagar compound wall

breaking, they had started setting the houses in Jawannagar on fire and in this mob, Bipin Automobilewala was present who told him to go away, due to which, he and his family members locked his house and ran towards the S.R.P. compound wall to save their lives and all the other persons also started running towards the S.R.P. compound wall; the Muslim mobs stayed there for around two to two and a half hours, however, at about 5:30 in the evening, a huge mob, armed with weapons, came near the S.R.P. group and upon the people in the mob pelting stones, they all fled from there and climbed on the terrace of the houses in Gangotri Society, where around two thousand to two thousand five hundred people must have been hiding and till about 11:30 to 12:00 at night, they were hiding on the terrace to protect their lives, thereafter at about 12:00 to 12:30 at night, upon five to seven huge police buses coming, they had boarded the same and come to the Shah Alam camp. Moreover, a DCM Toyota Tractor No.5076 of his ownership worth around rupees ninety thousand was set on fire by the riotous mob and was burnt.

132.70 The Investigating Officer admitted that this witness had stated before him that on that day in the morning at around 9:00 to 9:30, people were running around; mobs comprised of thousands of people armed with lethal weapons had gathered near Naroda Patiya and the S.T. Workshop gate and the people in the mob were shouting "kill, hack". The Investigating Officer has admitted that this witness has not named Mayaben, Murli and Guddu in the statement recorded by him, nor has he connected them with any fact relating the incident.

132.71 The contents of paragraphs 6 and 7, the third line to the last line of paragraph 8, the third line to the eighth line of paragraph 9, the third line to the last line of paragraph 10 from and the contents of paragraphs 12, 13, 15, 19 and 20 of the examination-in-chief of this witness, are read over to the Investigating Officer, who has admitted that the witness has not stated the facts stated therein in the statement recorded by him, except that insofar as the contents of paragraph 11 are concerned, the witness had stated before him that at about 5:30 in the evening, a huge mob, armed with weapons, had come near the S.R.P. and upon stones being pelted, they had fled and climbed on the terrace of Gangotri Society; however, the other facts have not been stated by him.

132.72 SUBMISSIONS: The learned counsel for the appellants pointed out that insofar as the testimony of this witness is concerned, the starting point is 11:30 to 11:45 a.m. on the day of the incident, and prior thereto he has not seen or heard anything. It was submitted that in the cross-examination of the witness, he has been confronted with the fact that he had not named Bipin Panchal in his statement dated 4.5.2002; however, there is no re-examination of the Investigating Officer PW-307 in this regard, nor has the Investigating Officer voluntarily clarified this issue. Therefore, it cannot be assumed that the name of Bipin has been stated in the first statement made by the witness. It was submitted that there is no reference to Bipin having alighted from the Maruti car along with Guddu, Murli and Mayaben, nor is there any reference that he was one of the persons who distributed the swords. It was submitted that the allegation regarding Bipin having seen him and chased him uttering certain words, is also not there in

his previous statement.

132.73 Next it was submitted that in his statement recorded by the police, the witness has not stated anything connecting Mayaben, Murli and Guddu with the offence and even in his subsequent statement dated 9.5.2002 recorded by PW-278, the names of accused Tiniyo, Murli and Mayaben have not been mentioned by the witness, nor has any role been attributed to them. (It may be pertinent to note that the statement dated 9.5.2002 recorded by PW-278 is more in the nature of a loss and damage analysis statement.) It was submitted that in the first two statements recorded by the police, out of the four persons named by the witness, only Guddu's name finds place and the names of Mayaben and Murli are not mentioned in either of the two statements, nor has any role been attributed to them. Therefore, as far as Mayaben and Murli are concerned, their names seem to have been mentioned for the first time before the SIT.

132.74 It was urged that even taking the facts as mentioned in paragraph 7 of his deposition at face value, it is not the case of any other witness that at or after 11:45 in the morning, a white car had come to Panchvati Estate Khada and anybody had alighted and distributed swords. It was pointed out that the entire story has been introduced for the first time before the SIT. Various omissions and contradictions in the testimony of the witness as to his police statements have been pointed out to the court. It was submitted that Murli (A-2) has not been named in any statement, nor has the name of Tiniya been mentioned, which has been duly proved in the testimony of the Investigating Officer. Moreover, no role has been

attributed to them in both the statements and for the first time before the SIT, Murli Sindhi has named and his name is overlapping in both the incidents. It was submitted that insofar as Mayaben is concerned, her presence has been shown only in the morning incident, but her name is not reflected in both the police statements. It was submitted that accused Tiniya's presence is mentioned only in the evening mob, but is absent in both the police statements. It was submitted that from the testimony of PW-307 Shri S.S. Chudasama, the Investigating Officer, it has been established that the witness had not named Guddu, Murli and Tiniya or attributed any roles to them.

132.75 It was further submitted that insofar as Ayub's incident is concerned, there were no allegations in any of the previous statements till his statement came to be recorded by the SIT. Referring to paragraph 87 of his cross-examination, it was pointed out that the witness has stated that on the day of the incident, he had seen Ayub for the first time at 5:00 to 5:15 in the evening. However, when he was confronted with the statement recorded by the SIT, he has stated that he saw him at 2 o'clock. It was submitted that if this part of his statement is read with his examination-in-chief, it can be seen that he has specifically stated that he saw the mob come at 5:30 to 6:00 in the evening. It was argued that there are material contradictions in the evidence of this witness and the timings stated by the witness do not match, which creates a doubt as to whether he had really witnessed such incident. It was submitted that most of the facts as well as the names of all living accused, except Bipin, have been mentioned for the first time before the SIT. It was urged that all the material facts which the witness has mentioned in his examination-in-chief,

namely, (i) Mysorewala coming to Panchvati Estate with other police personnel and getting down at about 11:45; (ii) ten minutes thereafter, Mayaben, Murli, Bipin and Guddu also having alighted from the white car; (iii) from that car, swords having been taken out and distributed; (iv) S.R.P. commando Dataniya having uttered certain words to the effect that they have to die; (v) throwing tear gas shells back at the S.R.P.; and (vi) Dataniya having injured him with the butt of the rifle; are the facts which no witness has stated as having occurred at the time and place projected by this witness, and, that too, for the first time before the SIT. It was urged that the contradictions in the witness's own evidence as well as the contradictions with the police statements indicate that he has not seen the incident that took place in the evening, which he had narrated in paragraphs 12 and 13 of his examination-in-chief.

132.76 It was also submitted that insofar as the deposition before the court regarding the witness having seen the mob with police officers in the Jawannagar pit at 11:45 is concerned, it is not corroborated by any other witness. It was submitted that there are vital and important contradictions in the deposition of the witness before the court and in his statements recorded by the police as well as by the SIT. The witness is, therefore, not a credible witness, on whose testimony reliance can be placed to establish the charge against the accused in such a serious offence.

132.77 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness was in the Jawannagar pit in the morning on the day of the incident, trying to change

the tyre of his truck and at that time, first the police came and then a car came, followed by the mob and thereafter, the witness went to the Marathi's terrace and then to the S.R.P., and then to Gauri Apa's house in Gangotri Society. It was submitted that as regards the events that occurred right from 11:00 in the morning to 11:30 at night, only one exaggeration has made about four people in the car. It was contended that the fact that the witness was present and that the mob had burnt his vehicle is evident from the compact disc of the site visit prepared immediately after the incident, which shows that some incident had taken place at that time. As regards the incident of Ayub, it was submitted that this witness is not the sole witness who says that Ayub was burnt near the Jawannagar wall in a rickshaw. The witness is duly corroborated by other witnesses also. Therefore, his evidence as a whole cannot be termed as not reliable and not believable, but can be relied upon as partly believable.

132.78 ANALYSIS: From the testimony of the witness as deposed before the court, briefly stated, the witness has deposed that at around quarter to twelve, the Muslims were shouting "*Mari nakhya! Mari nakhya!*" whereupon he climbed on the Jawannagar compound wall and saw the Muslims from Hussainnagar fleeing towards Jawannagar. At that time, he could see flames and smoke in Hussainnagar. The witness has thereafter stated that while he was standing near his Eicher vehicle near the Panchvati Estate, Mysorewala had come in a jeep and parked his jeep near the Panchvati Estate. Together with him, four to five policemen had also alighted. After ten minutes, a white coloured Maruti car arrived, from which, their MLA Mayaben Kodnani, Bipin Panchal, Murli Sindhi and Guddu

Chhara alighted. The mob followed the car. Thereafter, the door of the car was opened and swords were taken out and distributed. Bipin Panchal saw him and chased him, whereafter he fled and went to a Maratha's house. Thereafter, the mob tried to start his vehicle, but could not. They pushed the vehicle and broke the Jawannagar compound wall, and thereafter, set the vehicle ablaze.

132.79 Considering the omissions and contradictions that have been brought out in the cross-examination of the witness, it has come out that in his statement dated 4.5.2002, the witness has named only Bipin Autowala and Guddu as being in the mob, whereas before the SIT and the court, he has improved the version and named Mayaben Kodnani, Murli and Tiniya also. The entire version regarding the presence Mayaben together with Murli, Bipin Panchal and Guddu as well as the presence of Mysorewala, is, therefore, an improvement in the statement of the witness, which has come on record for the first time in the statement recorded by the SIT.

132.80 In the original statement of the witness, there is no reference to Mayaben Kodnani and the other accused coming to the Jawannagar pit as well as to the presence of Mysorewala. In his original statement as brought out in paragraph 166 of the cross-examination of the witness, he had only mentioned regarding the Jawannagar wall breaking and the mob entering and setting the houses at Jawannagar ablaze, wherein he had seen Bipin Automobileswala. Therefore, at a much belated stage, more than six years after the incident, the witness has come up with a totally new version and introduced the names of Mayaben, Murli and Tiniya as

offenders in this case. Insofar as accused Tiniya is concerned, he is named in the mob which came at around 5:30 to 6:00 in the evening together with Guddu Chhara and Murli Sindhi. Thus, while in his original statement, the witness has not mentioned having seen any accused in the evening incident, in his statement before the SIT and deposition before the court; he has referred to the presence of the accused in two incidents.

132.81 Insofar as accused No.44 Bipin Panchal is concerned, the witness has stated that after the morning incident, in the evening after 5:30 to 6:00, while he was sitting on the staircase (of Gauri Apa's house), he saw Datania (S.R.P. personnel), Bipin (A-44), Murli (A-2) and Guddu (deceased) lifting Ayub and putting him in a rickshaw and pouring kerosene from the can which Tiniya had in his hand on the rickshaw and setting him ablaze. Thus, insofar as accused No.44 Bipin Panchal is concerned, in the original statement, the witness had only mentioned his presence in the mob which came to Jawannagar after the wall was broken, whereas in his deposition, the role attributed to him is totally different, inasmuch as, he has stated that he came in the morning in a Maruti car with Mayaben and upon seeing him, told him to go away, or else he would hack him down, and once again, in the evening, he saw him along with the other accused, lifting Ayub, putting him in a rickshaw, pouring kerosene and setting the rickshaw ablaze. The version given by the witness concerning Bipin, the sole living accused named by him in his police statement, is different from the version given by him in his police statement to such an extent that it is not possible to reconcile the two versions. Therefore, even in respect of

accused No.44 Bipin, whom he has named in his police statement, it is not possible to accept the testimony of this witness as the role attributed to him in the deposition is totally different from the role attributed to him in his police statement.

132.82 On a perusal of the testimony of the witness, it emerges that there is no consistency in his statements and he has completely changed the original version given by him in his statement dated 4.5.2002, insofar as the accused named therein, are concerned and has introduced the names of more accused in his statement before the SIT. The only consistent part of the testimony of this witness is regarding the Muslims coming from Hussainnagar towards Jawannagar; at about a quarter to twelve he having seen flames and smoke in Hussainnagar; he, having come and stood near his Eicher vehicle; a mob of approximately twenty thousand people having come; the mob having pushed his vehicle and broken the Jawannagar wall and having set the vehicle ablaze; thereafter, the witness having taken his family members and gone towards the S.R.P. compound wall and having sat there from around 2:30 to 3:00 in the afternoon; at around 5:00 to 6:00 in the evening, while they were near the S.R.P. compound wall, from the fields as well as from Gangotri, three mobs having come; at about 6:45 to 7:00, the witness having climbed on the terrace and having stayed there till 12 o'clock at night; after which, the police having come and taken him to the Shah Alam Camp. Even as regards this part of the testimony of the witness, which has not been challenged in his cross-examination, the version regarding he having seen flames and smoke in Hussainnagar at a quarter to twelve, is

not consistent with the version given by other witnesses who have stated that the mobs started entering the chawls at around 11:00 to 11:30 and it was afternoon by the time the mob reached Hussainnagar. Therefore, the testimony of this witness cannot be taken into consideration for the purpose of considering the complicity of any of the accused named by him and can be accepted only to the aforesaid limited extent regarding his vehicle having been used for breaking the Jawannagar wall and having been set ablaze and the fact regarding he having gone to the S.R.P. compound wall and thereafter on the terrace of Gangotri Society.

132.82 It may be noted that during the course of his cross-examination, the statement recorded by the SIT has been shown to the witness and the contents thereof are brought on record, without seeking to contradict the witness qua any part of his primary statement. First, a question is put to the witness, and thereafter, he is sought to be contradicted by the statement recorded by the SIT qua what is elicited in the cross-examination. It appears that during the course of recording the testimonies of the witnesses, both the bar and the bench have adopted the path of least confrontation: the trial court, to avoid confrontation with the advocates, and the advocates, to avoid confrontation with the court. This escapist mentality on the part of both, to avoid trouble, rather than strictly follow the path of law, has resulted in delaying the matter and volumes of unnecessary and inadmissible evidence coming on record. This pernicious practice, which has been seen mainly in cases which are under the scrutiny of the media, needs to be urgently resolved.

132.83 Considering the vast improvements in the testimony of this witness, whereby even what was stated by him in his original statement against the accused has been washed out, it is difficult to give credence to the testimony of this witness. The witness has also referred to his having seen Dataniya, Murli and Guddu lifting Ayub and putting him in a rickshaw and pouring kerosene in the rickshaw from a can which was in the possession of Tiniya, and setting him ablaze. This version did not form part of his earlier statement and has come up for the first time before the SIT. Therefore, it is doubtful whether the witness has seen the incident of Ayub.

132.84 The upshot of the above discussion is that no part of the testimony of this witness can be relied upon for the purpose of proving the charge against any of the accused named by him.

133. **PW-144 Sarfaraz Abbaskhan Pathan**, aged 26 years, has been examined at Exhibit-998. The witness has deposed that he resides at *Hukumsing-ni-Chali, Naroda Patiya*, since his birth.

133.1 The incident took place on 28.2.2002. At that time, he was at home with his family which was comprised of his mother, father, brother and sister-in-law and all of them were residing together.

133.2 The witness has stated that the incident had taken place in connection with burning of a train at Godhra. After the incident, there was a call for Gujarat Bandh on 28th on which

day, he together with his family was at home at *Hussainnagar-ni-Chali*. On the day of the bandh, he and his family members were at home, at that time, at around 10:00 to 11:00, a mob came to Hussainnagar from Naroda. The mob, which was comprised of around ten to twenty thousand people, started pelting stones and bursting gas cylinders. The mob came to their house and set it on fire and his scooter was also set on fire. His scooter was lying in front of his house on the road. Upon the mob coming into their chawl, his father, mother and sister-in-law went to the S.R.P. camp at 7 o'clock in the evening. His house was damaged on account of fire by the mob. His house was damaged on account of being set on the fire by the mob. In the mob which had come to their chawl and set his house on fire and caused damage to his house, he had seen **Kalu Bhaiya (A-27)**, **Suresh Chhara (A-22)**, **Guddu Chhara** and **Bipinbhai Panchal (A-44)**. He had also seen other people in the mob; however, he does not know them.

133.3 The witness has stated that he can identify the persons in the mob even today. Bipinbhai used to do the work of Auto Consultant in their area, and hence, he knows him. Guddu Chhara has passed away. Suresh Chhara and Kalu Bhaiya belong to their area, and hence, he knows them and can identify them. The witness has identified accused No.27 and accused No.44. Accused No.22 had filed an exemption application and was not present before the court and is, therefore, deemed to be identified. The witness has stated that the police have recorded his statement in connection with the incident.

133.4 CROSS EXAMINATION: The witness has been cross-

examined with regard to the topography of the area. The witness has admitted that on the day of the incident, he was at home till 10:00 to 11:00 in the morning and till then, it was peaceful. The witness has admitted that no incident had taken place in their chawl till 10:00 to 11:00 in the morning and that they were at home till 11:00, where after he had gone and remained in front of Dilip-ni-Chali. The witness has admitted that he had gone with his family to the S.R.P. Quarters at 7 o'clock in the evening and that they had gone to the S.R.P. Quarters through Jawannagar. The witness has admitted that from 11:00 in the morning till 6:00 in the evening, he was at the entrance of Dilip-ni-Chali and that he went to Jawannagar at 6:00 in the evening. The witness has further denied that on that day, till 6 o'clock, his family members were at home.

133.5 The witness has admitted that at the entrance of Dilip-ni-Chali, other people were standing with him and that approximately there were five to seven of them. The witness has stated that during the time when he was standing at the entrance of Dilip-ni-Chali, stone throwing was going on. The witness has denied that while he was standing there, the Muslims were pelting stones from the chawls. He has admitted that he has seen the Hindus and the Muslims pelting stones at each other. The witness has further stated that the Muslims had pelted stones at around 1 to 3 o'clock in the afternoon. The witness has admitted that the Muslims, who pelted stones between 1:00 to 2:00 in the afternoon, belong to their chawl and has voluntarily stated that they were pelting stones to save their lives. The witness has denied that till 1 o'clock in the evening, the Muslims had not let the Hindu mobs enter the chawls.

133.6 In the cross-examination of this witness, it has come out that his father has sustained injury at Hussainnagar-ni-Chali. The witness has admitted that when he went from his house to Jawannagar with his family, they were walking slowly. The witness has admitted that from Jawannagar, he had gone to the S.R.P. Quarters and that when he went to Jawannagar, at that time, people belonging to the Muslim community were standing near the S.R.P. Quarters. The witness has admitted that those who were standing there were standing peacefully. The witness has admitted that he had not seen any person from the Muslim community having been injured or having fallen down. The witness has admitted that at 7 o'clock when he and his family went to the S.R.P. Quarters, nobody stopped them from going inside. The witness has stated that when he went to the S.R.P. Quarters, he had not seen any other Muslims entering the S.R.P. Quarters. In the cross-examination of this witness, it has come out that he knows where the people, whom he had seen in the mob on the day of the incident, are residing. He has stated that Suresh Chharo resides in Mahajaniyavas, Chharanagar; Kalu Bhaiya resides at Saijpur Tower, Fadeli and Bipin Panchal was residing at Krushnanagar at the relevant time. Guddu Chhara was residing in Jawannagar. The witness has stated that he does not know as to how many persons by the name of Suresh Chhara are there in Chharanagar. The witness has denied that he has any monetary dealings with Bipinbhai or that he has any social relations with him. He has admitted that he does not have any financial dealings or social relations with Guddu, Suresh and Kalu. The witness has further stated that he had no occasion to identify the four accused identified by him in the court. The

witness has admitted that in his police statement, he has stated that at 7 o'clock, he had gone to the S.R.P. Quarters. The learned advocate for the accused has clarified that the contradiction is only limited to the time. The witness has admitted that the facts stated by him with regard to how he knows the four accused as stated by him in his examination-in-chief, have not been stated by him in his statement recorded by the police. The witness has admitted that prior to his coming for recording his deposition; he was informed that Suresh Chhara is not present in the court. The witness is sought to be contradicted by his statement dated 9.3.2002 recorded by the police to the effect that in his examination-in-chief, he has stated that the mob came from Naroda, whereas in his police statement, he has stated that the mob had come from Saijpur Patiya, which the witness has admitted. A further part of the statement of the witness is sought to be brought on record to the effect that he had stated before the police that the police had released tear gas shells and had resorted to firing, but the mob had not dispersed. This part of his police statement, not being contrary to any part of the examination-in-chief could not have been brought out in the evidence of the witness.

133.7 To prove the omissions and contradictions in the statement recorded by him, the defence has cross-examined the assignee officer PW-276 Shri Pruthvisinh Udesinh Solanki, who has admitted that this witness in his statement recorded by him, had stated that the police had released tear gas shells and resorted to firing despite which, the mob had not dispersed.

133.8 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has stated that the mob had come for the first time at 11:00 a.m., which is contrary to the evidence of other witnesses examined by the prosecution who state different timings. It was submitted that this witness has stated that he along with his parents and sister-in-law had reached the S.R.P. Quarters at 7:00 p.m. and between 11:00 a.m. to 7:00 p.m., he was near Dilip-ni-Chali. It was submitted that a contradiction has been brought out to the effect that the witness in his statement dated 19.3.2002 recorded by PW-276 Shri P. U. Solanki, had not stated any facts to the effect that they went to the S.R.P. Quarters at 7:00 p.m. It was submitted that when according to this witness, the mob was comprised of about 20,000 people, his presence at a single place for so many hours is doubtful. It was submitted that the acquaintance with the accused has not been stated by the witness in his police statement, which fact has been admitted by him in paragraph 44 of his cross-examination. It was submitted that he has attributed the act of setting his house on fire to the accused; however, no overt act is attributed to them. Moreover, at exactly what time the incident has taken place, has not been stated anywhere. It was argued that it is difficult to believe that large mobs had come and set his house on fire, despite which, all of them could escape. It was submitted that from the evidence of this witness, it is clear that the mobs had come at 10:15 in the morning. If that be so, it is difficult to believe as to how his family members stayed there till 7:00 p.m. which clearly indicates that the witness has not seen anything. It was submitted that the whole story of the witness that his house was burnt in the morning and he saw the named accused is totally false, in such circumstances, the evidence of

the witness cannot be accepted as reliable evidence.

133.9 It was urged that this witness is not a reliable witness. He has made various contradictory statements in his deposition, which indicates that he has not seen the named accused in the mob at his house and his house was not burnt in the morning before 11:00 noon.

133.10 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has stated about the accused No.27, 44 and 22 pelting stones, committing loot and setting the houses on fire, etc. It was submitted that there is no cross-examination to dislodge the evidence of the witness qua the three accused leading the mob, etc. It was submitted that the witness has given the names of the accused in his police statement in the year 2002, and, therefore, the involvement of these accused, who were named in the year 2002, is proved beyond reasonable doubt.

133.11 ANALYSIS: This witness is a resident of Hukamsingni-Chali, which is one of the chawls situated on the front side of the chawls towards the Highway. As per the testimony of this witness, mobs of people came to Hussainnagar at around 10 to 11 o'clock and started pelting stones. According to this witness, the mobs set their house as well as his scooter, which was lying on the road on fire. Upon the mobs coming to their chawls, his parents and his sister-in-law went to the S.R.P. camp at 7 o'clock. The witness has stated that in the mob which set his house on fire and damaged it, he has seen Kalubhaiya (A-27), Suresh Chhara, Guddu Chhara (deceased) and Bipin Panchal (A-44). The witness has stated that he did

not know any other people in the mob. The witness has further deposed that he knows Bipinbhai because he was working as an Auto Consultant in their area. Suresh Chhara and Kalubhaiya reside in their area and, therefore, he knows them and is in a position to identify all three of them. The witness has thereafter, identified A-27 Kalubhaiya and A-44 Bipinbhai Panchal. The witness has named the third accused as Suresh Chhara, whereas there are two accused by the name of Suresh Chhara, namely, A-22 and A-26. accused No.26 was present in the court and the witness has not identified him, whereas accused No.22 had filed an exemption application and, therefore, he is deemed to have been identified.

133.12 In the cross-examination of this witness, nothing substantial has been brought out, except that no incident had taken place in their chawl till 11 o'clock and when he went to the S.R.P. Quarters at 7:00 p.m. with his family, no one had stopped him. Apart from the fact that the witness has stated his acquaintance with the accused in his deposition, further acquaintance is brought out in paragraph 36 of the cross-examination of the witness wherein he has stated that Suresh Chhara resides at Mahajaniyavas, Chharanagar, Kalubhaiya resides at Saijpur Tower, Fadeli and Bipin Panchal was residing at Krushnanagar. Therefore, while it is true that the witness had not stated regarding his acquaintance with the accused in his police statement, in his examination-in-chief he has deposed about his acquaintance with the accused, which is further fortified in his cross-examination by the learned counsel for the defence. Therefore, there is no reason to doubt the identity of the three accused.

133.13 From the cross-examination of this witness, no contradictions have been brought out qua his police statement, except for a minor discrepancy, which is not very material. Under the circumstances, the evidence of this witness is consistent with the statement recorded by the police. In the cross-examination of the witness, the defence has not been able to dent the credibility of the witness who comes across as credible and trustworthy witness. Therefore, the core of the testimony of this witness, whereby he has stated that he had seen the accused in the mob, has not been dislodged in his cross-examination. Under the circumstances, there is no reason to disbelieve the witness when he says that he saw the named accused in the mob in the morning.

133.14 Through the testimony of this witness the prosecution has proved the presence of Kalubhaiya (A-27), Suresh Chhara, Guddu Chhara (deceased) and Bipin Panchal (A-44) in the mobs in the chawl in the morning.

134. **PW-145 Shahnavaazkhan Abbaskhan Pathan**, aged 35 years, has been examined at Exhibit-999. The witness has deposed that he is residing at *Hukamsing-ni-Chali, Next to S.T. Workshop, Naroda Patiya, Ahmedabad*, since his birth. He does not remember the month, but says that the incident took place on the 28th in the year 2002. At that time, he was residing at Hukamsingh-ni-Chali with his parents, two brothers and his wife. He was doing the work of motor rewinding at Gopal Industries, near G. D. High School.

134.1 On the day of incident, there was a call for Gujarat

Bandh and he was at home. On that day, in the morning at around 9:30, a mob had come outside his house and they were vandalizing the shops and the masjid, all of which went on till 11 o'clock. Thereafter, the police had resorted to firing when their Muslim mobs went inside the lane. Thereafter, the Hindu mob advanced forward and entered their lanes. The Hindu mobs set Hussainnagar-ni-Chali and Dilip-ni-Chali on fire and looted the goods. The people in the mob had forced them into the chawls.

134.2 The mob had come from the direction of Natraj Hotel. The mob came from the Patiya, Opposite S.T. Workshop and was comprised of around fifteen to twenty thousand people. The people in the mob burnt his house and committed loot inside his house. Stone throwing and assault was going on in the interior side, and hence, they went towards the interior side towards Hussainnagar and hid in Hussainnagar. Thereafter, the police vehicle came and took them to the Shah Alam camp. He does not know as to where his family had gone at this time. He had stayed at the Shah Alam camp for one or two days, whereafter he had gone to Juhapura camp and met his parents. He had learnt that in the incident, his father had sustained stone injury on his leg which was treated in the camp. Except for this, no other member of his family had sustained any injury or loss of life. His father is dead.

134.3 The witness has further deposed that the mob had entered the chawl and as stated by him, the people in the mob were vandalizing his house and setting it on fire, and that he had seen Bipinbhai Panchal (A-44), Manoj Sindhi (A-41), Murli Sindhi (A-2), Kalu Bhaiya (A-27), Suresh Chharo (A-22), Haresh

Chharo (A-10) and Naresh Chhara, in all, seven persons, in the mob. He knew these seven persons in the mob, but did not know the other persons.

134.4 The police had recorded his statement in connection with the incident. The witness has stated that he can identify the accused whom he had seen in the mob and has identified accused No.27, accused No.22, accused No.10, accused No.44 and accused No.2, whereas accused No.1 had been granted exemption and therefore, is deemed to have been identified. This witness has correctly identified all the accused.

134.5 CROSS EXAMINATION: In the cross-examination of this witness, he is sought to be contradicted with his police statement to the effect that he had not stated the words "vandalizing the masjid" as referred to in his examination-in-chief, in his police statement. The witness is further sought to be contradicted as to his police statement to the effect that the facts stated by him in paragraph 4 of his examination-in-chief that "*the mob had come from the Patiya, opposite S.T. Workshop*" had not been stated by him in his police statement.

134.6 In the cross-examination of this witness, it has come out that he had left his house at 9:30 in the morning and had thereafter returned home only once at around 10 o'clock, when he found that the members of his family were not present and they had all gone away and that his house was locked. It has further come out that he was on the road from 9:30 to 11:00 in the lane next to S.T. Workshop and that at 11 o'clock, he went to Hussainnagar. It has further come out that

at 11 o'clock when he was standing near Dilip-ni-Chali; he has not seen his brother Sarfaraz. He has further stated that there were around a hundred people from Hukumsing-ni-Chali, Dilip-ni-Chali and Pandit-ni-Chali standing with him near the chawl where he was standing and has also named certain persons who were standing with him. It has further come out in his testimony that the mob which he had seen came from the side of Krushnanagar and another mob came from the side of Kubernagar also. The witness has admitted that the mobs which came from Kubernagar and Krushnanagar had gathered near Noorani Masjid and that, in all, there must have been around fifteen to twenty thousand people in the mob. The witness has denied that while he was standing there, there was cross pelting of stones by the Muslims in defence.

134.7 The witness has denied that the persons who were pelting stones at them were standing on the opposite side of the road and has stated that they were coming forward and pelting stones. They had come to the corner of the chawls and were pelting stones. The witness has voluntarily stated that the police were in front and they (the mob) were behind, and that the police was shooting.

134.8 In the cross-examination of this witness, it has further come out that at 11 o'clock on account of the stone pelting, they went inside the chawls. After 11 o'clock, they went to Hussainnagar, where they stayed for around one to two hours. He has admitted that after he went to Hussainnagar, there was no occasion for coming back to the corner of the chawl. They had gone to the terrace of a chawl behind Hussainnagar. They went to the terrace of a house with

two storeys. The witness has admitted that there were other Muslims like him on the terrace and that from the terrace; they straightaway went in a police vehicle to the Shah Alam camp.

134.9 In the cross-examination of this witness, it has come out that he had returned home from the camp after about six months. He had lodged a complaint regarding his house having been burnt and looted at the camp about eight days after he reached the camp. The police had come to the camp to record the complaint. The witness has admitted that he had signed the complaint after it was taken down.

134.10 In the cross-examination of this witness, it has further come out that the police had taken him to his house after three months of the incident where they had drawn a panchnama regarding the loss and damage caused to them and that on the same day, after recording the panchnama, his statement in connection with the incident was also recorded.

134.11 In the cross-examination of the witness, he has denied that on account of the mobs which had come from both the sides, the entire road was full of people. The witness has voluntarily stated that on account of the mobs on both the sides, the area on both the sides was filled up, but the entire road was not filled up. The witness has admitted that the mob which came from the side of Kubernagar had stopped at Natraj Hotel, but has denied the suggestion that the mob which came from the side of Krushnanagar, had also stopped at Natraj Hotel. The witness has stated that the mob from Krushnanagar came up to the chawls and did not go till the Patiya and has voluntarily stated that at 11 o'clock, upon the mob coming, he

had gone away to Hussainnagar and does not know as to where the mob went thereafter. The witness has admitted that at 11 o'clock when the mob entered, he had fled to save his life and had straightaway gone to Hussainnagar on the terrace of a house. The witness has further admitted that there were around one hundred to one hundred and fifty Muslims hiding with him on the terrace and has also admitted that they were all hiding on the terrace in such a manner that nobody could be seen. He has admitted that all those who were on the terrace came down at night when the police arrived.

134.12 The witness has stated that the police had recorded his statement at the camp and that he had narrated everything that he had seen on the day of the incident to the police, but has voluntarily stated that the police was not writing down everything. The witness has stated that on that day he has not seen any such incident, wherein a Tata vehicle set off in full speed and had killed two to three persons on the spot.

134.12 The witness has denied that Vermaji's paan-cabin was at the corner where he was standing. He has stated that the police had fired gun shots where he was standing and he has seen someone being injured with a bullet. One Mahammad and Mustaq were injured by the bullets fired by the police. The witness has admitted that he has not seen anyone other than these two persons having been injured, but is not in a position to state as to on which part of the body they had sustained bullet injuries.

134.13 The witness has thereafter been cross-examined

with regard to the topography of the area. He has admitted that when he reached the corner, there was a mob of ten thousand to fifteen thousand people and that he does not know from where the mob had come.

134.14 In his cross-examination, it has further come out that when he reached the terrace, it was around 4 o'clock in the evening. The witness has admitted that till 4 o'clock in the evening, he was at Hussainnagar on the terrace and that thereafter, he had not gone anywhere. The witness has admitted that in Hussainnagar, there are other houses like the house on the terrace of which he had gone. It has come out that the witness had gone on the terrace of one Mansuribhai's house. The witness has further stated that on the terrace where he was, there was no person who was required to be lifted and taken and that there was no person who was injured by a bullet and could not walk on the terrace and that the house on the terrace of which he was, had two floors.

134.15 The witness has admitted that they were sitting and hiding on the terrace, but has denied that they were sitting in a manner in which they could not see anyone from the terrace. The witness has voluntarily stated that they were taking care to see that no one could see them, but they themselves were looking. The witness has admitted that no one had attacked the chawl on the terrace in which he was, but has voluntarily stated that other chawls were set on fire. The witness has stated that such incidents of arson had taken place at *Dilip-ni-Chali, Hukamsing-ni-Chali* etc. The witness has denied that the incident took place at 6 o'clock in the evening and has voluntarily stated that the incidents started occurring from 12

o'clock in the afternoon. The witness has denied that he had not seen the mob at 9:30, but had seen it after 11 o'clock and that he had not seen the mob before 11 o'clock. The witness was confronted with his statement dated 9.3.2002 recorded by the police to the effect that he had stated therein that at around 11:00 to 11:30 in the morning, a mob of around fifteen to twenty thousand people came from the direction of Saijpur Patiya.

134.16 The witness has denied the suggestion that he, his brother and his family members were at home till 11 o'clock in the morning and has denied that after 11 o'clock, they had left their house to protect their lives. The witness has voluntarily stated that he was at Hussainnagar and his family members had come out at 10 o'clock. The witness has denied that he, his brother Sarfaraz and other family members had left their house together after locking their house. The witness has admitted that he has not stated the facts stated in paragraph 3 of his deposition, namely, that the mob had come at 9:15 in the morning and that the mob was damaging the properties till 11 o'clock, in his statement recorded by the police. The witness is also contradicted with his police statement to the effect that he had not stated that the mob was damaging the masjid. The witness has denied the suggestion that at 10 o'clock, he was at home and from there, he had straightaway gone to the terrace at Hussainnagar. The witness has voluntarily stated that he had gone to the terrace of Hussainnagar after 11 o'clock. He has admitted that on account of the mob having come, at 11 o'clock, he had gone to hide.

134.17 The witness has admitted that he does not know the names of the fathers of the accused whom he has identified. The witness has stated that he does not know as to how many other people have similar names in the Naroda Patiya area. The witness has stated that he has got no social, financial or business relations with the accused, nor does he have any relations of visiting each other's houses. The witness has admitted that he has identified the accused for the first time before the court and that prior thereto, there was no occasion to identify them. The witness has admitted that the mob which he had seen was prior to his having gone to hide.

134.18 From the cross-examination of this witness, it has come out that he had not seen the police at the camp for the first seven to eight days after they went there. The witness has stated that when the police called him to record his statement, they were sitting in a room in the camp. The witness has admitted that similarly, the statements of other people were also being recorded and that there was a queue for recording the statements and everyone was standing in a queue for getting their statements recorded.

134.19 In his cross-examination, it has further come out that he came to know that the mob had come outside at 9:00 to 9:15 in the morning on the day of the incident when he himself came out of his house. The witness has stated that he came out and went near Gafurbhai's house, where at present there is a police chowky at the corner of the S.T. Workshop compound wall and that he had reached there at around 9:00 to 9:15 in the morning and had remained there till 11 o'clock. It has further come out that where he was standing, there were

around a hundred people belonging to the Muslim community.

134.20 In the cross-examination of this witness, it has come out that at 11 o'clock, he had fled and returned and that together with him, there were also other Muslims who had fled. After fleeing at 11 o'clock, he had gone to Hussainnagar. The witness has admitted that the terrace on which he had taken shelter had a parapet. The witness has admitted that the parapet was such that if they stand near it, the people below could see them. The witness has stated that he had not stood near the parapet and has voluntarily stated that he was sitting near the cement lattice of the parapet and that the other people were also sitting like him. The witness has thereafter been again cross-examined with regard to the topography of the area. In his cross-examination, the witness has stated that he has no information about Bipin Auto Centre having been set ablaze in the incident. The witness has denied the suggestion that he has wrongly implicated Bipin Panchal at the instance of people of their community. He has denied that since Bipin Auto Centre has been set on fire by Muslims, he has named the Muslims in the complaint, and therefore, he has falsely named him in his deposition.

134.21 To prove the omissions and contradictions in the testimony of the witness as to his previous statements, the defence has cross-examined the concerned Investigating Officer/assignee officer who had recorded such statement.

134.22 PW-276 Shri P.U. Solanki, the assignee officer, in his cross-examination, has admitted that this witness had stated before him that in the morning at around 11:00 to 11:30, a

mob of around fifteen to twenty thousand people had come from Saijpur Patiya. He has further admitted that this witness had stated before him that in the morning at around 11:00 to 11:30, a mob of fifteen to twenty thousand people had come from Saijpur Patiya and started shouting and pelting stones due to which, the police had resorted to lobbing tear gas shells and firing to disperse the mob. However, the mob, being very large, did not disperse. The assignee officer has further admitted that the witness had stated before him that to protect their lives, they had hidden themselves and had also stated that at night, they were taken in a police vehicle to Juhapura, Sankalitnagar Relief Camp. The assignee officer has further admitted that this witness had not stated before him that the mob was damaging the masjid and that he has also not stated that the mob had come from the direction of Natraj Hotel and that the mob had come from Patiya, Opposite S.T. Workshop. The assignee officer has stated that the witness had stated that the mob had come from Saijpur Patiya. He has further admitted that the witness has not stated before him that on the day of the incident, he had gone to a terrace in the interior of Hussainnagar and was hiding there and that the police vehicle first took him to the Shah Alam camp and thereafter, he had gone to Juhapura camp.

134.23 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants submitted that the witness has not mentioned anywhere as to at what time the incident of his house being ransacked took place. He has admitted in paragraph 10 of his deposition that he has no information as to at what time his house was set on fire and looted. It was submitted that the admission in paragraph 10 indicates that

the witness has not seen the incident, in which case the facts stated in paragraph 6 of his testimony regarding the mob having entered his house and damaging the same and setting it on fire, would go. It was submitted that from the testimony of this witness, it emerges that after he left his house at 9:15, he did not return home at any point of time. Therefore, it is totally doubtful as to whether he has seen any incident regarding his house. It was submitted that in his examination-in-chief, he has specifically referred to these seven persons being part of a mob causing damage to his house, whereas in paragraph 10 of his cross-examination, he has stated that he has no information regarding the time when his house was set on fire and the time when it was looted. Referring to the contents of paragraph 9 of the cross-examination of the witness, it was pointed out that this witness has denied that after he left his home at 9:30 in the morning, there was no occasion to return home and that he had returned home once after 9:30 at 10 o'clock in the morning and that thereafter, there was no occasion for him to return home. When he went home, the members of his family were not present and all of them had gone and that when he went there, his house was locked. It was submitted that this part of his testimony totally falsifies the case of PW-144 Sarfaraz Abbaskhan Pathan, who is brother of this witness.

134.24 It was contended that the only allegation made by this witness is that of seeing the seven accused as part of the mob which ransacked and set his house on fire. No specific overt act has been alleged or attributed to any of the accused. It was submitted that acquaintance of the witness with any of the accused has not been established beyond doubt and on

reading his deposition as a whole, and particularly on a conjoint reading of paragraphs 6, 27 and 59, it is apparent on the face of it that after he left his house at around 9:15, he was at the corner of the road till 11 o'clock and then he ran away to Hussainnagar and hid himself on a terrace till 4:00 p.m. In the meanwhile, once, at 10:00 a.m., he came back to his house, but found that it was locked and all his family members had left the house. It was submitted that the witness had no occasion thereafter to go back to his house, and, therefore, the only claim made by him in paragraph 6 of his examination-in-chief gets falsified. It was urged that even on material parts, his version is found contrary to that of his own brother PW-144, and, therefore, both the brothers should not be believed to be truthful or reliable witnesses.

134.25 Mr. B. B. Naik, learned counsel for the appellants invited the attention of the court to paragraphs 4, 16, 26 and 33 of the deposition of the witness, to submit that different versions have been given in different paragraphs as to from where the mob came. This clearly shows that he had not seen any mob and that he has not seen anything. Referring to the contents of paragraph 6 of his deposition, it was submitted that in paragraph 27 of his cross-examination, the witness has stated that at 11 o'clock, he had gone to Hussainnagar and, therefore, did not know where the mob has gone. It was submitted that therefore, after 11 o'clock, he was not on the road or at home, and, therefore, he could not have seen the incident of his house where he says he had seen the named the accused. It was submitted that it is clear that the witness has not seen any mob and that there are major contradictions in his deposition before the court. It was argued that from the

testimony of this witness, it clearly transpires that he has not seen the incident of the burning of his house, when according to him the named accused were there. It was submitted that the evidence of this witness does not inspire confidence and cannot be relied upon to implicate the accused in such a serious offence.

134.26 Mr. Prashant Desai, learned Special Public Prosecutor, after referring to the relevant parts of the testimony of the witness, submitted that the witness has been staying at *Hukamsing-ni-Chali* and is a natural witness and his presence at the scene of offence is established beyond doubt even in the cross-examination. It was submitted that when the witness says that the mob came from Saijpur, it includes Naroda Patiya also, which cannot be said to be a material contradiction. Referring to paragraph 46 of the deposition of this witness, it was submitted that the case of the prosecution that the mob pelted stones, damaged the houses, ransacked the properties and set them ablaze and that they were frightened, is admitted by such a question. Referring to the contents of paragraph 49 of the evidence of the witness, it was submitted that the contradiction is only as regards the time and it cannot be said to be a material contradiction.

134.27 From the facts and contentions noted hereinabove, it is evident that the learned counsel for the appellants have made various submissions as regards the credibility of the witness and have stated the reasons as to why the witness should not to be believed. However, in response thereto, the learned Special Public Prosecutor has merely referred to the testimony of the witness and submitted his comments thereon,

but has not responded to any of the contentions raised by the learned counsel for the appellants.

134.28 ANALYSIS: This witness is the elder brother of PW-144 Sarfarazkhan Abbaskhan Pathan. The statement of this witness was recorded by PW-276 on 9.3.2002. From the testimony of this witness, it emerges that he is a resident of Hukamsing-ni-Chali and on the day of the incident, a mob had come outside his house at around 9:15 in the morning and was damaging the shops, etc. which continued till 11 o'clock. Thereafter, the police resorted to firing and the Muslims who were standing outside, went inside the lanes. Thereafter, the mob of Hindus advanced forward and entered their chawls and looted the houses and set Hukamsing-ni-Chali and Dilip-ni-Chali on fire. According to this witness, the mob was comprised of around fifteen thousand to twenty thousand people and had come from Natraj Hotel. Upon the mob coming, they had gone away and hidden themselves in Hussainnagar. The witness has deposed that in the mob, he has seen seven accused persons, viz., (i) Bipinbhai Panchal (A-44), (ii) Manoj Sindhi (A-41), (iii) Murli Sindhi (A-2), (iv) Kalu Bhaiya (A-27), (v) Suresh Chhara (A-22), (vi) Haresh Chhara (A-10) and (vii) Naresh Chhara (A-1). The witness has identified accused No.27, 22, 10, 44, 2 and 41 before the court, whereas accused No.1 had filed an exemption application and is, therefore, deemed to have been identified. Thus, all the accused named by him, have been correctly identified by the witness.

134.29 As per the testimony of this witness, he left his home at 9:30 in the morning and thereafter, went to his house once at 10:00 in the morning. When he went home, it was

locked and his family members were not present at home and had gone away. The learned counsel for the appellants have submitted that there is a discrepancy in the statement of this witness and the statement of his brother who had said that he was at home till 10:00 to 11:00 in the morning on that day and till then, there was peace in their chawl and that till at 11:00 on the day of the incident, they were at home. Therefore, his parents and his sister-in-law had gone to the S.R.P. Camp at 7 o'clock in the evening upon the mob coming to their chawl.

134.30 In the cross-examination of this witness, it had come out that he does not know anything about his brother Sarfaraz after he left home in the morning. This witness was standing at Dilip-ni-Chali at around 11:00 in the morning, but did not see his brother Sarfaraz. Sarfarazkhan has admitted that he was at home till 11 o'clock and had gone to the corner of Dilip-ni-Chali and was there from 11:00 to 6:00 and till then, there was no problem there.

134.31 This witness has stated that he was standing at the corner of the lane next to the S.T. Workshop in front of his house and had left that place at 11 o'clock and gone to Hussainnagar. In his cross-examination, it has come out that there was stone pelting at 11:00 in the morning, whereupon they went to the chawls on the rear side. The witness has admitted that after the mobs came in at 11:00, to save his life, he had fled and had straightaway gone to a terrace of a house in Hussainnagar, where he reached at around 4 o'clock. Till then, he was at Hussainnagar. In his further cross-examination, it has come out that the house in Hussainnagar was Mansuribhai's house. In his cross-examination, further facts

have been revealed to the effect that while he was standing there, he had seen someone being injured by bullets in the police firing and that one Mahammad and Mustaq were injured in the police firing. In the cross-examination of the witness, he has admitted that the chawl on the terrace of which he had taken shelter was not attacked while he was there, but has voluntarily stated that other chawls were being set on fire and that Dilip-ni-Chali, Hukamsing-ni-Chali, etc. were being set ablaze. The witness has denied that the incidents took place at around 6 o'clock and has voluntarily stated that the incidents started occurring from 12 o'clock in the afternoon. In paragraph 55 of his cross-examination, it has been elicited that he had seen the mob before he had gone and hidden himself.

134.32 In the cross-examination of this witness, no material omissions or contradictions have been brought out qua his police statement. The omissions and contradictions brought out are minor ones, which cannot in any manner be said to affect the credibility of the witness.

134.33 In paragraph 54 of his cross-examination, the witness has admitted that he does not know the names of the fathers of the accused identified by him. He further does not know as to how many other people with the same names as the accused are there in the Naroda Patiya area. He has stated that he has no social relations with the accused, nor does he have any relations of visiting each other's houses or monetary or business relations.

134.34 Insofar as the discrepancies between the testimonies of PW-144 and this witness are concerned, while

this witness has stated that he had left the spot at 11 o'clock, his brother PW-144 has stated that he had come to the spot at 11 o'clock. Therefore, the fact that PW-145 had not seen his brother while he was standing at the corner of Dilip-ni-Chali does not in any manner dent the credibility of PW-144 who has stated that he had come out at 11 o'clock. When the witness has mentioned a particular time in his deposition, it cannot be the exact time as per the clock, having regard to the fact that they are deposing about the incident that took place eight years prior thereto. Therefore, on a conjoint reading of the testimonies of PW-144 and PW-145, there does not appear to be any material discrepancy when PW-145 says that he had not seen his brother while he was standing at the corner of Dilip-ni-Chali. This witness had named the accused in his first statement recorded by the police on 9.3.2002, almost immediately after the incident. At that stage, there was hardly any scope of the witness being tutored. The witness has been consistent as regards his version of the incident and the accused. As noted earlier, there are hardly any contradictions in the testimony of the witness as to the statement dated 9.3.2002 recorded by the police. Under the circumstances, the witness being consistent in his testimony, there is no reason to discard the same. It may be noted that this witness has named seven accused persons, while his brother has named four accused persons, out of whom three are common. Since both the brothers have come at the spot at different times, it is but natural that all the accused whom they had seen might not have remained together. This court, therefore, does not find any substance in the submission of the learned counsel for the appellants regarding the discrepancies in the testimonies of the two brothers. Much significance cannot be attached to the

fact stated by the witness in his cross-examination that he had come back only once at 10 o'clock and at that time, his house was locked inasmuch as such facts have come in the cross-examination and the witness who was deposing after a period of eight years, might not have remembered the facts correctly.

134.35 Despite the lengthy cross-examination, the defence has not been able to dent the credibility of the witness who is consistent in his version and appears to be a credible and truthful witness.

134.36 The testimony of this witness would therefore help in establishing the presence of (i) Bipinbhai Panchal (A-44), (ii) Manoj Sindhi (A-41), (iii) Murlil Sindhi (A-2), (iv) Kalu Bhaiya (A-27), (v) Suresh Chhara (A-22), (vi) Haresh Chhara (A-10) and (vii) Naresh Chhara (A-1) in the mob which was looting and setting the houses in the chawls on fire at about 11:00 a.m. on the day of the incident.

135. **PW-146 Iqbalbhai Ismailbhai Mansuri** aged 43 years, has been examined at Exhibit-1007. The witness has deposed that he is residing at Hussainnagar since the last eighteen years and is a rickshaw driver. In the year 2002, his family was comprised of his father, his mother and his younger brother's two sons.

135.1 The incident took place on 28.2.2002, on which day there was a call for Gujarat Bandh. On the day of the incident, they were all at home. At around 8:00 to 8:30 in the morning, he was washing his brother-in-law's rickshaw when shouts

started coming from the road outside. He came out on the road to see when a mob had come from the direction of Natraj Hotel. The people in the mob were vandalising the masjid and the tea stalls. The people in the mob had pipes, swords etc. in their hands. On seeing this, he went home to the children. His father had set out at around 8:00 in the morning, to go to the house of Dahiben at *Hirawadi*. Thereafter, except for his father, they took all their family members and went and hid in Jawannagar. They sat near the S.R.P. compound wall till 4:30. At this time, at around 4:30 in the evening, sounds of gas cylinders bursting started coming. They tried to go inside the S.R.P. Camp; however, they were not permitted to go inside and they were beaten and driven out. At about 5:30 in the evening, they set out for Gangotri Society. They had gone to Gangotri Society.

135.2 At this time, Janak Marathi was standing in front of the Gangotri Society with a pipe in his hand. He recognized him and told him that they should go away from there. Thereafter, they forcibly entered the S.R.P. Quarters from behind Gangotri Society, where they sat till around 4:00 in the morning, when the police vehicle came and took them to the Shah Alam camp, where he and his family members stayed for six months.

135.3 After about fifteen days, they inquired about his father and came to know that he had left Dahiben's house on the same day. They searched for their father at all the relief camps as well as at the houses of other nearby relatives. Later on, after about a month, they learnt that a man wearing a pajama and kurta was set on fire near Krushnanagar and they

thought that the person who was burnt, must be their father. They have not found their father's dead body till date and his father is still missing.

135.4 The witness has stated that out of the people whom he met, he does not know anyone other than Janakbhai. The witness has stated that the police had examined him and recorded his statement and the SIT had recorded his statements twice. The witness has stated that he can identify Janakbhai Marathi and has correctly identified accused No.36 before the court.

135.5 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that all the Muslims went from the direction shown to them by Janakbhai and that on account of that, the lives of around thirty to forty Muslims were saved.

135.6 PW-307, S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 13.05.2002. He has admitted that this witness had not named any accused in the statement recorded by him.

135.7 SUBMISSIONS: The learned counsel for the appellants submitted that though this witness has seen the mob on the road, he has not implicated anybody, including the local residents who are residing in Gopinath and Gangotri Society, though he is residing there since more than ten years prior to the incident and has stated that Janak Marathi saved about thirty to forty Muslims by showing them the way to S.R.P. Quarters. He is the brother of PW-110 Noormohammed who is declared to be a hostile witness.

135.8 ANALYSIS: From the testimony of this witness, it is apparent that the witness has not implicated anyone in the offence in question. Insofar as the reference to Janakbhai Marathi being present near Gangotri Society is concerned, the testimony of the witness does not involve him as accused in the offence and on the contrary, indicates that the said accused had helped Muslims to escape from the area.

136. **PW-148 Nazirmahammad Faizmahammad Shaikh**, aged 55 years, has been examined at Exhibit-1022. The witness has deposed that he was residing at Jawannagar since the last fifteen years and that *Jawannagar* and *Jawaharnagar* are the names of one and the same place.

136.1 The witness has deposed that in the year 2002, he used to sell kerosene and his wife used to carry on the business of glass bangles in their house. He, his wife, three children, viz., two sons Mohammad Arif and Mohammad Imran, and daughter Nasreenbanu, were all residing together. His wife's name is Sahedbanu.

136.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh, and hence, he was at home. While he was having tea, in the open ground outside his house, mobs had gathered. The people in the mob had resorted to assaulting, arson and looting. At this time, he had sent his wife and daughter to the S.R.P. Quarters and he and his elder son Arif had stayed at home.

136.3 Thereafter, the mob came to their chawl. The mob had resorted to vandalism and arson. Thereafter, he took his son and hid in Gangotri Society till about 12.30 at night and upon the police vehicle coming, they were taken to the Shah Alam relief camp.

136.4 In the incident, his daughter Nasreenbanu had sustained burn injuries on her hand at the hands of the mob. She was given treatment at the Shah Alam camp. His wife and daughter were at the relief camp at a school in Shahibaug. He had met them after four days.

136.5 In the incident, his house was looted and set on fire. He had seen **Guddu Chhara** in the mob. He had tied a cloth around his face and was assaulting people. He is not aware as to whether or not Guddu Chhara is alive.

136.6 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that between the S.R.P. Quarters and Jawannagar, the road of Uday Gas Agency is situated and thereafter, there is Jawannagar No Khado which is also known as maidan.

136.7 He had seen the mob from Gangotri Society at around 12 o'clock in the afternoon. The witness has admitted that on the terrace of Gangotri where he was hiding, there were many other Muslims which could be to the tune of one thousand people. He has further admitted that all Muslims like him were trying to hide to save themselves. The witness has admitted that it is only after the police vehicle came at 12:30, that they had come out. The witness has admitted that the

Panchvati Khada is situated next to Jawannagar Khada. He has stated that he knows Guddu since the last one or two years and that he had seen him from far on that day. He has admitted that Guddu was standing in the mob of thousands of people. The witness has admitted that he had covered his face with a cloth. The witness has admitted that when he saw the mob, he was frightened and was standing at a long distance from the mob.

136.8 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has not stated any time regarding the incident, and hence, his deposition is as vague as possible. It is further submitted that no other witness has stated about the mob being present at Gangotri at 12:00 in the noon. Referring to the testimony of this witness, it was submitted that admittedly, all the Muslims were hiding and could not see the mob. It was further pointed out that the witness has admitted that Guddu had covered his face with a cloth, to submit that in these circumstances, he could not have identified him.

136.9 ANALYSIS: This witness has not deposed any material facts with regard to the incident. He has stated that he had seen Guddu Chhara (deceased) in the mob, but at the same time, he says that he had tied a cloth around his face, which is self-contradictory. Considering the nature of the evidence of this witness, who has named only one accused, viz., Guddu Chhara who is dead and in that regard also, his evidence is self-contradictory, nothing much turns upon the evidence of this witness and his evidence does not in any

manner further the prosecution case to establish the charge against the accused.

137. **PW-149 Faridabanu Abdulkadar Khalifa**, aged 46 years, has been examined at Exhibit-1028. The witness has deposed that presently since the last six years, she is residing at Ektanagar with her husband and son.

137.1 The witness has further deposed that her daughter Afsanabanu is residing at Vatva. At the time of the incident, her daughter Afsanabanu used to reside in Guddu Chhara's house on rent.

137.2 At the time of the incident, she used to reside with her husband and children, in a rented house in Lane No.7, Hussainnagar. The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh. Her husband had gone to his maternal uncle's house at Palitana. On the day of the incident, she and her children were having breakfast in the morning, when at around 9:00 to 9:30, there was commotion outside. Hearing the sounds, she went outside and saw that a mob was coming towards the Noorani Masjid from Krushnanagar and Natraj Hotel. At that time, she was standing next to the S.T. Workshop compound wall near the Noorani Masjid.

137.3 The people in the mob were breaking the handcarts, stalls and rickshaws nearby. Some of the persons in the mob were wearing saffron bands on their foreheads. At that time, the policemen and S.R.P. personnel were present near the

Noorani Masjid and Shri K. K. Mysorewala was also present at the S.T. Workshop with a Government jeep. At this time, **Mayaben Kodnani** came out from the mob and went near K. K. Mysorewala and spoke to him.

137.4 In the mob in which Mayaben was, certain other persons were also present, namely, **Kishan Korani (A-20), Babu Bajrangi (A-18), Murli (A-2), Manoj Videowala (A-41), Ashok Pan Gallawala, Bipin Panchal (A-44), Jaybhavani (deceased), Dalpat Chhara (deceased), Dalpat Chhara's son-in-law Tiniyo Chhara, Sahejad Chhara (A-26), Sahejad Chhara's son-in-law Vijay Chhara, Suresh Langdo (A-22), Guddu (deceased), Hariyo (A-10), Nariyo (A-1), Tiniyo Marathi and Subhash Ramesh.**

137.5 After talking with Mysorewala, Mayaben left, whereafter police firing and private firing commenced. Acts of arson also commenced near the Noorani Masjid. In this firing, Abid and Hasan Kureshi were injured by bullets and both of them died in the incident, whereas Mahammad, Piru, Khalid and Majid had sustained bullet injuries.

137.6 At this time, she, Kudratbibi and Madinabanu, all three of them, went to PI Shri Mysorewala and requested him to help in calling for an ambulance for those who were wounded in the firing. However, he told her in clear words that, he had orders to kill Muslims and no orders to save them. Upon Mysorewala saying so, she asked Mysorewala as to why he was supporting the Hindus and why was he not stopping them. Upon her saying so, he became angry and gave her three to

four blows with a lathi and told her to go away from there or else he would shoot her. Whereupon, she, Kudratbibi and Madinabanu, all three of them, went away from there. She went home and stayed there till around 12 o'clock in the afternoon.

137.7 Thereafter, the mob was advancing further and was ransacking and burning the houses, hacking down and killing, and hence, they were very frightened. Thereafter, she locked her house and went to Jawannagar to her daughter's house. At 2 o'clock in the afternoon, while she was going to have a look at her house, she saw Mullaji's handicapped son, burning near his house. On seeing this, she was frightened and immediately returned to her daughter Afsana's house. Thereafter, she tried to go inside the S.R.P. Quarters; she wanted to go there to save her life. She had gone with her children to the S.R.P. Quarters: however, the S.R.P. people did not permit her to go inside and hence, she sat outside the S.R.P. Quarters till 7 o'clock in the evening.

137.8 While she was sitting outside the S.R.P. Quarters, a mob came from the direction of Uday Gas Agency. The people in the mob had swords, dharias, iron pipes, iron rods and cans filled with kerosene or petrol in their hands. This mob had broken the compound wall of Jawannagar and entered inside. In this mob, she had seen **Guddu Chhara** (deceased), **Hariyo (A-10)**, **Nariyo (A-1)**, **Sahejad (A-26)**, **Dalpat Chhara (deceased)**, **his son-in-law Tiniyo (A-5)**, **Tiniyo Marathi (A-30)**, and **Vijay Chharo (A-46)**, etc., who were leading the mob.

137.9 At this time, a boy named Ayub, upon seeing the mob near his house at Jawannagar, out of fear, jumped from the terrace and sustained injuries on both his legs. Ayub could not stand due to his injuries and the people in the mob lifted him and put him in a rickshaw and set it on fire. She had seen them burning Ayub alive with her own eyes. At that time, a person wearing khakhi uniform and a helmet was also there in the mob.

137.10 This very mob had set Majid's house, which was the last house in the line of Jawannagar, on fire while Majid's family members were inside the house. At that time, she felt that they would not be able to escape. From the terrace, they got down inside Gangotri Society and through the fields, together with her children she went to the open ground. There were other people with her.

137.11 At that time, there was stone pelting in the open ground and she sustained stone injury on her left leg. Thereafter, they went through the wire fencing into the S.R.P. Quarters, to her maternal aunt's son Faiyazkhan's house. When they reached Faiyazkhan's house, it was locked. Therefore, she took the keys of the house from his neighbour who was residing opposite his house and opened the house, and took shelter there along with her children. On the next day, the police vehicle came, wherein they had gone to the Shah Alam camp.

137.12 Her husband had returned after three to four days after the incident and had met them at the relief camp. About eight days after the incident, she and her husband went to

have a look at their house and found that whatever was in the house, including cash, was looted. Thus, in the incident of loot, they had incurred a loss of about one lack and fifty thousand rupees.

137.13 They had stayed at the Shah Alam camp for six months. The police had recorded her statement two to three months after the incident.

137.14 Thereafter, pursuant to an advertisement in the newspapers, she had made an application addressed to Geethaben Johri. In response thereto, she had received a summons. She had gone to Gandhinagar at the address stated in the summons, where her statement was recorded and was read over to her. At that time, she had got the facts which she had stated before the police in her statement but were not recorded by them, recorded by the SIT. The SIT had written down everything stated by her.

137.15 The witness has deposed that out of the persons named by her, Guddu Chhara, Jay Bhavani, Dalpat Chhara and Ramesh alias Subhash Marathi are dead. The witness claimed that she could identify the accused who were present before the court and whom she had named. The witness had thereafter identified Bipin Panchal (A-44), Kishan Korani (A-20), Tiniyo Chhara (A-5), Suresh Langdo (A-22), Sahejad Chhara (A-26), Ashok Pan Gallawala (A-45), Manoj Videowala (A-41), Murli Sindhi (A-2), Mayaben Kodnani (A-37) and Babu Bajrangi (A-18) correctly. However, the witness has identified A-53 as Tiniyo Marathi, who in fact is A-30. The witness has, therefore, not identified accused Tiniyo Marathi (A-30) correctly.

137.16 CROSS-EXAMINATION: In the cross-examination it has come out that at the time of the incident, the witness was residing at Hussainnagar and prior thereto she was residing at Chharanagar. She had come to reside at Hussainnagar about one and a half years prior to the incident. The witness has been extensively cross-examined with regard to the topography of the area.

137.17 The witness has stated that when she heard the commotion, she was sitting at home. She had admitted that on the first occasion she came out on the road alone and Kudratbibi was not with her. She was standing near the S.T. Workshop compound wall. The witness has denied that the mobs which came from the direction of Natraj Hotel and Krushnanagar were so huge that the entire road was filled up. The witness has stated that she cannot say as to how many people were there in the mob.

137.18 In her cross-examination, it has further come out that one of the Muslim leaders standing in the mob had told them that Police Inspector, Mysorewala was standing there and that they (the women) should go and request him because if men went there, they were beating them. Therefore, all three of them were told to go. This is how she came to know that the person who was standing there was Shri K.K. Mysorewala. In her cross-examination, it has further come out that prior to the firing, the witness, Kudratbibi, Madinabanu and others were standing there. Their elders came to the spot where they were standing and told them to contact Shri Mysorewala, who at that time was standing below a tree near the S.T. Workshop.

The witness has admitted that after the firing she had gone home and prior thereto three of them (women) were standing near the S.T. Workshop and at that time people in Hindu mob had not done anything to them. The witness has voluntarily stated that it was because at that time they were standing at a distance from the mob. She has voluntarily stated that at this time Shri Mysorewala had beaten her. She has denied that she stood near Mysorewala for about five to ten minutes and has voluntarily stated that upon saying this much, he had beaten her. She had only stood till then. The witness has stated that she can give the names of the Muslim leaders who had acquainted her with Shri Mysorewala and has stated that they were Basirbhai and Usmanbhai, both of whom are no longer alive.

137.19 The witness has stated that she had returned home at 11 o'clock and was at home till 12 o'clock in the afternoon. She had admitted that from 11:00 to 12:00 in the morning, she was at home and had not gone anywhere.

137.20 In her cross-examination it has further come out that at the time of the police firing, she was standing near the S.T. Workshop compound wall. She has voluntarily stated that even when private firing started, she was standing there. She has stated that she knows the distinction between private firing and police firing. Private firing was done by the people residing in the area. She has admitted that when six persons were injured by bullets, she was standing on the side of the S.T. Workshop. At that time, the police were standing near the S.T. Workshop gate. The mob was also standing there and the police were standing with them.

137.21 In her cross-examination it has further come out that on the day of the incident she had gone to her daughter Afsanabanu's house at Jawannagar at 12:00 in the afternoon. She has admitted that she had not seen the mob setting any boy or woman on fire in Hussainnagar.

137.22 The witness has denied that on the day of the incident when she went to see her house twice, till then, nothing had happened to her house. The witness has voluntarily stated that she had set out to look at her house; however, she could not reach her house. She has admitted that when she went to look at her house the mob had not stopped her. The witness has voluntarily stated that at that time the mobs were not there. She has admitted that when she went to see her house, her children were with Afsanabanu.

137.23 She has stated that till the evening they were at Afsanabanu's house and that apart from them, there were other Muslims at Afsanabanu's house. There were more than one hundred and fifty people; men and women as well as old and young people. She has admitted that till evening, the mob had not attacked the Muslims who were sitting in Afsanabanu's house and has voluntarily stated that the mobs had come in the evening and till then there were no mobs, therefore, naturally they would not have attacked them.

137.24 The witness has denied that they were continuously sitting in Afsanabanu's house and has voluntarily stated that they kept on going in and out, but most of the time they were sitting near the S.R.P. Quarter's compound wall. She has

admitted that she was sitting there till 7:00 in the evening. The witness has stated that she does not know the exact time as to whether the mob came at 7 o'clock, but it was around that time that the mob had come and there was stampede. She has admitted that while they were sitting near the S.R.P. compound wall, the mob had not attacked them. She has stated that she does not know as to what was the distance between them when the mob came, but has stated that the mob had come right in front. The witness has admitted that in her statement dated 3.6.2008 recorded by the SIT, she has stated that after sitting in the house for a little while, they had left and were sitting near the S.R.P. compound wall till 7 o'clock in the evening. The witness has stated that she does not know all the 150 to 200 people who were sitting there and has voluntarily stated that at that time they were all concerned with protecting their lives and nobody was looking around to see whether they knew anyone.

137.25 In her cross-examination, it has come out that for the purpose of going to Faiyazbhai's house at the S.R.P. Quarters, they had climbed Gauri Apa's terrace and had gotten down from there and through the open ground they had gone to the S.R.P. Quarters. She has stated that she does not know as to how many other people were with her when she climbed Gauri Apa's terrace and has stated that she had not stayed at Gauri Apa's house even for a moment. She has stated that she had not noticed as to whether the terrace was empty and has voluntarily stated that she was in hurry to quickly reach there. She has stated that she does not know whether or not Gauri Apa was present there. In her cross-examination, it has been elicited that Gauri Apa's terrace was in Jawannagar and the

staircase of Gauri Apa's terrace fell in Gangotri Society.

137.26 The witness has admitted that Gangotri Society is entirely of Hindus. She has denied that when she reached the open ground, it had become dark and has voluntarily stated that it was not very dark and that there was something like moonlight. She has stated that many people were sitting in the open ground and that she has looked around at the open ground. She has stated that she had not paid any attention as to whether there were any obstacles while going from Gauri Apa's terrace towards the open field. She has admitted that while going from that side, the S.R.P. men had not stopped them and has voluntarily stated that there was no one from the S.R.P. at that spot. The witness has been extensively cross examined on certain aspects, such as, from where she had gone and to which place she had gone, etc.

137.27 In her cross-examination it has come out that the witness came to know for the first time that the police had not recorded her statement as stated by her after she received the summons from the SIT and her entire statement was read over to her. The witness has stated that till the SIT authorities read over her first statement to her, she was not aware that the statement was not recorded as dictated by her. The witness has stated that she does not know as to in which newspaper the SIT's advertisement had come, but has stated that her husband was educated and he had read the newspaper and informed her that if anyone wants to give a statement in connection with the incident, they can do so.

137.28 The witness has been extensively cross-examined

with regard to the application made by her to the SIT, as to who had written it down and where. The witness has stated that within a week or ten days from the date of receipt of summons, she had gone to the SIT office for recording her statement. The witness has denied that she was deposing as tutored to her by the leaders of her community and NGOs and that she has not seen any incident of firing as well as the incident of Ayub or Mullaji's son. She has denied that three months after the incident, the organisers of the camp had come and told her that her statement was to be recorded and had further taught her as to the names of which accused were to be given and in this manner she had given both of her statements to the Crime Branch as well as to the SIT.

137.29 The witness is shown her signature at Serial No.26 of Exhibit 670 and she has identified it to be hers. The witness is shown the signature below the document Mark 644/47 and she has identified it as her signature. The witness is cross-examined with regard to the application made by her and she has admitted that the contents of the application were read over to her and she had found them to be correct. The witness has stated that she does not know that in the application it was written that communal riots had taken place at Naroda Patiya in 2002, in connection with which she had given an FIR as well as a statement before the Crime Branch, Ahmedabad City. The application Mark 644/47 has been given Exhibit No.1034.

137.30 The witness has stated that the reason for giving two applications, viz. Exhibit 1034 and Exhibit 670 to the SIT was that the application Exhibit 670 was made jointly by many people and hence she too has made the application, whereas

she had made the application Exhibit 1034 to Gitaben Johri. She has stated that as far as she can recall, the application Exhibit 1034 was made first in point of time and the joint application Exhibit 670, was made thereafter. The witness has been extensively cross-examined with regard to both the above referred applications.

137.31 The witness has admitted that when she made the application Exhibit 670, she had not read her statement recorded by the Crime Branch in the year 2002 and till she made the application Exhibit 670, she was not aware as to what was recorded by the Crime Branch in her statement. She has admitted that at the time when she made the application Exhibit 1034, she was not aware as to what was recorded by the Crime Branch in the statement recorded by them. The witness has admitted that the Crime Branch has recorded her statement after two and a half to three months at the camp. The witness is further cross-examined with regard to the conditions at the camp and the facilities provided there, etc. In her cross-examination it has further come out that before the Crime Branch recorded her statement, she had gone to her house for drawing the panchnama of her house. The panchnama has been produced before the court together with a purshis Exhibit 1035. The panchnama, which was stated to have been drawn on 14.5.2002 between 12:30 to 12:55 in the afternoon, was shown to the witness and was given Exhibit No.1036. The witness has denied that the panchnama was read over to her and has voluntarily stated that on that day the panchnama was not read over to her and all the facts stated by her have not been recorded in the panchnama and that various items which were looted from her house are not

mentioned therein.

137.32 In her cross-examination, it has come out that for the injuries sustained by her on her legs, she had availed treatment at the camp, but since the injuries were not cured, she had availed treatment from Dr.Vyas at Jamalpur. The witness is again extensively cross-examined with regard to the topography of the area and the directions from which the mobs had come on that day.

137.33 The witness has admitted that on that day, Hindus and Muslims were pelting stone at each other and has voluntarily stated that the Hindu mob was very large and that Muslims had pelted stones only to protect the masjid. The witness is further cross examined with regard to the existence of a police point at the S.T. Workshop and the presence of police on that day.

137.34 The witness has partly admitted and partly denied what is recorded in her statement dated 12.5.2002, wherein it has been recorded that while they were having breakfast in the morning, when at about 9:00 to 9:30, suddenly there was commotion in the chawl to the effect that the people belonging to the Hindu community who have come outside, have attacked; whereupon she had come out of the house and had gone to the spot where there was police point, to have a look, and there, six persons who were wounded by bullets were brought there; all of them were from Hussainnagar and she had immediately gone to the police and requested them to help them by calling for an ambulance; upon they refusing to do so, she had returned to her chawl; when suddenly there

was a stampede and at that time police had given her three blows with a baton and they had returned to their chawl and upon the mob coming to their chawl, they had gone near the S.R.P. compound wall and sat there till 7 o'clock in the evening. After 7 o'clock, they had all gone inside the S.R.P. Quarters, where she had sat with her children throughout the night and in the morning at 6 o'clock, upon the police vehicles coming, she along with her children had gone to the Shah Alam Relief Camp where they were given shelter; and presently also she and her children are at the Shah Alam Relief Camp; in stone pelting she had sustained an injury on her left leg and had not sustained any other kind of injury. The witness has stated that she had before the police she had stated facts as deposed by her in her examination-in-chief, but the police had not written them down.

137.35 In the cross-examination of the witness it has been elicited that Abid, Pirmohammed, Khalid, Kaladia, etc., six persons were injured by bullets towards the S.T. Workshop in that area. She had admitted that all of them were standing in the same mob on the service road near the S.T. Workshop, on the road which goes towards Krushnanagar as well as on the road going towards their chawl. The witness has denied that the bullets were fired from the direction of the Noorani Masjid and has voluntarily stated that they were fired from the S.T. Workshop gate. She has stated that it must have been around 9:00 to 9:30, when these six persons were injured by bullets. The witness has admitted that the persons, who were injured in the firing, were standing in front. The witness has stated that along with the Muslims who were standing and were injured, Madinabanu, Kudratbanu, Abbasbhai, Basirbhai, etc.,

were also standing there. She has stated that she was standing there till around 9 to 11 o'clock.

137.36 The witness has denied that in her statement dated 12.5.2002 recorded by the Crime Branch, she has not stated that on the day of the incident she had gone to her daughter Afasanabanu's house and that she has not stated that Shri Mysorewala has given her three blows with a baton and that in the same statement she has not stated any facts regarding Mayaben, Kishan Korani, Murli Sindhi and Babu Bajrangi; and that she has also not stated any facts regarding Ayub jumping from a terrace and being burnt by putting him in a rickshaw; and that she has not stated that at that time Majid's family members were inside their house and they were burnt; and the fact regarding Mayaben having talked to P.I. Shri Mysorewala at that time; have not been stated by her in her statement. Moreover, she has also not stated any fact regarding Mullaji's crippled son in her statement. The witness has voluntarily stated that she has stated so, but the police had not recorded it.

137.37 The witness has stated that the incident concerning Majid's family members took place at 7:00 in the evening and that she had seen this incident while she was standing outside her daughter's house in the lane of Gauri Apa's house.

137.38 The witness has denied that in the firing from Noorani Masjid, six youths were injured by bullets. She has admitted that in her statement recorded by the SIT she had stated that six persons from the Muslim mob were wounded by bullets and those who were injured were, (i) Hasan Qureshi,

(ii) Abid Ali, (both of them have died), (iii) Khalid, (iv) Mohammed, (v) Majid, and (vi) Pirubhai Painter. The witness has voluntarily stated that she has not stated anywhere that firing took place near the Noorani Masjid.

137.39 Certain extracts of paragraph 7 of her examination-in-chief are read over to the witness and she has denied that she has not stated such facts in both of her statements recorded by police. The first five lines of paragraph 7 of her examination-in-chief are read over to the witness and she has denied that she has not stated such facts in her statement dated 12.5.2002. The last two lines of paragraph 6 of her examination-in-chief are read over to the witness, who has denied that she has not stated such facts in her statement dated 12.5.2002. The contents of paragraph 8 of her examination-in-chief are read over to the witness to the effect that in her statement dated 12.5.2002 she had verbatim not stated that in the very mob in which Mayaben Kodnani was there and that all the persons named in paragraph 8 were present there. The witness has voluntarily stated that she has stated so, but it had not been recorded. [The trial court has noted that the contradiction put to the witness is only to the effect that names of Mayaben Kodnani, Kishan Korani, Babu Bajrangi Murli, Manoj Videowala and Subhash Ramesh have not been stated in her statement dated 12.5.2002 and further she has not stated that all the accused were in the mob in which Mayaben Kodnani was.]

137.40 [The learned Additional Special Public Prosecutor had pointed out to the trial court that in statement the witness has not stated 'Kishan Korani', but has mentioned 'Kishandada

Marathi'; not mentioned 'Manoj Videowala', but has mentioned 'Manoj Tyrewala'; not mentioned 'Subhash Ramesh', but has mentioned 'Subhash Marathi'.]

137.41 The contents of paragraphs 9 and 10 of her examination-in-chief are read over to the witness, to the effect that she has not stated such facts in her statement dated 12.5.2002, which the witness has denied. The contradiction insofar as paragraph 10 is concerned, is only to the effect that the witness had stated that she had gone alone to the police and she had not mentioned about the presence of Kudratbibi and Madinabibi and that while she had mentioned that she had gone to the police there was to reference of having gone near P.I. Mysorewala. The name of Mysorewala has not been mentioned by her, though the other facts have been stated.

137.42 The contents of paragraphs 11, 12 and 14 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in her statement dated 12.5.2002. The contents of the first seven lines of paragraph 13 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in her statement dated 12.5.2002. The contents of paragraph 15 and last two lines of paragraph 16 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in her statement dated 12.5.2002.

137.43 The contents of paragraph 14 of her examination-in-chief are read over to the witness, to the effect that she has not stated such facts in her statement dated 3.6.2008 recorded by SIT. The contents of paragraph 19 of the

examination-in-chief of the witness from the sixth line to the last line are read over to her to the effect that she has not stated such facts in her statement recorded by the SIT. The witness has deposed that she had stated so, but they may not have recorded it.

137.44 The witness has admitted that in her statement dated 3.6.2008, she has stated that her police statement dated 12.5.2002 had been read over to her and that the same was correct and proper and that she had also stated that in her statement recorded on that day, she had given the names of Mayaben and other persons as being present in the mob and that these names had not been stated by her in her statement dated 12.5.2002. In this connection upon being asked she is stating that her statement was recorded at the Shah Alam Camp on 12.5.2002 and that time she had given the name of Mayaben as well as the other accused to the officers who took down the statement; however, at the relevant time the concerned officers had not written down their names. The witness has admitted that on that day she has seen, in all, two mobs; one in the morning and another in the evening. She has admitted that in her statement dated 12.5.2002 she had mentioned about both the mobs to the police and has voluntarily stated that it may be that they may not have written it down. She has denied that in her statement dated 12.5.2002 she has not stated any fact regarding the morning mob and the presence of Mayaben, Kishan Korani, Babu Bajrangji, Murli Sindhi and Manoj Videowala in the evening mob. The witness has voluntarily stated that she has stated so; however, the police had not written it down. The witness has admitted that in her statement dated 3.6.2008 recorded by

SIT, that she had mentioned the names of these five persons as well as Bipin Panchal as being present in the evening mob and not in any other manner.

137.45 The witness has stated that she cannot say as to when the incident of a living person being thrown in a rickshaw and being burnt had taken place; however, the incident took place in the evening. The witness has voluntarily stated that the incident had taken place as stated by her and at that time it was around 7:00 in the evening. This incident had taken place at Jawannagar, near the S.R.P. compound wall. On one side there was the S.R.P. compound wall and on the other side there was the Jawannagar compound wall, which the mob had broken and entered, and the incident had taken place between those two walls. She has stated that the incident took place near Guddu Chhara's house. She has denied that the incident had taken place near Afsanabanu's house. She has stated that the spot is at a little distance from Afsanabanu's house.

137.46 The witness has admitted that the incident of burning a person alive in a rickshaw took place near the S.R.P. compound wall. The witness has stated that she does not know as to from which terrace the youth or individual, who was burnt alive in a rickshaw, had fallen. She has stated that the youth has been brought from Jawannagar. She has admitted that she has not seen the youth falling from the terrace. She has stated that the incident did not go on for half an hour and that the mob has set the youth ablaze and then proceeded further. The witness has admitted that the mob had come from the Uday Gas Agency road and this very mob had broken the Jawannagar compound wall and had entered inside.

137.47 The witness has stated that the incident of Mullaji's crippled son had taken place at around 2:00 in the afternoon. The incident had taken place at Hussainnagar. She does not remember exactly in which lane of Hussainnagar the incident had taken place, but the boy was lying on the road side. She has admitted that at that time she had not seen any person there. She has voluntarily stated that she has seen that a boy was lying there and was burning with his tricycle for the handicapped.

137.48 The witness has admitted that the Islamic Relief Committee had given her a house at Ektanagar without any consideration and that she was not required to make payment towards the same. The witness has stated that she knows that Mayaben is a doctor and that she is a gynaecologist. The witness has voluntarily stated that she had been admitted in her hospital twice and, therefore, she knows her. The witness has stated that she does not know Kishandada Marathi. She has stated that she knows Kishan Korani, however, she has not gone to his house nor does she know his family members. He had never come to her house and that she had no occasion to talk with him and that she had no social relations with him.

137.49 The witness has further stated that she has not seen Babu Bajrangi's house. She has not gone to his house. He had not visited her house. She had no occasion to talk to him neither did she have any monetary dealings or social relations with him.

137.50 The witness has stated that she did not have any

monetary dealings or any social relations with the accused, namely, Murli, Bipin Panchal, Jai Bhavani, Dalpat Chara, Dalpat Chara's son-in-law – Tiniyo, Sahejad, Sahejad's son in law – Vijay, Suresh Langda, Guddu Chara, Hariyo, Nariyo, Tiniyo, Subhash Ramesh and Ashok Pan Gallawala and has voluntarily stated that she knew all of them.

137.51 The witness has stated that several years ago she used to take videos on hire from accused Manoj Videowala, but she had no other social relations with him.

137.52 The witness has admitted that she has the habit of eating pan. She has voluntarily stated that she had never eaten pan from Ashok Paan Cabin. She has denied that she used to sit at Ashok Paan Cabin and eat pan and used to take pan from him on credit and she owes Ashok certain amounts towards purchase of pan, which he was demanding, and therefore, she was implicating him.

137.53 The witness has stated that she does not know Manoj Tyrewala. Manoj Videowala has his shop at Kubernagar Road. The witness has stated that the shop which she has referred used to be there several years ago when she was residing at Charanagar. It must have been about twenty years prior thereto. The witness has stated that except for taking videos from Manoj, she had no occasion to meet him. She, however, has voluntarily stated that she has seen him during the riots.

137.54 The witness has admitted that the Jawannagar compound wall is situated between Afsanabanu's house and

Jawannagar pit. The witness is further cross-examined with regard to the details about where she was standing at the time of firing, etc.

137.55 In her cross-examination, it has come out that she had met Majid for the first time after the incident at the camp and that she had met him only once. She has stated that she did not have any conversation with Majid regarding the incident; however, he had told her that his daughter, as well as seven members of his family, were killed in the incident. She has stated that she has informed him that she herself had seen his house being burnt. The witness has stated that she had seen the incident from Gauri Apa's house. She denied that till Majid's house was totally burnt, she was standing there. She has admitted that as soon as Majid's house was set ablaze, out of fear she had gone away from there. She has admitted that she has not seen Majid's family members burning. She has voluntarily stated that she knew that Majid's family members were inside the house.

137.56 The witness has admitted that the accused, whom she has identified before the court, have been identified by her for the first time; prior thereto, she has not identified them before the police or a magistrate. The witness has admitted that her daughter, Afsanabanu has also been given a house by the Islamic Relief Committee and that it had been given without payment of any consideration. The witness has stated that she remembers the name of owner of Bipin Auto Centre, it is Bipin Panchal. The witness has stated that she does not know whether people from their community had set Bipin Auto Centre on fire. She has denied that since many Muslims have

been named in the incident wherein Bipin Auto Centre was set on fire, she is falsely deposing before the court and wrongly implicating Bipin Panchal and that Bipin was not present at the spot; and that as she and her daughter have been given houses for free by the Islamic Relief Committee, she was falsely deposing before the court.

137.57 The defence has cross-examined the concerned Investigating Officer or the assignee of the concerned Investigating Officer, who had recorded the statements of this witness to prove the omissions and contradictions in the testimony of the witness.

137.58 PW-278 Shri R.B. Joshi, the assignee officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that this witness had stated before him that they were having tea and breakfast in the morning when at around 9:00 to 9:30, suddenly there was commotion in the chawls that the people of the Hindu community who have come outside have attacked and upon their saying so, she had come out of her house to look and had gone to the police point which was there and there, six persons were injured by bullets. They were brought from there. All of them were residing at Hussainnagar and she immediately went to the police and had told the police that they should help them by calling an ambulance, but they had refused to do so, and hence, she had returned to her chawl, when suddenly there was pandemonium and at that time, the police had given three blows with a baton and they had come to their chawls and the people in the mob were coming inside their chawls. They had gone near the S.R.P. compound wall and were sitting there till

around 7 o'clock in the evening and at around 7 o'clock in the evening they had all gone inside the S.R.P. Quarters and there she and her children had stayed there throughout the night and in the morning at 6 o'clock upon police vehicle coming, she sat in the vehicle with her children and came to the Shah Alam relief camp and at present, she and her children are all at the Shah Alam relief camp. In the stone pelting, she was injured on the left leg and she has not sustained any other injury. The assignee officer has admitted that this witness has stated that she has sustained damages of Rs.35,000/-.

137.59 The assignee officer has admitted that this witness has not stated before him that she had gone to her daughter Afsanabanu's house on the day of the incident; Mysorewala had given her three blows with a baton; as well as facts regarding Mayaben, Kishan Korani, Murli Sindhi and Babu Bajrangi. Similarly, she has also not stated the facts regarding Ayub having jumped from the terrace as well as his being burnt in the rickshaw, Majidbhai's family while they were inside they were set ablaze, P.I. Shri Mysorewala had talk with Mayaben as well as the incident of Mullaji's handicapped son, have not been stated by this witness before him. He, however, has clarified that she had stated the fact regarding the police giving her three blows with a baton.

137.60 The assignee officer has further admitted that this witness has stated before him that at 6:30 in the evening the people in the mob were around ten to twelve thousand; wherein the people in front as well as the people who were wearing khakhi shorts and saffron bands and had swords in their hands were damaging houses of the people and were

setting them ablaze. Other than this, she does not know anything and at present, she and her family members are staying at the Shah Alam Roza relief camp.

137.61 The contents of first five lines of paragraph 7 of the examination-in-chief of this witness are read over to the assignee officer, who has denied that the witness had not stated such facts in her statement recorded by him. He has stated that this witness has stated that people had been brought to set the houses in Jawannagar on fire and this mob was comprised of ten to twelve thousand people, wherein on the front side there were men who were wearing khakhi shorts and saffron bands and had swords in their hands. The people had damaged the houses and set them ablaze. The facts other than these, are not there in the statement.

137.62 The contents of paragraph 7 from line No.1 to the last line at page 4 of her deposition are put to the assignee officer wherein the witness has stated that Shri K. K. Mysorewala was present near the S.T. Workshop with a government jeep. At this time, Mayaben Kodnani came out from the mob near K.K. Mysorewala and had some conversation with him. The assignee officer has admitted that the witness has not stated these facts in the statement recorded by him.

137.63 The contents of last two lines of paragraph 6 of the examination-in-chief of this witness are read over to the assignee officer, wherein she has stated that at that time she was standing near the S.T. Workshop compound wall, opposite the Noorani Masjid. The assignee officer has denied that the

witness has not stated that she was standing near the S.T. Workshop wall. He has stated that the witness in her statement had stated that the people belonging to the Hindu community had attacked the Noorani Masjid and upon hearing that she had come out of her house and had gone to the police point there.

137.64 The assignee officer has admitted that the witness has not mentioned having seen Mayaben in the mob. However, the witness in her statement had stated that she had seen the people who had attacked the masjid wherein Nariyo, Hariyo as well as Suresh Langdo, Bipin Aotowala, Manoj Tyrewala Sindhi, Ashok Pan Gallawala, Guddu Chharo, Jaybhavani, Sahejad Chhara, Kishan Dada Marathi, Tiniya Marathi, Subhash Marathi, Dalpat Chharo, Tiniya Chharo Dalpat Chhara's son in law and Vijay Chhara, all of whom reside at Naroda Patiya near the S.T. Workshop have been mentioned.

137.65 The assignee officer has admitted that the witness has not stated the name of Mayaben Kodnani or any role played by her in the statement recorded by him. The assignee officer has admitted that this witness has not mentioned the name of Kishan Korani but has named Kishan Dada Marathi. The assignee officer has also admitted that the witness has not stated the name of Manoj Videowala and Subhash Ramesh but had stated Manoj Tyrewala Sindhi and Subhash Marathi. He has further admitted that this witness has not stated the name of Babu Bajrangi or any role played by him in her statement recorded by him.

137.66 The contents of paragraph 9 of the examination-in-

chief of this witness are read over to the assignee officer wherein she has stated that Mayaben talked to Shri Mysorewala and departed, where after police firing as well as private firing had commenced and setting fire near the Noorani Masjid had started. In this firing, Abid as well as Hasan Qureshi were injured by bullets and both of them died on the spot, whereas in the firing Mohammed, Piru, Khalid and Majid were injured by the bullets. The assignee officer has denied that all the facts stated in paragraph 9 have not been stated by the witness and has stated that the witness had mentioned regarding these persons being injured in the firing and that the rest of the facts have not been stated by her.

137.67 The contents of paragraph 10 of the examination-in-chief of this witness are put to the assignee officer wherein the witness has stated that at this time she, Kudratbibi, Madinabanu all three of them had gone to P.I. Shri Mysorewala and had requested him to help them by calling an ambulance for those injured in the firing, whereupon he had, in clear words, told them that there was an order to kill the Muslims and not to save them. Upon Mysorewala saying so, she had told Mysorewala that he was supporting the Hindus and why was he not stopping them, whereupon he got angry with her and give three – four blows with a stick and told her to go away from there, or else he would shoot her. Upon this happening, she, Kudratbibi, Madinabanu, all three of them had gone away from there. She had gone at home and was sitting there. Thereafter, she had stayed at home till 12 o'clock.

137.68 The assignee officer has denied that all the facts stated in paragraph 10 of her examination-in-chief have not

been stated before him by this witness and has stated that the witness had stated in her police statement that she had immediately gone to the police and told the police to help them by calling an ambulance. Upon her saying so, they had refused and hence, she had immediately come to her chawl and suddenly there was a pandemonium and the police gave her three blows with a stick. Except for these facts, the other facts have not been stated by the witness.

137.69 The contents of paragraph 11 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not stated such facts in her statement recorded by him. The contents of paragraph 12 of the examination-in-chief of the witness are read over to the assignee officer who has denied that all the facts stated therein have not been stated by the witness in the statement recorded by him. The assignee officer has stated that the witness has stated that the people in the mob were in the witness's chawl and they had gone and were sitting near the compound wall of the S.R.P. and till 7 o'clock in the evening they had continued to sit there. Such facts have been stated by the witness, whereas the other facts have not been stated by her.

137.70 The contents of paragraph 13, 14 and 15 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not stated these facts in her statement recorded by him.

137.71 The contents of paragraph 16, except for the last two lines of the examination-in-chief of this witness are read

over to the assignee officer, who has denied that all the facts stated in this paragraph have not been stated by this witness. He has stated that the witness has stated that in the stone pelting she was injured on the left leg, except for that, the other facts have not been stated by her. The assignee officer has admitted that this witness in her statement has not stated any facts regarding the presence of Mayaben Kodnani, Kishan Korani, Babu Bajrangi, Murli as well as Manoj Videowala in the mobs in the morning as well as in the evening. He has clarified that what he wants to say is that the witness has referred to Manoj Tyrewala Sindhi, Kishan Dada Marathi amongst the five names given by her.

137.72 The assignee officer has admitted that after recording the statement of this witness, he has not taken any steps for verifying the same as there were no such instructions from the Investigating Officer.

137.73 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), in his cross-examination, has admitted that he has recorded the statement of this witness on 3.6.2008. He has admitted that this witness had stated before him that, "*.... I together with Madinabanu Kalumiya and Kudratbanu, who had a flour mill.*" He has admitted that this witness had stated before him that, therefore, she had come from her house to Naroda Patiya opposite the Noorani Masjid and had seen that mobs that had come from Natraj Hotel and Krushnanagar had gathered near the Noorani Masjid. The people in the mob had tied red coloured bands on their foreheads. The people in the mob were damaging the stalls and vehicles of the Muslims and setting them ablaze. They had entered the masjid and had

started damaging it. They were setting the masjid on fire, at that time, since the masjid was being damaged, Muslim youths had gathered to protect it. At that time, the mobs had come against each other and were pelting stones. At this time, the police and the S.R.P. were near the Hindu mob. From this mob, the police had fired upon the Muslim boys.

137.74 The Investigating Officer has admitted that this witness has verbatim, not stated regarding six Muslims having been injured in the firing from the direction of the Noorani Masjid and two of them having died. He has stated that the witness had stated before him that the police and the S.R.P. were near the Hindu mob. From this mob, the police had fired at the Muslim boys and people in plain clothes were also standing, who had resorted to private firing due to which, six people from the Muslim mob were injured, out of whom, Hasan Qureshi and Abid Ali had died.

137.75 The Investigating Officer has admitted that the witness had not stated that the mob from where there was firing, in which six Muslims had been injured and two had died, was near the S.T. Workshop. However, the witness had stated that the firing had taken place from near the Noorani Masjid at Naroda Patiya road.

137.76 The contents of paragraph 7 at page 4 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that the S.R.P. people were present and Shri K.K. Mysorewala was present at the S.T. Workshop with a government jeep. At this time, Mayaben Kodnani came out of the mob and went near K.

K. Mysorewala and she had talked with Shri Mysorewala. The Investigating Officer has denied that this witness in her sole statement recorded by him has not stated these facts. He has asserted that this witness had stated all the facts except that instead of the S.T. Workshop, she had mentioned Naroda Patiya road in her statement, as the place where Shri Mysorewala was present. In her deposition, she has mentioned the S.T. Workshop whereas in the statement she has mentioned Naroda Patiya road, all the other facts have verbatim been stated in her statement.

137.77 The contents of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that a boy named Ayub came near Jawannagar and got frightened upon seeing the mob near his house, due to which, he jumped from the terrace and both his legs were injured. This Ayub could not get up because of the injuries. The people in the mob picked up the fallen Ayub and put him in a rickshaw and set it on fire. They burnt Ayub alive, which she had seen with her own eyes. At this time, there was a person wearing a khakhi uniform and helmet in the mob.

137.78 The Investigating Officer has stated that part of what is read over to him had been stated by the witness in her statement but the remaining part has not been stated. He has stated that the witness had not given the name of Ayub but had mentioned a Muslim individual. The witness had not mentioned that the mob had burnt and had mentioned that kerosene was sprinkled on him and he was burnt but there was no mention of a rickshaw as well as a person wearing khakhi

uniform and helmet.

137.79 The Investigating Officer has admitted that this witness had stated before him that he had recorded her statement by putting questions to her in Gujarati as well as in Hindi. The Investigating Officer has admitted that he has put questions to her in Hindi as well as in Gujarati.

137.80 SUBMISSIONS: The learned counsel for the appellants referred to the examination-in-chief of the witness, to submit that there is no allegation against any of the accused with regard to the evening incident, that no role has been attributed to them except that they were present as part of the mob. It was stated that the only attribution to Mayaben Kodnani is that she had talked to Mysorewala and went away. It was submitted that eight days after the incident, the witness has gone to her house without police or anyone's help and they had found police personnel outside their house. Still at that point of time or even thereafter, till May 2002, they had not intimated the police about the incident. It was submitted that at the earliest point of time true facts should be brought on record and that delay gives rise to false implication. It was submitted that this witness has, at not less than three places, admitted that she did not know that the Crime Branch has not recorded her statement as given by her until it was read over to her by the officers of the SIT, that reading over of statements by the SIT has not taken place at any point of time prior to 3.6.2008. Therefore, she came to know about this fact of her statement not being properly recorded by the Crime Branch only on 3.6.2008, when her statement was recorded by the SIT, after her police statement was read over to her. It was

submitted that therefore, when the application Exhibit-1034 was made on 5.5.2008, admittedly the witness did not know about the fact that her statement was recorded by the Crime Branch against her wish and that the facts she had dictated were not written in it. Therefore, there was no occasion for her to make grievance in writing by way of the application Exhibit-1034 and it clearly appears and is coming on record that such a grievance is not her grievance, but it is a fact engineered and planned at the instance of somebody so that under this guise a new story or new names of accused can be introduced. It was submitted that in view of these facts, even her making a grievance before the SIT in her statement dated 3.6.2008 is inconsequential and is clearly made as tutored to her. Referring to the last three lines of paragraph 19 of her examination-in-chief wherein the witness has stated that as the police had not written down the facts as stated by her at the camp, she has stated these facts in her statement recorded by the SIT, who had recorded everything, it was submitted that in fact, such grievance is made before the SIT. Therefore, there is no omission, but a larger conspiracy at the instance of third parties or NGOs or lawyers helping the victims to falsely implicate others with false stories, has surfaced in view of the clear admission of this witness at three places that she did not know that her statement is not properly recorded until it was read over to her for the first time by SIT on 3.6.2008.

137.81 Reference was made to paragraph 173 of the cross-examination of the witness to submit that in the morning incident, the witness has alleged the presence of Bipin Panchal and accused No.2 Murli, which means that she knows them as

she had named them and she had specifically stated that these five persons and Bipin Panchal have not been named in the evening mob. It was submitted that, therefore, as per the claim of this witness they were not present in the evening mob. It was submitted that if the deposition of PW-143 Dildar Umrao Saiyed is seen, he has specifically referred to Bipin and Murli in the same incident in the evening. It was submitted that it creates further doubt insofar as Dildar's deposition is concerned, which makes the presence of Bipin Panchal and Murli doubtful. Referring to the contents of paragraph 178 of her cross-examination, it was pointed out that the witness has admitted that she had not seen any boy falling from the terrace, which makes her story of the boy being set on fire doubtful.

137.82 Referring to the cross-examination of the witness, it was pointed out that except for Mayaben Kodnani, this witness has no personal acquaintance with any of the accused. It was submitted that looking to all the major omissions in her police statement, stories which are being told for the first time before SIT create a serious doubt about the happening of such incident at all and about her being an eye witness to such incident.

137.83 It was submitted that this witness has identified accused No.5 Tiniyo Chhara, son-in-law of Dalpat Chhara and that accused No.5 has been named by only two witnesses, namely, PW-116 Lalabhai Nizambhai Luhar and this witness PW-149. It was submitted that PW-116 has not identified accused No.5 Tiniyo (Vikram Rathod) in the court and his evidence is not believed even by the trial court.

137.84 The learned counsel for the appellants further submitted that from the place where the witness was standing as stated by her in paragraph 6 read with paragraph 127 of her deposition, she could not have seen the mob, which indicates that she has not seen anything. It was pointed out that in paragraph 172 of her cross-examination, the witness has stated that she has seen only one mob in the morning incident whereas in her examination-in-chief she has referred to two mobs which indicates that she has not seen the incident. It was submitted that the witness is residing in the area since only one and a half years and she had seen the accused at the S.T. Workshop gate. It was submitted that the witness has no acquaintance with the accused and had no occasion to meet them and that in the absence of any test identification parade being held, it was not possible for the witness to identify all these accused.

137.84 Referring to the contents of paragraph 9 of her examination-in-chief, it is submitted that no other witness has stated that Hasan Qureshi had sustained bullet injuries and died. Insofar as reference to the handicapped son of Mullaji is concerned; it was submitted that Moinuddin's mother has been examined and she has narrated a different story and has not mentioned anything regarding tricycle. It was submitted that this witness in paragraph 13 of her examination-in-chief has stated that she was at the S.R.P. gate till 7 o'clock in the evening, but she does not say that any teargas shells were burst. Therefore, it is very doubtful whether at all she was sitting at the S.R.P. gate. It was submitted that under the circumstances, the fact regarding the witness having seen the

mob and the accused as well as having seen the incident of Ayub, create doubt over the veracity of her statement. It was further submitted that insofar as the incident of Ayub is concerned, the witness has not named any accused though other witnesses have given names of accused referred to by the witness in the mob. It was submitted that if the accused involved in Ayub's incident were those who were present in the morning mob, the witness would have certainly named them. It therefore, clearly transpires that the witness has not seen the incident of the mob and Ayub's incident. It was submitted that this witness implicates many accused, but it is highly doubtful as she was residing in the area since the last one and a half years only and she had no occasion to come in contact with the named accused. It was submitted that the evidence of this witness is therefore, not reliable and it may not be relied upon in such a serious offence.

137.85 ANALYSIS: This witness in her deposition has referred to the presence of Mayaben Kodnani along with Kishan Korani, Babu Bajrangi, Murli, Manoj Videowala, Ashok Pan-Gallawala, Bipin Panchal, Jaybhavani, Dalpat Chhara, Dalpat Chhara's son-in-law Tiniyo Chhara, Sahejad Chhara, Sahejad Chhara's son-in-law Vijay Chhara, Suresh Langda, Guddu, Hariyo, Nariyo, Tiniyo Marathi, Subhash, Ramesh in the mob in the morning near the S.T. Workshop where Shri K.K. Mysorewala was standing with a Government jeep. The witness has deposed that Mayaben Kodnani came out from the mob, went to K.K. Mysorewala and had a talk with him. After talking with Mysorewala, Mayaben left, whereafter there was police firing and private firing and incidents of arson near the Noorani Masjid commenced. The witness has stated regarding Mayaben

coming out of the mob and her going away after talking to Mysorewala, but she has not stated as to how Mayaben had gone, whether she had gone in a vehicle, or whether she had gone on foot. She has merely said that she had left.

137.86 Moreover, from the contradictions and omissions brought out in the cross-examination of this witness, it emerges that the witness had not stated any fact regarding the presence of K.K. Mysorewala with a Government jeep at the S.T. Workshop and the talk between Mayaben Kodnani and K.K. Mysorewala. The witness, in her statement dated 12.5.2002, had not named Mayaben Kodnani, Kishan Korani, Babu Bajrangi, Murli, Manoj Videowala and Subhash Ramesh and these names have been given by her subsequently in her statement before the SIT and then in her deposition before the court. The fact regarding Mayaben having left, whereafter the police and private firing and arson having commenced near the Noorani Masjid, have not been stated by the witness in her original statement recorded by the police. After considering the omissions and contradictions in the testimony of this witness, what is consistent in her testimony is that in the morning at around 9:00 to 9:30, the witness had heard commotion outside and hence, she had come out and seen mobs towards the Noorani Masjid coming from Krushnanagar and Natraj. In the mob, she had seen Ashok Paan-Gallawala (A-45), Bipin Panchal (A-44), Jaybhavani (deceased), Dalpat Chhara (deceased), Dalpat Chhara's son-in-law Tiniyo Chhara (A-5), Sahejad Chhara(A-26), Sahejad Chhara's son-in-law Vijay Chhara (A-46), Suresh Langda (A-22), Guddu (deceased), Hariyo (A-10), Nariyo (A-1) and Tiniyo Marathi (A-30). There was police firing in which several persons were injured. At that

time, she had gone to the police and had asked them to help by providing an ambulance for those who had been injured in the police firing. However, upon her saying so, she was inflicted three to four blows with a baton, whereupon she had returned and gone home and had remained there till 12 o'clock in the afternoon. Thereafter, upon the mobs coming, she had left her house and had gone outside the S.R.P. Quarters and had sat there till around 7 o'clock in the evening. At that time, another mob had come, wherein she had seen Guddu Chhara (deceased), Hariyo (A-10), Nariyo (A-1), Sahejad, Dalpat Chhara (deceased), Tiniyo (A-5), Tiniyo Marathi (A-30), Vijay Chhara (A-46), etc. leading the mob. There was stone pelting in which she was injured with a stone on her left leg. From the cross-examination of the witness, it has been elicited that she was at home till 11 to 12 o'clock. In her cross-examination, it has also come out that while she was sitting at Afsanabanu's house till the evening, there was no attack on the Muslims by the mob and the witness has voluntarily stated that the mobs came in the evening, and hence, till then, it was natural that the mobs had not attacked them. The witness has also admitted that while they were sitting near the S.R.P. compound wall, no mob had attacked them. In her cross-examination, it has further come out that she had left the S.R.P. Quarters compound wall at around 7 o'clock in the evening. In her cross-examination, it has further been elicited that for the purpose of going inside the S.R.P. Quarters, she had climbed over Gauri Apa's terrace and had got down in the field and had entered the S.R.P. Quarters. In her cross-examination, she has denied that when she reached the field from Gauri Apa's terrace, it was not dark. The witness has stated that there was moonlight. All these facts have been

brought out in the cross-examination of the witness.

137.87 In her cross-examination (paragraph 86), a contradiction has been brought out that before the SIT when she narrated the incident of Ayub, she had not mentioned any fact regarding a rickshaw. In her cross-examination (paragraph 135), it has been elicited that on that day, there were mobs near Noorani Masjid where she had also seen the police. The witness has voluntarily stated that both the police as well as S.R.P. were present there; however, both were siding with the mobs. The police was not doing anything to the mob and they were just watching everything. The witness has admitted that after being beaten with the baton, she had gone straight home and from there, she had straightaway gone to her daughter's house at Jawannagar. The witness has denied the suggestion that on that day she has not gone to her daughter's house and that on that day, they were sitting at the S.R.P. compound wall till 7 o'clock in the evening, and thereafter, she had gone to the S.R.P. Quarters. In her cross-examination, it has been brought out that in her statement dated 12.5.2002, she has not stated anything regarding her having gone to her daughter Afsanabanu's house, on the day of the incident. She had not named Mysorewala as the person who inflicted three blows with a baton on her; she had not stated the facts regarding Mayaben, Kishan Korani, Murli Sindhi and Babu Bajrangi; he had not stated the facts with regard to Ayub jumping from the terrace and being burnt in a rickshaw; and the fact regarding Majid's house with his family members being set ablaze; as well as the fact regarding PI Mysorewala talking with Mayaben.

137.88 On an overall view of the evidence of this witness,

while there are some improvements and embellishments in the version given by the witness, to a certain extent the version given by her before the court is consistent with what she had stated before the police in her first statement dated 12.5.2002. While the implication of Mayaben (A-37), Kishan Korani (A-21), Murli Sindhi (A-2), Babu Bajrangi (A-18) is in the nature of improvement, the witness has named all the other accused right from the inception in her statement dated 12.5.2002. The role attributed to those accused is also the same role attributed to them in the initial police statement. Before the court, the witness has identified Bipin Panchal (A-44), Kishan Korani (A-20), Tiniya Chhara (A-5), Suresh Langda (A-22), Sahejad Chhara (A-22), Ashok Pan-Gallawala (45), Manoj Videowala (A-41), Murli Sindhi (A-2), Mayaben Kodnani (A-37) and Babu Bajrangi (A-18) correctly. The witness, however, has identified accused No.53 as Tiniyo Marathi and has, thus, failed to identify Tiniyo Marathi (A-30) correctly. Insofar as Nariyo (A-1) and Vijay Chhara (A-46) are concerned, both of them had filed exemption applications and are therefore, deemed to have been identified. The witness has also failed to identify Hariyo (A-10), though he was present in the dock. Out of the witnesses whom she has identified, as noticed earlier, the witness had not named Mayaben (A-37), Kishan Korani (A-20), Murli Sindhi (A-2) and Babu Bajrangi (A-18) in her statement recorded by the police.

137.89 Therefore, the testimony of the witness qua those accused whom she had not named in her initial police statement, does not deserve to be accepted as the same is in the nature of improvement. While it is the consistent case of the witnesses that though they had named certain accused,

the police had not written down their names, from the testimony of this witness, it is evident that the witness had named a large number of accused in her police statement and the police has noted down their names. Therefore, there is no reason to believe that the police would not have written down the names of the other accused stated by her. It may be noted that insofar as accused No.37 Mayaben Kodnani is concerned, since she was an M.L.A. and was an influential person, there might be some reluctance in recording her name. However, insofar as the names of the other accused are concerned, they have also been named by other witnesses and their names have been recorded by the police. Therefore, when in case of other witnesses, the names of such accused have been recorded by the police, there was no reason for them not to write down their names at the instance of this witness also. Therefore, to the extent the witness has implicated accused other than Mayaben Kodnani(A-37) for the first time before the SIT and in her deposition before the court, her evidence qua those accused does not merit acceptance. However, insofar as the other accused are concerned, the witness is consistent in her statement right from inception and though she has been subjected to lengthy and searching cross-examination, she has withstood the same and the defence has not been able to dent her credibility except to the extent noted hereinabove.

137.90 A contention has been raised that though this witness had an opportunity to give the names of the accused at an earlier point of time, her statement was recorded belatedly only on 12.5.2002. Since similar contentions have been raised in respect of almost all the witnesses, such contention shall be dealt with as a separate topic.

137.91 Another submission made by the learned counsel for the appellants is regarding the application Exhibit-1034 made by the witness and the facts stated therein which apparently have not been stated by the witness. Since this is also a general allegation against many of the witnesses, the same shall be dealt with as a separate topic.

137.92 A contention has been raised that in paragraph 173 of her cross-examination, the witness has admitted that in her statement dated 3.6.2008, she has not stated the names of these five accused, viz., Mayaben, Kishan Korani, Babu Bajrangi, Murli and Manoj being present with Bipin Panchal in the mob in the evening. It was submitted that according to this witness, these five accused were not present in the evening mob, whereas PW-143 Dildar Umrao Saiyed has specifically referred to Bipin and Murli being present in the same incident in the evening which creates a doubt insofar as Dildar Saiyed's deposition is concerned, which makes the presence of Bipin Panchal and Murli doubtful. It may be noted that while evaluating the testimony of PW-143 Dildar Umrao Saiyed, the court has not accepted his testimony regarding the presence of Bipin and Murli in the evening incident as deposed by him.

139.93 It was pointed out that in paragraph 178 of her cross-examination, the witness has admitted that she had not seen any youth falling from the terrace, which makes her story of a youth being set on fire doubtful. Insofar as this contention is concerned, since different witnesses have mentioned about the incident of Ayub, this part of her testimony shall be considered while appreciating the evidence in respect of the

incident of Ayub.

137.94 Insofar as the contention with regard to identification of accused No.5 Tiniyo Chhara, son-in-law of Dalpat Chhara by this witness, who is also one of the two witnesses who has named this accused is concerned, the same shall be considered while considering the complicity of each individual accused.

137.95 It has also been contended that this witness in her cross-examination has stated that she had seen only one mob in the morning incident, whereas she has referred to two mobs in her examination-in-chief, which indicates that she has not seen the incident. In this regard, a perusal of the cross-examination of the witness reveals that what she has stated is that in the entire day, she had seen two mobs, one in the morning and one in the evening. Therefore, when she refers to one mob, she means to say that she had seen the mobs only twice, once in the morning and once in the evening. Her statement cannot be read to mean that there was only one mob in the morning.

137.96 A contention has also been raised with regard to the discrepancies in the testimony of the witness qua Mullaji's handicapped son and the testimony of Moinuddin's mother which shall be considered while considering the topic of Moinuddin's death.

137.97 A contention has also been raised that the witness has been residing in the area since one and a half years prior to the incident and that she had no occasion to come in

contact with the accused and in the absence of any acquaintance being proved as well as in the absence of a test identification parade, the identity of the concerned accused is not established. In this regard, it may be noted that in her cross-examination, it has been elicited that the witness knows the name of the owner of Bipin Auto Centre and that it is Bipin Panchal. In her cross-examination, it has come out that she knew Guddu Chhara since a long time as his house was in Jawannagar. In her cross-examination, the witness has stated that she knew Mayaben who is a doctor and a Gynecologist and that she had been admitted in her hospital two to three times, and therefore, she knows her. The witness has stated that she knows Kishan Korani though she did not have any occasion to visit his house or did not have any social relations with him. As regards Babu Bajrangi, the witness has stated that she has not seen his house and had no occasion to talk with him and had no financial or social relations with him. The witness has also stated that she did not have any financial dealings or social relations with the accused, namely, Murli, Bipin Panchal, Jaybhavani, Dalpat Chhara, Dalpat Chhara's son-in-law Tiniyo, Sahejad Chhara, Sahejad Chhara's son-in-law Vijay, Suresh Langda, Guddu Chhara, Hariyo, Nariyo, Tiniyo Marathi, Subhash, Ramesh and Ashok Pan-Gallawala, but has stated that she knew all of them. The witness has further stated that she used to hire videos from accused Manoj Videowala since many years. A suggestion has been made in her cross-examination that she used to eat paan on credit and owes certain amount to him, and therefore, she is falsely implicating him. Thus, acquaintance with the accused has been brought out in the cross-examination of the witness.

137.98 Thus, through the testimony of this witness the prosecution has succeeded in establishing the presence of Nariyo (A-1), Suresh Langda (A-22), Bipin Autowala (A-44), Manoj Videowala (A-41), Ashok Paan-Gallawala (A-45), Guddu Chhara, Jaybhavani, Sahejad Chhara (A-26), Dalpat Chhara, Tiniyo (A-5), Dalpat Chhara's son-in-law Vijay Chhara (A-46), in the mobs in the morning and the presence of Guddu Chhara (deceased), Nariyo (A-1), Sahejad (A-26), Dalpat Chhara (deceased), Tiniyo (A-5), and Vijay Chhara (A-46), leading the mob in the evening.

138. **PW-150 Ishaqkhan Sardarkhan Pathan**, aged 37 years, has been examined at Exhibit-1041. The witness has deposed that he is a native of Village Orethi, District Morena, Madhya Pradesh and is residing at *Ektanagar* since the last three years. Prior thereto, he was residing at *Lane No.5, Hussainnagar, Near S. T. Workshop, Naroda Patiya* in a house of his ownership with his family comprised of his wife Rasidabanu, his children Menajbanu, Akaramkhan and Nazreenbanu since the last fifteen years prior to the incident.

138.1 His younger brother Idrishkhan used to reside next to him. They are in all three brothers. His elder brother Nisarkhan was residing in *Lane No.3, Hussainnagar*.

138.2 On 27.2.2002, he had gone for his job at Mahagujarat Foundry, Memco when his employer informed him at around 5 o'clock in the evening that kar sevaks have been burnt in a train at Godhra and hence, the situation was not good, therefore, he could go home. After finishing his work in

the factory, he came to *Bhargav Road via Meghaninagar Rameshwar Temple*, where his friend Jalimsinh Tomar was residing and met him. He told him that the situation was not good and that he should go straight home and hence, he had gone home.

138.3 His friend Jalimsinh Tomar had also told him that one rickshawala was killed at Rameshwar Temple, and hence, he should go home.

138.4 As per his information, the Vishwa Hindu Parishad had given a call for bandh on 28.2.2002, and hence, his employer had told him not to come for his work and the factory was closed on that day.

138.5 On 28.2.2002, he was at home with his parents, when two skilled workmen of the village who were working with him, viz., Vikrambhai and Shivnath Yadav came to his house. They had come to talk to him with regard to the money which he wanted to borrow from them and after offering them tea, they left on their bicycles.

138.6 After sometime, he came out of his house to go towards Vatva when both of them were returning to his house. They met him on the road near their chawl and told him that the mobs have come from Natraj Hotel and Krushnanagar and have set the areas near the Noorani Masjid on fire and the mobs are looting and ransacking. Therefore, all three of them returned to his house.

138.7 At this time, his brother Idrishkhan, who was

residing next to him, asked him as to why they had not gone whereupon they had told him about the stone throwing and incidents of arson near the Noorani Masjid. Therefore, he (Idrish) he went to have a look.

138.8 He was watching from the entrance of their lane, when a lot of commotion could be heard and he also went to see as to why Idrishkhan had not returned. He returned home with Idrishkhan and said that they should get out from there by any means.

138.9 At this time, there was firing on the road and tear gas shells were burst and two to three persons had been injured and hence, he was frightened. At this time, Vikram and Shivnath had come out of his house and they were also frightened. He took his brother as well as Vikram and Shivnath and came back home. Upon returning home, since the circumstances were such that they could not take anything with them, he, his brother's family members, Vikram and Shivnath, all of them came out of his house and went outside the lane.

138.10 From this place, they could go towards Jawannagar Khada. They went towards the S.R.P. Quarters where the S.R.P. people were standing. They abused them.

138.11 When they reached the S.R.P. Quarters and abuses were hurled at them, prior thereto, there was a mob of around fifty to sixty persons at the Jawannagar corner, where on the front side, Hira Marvadi (A-42), Jay Bhavani Chhara, Suresh Chhara (A-22) and Sahejad (A-26) were present, which he

himself had seen. These four persons and others hurled abuses at them and were saying, "*cut them! kill them!*". They also said "*where are you going; Miyas, where will you go now, your end has come; today, we will certainly cut you!*" All the four were holding swords in their hands.

138.12 Thereafter, when they went towards the S.R.P. Quarters, as already told by him, the S.R.P. people hurled abuses at them. They wanted to go inside the S.R.P. Quarters and also wanted to take Vikramsingh and Shivnath inside the S.R.P. Quarters with them, however, that could not happen. The S.R.P. people had released tear gas and had told them that now there were no chances of their escaping.

138.13 Thereafter, all of them, including Vikramsingh and Shivnath, hid in a society building in Jawannagar Khada and in this manner, they stayed there till 5 o'clock in the evening.

138.14 After 5 o'clock, he took Shivnath and Vikramsingh and went towards the S.R.P. compound wall and told them, "*These two persons are Hindus and let them go*", despite which, they said, nobody could go inside. Nonetheless, he forcibly sent them inside, but the S.R.P. people caught hold of them and asked them to remove their lower apparel and after checking, they were permitted to go inside.

138.15 Thereafter, the families of both the brothers climbed on the terrace of Gangotri Society. Subsequently, at around 6:00 to 6:30, he alone climbed down from the terrace to find out if he could find some way and then take his family with him. He reached the corner of Jawannagar, where

Jaybhavani's house was situated. He reached the open ground in front of Jaybhavani's house.

138.16 Upon reaching there, he saw Jaybhavani, Suresh Chharo, Hira Marvadi and Sahejad, who were holding weapons in their hands and all of them were grabbing the sister of a girl called Nagina and were grabbing at her mother and they were molesting both of them and upon seeing this, he fled. He fled and went to the terrace of Gangotri and told his wife that there was no possibility of getting out from there.

138.17 Thereafter, he made a phone call to his friend Ramesh Kashyap from the terrace of Gangotri on his mobile. He informed Ramesh about the place where he was and told him that if possible, he should come and save his children and that there was no chance of their being saved.

138.18 At around 9 o'clock at night, Ramesh came to the terrace and took the families of both the brothers and the two women who were with them, out of whom, one was his sister and the other was his paternal aunt's sons' wife, to his house in Maheshwari Society, at Odhav, where they stayed for six days. After staying there for six days, he (the witness) told him that the situation is bad and that he should send them to Shahibaug and hence, he sent them to Dariyakhan Ghummat Camp, at Shahibaug.

138.19 The witness has further stated that his house and his brother's house were looted and nothing remained inside their houses. After fifteen days of the incident, the police had recorded his statement. After three to four months thereafter,

a panchnama of the house was carried out. On the day of the panchnama also, the police had recorded their statements.

138.20 Thereafter, one day, the SIT people had said in the newspaper that if anyone wants to make an application, they can do so and hence, he also made an application to the SIT. Thereafter, the SIT people had called him to Gandhinagar and had recorded his statement. The SIT people read over his earlier police statement to him and asked whether all the facts stated therein were correct, whereupon he told him that some of the details were incomplete, which he would state before them.

138.21 The witness has stated that he knows Jaybhavani, Suresh Chharo, Hira Marvadi and Sahejad and that as per his information, Jay Bhavani has died. The witness has stated that he would be able to identify the other accused and has identified the accused No.42 – Hira Marvadi and accused No.26 Sahejad correctly, whereas instead of accused No.22, he has identified accused No.50. Thus, the witness has not been able to identify Suresh Chhara (Accused No.22).

138.22 CROSS EXAMINATION: In the cross-examination of this witness, he has denied that the SIT Officers had read over his police statement to him, whereupon he had stated that all the facts stated therein are correct. The witness has denied that he has not stated before the SIT that the statement recorded by the Crime Branch is not entirely correct. The witness has denied that the names given by him to the SIT are the names which he had come to know about afterwards and that he had given such names at the instance of someone. The

witness has denied that in his statement dated 18.3.2002 recorded by the Crime Branch, he had stated that, however, subsequently he came to know that in the mob which was involved in damaging and looting his house, (1) Suresh Chhara alias Sahejad, (2) Guddu Chhara, (3) Hira Kathiyawadi, (4) Ganpat Chhara, (5) Virsinh Rathod (Chhara) as well as other people in the mob were present. The witness has admitted that the facts stated by him in paragraph 5 of his examination-in-chief whereby his employer had told him to return home as the atmosphere was not good, etc., have not been stated by him in his statement recorded on 18.3.2002. In the opinion of this court, the omission to state the facts stated in paragraph 5 of the examination-in-chief cannot be said to be a material omission so as to amount to contradiction, inasmuch as, the same do not have any direct connection with the incident in question.

138.23 The witness is read over the contents of paragraphs 6 and 7 of his examination-in-chief to the effect that he has not stated such facts in his statement dated 18.3.2002, which the witness has denied. Considering the contents of paragraphs 6 and 7 of the examination-in-chief of the witness, wherein certain ancillary facts that have no direct connection with the incident in question have been stated, the omission to state such facts in the police statement would not amount to a material omission amounting to a contradiction.

138.24 The contents of paragraph 8, except for the first line, the contents of paragraph 9 and the contents of paragraph 10 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in his

statement dated 18.3.2002, which the witness has denied. The contents of paragraphs 8, 9 and 10 of the examination-in-chief of the witness can be said to be merely an elaboration of the events that occurred prior to the incident and, therefore, omission to state such facts cannot be said to be material omission amounting to contradiction and hence, ought not to have been permitted to be put to the witness.

138.25 The witness has denied that on that day, he had not gone out of his house and that his younger brother Idrish had come and informed him about the mobs having come and having resorted to ransacking. The witness has denied that in his statement dated 18.3.2002, he has stated that his brother Idrish who had gone out, had returned home and informed them that on the road, mobs are damaging the masjid and have resorted to arson and vandalism and the people in the mob are also putting gas cylinders in the masjid; and upon his brother coming and saying so, they had come to know about it. The witness has denied that his brother Idrish had come and told them the facts regarding the mob damaging and committing arson, putting gas cylinders, etc. due to which, he was worried, and hence, out of fear, they had gone to the terrace of Gangotri Society and remained there till 10 o'clock at night.

138.26 The witness has denied that in this very statement he has also stated that, therefore, all the members of the family were frightened and out of fear, together with their families, they as well as the people of their chawl, all of them, left the chawls and went to the terrace of Gangotri Society nearby and had remained there till 10 o'clock at night. The

witness has further denied that in this very statement he had also stated that at present, his family members have taken shelter at the relief camp at Bapunagar Aman Chowk since 5.3.2002 and that later on he had come to know that due to destruction and loot committed at his house, together with cash as well as ornaments and household article, he believed that he had sustained a loss of Rs.2 lakh. His Splendor motorcycle No.GJ-1-CE-4786 was lying near his house.

138.27 The contents of paragraphs 11, 12, 13, 14, 15 and 16 are read over to the witness to the effect that he has not stated such facts in his statement dated 18.3.2002, which the witness has denied. The contents of paragraph 17 from the third line to the last line as well as the contents of paragraphs 18, 19, 20 and 21 of the examination-in-chief of this witness came to be read over to him to the effect that he has not stated such facts in his statement dated 18.3.2002, which the witness has denied. The contents of first line of paragraph 22 of the examination-in-chief of the witness, wherein he has stated that his brother's house was looted were read over to the witness to the effect that he has not stated such facts in his statement dated 18.3.2002.

138.28 The contents of paragraphs 5, 6 and the contents of paragraph 8 from the second to the last line, the contents of paragraphs 9, 10, 11, 12 to 16 and para 17 from the third line to the last line, paras 18 to 21 are read over to the witness to the effect that he has not stated such facts in his statement dated 26.6.2002. The witness has voluntarily stated that he had stated everything before the police, but he does not know whether the police had written it down and that the police had

not read over his statement to him. It appears that insofar as the statement dated 26.6.2002 is concerned; the same is limited to the loss sustained by the witness in the incident in question.

138.29 The witness has been extensively cross-examined with regard to the topography of the area. The witness has stated that he had not gone to Gangotri Society via the S.R.P. Quarters. He has stated that he had climbed on the staircase of the house on the opposite side and had gone to Gangotri Society. He had directly gone to the terrace of the Gangotri Society and had not gone inside Gangotri Society.

138.30 The witness has denied that the four accused named by him, all reside at Jawannagar. The witness has stated that he does not have any social or monetary relations with the accused. He has admitted that he had no occasion to either talk with any of the accused or to travel with them.

138.31 Certain omissions in the statement recorded by the SIT have been put to the witness. The contents of paragraph 11 of the examination-in-chief of the witness are read over to him to the effect that he has not stated such facts in the statement recorded by the SIT. The contents of paragraph 12 of his examination-in-chief are read over to the witness to the effect that he has verbatim not stated such facts before the SIT. The witness is sought to be contradicted by his statement recorded before the SIT to the effect that he has stated that thereafter, they had gone on the terrace of Gangotri Society and had hidden in a house. The witness has voluntarily stated that what he means to say is that they had hidden on a terrace

of Gangotri Society.

138.32 The witness has admitted that he has identified the accused before the court for the first time but has voluntarily stated that he knew them earlier also. He has denied that he has not seen any such incident and that he is falsely deposing before the court.

138.33 The witness was confronted with his statement dated 26.6.2002 wherein he has stated that however, Shivnath who was working with him had come to his house at 9 o'clock in the morning to take money and had informed him that mobs of thousands of people had gathered near Noorani Masjid and Patiya and that at any time something untoward might happen. Hence, they should immediately go away from there to safe place. Therefore, he, together with his family had fled to Gangotri Society behind Hussainnagar and taken shelter there and the police vehicles came there at 10 o'clock at night and dropped them at Dariakhan Ghummat Relief Camp, where they are residing with their family members. The witness has voluntarily stated that he has stated facts, as stated by him, in his examination-in-chief. The witness has denied that in his statement dated 26.6.2002, he has stated that he does not know as to who was involved in the riots and that he cannot identify them even by their face. The witness has admitted that no member of his family was injured or had sustained loss of life in the incident and that his house was not set on fire. The witness has stated that they had gone to hide on the terrace of Gangotri Society before it became dark. He has stated that he cannot say as to how long after they reached there it had become dark and has voluntarily stated that it

became dark after a considerable time.

138.34 The witness has stated that he had not seen any incident on that day from the terrace and has voluntarily stated that he had seen the incident from the ground. The witness was confronted with his statement dated 18.3.2002 to the effect that he has stated therein that they went on the terrace of Gangotri Society and remained there till 10 o'clock at night and while staying on the terrace they had seen the riotous mob damaging, looting and torching. The witness has stated that he had not seen the incidents mentioned in paragraph 18 of the examination-in-chief from the S.R.P. Quarters or from the terrace of Gangotri Society and has voluntarily stated that he had seen the incidents after he climbed down. The witness has stated that that he had seen the incident from such a distance from where he could clearly see them. He has stated that he had come down from the terrace at around 6:00 to 6:30 in the evening and that no one else had climbed down with him. He has stated that he had seen the incident after walking a little further after getting down. The witness has stated that the spot from where he saw the incident was at the end of the house. He has admitted that there were houses nearby and that this was a corner of Jawannagar and Gangotri Society and was an empty space. The witness has stated that he does not know as to at what distance the accused were from him when he saw them in the mob at the Jawannagar corner. The witness has denied that a mob of thousands of people who were shouting was with the accused named by him in his examination-in-chief. The witness has denied that at this time, except the four accused, 50 – 60 persons and his family members, no one else was there at the

Jawannagar corner. The witness has voluntarily stated that there were other people but he does not know them. The witness has stated that he cannot say as to how far the people in the mob were from Jawannagar when he was going from Hussainnagar to the S.R.P. Quarters. The witness has voluntarily stated that he could see them in front. The witness has denied that they were standing on the way through which he was required to go.

138.35 The witness has stated that the people in the mob had followed him but has stated that he had immediately gone away and that they had not followed him for a long time. He does not know as to what the people in the mob did after he fled from there. The witness has admitted that from the time he left his house and reached the shuttered house, no one had personally assaulted him. The witness has voluntarily stated that on all four sides, the mobs were attacking. He has stated that the shuttered building in which they had hidden, was half closed and that there were other Muslims with him in the building. The witness has stated that he does not know the exact time but approximately at around 5 o'clock in the evening, he had gone from the shuttered building to Gangotri Society. He has admitted that from his house, he had gone to the shuttered building and after the stay at the shuttered building came to an end, they came out of the shuttered building and reached the terrace of Gangotri Society and till then, he had not seen any incident.

138.36 The witness is then cross-examined with regard to the application made to the SIT as to who had written it and how he came to know about it. His application Mark 644/49 is

shown to the witness, who has admitted his signature at the bottom of the document. The application is exhibited as Exhibit-1045. The witness has denied that as no member of his family had died or had sustained injuries and as his house was not set on fire and he had no information about his earlier statements, there was no necessity for him to approach the SIT.

138.37 The witness has denied the suggestion that on that day, he had not seen any accused in the incident. He has denied that he and both his brothers have been given houses free of cost by the Islamic Relief Committee after the riots of 2002. He has admitted that the Islamic Committee has given him the house at Ektanagar without any consideration and has voluntarily stated that the Committee has not given him in writing that nothing is to be taken towards the house. He has stated that at present, he is staying in the house merely as a tenant. The witness has admitted that the Islamic Committee is not recovering any rent from him; however, the entire cost of the house is to be borne by them. The witness has denied that as the Islamic Committee has given him the house, at their instance, he was falsely implicating the accused.

138.38 PW-291, M. B. Raj, the assignee officer has, in his cross-examination, admitted that he had recorded the statement of this witness on 26.6.2002. The contents of paragraphs 5, 6, 9, 10 to 16 and 18 to 21 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that all these facts have not been stated by the witness in the statement recorded by him. The contents of paragraph-8 of the examination-in-chief of the witness are read

over to the assignee officer, wherein the witness has stated that at that time, one Vikram, a person from his village who was working with him and another Shivnath Yadav came to his house. They had come to talk to him about money which they wanted and after offering them tea, they both departed with their cycle. The assignee officer has denied that the witness has not stated such facts before him and has stated that he had stated before him that Shivnath used to serve with him had come to his house at 9 o'clock to borrow money.

138.39 The contents of paragraph 17 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness has stated that thereafter, he alone climbed down from the terrace at around 6:00 to 6:30. He had gone to search if he could find a way from where he could take his family. He had come to Jaybhavani's house at the corner of Javannagar and had reached an open ground opposite his house. The assignee officer has admitted that such facts have not been stated by the witness before him.

138.40 The contents of paragraphs-106 and 107 of the cross-examination of the witness are read over to the assignee officer who has admitted that the witness has stated these facts in the statement recorded by him.

138.41 PW-292, R. C. Pathak, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 18.3.2002. The assignee officer has admitted that this witness in the statement recorded by him, he had stated that, however subsequently, he had learnt that out of the people who had carried out loot and damage to

his house, (1) Suresh Chhara alias Sahejad, (2) Guddu Chhara, (3) Hira Kathiyavadi, (4) Ganpat Chhara, (5) Virsinh Rathod (Chhara) as well as other people in the mob were also involved. That his brother Idrish who had gone out, upon returning home, had informed them that the people in the mob are damaging the masjid on the road and have commenced damaging and setting them on fire and the people in the mob are also putting gas cylinders in the masjid and upon his brother coming and informing them, they had come to know, therefore, all the family members were frightened and for fear of being assaulted, together with their families as well as the people of their chawls, left their chawl and went to the terrace of Gangotri Society nearby and remained there till 10 o'clock at night. At present, from 5th March, 2002, their family members have also come to Aman Chowk, Bapunagar and are taking shelter there. Afterwards, he had learnt that though he had sustained damages of approximately rupees two lakhs on account of the loot and damage carried out on his house, the cash amount, ornaments and the household goods, and that the Splendor motorcycle No.GJ-1-CE-4786 was lying near his house. They had gone to the terrace of Gangotri Society and had stayed there till 10 O'clock at night and while sitting on the terrace, they had seen the riotous mob was damaging, looting and burning.

138.42 The contents of paragraphs 6, 7, 9, 10, 11, 12, 13, 14, 15 and 16 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated these facts in the statement recorded by him. The contents of paragraphs 18 to 21 of the examination-in-chief of the witness are read over to the

assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him. The contents of paragraph 17 from the third line to the last line of the examination-in-chief of the witness are read over to the assignee officer who has admitted that the witness has not stated such facts before him. The assignee officer has admitted that the witness has not stated before him that his brother's house was also looted.

138.43 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 11.6.2008. He has stated that this witness had stated before him that on 27.2.2002, Kar Sevaks were burnt in a train at the Godhra Railway Station, which he came to know while he was working in the factory at Mahagujarat Foundry, Memco, opposite Omkar at 5:30 in the evening. The Investigating Officer has admitted that this witness had not stated before him as to where he had met Jalamsinh. However, he has stated the fact regarding having met Jalamsinh.

138.44 The contents of paragraph 6 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that his friend Jalamsinh Tomar had informed him that a rickshawala had been killed at Rameshwar Mandir, which he also might have seen, due to which, the situation is not good and hence he had gone home. The Investigating Officer has admitted that the witness has not mentioned the words, Rameshwar Mandir, but had mentioned Rameshwar Char Rasta. The Investigating Officer has admitted that this witness had not stated that Shivnath and Vikramsingh

had come to his house to ask for money. The witness had stated that these two persons had come to his house and there was a social exchange.

138.45 Certain extracts of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer who has denied that all these facts have not been stated by the witness in the statement recorded by him. He has clarified that the witness had stated that he returned home and was going towards Vatva, at that time, both of them had met him near his chawl and told him that huge mobs have gathered near Noorani Masjid, Natral Hotel and Krushnanagar. Hence, they had stayed at home when his brother came. The Investigating Officer has admitted that the witness has not stated before him that after talking with his brother Idrish they had gone out to watch. He has admitted that the witness has not stated in the same words but the meaning is the same because in the statement he has stated that they were staying at home when his younger brother Idrish went out to see what was happening towards Noorani Masjid.

138.46 The contents of paragraph 11 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that all these facts have not been stated by the witness in the statement recorded by him. He has stated that the witness had stated before him that upon there being commotion on the road, he had gone to see what was happening and his younger brother Idrishkhan had said that as riots have started, they should all flee.

138.47 The contents of paragraph 12 of the examination-in-

chief of the witness are read over to the Investigating Officer who has denied that all these facts were not stated by the witness in the statement recorded by him. He has stated that the witness had stated the fact regarding firing, two – three people being injured by bullets. The witness having left his house with Vikramsingh and Shivnath and that he was going with both of them towards Jawannagar, etc. facts have been stated by him.

138.48 The contents of paragraph 17 of the examination-in-chief are read over to the Investigating Officer, wherein the witness has stated that he was looking if he could find a way and had come to take his family from that road. He came till the corner of Jawannagar where Jaybhavani's house was situated. There was an open ground in front of his house and he had reached there. The Investigating Officer has admitted that the witness had not stated all these facts in the statement recorded by him but had stated that the witness had stated that at around 7 O'clock, he climbed down from the terrace of Gangotri Society and had gone to the S.R.P. Quarters.

138.49 The last two lines of paragraph 18 of the examination-in-chief of the witness are read over to the Investigating Officer wherein he has stated that he had come there and told his wife that there is no way to escape. The Investigating Officer has admitted that such facts have not been stated by the witness in the statement recorded by him.

138.50 The contents of paragraph 19 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness had not stated such facts in

the statement recorded by him. He, however, has stated that the witness has stated that his friend Ramesh Kashyap had come where he was at the terrace and had taken him and his family to his house at Odhav where the witness and his family had stayed for six days.

138.51 The contents of paragraph 21 of the examination-in-chief are read over to the Investigating Officer wherein the witness has stated that they had stayed at his house for around six days, after which he had told him that the situation is bad and he should sent them to Shahibaug and hence, he had sent them to Dariakhan Ghummat camp at Shahibaug. The Investigating Officer has admitted that such facts have not been stated by the witness in the statement recorded by him. In the opinion of this court, what happened six days after the incident can hardly be said to be an omission, leave alone a material omission amounting to a contradiction.

138.52 Certain extracts of paragraph 16 of the examination-in-chief of the witness are read over to the Investigating Officer wherein he has stated that after 5 o'clock he took Shivnath and Vikramsingh and went towards the S.R.P. compound wall, and he told them that both of them are Hindus and that they should let them go despite which, they had said that nobody could go from there and that he had forcibly sent them inside and that the S.R.P. people had caught hold of both of them and had made both of them remove their lower apparel and after checking let them go. The Investigating Officer had stated that the witness had stated before him that he had got both the Hindu boys to jump over the S.R.P. Quarters compound wall and sent them in but the S.R.P.

people were not permitting them to go and had questioned them and checked them and upon them appearing to be Hindus, they had permitted them to go to the S.R.P. Quarters.

138.53 SUBMISSIONS: The learned counsel for the appellants drew the attention of the court to the cross-examination of the witness, to point out that various omissions in the statements recorded by the police have been proved. It was pointed out that before the police, the witness has not named the four accused nor has he mentioned anything regarding utterances or hate words or any weapon held by the accused and that all these omissions have been proved through the testimony of the Investigating Officer. It was submitted that all the relevant facts mentioned in paragraphs 6 to 22 of the examination-in-chief of the witness have been stated for the first time before the SIT. It was submitted that the witness has mentioned two incidents. In the first incident, he has not attributed any overt act against any person in the mob comprised of fifty to sixty persons including the four named accused. It was submitted that if paragraph 14 of the examination-in-chief of the witness is read closely, it is difficult to believe that the mob would not do anything after having uttered the words alleged and when all the four accused were stated to be armed with swords.

138.54 It was submitted that there is a definite attempt made by an NGO and/or third parties in the name of helping the victims that they first made allegations in the names of the witnesses without their knowledge, got such applications signed, and then tutored them to give statements before the SIT and before the court thereafter. It was urged that such

tutoring has ultimately resulted into bringing some new persons within the sweep of the investigation by the SIT for the first time and that some new stories which were either never stated before or which have never happened, have surfaced after a period of six years. Insofar as the second incident is concerned, it was submitted that if a few facts stated in paragraphs 17 and 18 of the examination-in-chief of the witness are read together with paragraphs 30, 39 and 109 of the deposition, there is reason to believe that the witness is blatantly lying before the court and the version narrated in paragraphs 17 and 18 is not only contradictory to his first police statement dated 18.3.2002, but it is also contradictory to his SIT statement.

138.55 It was submitted that this witness has stated regarding having hidden in a shuttered building in Jawannagar, whereas it has come on record that there is no such shuttered building in Jawannagar. Referring to the deposition of the witness wherein his acquaintance with the accused named by him is discussed, it was pointed out that when the witness has nothing to do with the accused persons, how could he have given their names and identified them without a test identification parade. It was submitted that this witness is not a reliable witness as there are material and vital contradictions in his deposition and between his deposition and the statements recorded by the police and the SIT. It was submitted that there is no building with shutters in Jawannagar Khada or in the lanes of Jawannagar. According to the learned counsel, in the light of his statement in paragraph 119 of his deposition, the witness had not seen any accused before he went to the terrace of the house of Gangotri. It was submitted

that this witness had no occasion in the past to know the accused and their names.

138.56 It was, accordingly, urged that the witness may not be believed to be a reliable, trustworthy and truthful witness.

138.57 ANALYSIS: Considering the omissions and contradictions brought out in the cross-examination of the witness, it emerges that the uncontroverted part of his testimony is to the effect that on 28.2.2002, he was at home with his family. Upon the mob coming, they fled towards the rear side of the chawl and went to the terrace of Gangotri Society with the families of both the brothers. It appears that the witness in his statement recorded by the police has stated that he subsequently came to know that the named accused were in the mob, which damaged and looted his house. From the cross-examination of the witness, it emerges that none of his family members were injured. In paragraph 106 of his cross-examination, there is a reference to his statement dated 26.6.2002, wherein he had stated that Shivnath, who was serving with him, had come to his house in the morning to take money. It may be noted that the core part of the testimony of this witness is in paragraph 14 of his examination-in-chief, wherein he has stated that prior to reaching the S.R.P. Quarters, at Jawannagar corner, there was a mob of fifty to sixty persons and in front of the mob, Hira Marwadi, Jaybhavani Chhara, Suresh Chhara and Sahejad were present. These four persons and the others abused them and asked them as to where they were going and that today they would be hacked and killed and all of them had swords in their hands. Thereafter, they had gone towards the S.R.P. Quarters, where

the S.R.P. people had abused them. It may be noted that this part of his testimony is totally missing in his police statement dated 18.3.2002. The other part of his statement wherein he implicates the accused is in paragraph 18 of his examination-in-chief, wherein he has stated that upon reaching the open space near Jaybhavani's house he had seen Jaybhavani, Suresh Chhara, Hira Marwadi and Sahejhad with weapons in their hands and they were molesting the sister of a girl named Nagina and her mother, after seeing which, the witness had fled from there and had gone to a terrace of Gangotri Society. In the statements recorded by the police at the relevant time, none of these facts have been stated by the witness, and as noted hereinabove, in his statement before the police he had stated that he had subsequently come to know that the named accused were in a mob which damaged and looted his house. The version stated before the court in his deposition has, therefore, come out for the first time before the SIT. Considering the fact that the names of the accused have been recorded in his police statement, there is no reason to believe that the police have not recorded his statement, as stated by him. However, subsequently, the witness has improved upon his version and has attributed further roles to the accused, which are more serious in nature.

138.58 Having regard to the overall testimony of this witness, and considering the improvements made in his statement, the witness does not come across as a truthful witness, and in any case, since in his first available police statement the witness had named the accused on the basis of hearsay, the testimony of this witness cannot be taken into consideration for the purpose of implicating the accused in

such a serious offence.

138.59 Moreover, the version given by the witness that fifty to sixty people had accosted them and threatened to hack and kill them, but did not do anything to them is also not plausible, inasmuch as, if the mob was present there and the witness and others were there, there was no reason for the armed mob to merely threaten them and not harm them.

139. **PW-151 Raziyanu Mohammadayub Shaikh**, aged 43 years, has been examined at Exhibit-1057. The witness has deposed at the relevant time, she was residing at *Jawannagar, Naroda Patiya* with her husband and four sons, viz., the eldest son Mohammadhassan, aged eight years, second son Mohammadyusuf, aged seven years, third son Firoz, aged two years and the youngest Shoaib about twelve-days old.

139.1 The incident took place in the year 2002. She does not remember the date or the month. But on that day, there was a call for Gujarat bandh. On that day, she, her mother-in-law and her children were at home. Her husband had gone for his job.

139.2 On that day, stone pelting and disturbances took place between 9:00 to 9:15 in the morning. Thereafter, at 2 o'clock, there were shouts of "*The mobs have come! The mobs have come*". The mobs were assaulting and committing arson. She had given birth to a child just twelve days ago, and hence, she was at home.

139.3 In the afternoon, at around 2 o'clock in the afternoon, she took her children and mother-in-law and went to someone's terrace. Because of the riots, everyone was fleeing and they too fled with the others. In the evening at 6:00 people started saying, "*Come down! Come down!*" and hence she took her children and her mother-in-law and came down.

139.4 After 6 o'clock in the evening, when it was time for *maghrib namaz*, everyone started going near the water-tank, and hence, she too went there. Thereafter, from above as well as from the S.T. Workshop, from all sides, petrol, acid and some highly inflammable substances were thrown on them. The substance was such that it would catch fire immediately.

139.5 In this incident, her mother-in-law was set ablaze and she died. Her third son Firoz who was two years old at the time of the incident and was with her mother-in-law, was also burnt to death in this incident.

139.6 She was near the water-tank. She was burnt on her right hand, left side of her back and her head. Her twelve day old son was in her arms on that day. She wanted to take him and leave the water-tank spot, at that time, somebody inflicted a blow with a pipe on the parting of her hair, where she was earlier burnt, as a result of which, she became unconscious and fell down. While she was lying unconscious, her child Shoaib fell from her arms into the fire. She was unconscious, however, upon hearing the cries of her child, she regained a little consciousness and while trying to take her child Shoaib out of the fire, she sustained burn injuries on her hands and

one leg. Thereafter, she took her child and went back to the terrace, where they were sitting earlier.

139.7 Her mother-in-law Fatima and her son Firoz had got separated from her on the date of the incident and she never found them again.

139.8 Thereafter, some vehicle came and at that time, her husband came looking for her and her children. Thereafter, they were taken in that vehicle to the Shah Alam camp. Her other two children had also got separated from her on the date of the incident. They, that is, she and her son Shoaib were taken to the V.S. Hospital for treatment from the relief camp.

139.9 In this incident, she and her husband had sustained burn injuries and she has sustained serious injuries due to the pipe blow. The witness has stated that she cannot identify any person involved in the incident, who either set them on fire, or inflicted blows on them. The police had taken down her statement as regards the incident. However, at the relevant time, her health was not good.

139.10 She had stayed at the V. S. Hospital for treatment for around three months. Her twelve day old son was treated for around twenty days.

139.11 The witness has stated that since her son Shoaib was only twelve days old, it is quite natural that he would not be able to speak. None of her children was twenty years old.

139.12 The witness has stated that at the time of the

incident, they had a house near the Noorani Masjid, which they had rented out; however, since they needed more space for her delivery, they had kept a house in Jawannagar. However, after the incident, since they did not feel like staying in this house, they had returned to their house at Noorani Masjid.

139.13 CROSS EXAMINATION: In the cross-examination of this witness, a contradiction is sought to be brought out to the effect that in her statements dated 1.3.2002 and 6.3.2002, she had not stated the facts narrated by her in paragraphs 6 to 11 of her examination-in-chief.

139.14 In the cross-examination of this witness, it has come out that she knows Abdul Majid who lives in the last lane of Jawannagar. He is her brother-in-law. Her brother-in-law had met her at the V.S. Hospital. She had met Abdul Majid and his family members on the day of the incident and they were sitting together on the terrace of Gangotri Society. The witness has denied that she, Abdul Majid and others had left the terrace of Gangotri Society together and has voluntarily stated that all of them had gone separately.

139.15 The witness has admitted that she and her family had left their house at around 4 o'clock in the evening and that it took them approximately twenty minutes to reach Gangotri Society. At the time, when she reached the terrace, Abdul Majid and his family were sitting there and they got down from the terrace prior to the time for *maghrib namaz* at approximately 6 o'clock in the evening. The witness has denied that she is falsely deposing with regard to her being beaten and set on fire near the water tank and her son being burnt

and her mother-in-law and her son being killed in the incident and being separated from them.

139.16 To prove the omissions and contradictions in the testimony of this witness the defence has cross examined PW-276 Shri P.U. Solanki, the assignee officer, who, in his cross-examination, has admitted that this witness has not stated the facts stated by her in paragraphs 6 to 11 of her examination-in-chief, except for stating that she had sustained burn injuries on her right hand as well as leg and thigh and that she was injured on the head and her twenty day old son Shoaib had also sustained burns on both his hands and left leg and that her mother-in-law Fatima and son Firoz had got separated in the pandemonium.

139.17 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has not implicated any accused and she has also not stated anything about any mob at the passage of the water tank. It was submitted that the testimony of this witness renders the evidence of Abdul Majid (PW-156) doubtful as Abdul Majid has stated that this witness informed him about burning of his family members at the passage, whereas this witness does not say anything about Abdul Majid meeting her at the terrace of Gangotri Society when she went there after she and her son were injured.

139.18 ANALYSIS: This witness comes across as a truthful and credible witness. Her statements were recorded by the police on 1.3.2002 and 6.3.2002, immediately after the incident. She is an injured witness, who had lost her mother-in-law and her two year old son in the incident and her twelve

day old child had sustained burn injuries. Considering the horrific experience undergone by the witness on the fateful day, it cannot be gainsaid that she would still be reeling under shock and terror. Moreover, it has been noticed that the statements recorded by the assignee officer at the hospital have been recorded very perfunctorily. Therefore, her not having stated the facts stated in paragraphs 6 to 11 of her examination-in-chief in such statements recorded by the police would not dent the credibility of the witness, who has clearly stated the facts as they were, without any exaggeration and embellishment.

139.19 As regards the contention that the fact that this witness has not mentioned that she had told Abdul Majid that his family members had been set ablaze, would render the evidence of Abdul Majid doubtful, in the opinion of this court, the witness has deposed about the incident in her examination-in-chief. Having regard to the events that took place on that day, she may not even have recalled the fact that she had informed Abdul Majid about it when she went on the terrace. What is significant is how the incident took place and not to whom she had narrated the same. Besides, considering the time between the incident and the recording of her evidence, her not recalling such fact can hardly be said to be a contradiction.

139.20 From the testimony of this witness it emerges that apprehending that the mobs were approaching Jawannagar, at around 2 o'clock the witness and her family went to a terrace and at around 6 o'clock came down and went towards the

water-tank, where they were attacked in the passage of the water-tank. Inflammable substances were thrown from above and they were assaulted and burnt. The fact regarding the witness had sustained injuries as stated by her is duly corroborated by the medical certificate issued by the hospital where she was treated. This, witness is, therefore, a truthful and credible witness and there is no reason to disbelieve the version given by the witness regarding the manner in which the incident occurred. Considering the fact that the witness has not named any accused, her testimony is helpful to the prosecution to the limited extent of establishing the manner in which the incident occurred.

140. **PW-152 Parveenbanu Salambhai Kureshi**, aged 38 years, has been examined at Exhibit-1061. The witness has deposed that she is residing at Jawannagar since the last twenty years with her family comprised of her husband and children and her elder sister-in-law Zayda alias Gauri and her children.

140.1 At the time of the incident, she had four children, viz., her daughter Reshma, aged 12 years, son Sameer, aged 10 years, younger daughter Meraj, aged 7 years and son Imran, aged 3 years.

140.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh. At that time, her family members were at home and her husband had gone to his mutton shop, which is on the very same road in Masjid-ni-Chali.

140.3 If she says on a totally approximate basis, on that day, at around 9:00 to 9:30 in the morning, there was a lot of commotion on the road near the Noorani Masjid. When her husband came home from the road, they learnt that there were riots outside. At this time, the electricity connection was cut and their acquaintances had come to their house and all of them were fleeing towards the rear side of the chawls to save their lives.

140.4 At this time, the violence increased and at around 1:30 in the afternoon, she, her children, her husband, her sister-in-law and her two children, all of them, went to a terrace of Gangotri Society to save their lives. Thereafter, the police came to the terrace and told them that they could not sit on the terrace and made them get down, due to which they got down from the terrace, at around 4 o'clock. At this time, the gate of the Gangotri Society was closed and the mob was coming from the direction of the masjid. The people in the mob were armed with weapons like swords. The mob was huge and violent. The police had resorted to firing. There was a water-tank near Gangotri Society, where there was a passage where a lot of public had entered and they also went there. Stone pelting and violent acts were going on there. At this time, there was stone pelting from the S.T. Workshop and she was injured on her forehead by a stone. Upon being injured in the stone pelting, she fell down with her child and at that time, they threw acid from the terrace.

140.5 From the terrace, they were throwing kerosene, acid, etc. and she was sustained burns with the acid. Due to this, she had sustained burn injuries on the left side of her

body from her leg to her hands and on account of the acid thrown on her, she had sustained injuries on her right hand. When she fell down, her three year old child was with her and her three children were with her husband. The child who was with her remained with her, whereas, at this time she and her husband and the children who were with him, got separated. Her elder sister-in-law and her children were left in the passage and all of them got dispersed.

140.6 She had sustained burn injuries on both her legs and her hands and had sustained stone injuries on her forehead. It must have been around 7:00 to 7:30 at the time when she fell down. When she fell down, she was crushed under several other people. At the time when acid was thrown on her, her three year old child who was with her at the time of the incident, fell from her hands and upon it becoming dark, she could not find her child which had fallen down. She went on somebody's terrace in the same lane. On account of acid falling on her, she felt severe burning sensation and pain.

140.7 Thereafter, late at night, the police came and she was on the terrace. From there, she was taken by the police to the Shah Alam camp and from the camp, she was straightaway sent to the V.S. Hospital, where she was admitted.

140.8 Her husband and her three children had got separated from her. Her three children, namely, Reshma, Sameer, Meraj were with her husband Salam and all of them died in the incident.

140.9 The police had recorded her statement when she

was in the V.S. Hospital, where she had stayed for four months for treatment.

140.10 The witness has stated that she does not know any of the persons in the mob who had thrown acid on her and pelted stones at her.

140.11 After three days, her sister-in-law came to the V.S. Hospital. After three to four days, she (her sister-in-law) disclosed to her that her husband and her three children who were with him, had also died. Thus, in the incident, her husband and her four children had died. When they got separated, the people in the mob killed her husband by inflicting blows with a sword, throwing acid and setting him ablaze, and he himself, while dying, had told her that their three children had slipped out of his hands and have died.

140.12 CROSS EXAMINATION: In her cross-examination this witness has admitted that on the day of incident, at 9:00 to 9:30 in the morning she was at home and was cooking. She has stated that her husband used to go to their mutton shop everyday in the morning at 7 o'clock. The witness has admitted that from 7:00 to 9:00 in the morning, no one had informed her that there were disturbances outside. She has voluntarily stated that upon her husband coming home she had come to know about it. She has admitted that because of pandemonium prevailing in the chawl, Muslim people had run helter skelter. Her husband came while the pandemonium was going on.

140.13 The attention of the witness was drawn to the last

but one line of paragraph 6 of her examination-in-chief wherein she has stated that their acquaintances and neighbours had come to their house. She has stated that Munirbhai, Mebala and Raziabanu, etc. were amongst these acquaintances and neighbours. She has admitted that the family members of these persons had also come to her house and has voluntarily stated that thereafter they went away.

140.14 In her cross-examination, it has come out that her house is in the 4th lane of Jawannagar. She has stated that all of them had come to her house and stayed there for about half an hour to one hour and has voluntarily stated that thereafter even they (the witness) had left. The witness has admitted that all these three Muslims had stayed at her house for about half an hour to one hour and in the meanwhile no mob from outside had attacked her house.

140.15 The witness has stated that every one left at around 1:30 in the afternoon and has admitted that till that time no one had attacked their house.

140.16 The witness has stated that on that day when they reached the passage near the tank, they actually wanted to go to Naroda. Walls have been erected near the water tank wherein there are walls on three sides and on one side it is open. The witness has stated that at that time her husband and her four children were together. When they were in the passage, her four children and her husband were with her. Her entire family was with her in the passage. In the cross-examination it has come out that the terrace from which they were throwing acid, was a terrace of Gangotri Society. She has

admitted that at that time there was stampede. When she fell down in the passage, she had remained there for about three hours and was crushed. The public was falling upon her and she was feeling suffocated where she had fallen. Her entire body was injured. The witness has voluntarily stated that she had sustained 10% burns. At that time on account being wounded, she could not walk.

140.17 In her cross-examination, it has further come out that while she was lying there for two to three hours, no one had come to pick her up or help her after she fell down from terrace on which she had gone. There were other people also. She has stated that around 12 o'clock in the night they were taken to the relief camp.

140.18 The witness has stated that they were taken to Shah Alam Dargah Camp and that at the Shah Alam Camp, she had taken about 15 to 20 minutes to change her clothes and thereafter she had gone to the hospital. Since acid was spilled on her, her clothes were soaked with acid which caused extreme pain; therefore, she had removed those clothes. The witness has stated that she does not know whether they were sent to the hospital by the camp people or by the police.

140.19 The witness has stated that she has not narrated the incident that took place with her family before the doctor at the V.S. Hospital, and has voluntarily stated that the doctor had not asked her anything. She has stated that while she was at the hospital, her sister-in-law had taken care of her. No one from her parental side had come because they were all residing at Gulbarga, Karnataka. The witness has stated that at

the time when she was under treatment for four months, she had stated the fact as to who had burnt her and how, to the police. The witness has stated that except for the police she has not stated this fact to anyone.

140.20 The witness has admitted that after the incident she has not shown the police as to from which terrace acid or stones were thrown at her, and where her husband was killed with a sword, for the reason that the police has not asked her any such thing. The witness has stated that the police have recorded her statement five to six days after the incident. The witness has stated that she does not know whether the police has recorded statement, as stated by her and has voluntarily stated that she is illiterate. She has stated that she has also stated the facts regarding the incident to her sister-in-law Zayda.

140.21 The witness has stated that she has not asked anyone to verify as to whether the police has recorded her statement correctly. She has voluntarily stated that only her sister-in-law and her children had survived and that in the incident her (sister-in-law's) son went missing and was found a month later. The witness has stated that she does not know any Jadikhala or Gauri Apa. Her sister in law's name is Gauri and she knows her. The witness has stated that she has not got any compensation in respect of looting of her house. She has voluntarily stated that she has received compensation for the death of her husband and her children. The witness has denied the suggestion that she has falsely stated the facts with regard to death of her husband and children in the incident and that no such incident had taken place or that she was

falsely deposing before the court.

140.22 The witness has stated that she does not know as to whether any case papers were prepared during the period when she took treatment at the V.S. Hospital. The witness has voluntarily stated that she had received stitches on her forehead and was given treatment where acid was thrown on her. The witness has denied that she had not availed any treatment and that she was falsely deposing before the court.

140.23 The witness is confronted with her statement dated 6.3.2002 recorded by the police wherein she has stated that on 28.2.2002, in connection with the incident that took place in Godhra city there was a call for 'Gujarat Bandh' and hence her family members were present at home and at that time in the morning at around 11:00 to 11:30, a very huge mob of people came from Saijpur Patiya and these people started shouting and pelting stones and the police had lobbed teargas shells and fired at the mob; despite which the mob which was very huge did not disperse; the mob was pelting stones, damaging houses and setting them on fire and they saw the people in the mob and started fleeing. However, the people in the mob surrounded them from all four sides and sprinkled kerosene and set them on fire, due to which she has sustained burns on both of her legs, abdomen and both of her hands and has been injured on forehead with stone. She does not know where her husband and children are. Upon the police vehicle coming, they had brought her to the Shah Alam Camp. The witness has voluntarily stated that she has stated the facts as stated by her in her examination in chief before the police.

140.24 The contents of paragraph 5 of her examination-in-chief from the 2nd to the 5th line are read over to the witness and also the contents of paragraphs 6, 7, 8, 9 and the last line of paragraph 10, to the effect that she has not stated these facts in her statement before the police. The witness has voluntarily stated that she does not know what the police has written down and has not written down.

140.24 To prove the omissions and contradictions in the testimony of the witness as to her previous statement recorded by the police, the defence has cross-examined PW-276 Shri P.U. Solanki, the assignee officer, who, in his cross-examination, has admitted that the witness in her statement dated 6.3.2002 had stated that on 28.2.2002, as there was a call for Gujarat Bandh in the context of the incident that took place in Godhra city, her family members were present at home and at this time, in the morning at around 11:00 to 11:30, a huge mob came from Saijpur Patiya and the people in the mob started shouting and pelting stones and the police released tear gas shells at the mob and resorted to firing despite which, the mob being very huge, did not disperse and was pelting stones and damaging the houses and burning them and upon seeing the people in the mob, they started fleeing, however, the people in the mob surrounded them from all four sides and sprinkled kerosene and set them ablaze. Wherein she sustained burn injuries on both her legs and abdomen as well as on both her hands and she was injured on her forehead with a stone. She does not know where her husband and children are and that upon the police vehicle arriving, she was taken to Shah Alam. The assignee officer has admitted that it has not happened that the witness

Parveenbanu had not stated such facts and that he had written them down on his own.

140.25 The assignee officer is read over the facts stated in paragraph 5 of the examination-in-chief of this witness, wherein she has stated that at that time, her family members were at home and her husband had gone to their mutton shop on the road in Masjid-ni-Chali and he has admitted that she has not stated such facts in the statement recorded by him. The contents of paragraphs 6, 7, 8 and 9 of the examination-in-chief are read over to him and he has stated that such facts were not stated by her in her police statement.

140.26 The last line of paragraph 10 of the witness wherein she has stated that at that time, it must have been around 7:00 to 7:30 in the evening as well as the contents of paragraphs 11, 13 and 16 are read over to the assignee officer, and he has stated that except for what is stated in the context of paragraph 8 of her examination-in-chief, namely, that the witness had stated that she was injured on her forehead with a stone, none of the other facts were stated by her in the statement recorded by him. The assignee officer has further admitted that it has not happened that he has not written down the facts stated by the witness. The assignee officer has also admitted that he had read over the statement to the witness and in connection therewith, he had made a note below the statement. He has admitted that the last sentence in the statement, namely, that the above facts written by her are proper and correct, have been stated by the witness. The assignee officer has further admitted that he had informed the witness about what he was writing down in the

statement.

140.27 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the contents of paragraph 7 of the examination-in-chief of the witness to submit that except for this witness, no other witness has stated that the police had come to the terrace and asked them to vacate the terrace. It was pointed out that the witness has not implicated any of the accused, though they are local residents. It was submitted that according to this witness, the incident at the passage of the water tank took place at around 7:00 to 7:30 and looking to the day, viz., 28th February, there would be no daylight and she has stated in her deposition that electric supply was cut off in that area, therefore, it would not be possible for anyone to identify any accused.

140.28 ANALYSIS: This witness is an injured eye-witness, who has lost her husband Salam and her four children in the incident. As per the version given by this witness when the riots started, they all went towards the rear side of their chawl. At around 1:30 in the afternoon, they went to the terrace of a house in Gangotri Society, but at around 4:00 p.m. the police came and told them to vacate the terraces, whereupon they came down and mobs also came from the direction of the masjid and the huge mob was violent. The witness and others had entered into the passage of a water tank and stone pelting and assault started. Acid was being thrown from the terrace. She sustained burns on her body due to the acid attack and in the melee, her husband and children got separated and she was left with one child, who too slipped out of her hands. She had sustained burn injuries and was wounded on the head by a

stone and fell down. She could not find her child in the darkness and she went from the passage to a terrace. The witness has stated that she could not identify any person in the mob that threw acid on her or pelted stones at her.

140.29 The witness has been confronted with her statement dated 6.3.2002 recorded by the assignee officer PW 276, to the effect that a major part of which she has stated in her examination-in-chief has not been stated by her in the statement recorded by the police. Insofar as the statement dated 6.3.2002 is concerned, this court, while discussing the testimony of PW 205 Zarinabanu, has observed thus:

“Insofar as statement dated 07.03.2002 is concerned, the same is recorded by PW-276 Shri P.U. Solanki at the V.S. Hospital, wherein he has recorded the statement as referred to hereinabove. It is a matter of deep concern and is required to be taken serious note that this officer has recorded statements of PW-145 Shahnawazkhan Abbaskhan Pathan, PW-152 Parveenbanu Salambhai Qureshi, PW-154 Ahemadbadshah Mehboobhussain (para 71), PW-156 Abdul Majid Mohammed Usman Shaikh, PW-167 Mohammed Hussain Kayumbhai Shaikh (para 94) and this witness PW-205 Zarinabanu Naeemuddin Shaikh. During the cross examination of the officer, the police statement of each of the above witnesses, as recorded by this officer, has been brought on record. On a conjoint reading of the statements of all the above witnesses, it is found that the statements are identically worded, except the names, addresses and particulars of family members as well as names of

family members, who are injured or who have died in the incident and injuries sustained by the witnesses. The main part of statements of each witness is absolutely identically worded. Evidently, therefore, this officer appears to have written down the statements as per his own whims and has not written down what is stated by the witnesses. Such statements, therefore, cannot be said to be statements of the concerned witnesses and no part of such statements can therefore, be used to contradict the witnesses."

140.30 The above observations also relate to the statement dated 6.3.2002 of this witness. Therefore, such statement cannot be used to contradict the testimony of this witness; consequently, what has been stated by the witness in her examination-in-chief is required to be accepted.

140.31 As noticed earlier, this witness has not named any accused in the offence. However, from the testimony of this witness it is proved that the incident took place at the passage of the water tank and acid was being thrown by the mob from the terraces nearby. Upon evaluating the testimony of this witness, she comes across as a truthful and credible witness, and there is no reason whatsoever to discard her testimony.

141. **PW-153 Kulsumben Ibrahimhai Mansuri**, aged 45 years, has been examined at Exhibit-1062. The witness has deposed that she is residing at *Hussainnagar, Naroda Patiya* since many years. In the year 2002, she had four children, including her youngest daughter Nilofer.

141.1 She does not remember the date and the month, but states that the incident took place in the year 2002. On that day, there was a call for Gujarat Bandh. There were shouts coming from outside that a mob of Hindus had come. Thereafter, there was stone pelting near Noorani Masjid. Shops were set on fire, there was looting. All this was being done by the Hindu mobs. The persons in the mob were breaking things on the road and were also ransacking the houses and shops.

141.2 On that day at around 9:00 to 9:30 in the morning, the Muslims were saying, "the mob has come, the mob has come" and all the Muslims ran towards the khada (pit). Throughout the day, they were running here and there and the mobs were coming anywhere. On that day, her husband had gone out in the morning and she together with her four children ran towards the khada.

141.3 From the khada, they went towards Jawannagar. Since the mobs were coming from all four sides, on account of fear, they were fleeing. They had fled from Jawannagar to the S.R.P. side. She had taken her children and fled towards the S.R.P. Quarters, however, they were not permitted to go inside the S.R.P. Quarters. Thereafter, upon seeing a terrace there, they climbed on the terrace and sat there.

141.4 Many Muslim people were climbing on the terrace to save themselves. They sat on the terrace for a long time and thereafter, they could hear voices saying, "*Run, run, the mobs have come*". Therefore, she along with her children ran. She came down from the terrace. She does not know what the time

was, but it must have been afternoon time.

141.5 After getting down, they could hear talks about the mobs coming from all four sides and hence, she went back on the terrace and sat there. At that time, it was evening and hence, it must have been around 5 o'clock, when she saw her husband and hence, all of them, namely, her husband and her children got together.

141.6 They all came down because sounds of "kill, hack" were coming. Thereafter, her three children and her husband got separated from her. At that time, her daughter Nilofer was with her.

141.7 She and Nilofer were surrounded by the mobs which were coming from all four sides near the water tank. They were caught between the mobs. On one side, from the terrace of Gangotri Society, they were throwing petrol and acid. At that time, Nilofer was seven year old. The people in the mob were on the terrace and they were throwing petrol and inflammable substances. They had set Nilofer on fire, in front of her eyes. When she went to rescue her daughter Nilofer, the people in the mob hit her on the head and back and on both her hands and legs with a pipe and her hands and legs were fractured. She was trying to save Nilofer and they were beating her with a pipe on her head and she felt a dizzy and became unconscious. Today also, she has rods in both her hands.

141.8 She does not know what had happened after she became unconscious. Her daughter Nilofer was set on fire before she had become unconscious.

141.9 Thereafter, she does not know as to who took her to the hospital from there. However, when she regained consciousness on the next day, she was in the hospital. She stayed in the V.S. Hospital for around one month for treatment. In this incident, she sustained burn injuries on her back.

141.10 The police had recorded her statement in the hospital. On the day of the incident, there were mobs of people, but she does not know the name of any person in the mobs, because, she does not know anyone.

141.11 CROSS EXAMINATION: In the cross-examination of the witness, it has come out that her husband was working as a plumber and had gone out to earn on that day. The witness has voluntarily stated that he was doing casual labour work and used to leave his house in the morning at 8:00 to 8:30. The witness has stated that she does not know whether there was any such situation at 8 o'clock on the road and has voluntarily stated that at that time, she had not gone out.

141.12 The witness has stated that she does not know the lane of Hussainnagar in which she resides and has stated that she only knows who resides nearby. She has stated that one Sabera resides near her house but she does not know the names of anybody else. The witness has admitted that upon hearing sounds of "*mobs are coming, mobs are coming*" she had started running here and there. The witness has voluntarily stated that all the public there was running hither-thither out of fear. She has stated that the pit is at a short distance from her house. She does not know as to whether the

S.R.P. compound wall is near the pit and she does not know as to whether there are any S.R.P. Quarters there.

141.13 The witness has stated that she cannot say as to how many Muslims persons were there in the mob. The witness has admitted that since the mob was behind them, they were all running. She has admitted that nothing had happened to her and Nilofer in the riots till the afternoon and has voluntarily stated that everything happened at 5:00 in the evening.

141.14 The witness has admitted that till she was at the pit, she had not met her husband. She had seen her husband on the terrace on that day. She has stated that they must have climbed on the terrace at different times. She has stated that something like petrol, kerosene was thrown on her daughter Nilofer from the terrace, which was a terrace near the water tank. The witness does not know whether the terrace was on the first floor or the second floor. She has further stated that some inflammable substance was thrown on her daughter Nilofer and many other people were also set ablaze below. The witness has voluntarily stated that children of many Muslims were burnt on that day.

141.15 The witness has stated that when the people in the mob had set Nilofer ablaze, she was quite near to her. The witness has stated that she cannot say as to exactly how many people were there in the mob and she does not know whether the mob was big or small. She has denied that when Nilofer was set ablaze, she and Nilofer alone were there in the mob. She has stated that there were many other people there. The witness has stated that she does not know what a fracture is

but that she had fallen down and had become unconscious and could not get up and could not walk and she could not even drink water in the hospital.

141.16 The witness has stated that she does not know whether she had any talk with the Doctor in the hospital and has voluntarily stated that the Doctor had told her that she had sustained a fracture and was to be operated on the next day and hence, she should not eat anything after she wakes up in the morning. The witness has stated that after she became conscious, she had not informed the Doctor at the Hospital about Nilofer's incident. She has voluntarily stated that at that time, she was injured on the head and could not speak.

141.17 The witness has denied that when she was at the hospital for one month, her family members were with her at the hospital and has voluntarily stated that people on the nearby beds in the hospital had helped her. The witness has deposed that she had told the people on the other beds to help her in searching out her children and her family.

141.18 The witness has stated that when she was at the V.S. Hospital, the police had come but the police used to write on their own and go away and did not read over what they had written. The witness has stated that she does not know whether the police had recorded her statement on the next day after the incident and also does not know as to how many times, the police had come to the hospital. The witness has voluntarily stated that the police used to come and write something but she could not understand anything.

141.19 The witness is confronted with her statement dated 1.3.2002 recorded by the PSI Naroda Police Station, wherein the witness has stated that on 28.2.2002, in the evening at around 6 o'clock, she was present at home. In the meanwhile, a mob of persons suddenly entered Hussainnagar-ni-chali and the people started indiscriminately entering and damaging houses and setting them on fire. During this time, the people in the mob had set her house on fire and the people in the mob had beaten her with blunt weapons and upon her house being set ablaze, she had sustained burns in varying degrees on both her hands, and legs and at this time there was a stampede amongst the people at Hussainnagar and she too had fled to escape from the mob. The people in the mob had set her house on fire and had caused burns on her entire body. The people in the mob having set her house on fire, she does not know anyone's name or address. The witness has voluntarily stated that her house has not been set on fire on the day of the incident and that the entire facts are wrong. The witness has deposed that before the police she had stated the facts as stated by her in her examination-in-chief. [In the statement recorded by the police, it has been mentioned that the witness had been admitted in the trauma ward for treatment.] The witness has stated that after she was discharged from the hospital, she had gone to the Shah Alam camp where she met her husband and narrated the incident of Nilofer to him. The witness has denied that she has not been burnt with any substance and that she had sustained the injuries in the stampede.

141.20 The witness has admitted that what she is stating before the court she is stating for the first time. The witness

has admitted that the facts which she has stated before the court have not been stated by her before the police or before the court or before any organization.

141.21 The witness has admitted that she had shown the Doctor all the injuries sustained by her and the Doctor had given her treatment. The witness has stated that she does not know at what time, she reached the pit. She has admitted that the pit is the Jawannagar pit. She has stated that when she reached the Jawannagar pit, she had not seen any truck.

141.22 The third line to the last line of paragraph 3 of her examination-in-chief, the contents of paragraphs 4, 5, 7, 8, 9 and 10 are read over to the witness to the effect that she has not stated such facts in the statement recorded by the police. The witness has denied that she has not sustained any injury on her head or sustained any burn injuries and that she is falsely deposing before the court.

141.23 PW-274 Shri K.K. Mysorewala, the Investigating Officer, has admitted that the statement of this witness was recorded by Shri Katara on 1.3.2002. In the cross-examination of the Investigating Officer, it has been brought out that the witness had stated before Shri Katara that on 28.2.2002, at around 6 o'clock in the evening, she was at home, at that time, a mob of people suddenly entered Hussainnagar-ni-Chali and started entering the houses and damaging and burning them. During this time, the mob had set her house on fire and had beaten her and upon her house being set on fire, she had sustained burn injuries in varying degrees on both her hands as well as on her legs and at this time, the people of

Hussainnagar started running helter-skelter and she too fled from there to escape from the mob. That this mob of people had set her house on fire and had burnt her on her whole body and that she did not know the names or addresses of any of the people in the mob who had kindled the fire.

141.24 In the cross-examination of the Investigating Officer, it has further come out that the witness has not stated the facts stated by her in paragraphs 5, 7, 8 and 10 of her examination-in-chief in her statement before Shri Katara, whereas insofar as paragraph 3 of her examination-in-chief is concerned, the Investigating Officer has stated that the witness had stated that damage was caused to Hussainnagar-ni-Chali. As regards the contents of paragraph 4 of her examination-in-chief, the Investigating Officer has stated that the witness has stated that the people of Hussainnagar were running helter skelter and that the witness had also stated that they had gone towards the khada (pit). The Investigating Officer has further stated that insofar as paragraph 9 of the examination-in-chief is concerned, the witness had stated that she was beaten and that she had sustained burns.

141.25 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has been residing at Hussainnagar since many years prior to the incident. Referring to paragraph 11 of her testimony, it was submitted that the police had taken the injured to the Civil Hospital, therefore, this witness must have been taken from the scene of offence to the relief camp, from where she must have been taken to the V.S. Hospital. The attention of the court was invited to paragraph 12 of her deposition, to submit that the witness has

clearly stated that she does not know anyone in the mob. It was submitted that this witness is a local resident, but does not implicate anyone including any of the local accused.

141.26 ANALYSIS: This witness comes across as a credible and truthful witness. The witness is sought to be contradicted as to her statement dated 1.3.2002 recorded by Shri Katara. Shri Katara has passed away during the pendency of the trial and his statement is sought to be proved through the testimony of PW 274 Shri K.K. Mysorewala. The witness has specifically stated that her statement was not recorded as stated by her, and it is only Shri Katara who could have met with such allegation. Moreover, the incident took place at 5:00 to 6:00 p.m. on 28th February, 2002 and the statement of the witness came to be recorded when she was in the trauma ward on the very next day, that is, on 1st March 2002. The witness is an injured witness who had sustained multiple fractures on different parts of her body. Her daughter was burnt to death before her very eyes on the previous day. Evidently, therefore, one does not have to examine a doctor or an expert to prove trauma at this stage. On the contrary, it would be surprising if a woman who has undergone such terror does not suffer from trauma and shock. A perusal of the injury certificate Exhibit 878 shows that the witness has suffered multiple rib fractures, fracture on the middle shaft of the humerus, fracture of the thigh bone, fracture of the shaft of ulna. Thus, the version given by the witness is corroborated by the injury certificate. Therefore, much credence cannot be given to a statement recorded when the witness was in such a state of mind. Such statement, therefore, cannot be used to contradict the witness. Besides, the testimony of the witness does not contain any

exaggerations or embellishments, nor has she tried to falsely implicate anyone. The witness has clearly stated that she does not know anyone in the mob and does not implicate any of the accused. Therefore there is no reason to disbelieve the testimony of this witness.

142. **PW-154 Ahmadbadshah Maheboobhussain Shaikh**, aged 28 years, has been examined at Exhibit-1065. The witness has deposed that he is residing at *Jawannagar, Naroda Patiya* since his birth. In the year 2002, he was residing at *Jawannagar, Naroda Patiya* with his father, mother and brothers, etc. At that time, he was a bachelor and had a scooter garage by the name of *Punit Auto Garage near Thakkar Bapanagar*.

142.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh and he was at home. On that day, in the morning at around 10:00 to 10:30, he had gone on the road near Gafurbhai's house, where presently Naroda Patiya Police Chowky is situated.

142.2 When he came out, he saw that there was a very huge mob of Hindus near the S.T. Workshop. The mob was vandalizing the Noorani Masjid which is situated opposite the S.T. Workshop. This mob was also comprised of Hindus. The entire road from the crossroads till the S.T. Workshop was filled by the mob. At this time police firing had also commenced. In this police firing, he had been injured by a bullet on the armpit part of his right shoulder. As he was injured, he proceeded towards his house. When he reached the flour mill, which was

nearby, he started feeling dizzy.

142.3 Upon feeling dizzy, he remained sitting there. Thereafter, two to three persons lifted him and took him home. After reaching home, he had lain there. He did not receive any treatment. He was at home till 2:00 to 2:30.

142.4 Thereafter, two to four people took him from his house towards the S.R.P. Quarters and were saying that if the dispensary is open, they would get him examined. Near the S.R.P. Quarters, the S.R.P. men had driven them away and told them they would not be taken inside. Therefore, from there they had gone to Gauriben's terrace in Jawannagar and were sitting there.

142.5 Thereafter, he came to know that mobs had entered Hussainnagar and had resorted to large scale vandalism and were burning houses.

142.6 In this manner, while they were on the terrace, it became evening. Thereafter, even from the terraces of Gangotri, they were driving away the Muslims and were saying "escape from the rear side", due to which he had gone on the rear side with other Muslims. In this manner they reached upto Teesra Kuva where there was a huge mob, which he had seen. The people in the mob had swords and other such weapons. Hence, from that place they returned to Jawannagar. At this time a mob also came near the S.T. Workshop, therefore, they all went to where the water tank of Gangotri and Gopinath is situated.

142.7 The mob which came from the side of the S.T. Workshop, came to where they were, and started assaulting and hacking and poured kerosene and petrol on all of them and then set them ablaze.

142.8 In this manner the mob had thrown kerosene and petrol on them and set them ablaze, wherein he had sustained burn injuries on his right hand, the right side of his chest, on his stomach as well as both of his legs. After this, he somehow managed to go home. He does not know what the time was, but thereafter he had remained at home. Later on at night, upon the police vehicles coming, his paternal uncle, his father and his brother came to his house to take him. When they came to take him he was slightly conscious, but thereafter he became unconscious and when he regained consciousness, he was at the Vadilal Hospital where he was treated.

142.9 He had taken treatment at the Vadilal Hospital for about nine months and three days. For a period of six months, the hospital people had not paid any attention to him.

142.10 He had seen the different mobs mentioned by him and the mobs had inflicted injuries on him during this incident, but he does not know any person in the mobs.

142.11 At the time of the incident, the police used to come to the hospital to record his statement. However, they used to ask his name and address and go away. The police were not recording his statement by writing down what he was saying. The police had come like this on two occasions.

142.12 CROSS EXAMINATION: In the cross-examination of this witness, he has denied that during the entire period when he was in the hospital, the people from the Muslim community, the people from the Jamaat as well as the Committee were coming there. The witness has voluntarily stated that only his father and his brother were with him. He has stated that he has not stayed at the relief camp and that he had not talked with his father and his brother with regard to the incident while he was at the hospital.

142.13 The witness has further stated that from 28.2.2002, till he was deposing before the court, during the entire period, he has not received any information about any proceeding before the Supreme Court or any other voluntary organization. In his cross-examination, it has further come out that the police were not recording his statement, but were only asking his name and address and were going away and that he knew this fact right from the time when the police had come to the hospital. The witness has admitted that despite it being so, till date, he has not stated this fact regarding the police not recording his statement and only asking his name and surname and going away, anywhere, except for the first time before the court. The witness has denied that apart from the police, the executive magistrate had also come to record his statement. At this stage, the learned advocate for the defence has sought to produce a dying declaration dated 4.3.2002 recorded by Shri K. P. Shah, Executive Magistrate for the purpose of cross-examining the witness. Upon being shown the document, the witness has stated that he does not know that a Magistrate by the name of Shri K. P. Shah had visited the hospital and had recorded his dying declaration. The witness

states that he is not aware that Shri K.P.Shah had recorded his statement and that he had put his thumb impression below the same. Upon being shown the thumb impression below the document, the witness has stated that he cannot say that the thumb impression is his. The document has been exhibited as Exhibit-1066. [Considering the fact that the witness has stated that he is not aware of any such statement of his having been recorded by the Executive Magistrate as well as the fact that he has not identified his thumb impression below the same, it is surprising that the document has been admitted in evidence and has been exhibited as Exhibit-1066, inasmuch as the witness has not proved either the contents of the document or his thumb impression below the same.]

142.14 In his cross-examination, the witness has admitted that the incident which had taken place in the morning was the one where he had sustained a bullet injury and the second incident took place in the evening. The witness has stated that the bullet with which he was injured was a police bullet and that he was not injured in private firing. The witness has denied that the mob had tried to set his house on fire during which, he had sustained burn injuries.

142.15 The contents of the dying declaration Exhibit-1066, namely, the questions and the answers are read over to the witness. The witness has stated that he does not remember as to whether he was occupying bed No.5 in the Hand Surgery Department of the V. S. Hospital. The witness has voluntarily stated that all that he clearly remembers is that he was at the V. S. Hospital. The witness has denied that he had not told Shri K. P. Shah, Executive Magistrate the fact regarding his having

a garage and has voluntarily stated that he has not recorded his statement at all, and hence, such question did not arise.

142.16 The witness is read over all the questions in Exhibit-1066. He has denied that he had given the answers to the questions as recorded therein and thereafter, he had put the impression of his left thumb thereon.

142.17 The witness is confronted with his statement dated 1.3.2002 recorded by the PSI, Naroda Police Station, wherein he had stated that on 28.2.2002, communal riots erupted in Ahmedabad city due to which, at around 10 o'clock, a riotous mob had rushed into Jawaharnagar Chhapra due to which the people in the mob started entering the houses in Jawaharnagar Chhapra and started damaging and ransacking them and setting the houses on fire, due to which he tried to flee from his house, whereupon, a bullet scraped through his side during the firing and while trying to run from there, as the houses were on fire, the clothes that he was wearing caught fire and he had sustained burn injuries in different degrees on the face and his body and he ran from there and went towards the Noorani Masjid and that he had further stated therein that he was admitted in the Hand Surgery Ward and at present, he was fully conscious and was under treatment and that since there was firing from the mob and he had sustained bullet injury, he did not know any name or surname.

142.18 In the cross-examination of the witness, it has come out that Gafurbhai's house is the first house when one comes from outside. The witness has stated that he cannot say the exact time when he was injured by the bullet, but it was

approximately from 10:00 to 10:30 in the morning. The witness has stated that his house is located in Lane No.4, Jawannagar and cannot even approximately say as to at what time he had reached his house. The witness is cross-examined as to in what manner he was brought home. The witness is confronted with his statement dated 7.3.2002 recorded by the police to the effect that he had stated therein that at around 11:00 to 11:30, a huge mob of people came shouting and pelting stones and the police had released tear gas and resorted to firing and that the mob started damaging the houses and setting them on fire and in the police firing, he was injured by a bullet on his side and had sustained injury. Upon seeing the mob, they, that is, the residents of that area started fleeing towards Gangotri Society behind Jawannagar, where also there was a huge mob and they were surrounded from all four sides and the people in the mob started pelting stones and resorted to arson and sprinkled kerosene and set them ablaze and he too had sustained burns.

142.19 The witness is sought to be contradicted as to his statements dated 1.3.2002 and 7.3.2002 to the effect that he has not stated that he had come out near Gafurbhai's house on the road as stated by him in paragraph 3 of his examination-in-chief. The witness is further sought to be cross-examined with regard to certain facts deposed by him in paragraph 4 of his examination-in-chief; however, the same cannot be said to be an omission in the nature of contradiction, and hence, ought not to have been permitted to be put to the witness. The witness is further sought to be contradicted as to his police statements dated 1.3.2002 and 7.3.2002 to the effect that he had not stated the contents of paragraph 5 in both the police

statements, however, it appears that the omission which is sought to be brought out is not wholly correct, inasmuch as, the witness has deposed with regard to being injured on his left side with a bullet and has also referred to being injured in the police firing. The witness is also sought to be contradicted as to his previous statement recorded by the police to the effect that he had not stated the contents of paragraphs 6, 7, 8 and 9 of his deposition in both the police statements. Insofar as paragraph 9 of his examination-in-chief is concerned, it appears that the witness did state before the police that they had fled towards Gangotri Society.

142.20 The witness is confronted with his police statements to the effect that he had not stated the facts stated in paragraph 9 of his deposition, wherein he has stated that they had gone on the terrace in the evening whereafter the Muslims were driven out from the terraces of Gangotri and told to escape from the rear side, and hence, he too had gone with other Muslims and had reached till Teesra Kuva, where they had seen a huge mob with swords and other weapons and from there, they had returned to Jawannagar, at which point of time, a mob had also come from near the S.T. Workshop and all of them were cornered near the water tank at Gangotri and Gopinath. Similarly, the witness is also confronted with his previous statements to the effect that he has not stated the facts stated in paragraph-10 of his examination-in-chief, viz. that the mob started cutting and killing them and pouring kerosene and petrol upon them and set them ablaze.

142.20 [The witness in his statement dated 7.3.2002 has stated facts regarding kerosene and petrol being poured upon

all and being set ablaze].

142.21 The witness is also cross-examined to the effect that he has not stated the facts stated in paragraph 11 of his examination-in-chief, wherein he has narrated that he had also sustained burn injuries on his right hand, chest, abdomen as well as legs and that thereafter, he had returned home and upon the police vehicle coming, his family members had come to take him with them at which point of time, he was slightly conscious, but thereafter he had become unconscious in any of his statements.

142.22 The witness is confronted with paragraph 12 of his examination-in-chief to the effect that he has not stated the facts stated therein in his previous statements recorded by the police. However, the averments made therein only relate to his being treated at the Vadilal Hospital and the period of his hospitalization, which in no manner can be said to be an omission amounting to a contradiction. The witness has, however, voluntarily stated that the police have actually not recorded his statements on either of the two days and that they had only asked his name and address and had gone away, and hence, there is no question of recording anything in the statement. The witness has denied that he has not sustained any bullet injury and that he has not been set ablaze after pouring petrol and kerosene. The witness has admitted that whatever has been stated by him before the court, has been stated by him for the first time and that the police has not recorded his statement and had only taken his name and address and had gone away and that he has not stated the facts regarding the incident to the police or any other

authority. The witness has denied that he is falsely deposing at the instance of their institution or their Jamaat.

142.23 To prove the omissions and contradictions in the testimony of this witness as to his statement dated 1.3.2002 recorded by Shri Katara (deceased), the Investigating Officer PW 274 Shri K.K. Mysorewala has been cross examined by the defence.

142.24 In the cross-examination of PW-274 Shri Mysorewala, it is brought out that this witness has stated before Shri Katara that on 28.2.2002, communal riots had erupted in Ahmedabad city due to which, at around 10 o'clock in the morning, the riotous mob had entered Jawaharnagar hutments and the people in the mob started entering the houses in Jawannagar hutments, damaging them and burning them due to which, he tried to flee from his house and a bullet grazed his left arm and upon trying to flee from there, since the houses were set on fire, the clothes that he had worn, had caught fire, due to which he had sustained burn injuries in varying degrees on his face and his entire body and he fled from there and gone towards the Noorani Masjid. That he has been admitted in the Hand Surgery Ward for treatment and that at present, he is totally conscious and under treatment and that there was firing from the people in the mob, due to which he had sustained bullet injury and he did not come to know the names and addresses of any of those people.

142.25 In the cross-examination of the Investigating Officer, it has been brought out that the witness has not stated that at that time, he was running a scooter garage by the

name of Punit Auto Garage near Thakkarbapanagar, as stated by him in paragraph 3 of his deposition and that he had not stated the facts stated by him in paragraphs 6, 7 and 8 of his examination-in-chief in his statement recorded by Shri Katara. It has further come out that the witness in his statement recorded by Shri Katara had not stated that on that day, he was at home and that on that day in the morning at around 10:00 to 10:30, he had come out on the road near Gafurbhai's house, where at present the Naroda Patiya Police Chowky is situated, as stated by him in paragraph 4 of his examination-in-chief.

142.26 The Investigating Officer has been cross-examined as regards the contents of paragraph 5 of the examination-in-chief of this witness and he has denied that such facts have not been stated by the witness. The Investigating Officer has stated that the witness in his statement had referred to his being injured by a bullet on his left arm and that he had sustained such injury in firing. However, the remaining facts are not there in his statement. The Investigating Officer has further admitted that the witness, in his statement recorded by Shri Katara, has not stated the contents of paragraphs 9 and 10 of his examination-in-chief. In the cross-examination of the Investigating Officer, a contradiction is sought to be brought out as regards the last two lines in paragraph 12 of the examination-in-chief of this witness, wherein he has stated that for six months, the hospital people had not paid attention to him, which the Investigating Officer has admitted that the witness had not stated before Shri Katara. In the opinion of this court, the above fact cannot be said to be an omission which is so material so as to amount to a contradiction, and hence,

such a question ought not to have been permitted to be put to the Investigating officer.

142.27 It appears that while cross examining PW 276 Shri P.U. Solanki, the assignee officer, due to inadvertence, part of the cross-examination of this witness has been recorded in continuation with the cross-examination relating to Parveenbanu Kureshi (PW-152). Therefore, it appears that the contents of paragraph 71 of the deposition of PW-276 relate to the statement of this witness dated 7.3.2002 recorded by him.

142.27 The assignee officer has been read over the contents of paragraph 29 of the deposition of PW-154 Ahmadbadshah Mehboobhussain and he has admitted that the witness had stated before him that he had not gone for his job and was present at home and at that time, in the morning at around 11:00 to 11:30, a huge mob came to where he was residing at Saijpur Patiya and the people in the mob started shouting and pelting stones and there was intensive stone pelting and the policemen released tear gas and resorted to firing, despite which, the mob being huge did not disperse and damaged the houses and started setting them on fire and in the police firing, he had sustained a bullet injury on his left arm and was injured and after seeing the mob, they, that is, the residents of the area started fleeing and ran towards Gangotri society situated behind Jawannagar and there also, there being a huge mob of people, they were surrounded on all four sides and the people in the mob had pelted stones and set ablaze and were sprinkling petrol and burning them and he too was burned.

142.28 In the cross-examination of the assignee officer, it has been brought out that this witness had not stated before him that at the relevant time, he was running a scooter garage by the name of Punit Auto Garage near Thakkarbapanagar. The last three lines of paragraph 4 of the examination-in-chief of this witness are read over to the assignee officer, wherein the witness has stated that on that day, in the morning at around 10:00 to 10:30, he came on the road near Gafurbhai's house where at present Naroda Patiya police chowky is situated and he has stated that these facts have not been stated by the witness in the statement recorded by him. The contents of paragraph 5 of the examination-in-chief of this witness are read over to the assignee officer and he has stated that this witness has not stated such facts in his statement dated 7.3.2002. The assignee officer, however, has voluntarily stated that the witness has stated before him that he had sustained injury when the policemen were firing and except that, no other facts are stated. The assignee officer has further admitted that the witness had not stated the facts stated in paragraphs 6, 7 and 8 of his examination-in-chief in his statement dated 7.3.2002 recorded by him.

142.29 The assignee officer has further admitted that part of paragraph 11 of his examination-in-chief, wherein he has stated that thereafter, in some manner or the other, he had come home and does not know as to what was the time, but thereafter he had stayed in his own house and at night, upon the police vehicle coming, his paternal uncle, his father and his brother came to fetch him from his house and when they came to take him, he was slightly conscious, but thereafter he became unconscious, have not been stated by him in the

statement recorded by him.

142.30 The assignee officer has also admitted that the contents of paragraph 12 of his examination-in-chief wherein he has stated that he was treated at the Vadilal Hospital for nine months and three days, however, for six months, the hospital people had not paid any attention to him.

142.31 [From the questions put to the assignee officer in connection with the above referred facts stated in paragraph 12 as well as in connection with the witness having a scooter garage by the name of Punit Auto Garage at the relevant time, are not omissions which can be said to be so material as to amount to contradictions and therefore, ought not to have been permitted to be put to the witness].

142.32 The assignee officer has further admitted that the statement dated 7.3.2002 was recorded in his presence and that he had recorded it in terms of what was stated by the witness and that he had also explained the facts to the witness. He had not just asked the witness his name and address and gone away, but had recorded the statement as stated by the witness.

142.33 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is stated to have seen the mobs in the morning as well as in the evening and has sustained injuries. Though he is residing in the area since twenty years, he has not named any accused. It was submitted that many accused are residing in that area, despite which this witness has not named them, which indicates that it was not

possible for anyone to identify anyone in the mob on that day, and, therefore, whenever the statements are recorded by the police in the hospital, including the dying declarations, no one has named any accused. It was further pointed out that according to this witness, he was injured in the police firing and not in a private firing. It was submitted that this witness does not implicate any accused in connection with the incident and upon appreciation of the evidence; the question that arises is whether he received burn injuries at home or at the passage of the water tank.

142.34 ANALYSIS: From the testimony of this witness, it emerges that he had sustained injuries in two stages: firstly, in the morning, in the police firing and secondly, in the evening. The witness has categorically stated that he was injured in police firing and not private firing. Since, the witness is an injured witness, who has sustained bullet injuries in the firing; his testimony that he was injured in police firing would carry more weight than the testimonies of other witnesses who had merely witnessed the incident. Insofar as the statement dated 1.3.2002 recorded by Shri Katara is concerned, on the face of it, it does not appear to have been correctly recorded. A perusal of the statement as brought on record in the cross-examination, shows that it has been recorded therein that at around 10 o'clock, a riotous mob had charged into Jawaharnagar Chhapra (hutments). The people in the mob set the houses in the Jawannagar hutments on fire and entered the houses and started breaking and damaging them. Therefore, he tried to flee from his house, whereupon, due to the firing a bullet scraped through his arm pit and while trying to flee from there, since the houses were aflame, the clothes that he was

wearing caught fire and he had sustained burn injuries in different degrees on his face and his body and he fled from there and went towards the Noorani Masjid. From the evidence on record, there is nothing to show that the mobs had entered Jawannagar at 10 o'clock in the morning, nor is there any evidence to the effect that there was firing at Jawannagar at that time. Evidently, therefore, the witness is justified in saying that the statement has not been recorded as stated by him. The overall evidence on record supports the version given by the witness as against what has been recorded by the assignee officer.

142.35 Insofar as the statement dated 7.3.2002 is concerned, a perusal of the testimony of PW 276 Shri P.U. Solanki, the assignee officer, shows that he has recorded identically worded statements of several witnesses on 6th and 7th March, 2002, which gives reason to believe that the statements were not recorded as stated by the witnesses. No reliance can, therefore, be placed on such incorrect police statements to contradict the witness.

142.36 This witness is an injured witness. The testimony of this witness regarding having sustained a bullet injury in the police firing and burn injuries in the evening incident is corroborated by the medical case papers at Exhibit 285. The history recorded in the injury certificate is "*burns during riots on 28/2/02 at 5 pm by opposite mob by throwing inflammable material over body. H/o burns over both upper limb and lower limbs.*" The certificate further refers to burns on the chest. The medical case papers further refer to a bullet injury on the left side of the upper part of the chest.

142.37 Considering the overall testimony of this witness, he comes across as a truthful and trustworthy witness. The version given by him is natural and there are no exaggerations and embellishments. From the testimony of this witness, it emerges that at around 10:00 to 10:30 in the morning, the Noorani Masjid was being vandalized and there was police firing, wherein he sustained a bullet injury on his left arm pit. He was lifted and taken home, where he stayed till 2:00 to 2:30. Thereafter, for the purpose of providing medical treatment, an attempt was made to take him to the S.R.P. Quarters, but they were not allowed to enter. From there, they went to Gauriben's terrace at Jawannagar. In the evening they went towards Teesra Kuva, but there was a huge mob there, due to which, they started coming back towards Jawannagar, when another mob came from the side of the S.T. Workshop. To escape from the mob, they went inside the passage of the water tank where they were assaulted by the mob and set ablaze after sprinkling kerosene and petrol on them. The witness has sustained burn injuries and somehow managed to reach his house in Jawannagar which is quite close to the place where the incident had occurred. The witness appears to have given a true account of the incident and has not named any accused. His testimony appears to be credible and truthful and there is no reason to disbelieve the version given by him.

143. **PW-155 Shahenazbanu Munavarbhai Shaikh**, aged 40 years, has been examined at Exhibit-1067. The witness has deposed that she is residing at *Jawannagar, Naroda Patiya* since the last twenty years. She has stated that

Jawannagar and Jawaharnagar are one and the same. In the year 2002, she was residing there along with her husband and her children. She had three sons and two daughters.

143.1 The witness has deposed that the incident must have taken place approximately eight years ago. She does not remember the exact date. On that day, there was a call for Gujarat Bandh. On the day of the incident, she was at home. At that time in the morning, there were disturbances on the road outside, where there was stone pelting and assaulting. Her husband came home and told her that there was stone pelting and ransacking at the Noorani Masjid and hence, she came to know about it.

143.2 At around 4 to 5 o'clock, the mobs came to Jawannagar and were pelting stones, they had broken the Jawannagar wall and had come inside. Hence, they fled and went to a terrace of Gangotri Society, however, they were asked to get down from the terrace and they had fled towards the S.R.P. Quarters.

143.3 At the S.R.P. Quarters, they were not permitted to enter and were driven away. While they were coming back, they were caught between the mobs. In the stampede which ensued on account of the mobs, she, her husband and their children got separated from each other.

143.4 The people in the mob threw petrol, acid, etc. on them and set them ablaze. She was burnt. She had sustained burn injuries on her back, both her hands and her knee. Thereafter, she went from there to a terrace behind Gangotri

Society and sat there.

143.5 Thereafter, during the night time, the police came and took them to the Shah Alam Relief Camp, where she took treatment for eight days. However, thereafter, she was taken to the V.S. Hospital and provided treatment. She was given treatment for about two and a half months.

143.6 The witness has stated that she does not know any of the persons in the mobs which she has referred to. The police has recorded her statement. She has stated that the police had asked her questions in Hindi and she had answered them in Hindi.

143.7 CROSS EXAMINATION: This witness in her cross-examination has admitted that the police had recorded her statement on 10.3.2002. The witness has denied that after her statement was recorded, the police had read it over to her and thereafter had obtained an impression of her right hand thumb at the bottom of the statement. The witness is shown the thumb impression at the bottom of the statement and she has stated that it is not her thumb impression

143.8 The witness has admitted that she has stated before the police that on 28.2.2002 in the communal riots which had erupted in Ahmedabad city, at the hutments in Jawaharnagar near S.T. Workshop.. (illegible), a riotous mob with sharp edged weapons was rioting at Naroda Patiya as well as the Noorani Masjid, etc. and had set their houses on fire and in the stampede amongst the residents of Jawaharnagar hutments, she, her husband and children had fled towards

Naroda Patiya to protect their lives. In the meanwhile, at 6:30 in the evening, she had fled with her family towards Naroda S.T. Workshop, when a riotous mob had stopped her and had poured kerosene over her body set her back on fire due to which she had sustained burn injuries on her back and had sustained simple burn injuries on the elbows of both her hands. During this time, her husband took the children and escaped from the middle of the riotous mob, and in the meanwhile, because the police vehicles were present, they escaped and on the same day, they were taken to a safe place at Shah Alam camp in the police vehicles. This part of the testimony of the witness is inadmissible in evidence inasmuch no part of the testimony of the witness is sought to be contradicted by it.

143.9 The witness has stated that at the time of the incident, she was residing in the second lane of Jawannagar. At the time of the incident, she had not seen any of her Muslim acquaintances. At that time, she knew the Muslims residing in lane No.2, namely, Halimbhai Shehnazapa, Mumtazkhala, Kherunapa, etc. She does not know the names of the male members of their family. She had admitted that lane No.2 is situated in the Jawannagar khada (pit). She has voluntarily stated that earlier it was known as khada and now it is known as Jawannagar.

143.10 The witness has admitted that she could see the Uday Gas Agency road and the pit area from her house. She has admitted that on the day of the incident, till 4 to 5 o'clock she was at home, and till then, people had not caused any damage to her house. She has admitted that before 4 to 5 o'clock, no damage was caused at Jawannagar.

143.11 The witness has admitted that at around 4 to 5 o'clock, for the first time, the mob of people had broken the wall to come inside Jawannagar. The witness has admitted that she had not seen any truck in the Jawannagar pit but has clarified that she has not seen it but she cannot say as to whether or not it was there. The witness has stated that she cannot say whether when she went to the terrace of Gangotri Society, the sun was there in the sky. She has admitted that at that time, it had become dark. The witness has admitted that it had become dark, thereafter everyone was getting down in Gangotri Society, and hence, she also had come down. The witness has admitted that she was at home at 5 o'clock and till then she had not seen anyone on the Uday Gas Agency road.

143.12 The contents of paragraph 3 of her examination-in-chief from the second to the last line are read over to the witness to the effect that she has not stated such facts in her statement recorded by the police. The contents of paragraphs 4 and 5 of the examination-in-chief of the witness are read over to her to the effect that she has not stated such facts in the statement recorded by the police. The witness has denied that at the instance of voluntary Muslim organizations and the people of their Jamaat, she was falsely deposing before the court and that she has not seen the incident and has not sustained any injury in the incident.

143.13 To prove the omissions and contradictions in the testimony of this witness, PW-274 Shri Mysorewala has been cross examined by the defence in connection with the statement dated 10.3.2002 recorded by Shri Katara

(deceased).

143.14 PW-274 Shri Mysorewala is cross-examined as regards the contents of paragraph-3 of the examination-in-chief of this witness, wherein she has, *inter alia*, stated that on that day, there was a call Gujarat Bandh and she was at home. At that time, in the morning, there were riots on the road outside. There was stone throwing and assault. Her husband had come home and informed her about the stone pelting and damaging of the Noorani Masjid, and hence, she came to know about it. The Investigating Officer has denied that these facts had not been stated by the witness before Shri Katara and that the witness had stated that there were riots on the road and that there was stone pelting and assault, whereas the remaining facts have not been stated by the witness.

143.15 In the cross-examination of the Investigating Officer, it has come out that the witness has not stated the facts stated in paragraph 4 of her examination-in-chief in her statement recorded by Shri Katara. As regards the contents of paragraph 5 of her examination-in-chief, the Investigating Officer has denied that the witness has not stated these facts before Shri Katara and has stated that the witness had stated that the mob had stopped her in the middle and that her husband together with the children had escaped from the middle of the riotous mob. The remaining facts have not been stated before Shri Katara.

143.16 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is residing in the second lane of Jawannagar since twelve years prior to the incident.

The witness is an injured witness who has stated that when they came down from Gangotri Society, it was dark and thereafter, the incident has taken place. That till 5:00 p.m., there was no disturbance in Jawannagar. It was submitted that this witness is a local resident, but has not implicated any of the accused.

143.17 ANALYSIS: This witness appears to be a truthful witness and the omissions sought to be brought out in her cross-examination to contradict her testimony are not material omissions as would impeach the credibility of the witness. The witness is an injured witness. She has not named any accused. From her testimony it emerges that the mob broke the Jawannagar wall and entered Jawannagar at about 4:00 to 5:00 p.m. in the evening. The fact that in her cross-examination, the witness has admitted that when she was on the terrace of Gangotri it had become dark and it was after dark that everyone had got down from Gangotri, and therefore, she too had got down, does not in any way help the defence for the reason that the witness has deposed that she had gone on the terrace of Gangotri when the Jawannagar wall was broken. But thereafter, they were made to come down from the terrace, and hence, they had fled towards the S.R.P. Quarters. They were not allowed to enter the S.R.P. Quarters and were driven back, when they were caught in the middle of the mob. The mob poured inflammable substances on them and set them ablaze, whereafter she went to the terrace of Gangotri Society. Therefore, when she went to the terrace, for the second time, it had become dark. The witness has stated that she did not know any person in the mob, and has stated that she could not recognize anyone because it was dark.

143.18 This witness has not named any accused, and hence, her testimony is relevant only for the purpose of ascertaining the manner in which the incidents had taken place.

144. **PW-157 Mahammadsafi Allabax Mansuri**, aged 52 years, has been examined at Exhibit-1108. The witness has deposed that he has been residing at *Hussainnagar* since about the last twenty years. In the year 2002, his family was comprised of him, his wife Rasidabanu, his sons Mahammadyasin and Mahammadyamin, his daughter-Yasmin and the youngest son Sahejad, were all residing together.

144.1 In the year 2002, he was engaged in the business of making quilts and pillows at *Naroda Baithak, Payalnagar Road*, in a shop, in the name and style of Rajasthan Mattresses.

144.2 In the year 2002, his shop was looted and set on fire. He is a native of *Village Bheruda, Taluka Medata, District Nagor, Rajasthan*. He has studied up to the 2nd Standard in Gujarati medium. He was residing in Ahmedabad city, Gujarat State since the last about forty seven years.

144.3 The incident took place on 28th February, 2002. On that day, there was a call for Gujarat Bandh, which he came to know on the previous day, and hence, he had not opened his shop in the morning. He was at home till 9:30 in the morning and at around 9:00 to 9:30, he had heard that there was a mob outside which was ransacking the shops near the Noorani

Masjid and burning the shops and houses. Upon hearing this, he came out to watch on the road. Outside his house at the entrance, there is *Chetandas-ni-Chali*, where at present a police chowky has been set up. He had come near Chetandas-ni-Chali to look.

144.4 Upon coming out, he saw that there was a huge mob near the Noorani Masjid. Another mob was coming from the direction of Krushnanagar and one mob was coming from the direction of Natraj Hotel. He had seen the mob coming from Natraj as well as from Krushnanagar. At the Noorani Masjid, the mob was pelting stones and ransacking it. That mob at the Noorani Masjid till the S.T. Workshop was comprised of scattered groups. He saw that in the mobs from Natraj and Krushnanagar, people were armed with weapons like swords, dharias, rods, pipes, etc. and some of the members of the mob had tied saffron coloured bands on their foreheads and around their necks.

144.5 In this mob, **Bipin Autowala** (A-44) was present. The police was there and behind the police, there was **Kirpalsing (A-62)**, who was a member of the mob at the S.T. Workshop, Opposite the Noorani Masjid. Guddu Chharo and Suresh Langdo were also present in this mob near the Noorani Masjid. While ransacking was going on near the Noorani Masjid, the Muslim people started gathering near Chetandas-ni-Chali which is on the opposite side of the Noorani Masjid.

144.6 At this time, mobs of Hindus started pelting stones at the Muslims. The stones were pelted from the open space where presently, there is a police chowky. At this time, the

police released tear gas shells and thereafter, indiscriminately fired at the Muslims. P.I. Shri Mysorewala and Shri Gohel, both were present there with their vehicles. At that time, there was a worker with a saffron scarf around his neck with the police and the witness felt that he must be a worker of the Bajrang Dal or the Vishwa Hindu Parishad. This person was pointing out to the police the direction in which they should shoot and the police was firing according to his instructions.

144.7 In this firing, four to five persons were injured by bullets on the spot, in front of his eyes. Abid, Khalid, Piru Painter and Kaladiya were amongst the persons who were injured in this firing. Due to the firing, they were all shocked and started running hither thither in their lanes and he too had also come inside the lane. However, he had heard that thereafter also, the firing had continued.

144.8 At this time, it must have been approximately 12:00 to 12:30. He had come inside the lanes and had gone back to his house at Hussainnagar. After returning home, he took out his family from his house, locked his house and together with his family stealthily, went around in the lanes till around 4 o'clock.

144.9 Till around 4:00 to 4:30 in the evening, they were stealthily roaming around in the lanes, and in the meanwhile, at around 1:30 to 2:00, both the PI of Naroda Police Station and other staff members were standing near Lane No.5, Hussainnagar. The members of their community, Dilshadkhan and Basirbhai went to the police and requested them to have mercy on them and stop the riots, when Mysorewala had told

both of them that they had pulled two Hindus and brought them inside and that they should return both of them. Whereupon, Dilshadkhan and Basirbhai told them that no such incident had taken place and that they could investigate on their own, whereupon both the policemen talked with each other and then, all of them started laughing. At that time, he was present in Lane No.5 at a little distance from them.

144.10 After hiding in this manner till around 4:00 to 5:00 in the evening, they started going towards the S.R.P. Quarters which are situated near their houses. From the S.R.P. Quarters compound wall, there is a way for going inside the S.R.P. Quarters. They requested them to permit them to go inside from that way and similarly, other Muslims were also requesting them to let them enter the S.R.P. Quarters. At that time, the S.R.P. PSI Shri Ketan Parikh and other S.R.P. personnel were there, but did not let them go inside. They fervently beseeched them, whereupon they started beating them with the butt of the guns and told them that what the Muslims had done at Godhra was going to happen to them there.

144.11 Hence, they sat outside the S.R.P. compound wall near the chawls and huts near Jawannagar. At this time, it was around 4:30 in the evening.

144.12 After a little while, a mob came from the side of Uday Gas Agency which was comprised of people who were armed. In this mob, he saw **Bipin Autowala (A-44), Guddu Chhara (deceased), Kirpalsing (A-62) and Suresh Chhara (A-22)**. Out of these people, some of them climbed on the

terrace of Tiniya Marathi's house near the S.R.P. compound wall and started pelting stones at them, which included women, men and children. According to this witness, if they had been allowed to sit there, possibly the incident that occurred may not have taken place. However, the S.R.P. people, in connivance with the people in the mob, had planned in one way or the other to get all of them into the open field which is behind Gangotri and Gopinath Society, and hence, stones were pelted on them with a view to drive them into an open space.

144.13 The witness has deposed that Ketan Parikh had also pointed a pistol at them and told them to go to the rear side. At this time, Ketan Parikh had also lobbed tear gas shells. Upon seeing all this, he had felt that there was a conspiracy by all of them to send them to the open ground at the back.

144.14 Upon such shells being burst and guns being pointed at them, all of them climbed the staircase at Jawannagar and went on the terrace of Gangotri Society on the rear side. He too took his family and in this manner, went to the terrace of Gangotri Society.

144.15 At this time, a sweeper by the name of Keshabhai Popat was standing in the lane of Gangotri Society and he too was sending everyone on the rear side. His daughter was very frightened and her health was deteriorating, and hence, he asked for water from Kesha Popat because his house was near the S.R.P. compound wall. He had also asked for a shelter from Kesha Popat as well as asked for drinking water; however, he (Kesha Popat) told them that they should go to the rear side,

where all arrangements were made for them. Therefore, the witness had told him that when they were not in a position to escape from there, how would it be possible for them to escape from the open field? However, Kesha Popat insisted that they should go on the rear side. The witness was suspicious about what he was saying, and hence, they had not gone on that side.

144.16 At this time, other Muslims after hearing Kesha Popat's words, tried to go to the field on the rear side, however, he had stopped them. However, some people had already gone there and he could not stop them. Out of those people who have already gone, many of them died which he had learnt afterwards. At this time, it must have been around 5:30 in the evening. Like Kesha Popat, certain S.R.P. personnel were also insisting that they should go on the rear side.

144.17 They went near Gangotri Society and from there, they returned to Lane No.4, Hussainnagar. One Umrudin Mansuri's two storeyed house is situated in Lane No.4, Hussainnagar, where many Muslims were hiding. The Muslims were hiding on the ground floor, the middle floor as well as on the terrace. From there, some of the Muslims shouted to them and called them, and hence, they had gone to the terrace of Umrudin's house.

144.18 When they went to the terrace, some of the Muslims had mobile phones and were calling the police control room and the fire brigade; however, all those services were shutdown on that day. Hence, they did not get any help from the police or the fire brigade. They stayed on the terrace till

late at night when the police came and took them in a bus to the Shah Alam relief camp.

144.19 The witness has further deposed that while on the way to the relief camp, they had seen burning dead bodies on the road.

144.20 The witness has deposed that in the riots, his house and his shop were looted and burnt. He had stayed at the relief camp for about three and a half months. While they were at the relief camp, he had heard about the incidents of killing, burning and rape.

144.21 The police had recorded his statement in connection with the incident. The police had merely come by way of formality and that the witness felt that they were not recording their statements in true spirit.

144.22 Sometime in the year 2008, he came to know that the SIT was going to investigate and that they would investigate impartially, and hence, he had made an application to the SIT. His statement was recorded by the SIT, Gandhinagar, where he had given an application. At Gandhinagar, he had stated everything that he knew about the incident. The SIT people had recorded his statement on the second occasion to inquire about Haresh Chhara. On another occasion also, an explanatory statement of his was recorded in connection with Kirpalsingh.

144.23 The witness has stated that as per his information, Guddu Chhara is dead and has stated that he will be able to

recognize Bipin Autowala, Suresh Langda and Kirpalsingh despite the fact that a long time has elapsed. The witness has thereafter identified Kirpalsingh (A-62) and Suresh Langda (A-22) before the court. Bipin Panchal had made an exemption application and hence, he is deemed to have been identified. Thus, the witness can be said to have identified all the three accused.

144.24 CROSS EXAMINATION: This witness has been extensively cross-examined with regard to the topography of the area which runs into several paragraphs.

144.25 In his cross-examination, the witness has denied that on the entire day of the incident, he had not seen the compound wall of Jawannagar khada. The witness has stated that he has seen the compound wall from Jawannagar. At the time when he had gone, he had gone through Jawannagar and while returning, he had come through Gangotri Society. When he was at Jawannagar, he had seen the compound wall being broken. The witness has admitted that when he went out at 4:00 to 4:30, a mob was breaking the wall. The witness has denied that when he entered Jawannagar and while he was there, he had not seen any incidents take place. The witness has denied that at that time, he had seen only stone pelting in Jawannagar. The witness has voluntarily stated that he had seen S.R.P. people pointing guns and lobbing tear gas shells. The witness has admitted that while he was at Jawannagar, except for the stone pelting, lobbing of tear gas shells by the S.R.P. and pointing guns, he had not seen any incident.

144.26 The witness has admitted that there may be a

discrepancy of a half an hour to an hour in the timing shown by him in his examination-in-chief with regard to different incidents. The time stated by him is not accurate, but is based on estimate. The witness has stated that on the day of the incident, he had come out at about 9:30 in the morning. He had come out in the open space near National Highway No.8, where at present there is a police chowky and was standing there. The witness has denied that on the day of the incident, he had stood at the same place for around half an hour, but has explained that he was not standing at one place and was standing at different places and that, he must have stood there for about two to two and a half hours.

144.27 In his cross-examination, the witness has stated that he has not noticed as to whether in the Hindu mob near the Noorani Masjid, there was any Muslim woman. The witness has voluntarily stated that there was a constable like woman in the mob near the Noorani Masjid; however, he does not know whether she was a Muslim. The witness has admitted that the mobs had pelted stones at Muslims. He has denied that in response thereto, the Muslims had pelted stones in retaliation for the reason that thereafter, the police had resorted to firing. The police had fired at the Muslims and driven them inside.

144.28 The witness has stated that the SIT had recorded his statement on 2.6.2008. In his cross-examination, it has come out that he had firstly seen Guddu near the Noorani Masjid. The witness is not aware as to in which mob Guddu had come, but when he saw him, he was near the Noorani Masjid. It was morning time. The witness has denied that thereafter, during the entire day, he had not seen Guddu Chhara and has

voluntarily stated that thereafter, he had seen him in the evening. In the morning, he had seen Guddu with Bipin Panchal and Suresh Chhara. The witness has admitted that he had seen only these three persons and no one else near the Noorani Masjid. The witness has voluntarily stated that he had seen the others near the S.T. Workshop. The witness has admitted that on the day of the incident, he had afterwards seen these three persons in the evening on Tiniya's terrace and thereafter, he had not seen them anywhere. The witness is confronted with his statement dated 2.6.2008 recorded by the SIT; however, no part of the statement is put to the witness to bring out any omission or contradiction in his primary statement, and hence, the same is not admissible in evidence.

144.29 The witness has denied that in his statement recorded by the SIT, he has not stated any facts regarding the mobs having gathered near the S.T. Workshop gate and the police having fired at the Muslims mob.

144.30 The witness has stated that he is not aware as to whether Shri Gondia had called for any police vehicles to rescue them or that any arrangement was made to take them to the camp. The witness has admitted that no person in his family has been injured in the incident. The witness is shown internal pages 230 and 231, Exhibit-47, which is a list of documents, submitted with the chargesheet, and he is shown the signature at the bottom of such document, which he has admitted to be his signature.

144.31 The learned Special Public Prosecutor has submitted that the printed complaints at pages 230 and 231 have been

included with I-C.R. No.177/02, which has subsequently been merged with I-C.R. No.100/02. Moreover, in the FIR Mark 264/14, there is a reference to the witness's complaint at Serial No.21.

144.32 The witness has stated that he is not aware that the document shown to him is his complaint. The witness has stated that as far as he knows, at that time, they were filling in the loss damage forms and he had also filled in such form and his signature was taken on such forms. The attention of the witness was drawn to internal pages No. 231 and 233 viz. the loss damage analysis form. The witness has denied that when the loss damage analysis form was filled up, he was absolutely healthy and has voluntarily stated that they were under shock. The witness has further stated that their signatures were being taken on several forms at the relevant time. The witness has denied that the complaint which was read over to him, had been dictated by him, but has admitted his signature thereon. The witness is shown two documents, one being a ready-made complaint and another being a loss - damage analysis form which is given combined Exhibit-1111. (It may be noted that despite the fact that the witness has not admitted the contents of the printed complaint, the same has been exhibited by the court.). The witness is thereafter examined with regard to the number of signatures that he had made in the camp etc.

144.33 The witness has denied that he has not given the names of Kirpalsingh and Suresh Langda before any authority prior to 2008 and has voluntarily stated that the police was not writing as stated by them. The witness has stated that prior to 2008, he has not made any complaint to any authority

regarding his complaint or statement not being recorded as stated by him. The witness has voluntarily stated that there was no one to take their complaint, no one was listening to them, and after the SIT came, their statements were recorded by the SIT.

144.34 The witness is shown the application Mark 644/36 and the contents thereof are read over to the witness. The witness has stated that he has not stated all the facts recorded in the application, but has admitted his signature thereon. The witness has voluntarily stated that the object of giving the complaint was to see that his statement is recorded by the SIT. The application is given Exhibit-1112. (From the deposition of the witness, it is evident that he has not admitted the contents of the application despite which, the same has been exhibited by the court.). Thereafter, the witness has been cross-examined with regard to the application as to who and how and in what manner it was written down. Several parts of the police statement of the witness, wherein there is a reference to the topography of the area, have been put to the witness. Since no part of this statement has been used to contradict the witness, the trial court ought not to have permitted the same to come on record, inasmuch as the same is clearly in violation of the provisions of section 162 of the Code.

144.35 Through the process of cross-examination, without putting any question to the witness regarding any omission or contradiction in his examination-in-chief, more or less the entire police statement of the witness has been brought on record.

144.36 The witness has denied that in his statement dated 13.4.2002, he has not stated the name of Kirpalsingh and has not attributed any role to him.

144.37 The witness has stated that while recording his statement, he did not have to ask Suresh Langda's name to anyone. The witness has admitted that in his statement, he has neither given the name of Haresh Chhara, nor attributed any role to him for the reason that he had not seen Haresh Chhara. The witness has denied that in this statement, he has not stated any fact regarding the Hindu mob having set the Noorani Masjid on fire and having pelted stones at the Noorani Masjid. The witness has admitted that when they went from Hussainnagar to Jawannagar, they had gone from near Tiniya's house. The witness has admitted that Tiniya's house is touching the S.R.P. compound wall. The witness has stated that when he passed from near Tiniya's house, he had not seen anyone inside or on his house. He has stated that subsequently, he had seen people on Tiniya's house. The witness has denied that he has not stated the fact regarding the people having climbed on Tiniya's terrace and having pelted stones from there in his statement dated 13.4.2002.

144.38 In his cross-examination, it has come out that the witness knew Guddu Chhara since many years, he did not go around with him, but he was residing in his area and therefore, he knew him. The witness has stated that he had heard that Guddu Chhara commits thefts in groups, namely, that he has formed a gang for the purpose of stealing. He has stated that he has never gone to Guddu's house and he has not seen his house. The witness is cross-examined with regard to the

topography of the area.

144.39 The witness has admitted that when the police vehicle came to take them, the police had come with a child with them. The witness has admitted that this child was entrusted to someone and that his hands and legs were burnt and that the police had seen the child crying amidst the dead bodies and the police had brought the child. The witness has admitted that in his statement dated 23.5.2002 recorded by the police, he had stated that he does not know as to who has committed loot of his house and has damaged his godown. The witness has denied that he has not given the names of the accused named by him in his examination-in-chief or attributed any role to him before the police. The contents of paragraph 2 of Exhibit-1111 are read over to the witness, who has stated that he has not stated these facts, but has stated that he had seen Bipin Autowala, Guddu Chhara and Suresh leading the mob on the day of the incident. He had not seen Haresh Chhara.

144.40 The witness has denied that he has not seen any of the accused at the time and place stated in his examination-in-chief and that at the instance of the people of his community, he was falsely deposing before the court. The witness has admitted that like him, many other people had come on the road to see what was happening. The witness has denied that Piru had sustained bullet injury in the lane of his house and has stated that he had sustained a bullet injury at the entrance of Chetandas-ni-Chali. The witness has denied that the Muslims who had sustained bullet injuries, except Piru, were injured at the entrance of their lane, opposite the S.T. Workshop and has

voluntarily stated that those who were injured by bullets in front of his eyes, they were all injured in the nearby area of Chetandas-ni-Chali.

144.41 The contents of paragraph 7 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statements dated 23.5.2002 and 14.9.2008. (It may be noted that the statement dated 23.5.2002 is in respect of the loss, damage analysis and the statement recorded by the SIT is a subsequent statement. Therefore, unless a contradiction is pointed out in the first statement, not stating facts which are already stated in the first statement, would not amount to a contradiction.)

144.42 The contents of paragraph 7 of his examination-in-chief, from the last line of page 3 till the end of the paragraph, are read over to the witness to the effect that he had not stated such facts in his statement dated 13.4.2002. The contents of the first four lines of paragraph 8 of the examination-in-chief of the witness are read over to him. The witness has admitted that in his statements dated 13.4.2002 and 23.5.2002, he has not stated any fact regarding accused Kirpalsingh. The witness, however, has denied that in his statement dated 2.6.2008, recorded by the SIT, he has not stated these facts. The last four lines of paragraph 8 of the examination-in-chief of the witness are read over to him, wherein he has stated that ransacking was going on near the Noorani Masjid, in the meanwhile, the Muslims had started gathering near Chetandas-ni-Chali which is on the opposite side of the Noorani Masjid, to the effect that he has not stated these facts in his statements dated 13.4.2002, 2.6.2008 and

14.9.2008. In the opinion of this court, the fact regarding the Muslims having gathered near Chetandas-ni-Chali cannot be said to be so material an omission so as to amount to a contradiction.

144.43 The contents of paragraph 9 of his examination-in-chief, from the third line to the last line, are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002 and 23.5.2002. The contents of first five lines of paragraph 10 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his three statements. The contents of paragraph 12 of his examination-in-chief, from the second line to the last line, are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002, 23.5.2002, 18.6.2004 and 14.9.2008. The contents of paragraph 12 of his examination-in-chief, from the second line to the last line, are read over to the witness to the effect that he had not stated such facts in his statement dated 2.6.2008.

144.44 The contents of paragraph 15 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002, 23.5.2002 and 14.5.2008. The contents of the first four lines of paragraph 15 of his examination-in-chief are read over to the witness. The witness has denied that in his statement dated 2.6.2008 recorded by the SIT, he has not given the names of accused Kirpalsingh and Suresh Chhara in the mob which came from the direction of Uday Gas Agency. The same extracts of paragraph 15 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in his

explanatory statement dated 18.5.2008. The contents of paragraph 15 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002 and 23.5.2002. The contents of the fourth line of paragraph 15 till the first line on page 9 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statement dated 2.6.2008.

144.45 The contents of paragraph 16 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002, 23.5.2002 and 14.9.2008.

144.46 The contents of paragraph 15 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002, 23.5.2002 and 14.5.2008.

144.47 The contents of paragraphs 18, 19, 21 and 22 of his examination-in-chief, are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002 and 23.5.2002. The contents of paragraph 17 of his examination-in-chief are read over to the witness to the effect that he had not stated such facts in his statements dated 13.4.2002, 23.5.2002, 2.6.2008, 8.6.2008 and 14.9.2009. The contents of paragraph 24 of his examination-in-chief are read over to the witness to the effect that he had not stated these facts in his statements recorded by the SIT.

144.48 In the cross-examination of this witness, it has come

out that he had no social or financial relations with Guddu, Suresh, Kirpalsingh and Bipin Panchal. The witness has stated that he is not aware whether accused Suresh has a mutton shop in this area and as to whether Guddu Chhara is a leader of his community. The witness has denied that he had a dispute with regard to some outstanding amount with Suresh and that Guddu had come with come with Suresh and that with a view to lodge a false complaint against Guddu and Suresh, he had gone to take help from Kirpalsingh and upon Kirpalsingh refusing to do so, he had felt bad and out of vengeance, he had wrongly given the names of all the three persons and that during the entire day of the incident, he had not seen any of the accused and that he is falsely deposing before the court.

144.49 The witness has denied that prior to the SIT recording his statement; he had not given the name of Bipin Autowala or attributed any role to him. (The trial court has put a note to the effect that in his statement dated 13.4.2002, the witness has specifically made reference to Bipin Autowala as Bipinbhai whom he knows.)

144.50 In his cross-examination, it has come out that the witness has seen Bipin Auto Centre which is on the opposite side of Uday Gas Agency. The witness has stated that he had no occasion for visiting Bipin Auto and that he had no occasion to meet Bipinbhai. The witness has admitted that in none of his statements, he has given the full name of Bipin Autowala and his address. The witness has stated that he knows him only in that manner, and, therefore, he has given his name and description accordingly. The witness has admitted that he has

not given the physical description of Bipin Autowala in his statements and that he has only described him as Autowala. The witness has admitted that his house at Hussainnagar has been repaired by the Jamat people. The witness has admitted that the Islamic Relief Committee has repaired the house of all Hindus and Muslims at the spot. The witness has denied that as tutored by the Islamic Relief committee, he was wrongly giving the name of Bipin Autowala.

144.51 PW-300 Shri N.S. Malek, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 23.5.2002. The assignee officer has admitted that this witness has not named Kirpalsingh and Suresh Langdo before him. The assignee officer has admitted that this witness had stated before him that on 28.2.2002, as there was a call for Gujarat Bandh, he had not opened his shop and had kept a holiday and was at home and in the morning, at around 9:30 to 10:00, the mobs had gathered on the road and there were incidents of stone pelting and arson and he had gone on the road to watch and saw that on both the sides of the road, mobs of people had gathered, due to which, he returned home. However, people from the chawl had also gathered there and he locked his house and took his wife and children and together with the people of the other chawls, went on the rear side of the chawl to Jawannagar near the S.R.P. compound wall. However, they were not permitted to go inside the S.R.P. headquarters. Hence, they sat near the compound wall. However, mobs of people were pelting stones on them and hence, they went to Gangotri Society and several people from Gangotri Society as well as S.R.P. were standing there. They advised them to go towards the field. However,

they had not gone and after coming back on the road tried to go to Zikarhasan-ni-chali on the other side. However, there is a two storeyed house of Umrudin Pinjara in Hussain-ni-chali, in that house as well as near that house, several people of their community were sitting and those people shouted at them and, therefore, they went together with the people of their chawl in that house.

144.52 The assignee officer has denied that the witness in the statement recorded by him had stated that on the day of the incident they were roaming around to protect themselves and had also come on the National Highway road and were trying to cross the National Highway road and go to Zikarhasan-ni-chali on the other side of the road.

144.53 Certain extracts of paragraphs 13, 15, 18 and 21 as well as the contents of paragraphs 7, 12, 16, 17, 19 and 22 of the examination-in-chief of the witness are read over to the assignee officer, who has stated that insofar as paragraph 13 is concerned, the witness has stated that they were not being permitted to enter the S.R.P. Quarters. The assignee officer has admitted that the witness has not stated the contents of paragraph 15 and 18 and 21 of his examination-in-chief in the statement recorded by him.

144.54 Insofar as the contents of paragraph 7 of the examination-in-chief are concerned, the assignee officer has denied that all the facts stated therein have not been stated by the witness. He has stated that the witness has not stated as to from which spot, the mob was coming but he has stated that he had come out on the road and that on both the sides of the

road, mobs of people had gathered, however, the rest of the facts have not been stated by him.

144.55 The assignee officer has admitted that the facts stated in paragraphs 12, 16, 17, 19 and 22 of his examination-in-chief have not been stated by the witness in the statement recorded by him. Certain extracts of paragraphs 9 and 10 of the examination-in-chief are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

144.56 PW-178 Shri P. N. Barot, the Investigating Officer has admitted that he has recorded the statement of this witness on 13.4.2002.

144.57 The contents of the statement recorded by the Investigating Officer are read over to him and he has admitted that such facts have been stated by the witness in the statement recorded by him. However, the contents of the police statement have been simply put to the witness without seeking to contradict any part of his examination-in-chief, and hence, it was not permissible to bring on record the contents of the police statement. The evidence of the Investigating Officer to the extent the contents of the police statement are brought on record is, therefore, inadmissible in evidence.

144.58 The Investigating Officer has admitted that this witness had not stated before him that he had gone to the terrace of Gangotri Society. The Investigating Officer has further admitted that this witness had not named Kirpalsingh before him nor had he attributed any criminal role to him. The

Investigating Officer has admitted that the witness had not stated before him that the Hindu mob had set the Noorani Masjid ablaze and had pelted stones at the Noorani Masjid. The Investigating Officer has admitted that this witness in the statement recorded by him had not stated as to where the accused were on the day of the incident; what they were doing and which weapons were in their hands as well as at which time they were there. He, however, has clarified that the witness had given the names of the accused, the role played by them as well as their surnames in the statement recorded by him.

144.59 Certain extracts of paragraph 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that the witness had not stated all these facts in the statement recorded by him. The Investigating Officer has stated that the witness had stated before him that the mobs had come on the road opposite the Noorani Masjid from the side of Naroda Patiya as well as from the side of Krushnanagar shouting and making a lot of commotion and had charged towards the Noorani Masjid and both the mobs had merged and were pelting stones at the chawls, in the statement recorded by him. However, the other facts have not been stated by him.

144.60 The last four lines of paragraph 8 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that while ransacking was going on near the Noorani Masjid, the Muslim people had started gathering at Chetandas-ni-Chali, which is on the opposite side of the Noorani Masjid. The Investigating

Officer has admitted that the witness had verbatim not stated such facts before him but had stated that several people from the chawl had come at the corner of the S.T. compound wall to see what was happening on the highway. Except this, the other facts stated in the four lines, have not been stated by him in the statement recorded by him.

144.61 The contents of paragraph 9 from the third line to the last line are read over to the Investigating Officer, who has admitted that the witness had not stated such facts in the statement recorded by him but had stated that he could hear sounds of firing.

144.62 The contents of the first five lines of paragraph 10 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that all the facts have not been stated by the witness in the statement recorded by him. The Investigating Officer has stated that the witness had stated that he had heard the sounds of police firing and that the police were releasing teargas shells.

144.63 The contents of paragraph 12 of the examination-in-chief of the witness from the second line to the last line are read over to the Investigating Officer, who has admitted that these facts have not been stated by the witness in the statement recorded by him.

144.64 The contents of paragraph 13 of the examination-in-chief are read over to the Investigating Officer, who has admitted that the witness had not stated such facts in the statement recorded by him. However, he had stated that he

had gone near the S.R.P. Group-II compound wall.

144.65 The contents of paragraph 15 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness had not stated such facts in the statement recorded by him, but had stated that at this time, armed mobs of thousands of Hindus in such fury as had never been seen before had come.

144.66 Certain extracts of paragraphs 16 to 19 and 21 and all the facts stated in paragraph 22 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that this witness had not stated such facts in the statement recorded by him.

144.67 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statements of this witness on 2.6.2008, 18.6.2008 and 14.9.2008. The Investigating Officer has admitted that this witness in his statement dated 2.6.2008 had stated that this mob had come near the masjid and had pelted stones and had damaged the masjid and nearby shops of Muslims and had set them on fire and had caused damage to the Muslims due to which, the Muslim youth from the chawl, for the purpose of protecting the masjid, gathered together and the Hindu mob started pelting stones at the Muslim mob and at this time, Naroda Police Station Senior P.I. Shri K.K. Mysorewala and Second P.I. Shri Gohil were present with their vehicles and staff near the Noorani Masjid in the middle of the opposite mob, and the S.R.P. police people were also present. Upon the Hindu mobs coming towards their chawl, the mobs of

both the communities came opposite each other and there was stone pelting, whereupon, the above referred police officers and policemen fired upon the Muslim mob, due to which, four to five persons in the Muslim mob were injured by bullets. Other than this, the two statements recorded by the police on 13.4.2002 and 23.5.2002 have been read over to him and they are correct and proper.

144.68 The Investigating Officer has admitted that this witness had not stated before him the fact regarding “near S.T. Workshop Gate”, but has clarified that the witness had clearly stated “Opposite the Noorani Masjid”, which means “the S.T. Workshop Gate”.

144.69 The Investigating Officer has admitted that this witness in his statement dated 18.6.2008 has stated that he has been shown the attached complaint application with Naroda Police Station I-C.R. No.177/02 for the offences under sections 143, 147, 148, 149, 395 etc. of the Indian Penal Code, which application is read over to him and that the complaint application has been made by him.

144.70 The Investigating Officer has admitted that this witness has in his statement dated 14.9.2002, stated that on 2.6.2002, he had given the names of Bipin Autowala, Guddu Chhara and Suresh Langda Chhara, Kirpalsingh who is a person of Mayaben Kodnani and Safai Kamdar Kesha Popat. In the context of why he had not given the names of these accused in the earlier statement, he has stated that they were at the Shah Alam camp when the police had recorded his statement. At this time, he was in a state of shock on account of the Naroda

Patiya incident and his mental position was not good at that time and at the relevant time, the names of the persons whom he could remember were involved in the riots, had been stated by him; since he could not remember the names of the other accused, they were not stated at that time; thereafter, he had given the names of such persons who were involved in the riots, before him.

144.71 The Investigating Officer has admitted that this witness in his statement dated 2.6.2008, has not mentioned any fact regarding saffron bands being tied, as stated by him in paragraph 7 of his examination-in-chief. He has further admitted that the witness had not stated all the facts stated by him in paragraph 7 of his examination-in-chief in his statement dated 14.9.2008. He has clarified that as stated by him earlier, the statement dated 14.9.2008 was for a limited purpose and that the main statement was dated 2.6.2008.

144.72 The contents of first four lines of paragraph 8 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein he has stated that Bipin Autowala was in this mob. The police was there and behind the police, Kirpalsingh was there who was in the mob who had come near the gate of the Workshop opposite the Noorani Masjid. The Investigating Officer has admitted that in his statement dated 2.6.2008, in these four lines, the witness has not stated anything regarding Kirpalsingh. He, however, has stated that the meaning of this fact stands included that he has stated that "Opposite the Noorani Masjid".

144.73 Certain extracts of paragraph 8 of the examination-

in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that while damage was being caused to the Noorani Masjid, in the meanwhile, the Muslims had come to Chetandas-ni-Chali which is opposite the Noorani Masjid and had started gathering there. The Investigating Officer has admitted that this witness has not stated such facts in his statement dated 2.6.2008. He, however, has denied that this witness has not stated such facts in his statement dated 14.9.2008. The Investigating Officer has stated that the witness had stated before him that he and other Muslims of the chawl were standing at the entrance of Chetandas-ni Chali when they saw. Certain extracts of paragraph 10 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein he has stated that at the site of firing, five persons were injured by bullets before his eyes. Amongst the persons who were injured in the firing were Abid, Khalid, Pirubhai Painter and Kaladiya. During this period, on account of firing, all of them were stunned. The Investigating Officer has admitted that this witness had not stated such facts in the statement dated 14.9.2008.

144.74 Certain extracts of paragraph 12 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness had not stated such facts in his statements dated 18.06.2008 and 14.09.2008, but has clarified that both these statements were only for the limited purpose of making certain clarifications.

144.75 The contents of last two lines of paragraph 12 of the examination-in-chief of the witness are read over to the

Investigating Officer, wherein he has stated that he was present in lane No.5, who has admitted that the witness has not stated such facts in his statement dated 2.6.2008. He, however, has clarified that the witness had stated that he was nearby the police. The contents of paragraph 13 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness has not stated such facts in his statement dated 2.6.2008.

144.76 It appears that there is some mistake in recording the evidence of this witness, inasmuch as after reproducing the contents of paragraph 13 of the examination-in-chief of the witness, the Investigating Officer has clarified that all these facts find place in the main statement of the witness dated 2.6.2008, whereas the statement dated 14.9.2008 was only for the limited extent of clarification.

144.77 Certain extracts of paragraph 15 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that after sometime, a mob had come from the direction of Uday Gas Agency; the people in the mob were armed with weapons and in this mob, Bipin Autowala, Guddu Chhara, Kirpalsingh and Suresh Langda were present. The Investigating Officer has admitted that this witness had not named these four accused in his statement dated 2.6.2008, but has referred to a mob. He, however, has clarified that in the first statement, the witness had mentioned the names of Bipin Autowala, Guddu Chhara, Suresh Langda and Kirpalsingh in the mob that was present in the morning. Thereafter, the witness had referred to a mob having come from the direction of Uday Gas Agency at

4 o'clock, wherein he had not given the names of any of the accused. That when the witness had referred to a mob having come in the open ground in the evening on the day of the incident, the witness has named Guddu Chhara and Bipin Autowala in that incident.

144.78 The Investigating Officer has admitted that this witness in his statement dated 18.6.2008 had not mentioned the presence of Kirpalsingh in the mob.

144.79 Certain extracts of paragraph 12 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that certain persons out of these people had climbed on Tiniya Marathi's terrace near S.R.P. compound wall and amongst them (the Muslims), there were women, men and children. The Investigating Officer has admitted that such facts have not been stated by the witness in his statement dated 2.6.2008.

144.80 The contents of paragraph 16 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that the witness has not stated such facts in his statement dated 14.9.2008, but has clarified that the statement dated 14.9.2008 was for the limited purpose of clarification, whereas the witness had stated all these facts in statement dated 2.6.2008.

144.81 The contents of paragraphs 17 and 24 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that the witness has not stated such facts in all the three statements recorded by

him.

144.82 From the cross-examination of the Investigating Officer, it is apparent that he has recorded as many as three statements of this witness. The first statement being the main statement dated 2.6.2008 and the subsequent statements are clarificatory statements. Therefore, if certain facts are stated in the first statement dated 2.6.2008, it is not necessary for the witness to reiterate the same in his subsequent statements. Therefore, non-stating of certain facts in the subsequent statements would in no manner amount to an omission, leave alone a material omission amounting to a contradiction. Under the circumstances, such questions ought not to have been permitted to be put to the witness as well as to the Investigating Officer, inasmuch as, the same is not admissible in evidence and has resulted into unnecessarily increasing the volume of the evidence.

144.83 SUBMISSIONS: The learned counsel for the appellants submitted that considering all the facts that have come on record, as far as accused No.62 Kirpalsingh is concerned, his name was not mentioned in both the incidents in the police statement dated 13.4.2002, whereas as far as the statement recorded by the SIT is concerned, the name of Kirpalsingh is not there in respect of the second incident, that is, the incident after 4:30 in the evening. It was submitted that Kirpalsingh's name has come up for the first time before the SIT. It was submitted that as far as Bipin, Guddu and Suresh are concerned, their names are mentioned in both the police statements, whereas, as far as the second incident is concerned, only the names of Bipin and Guddu are mentioned

and the name of Suresh is missing in the SIT statement. It was submitted that in the police statement, the names of all the four accused in respect of the second incident are not there including the incident of stone pelting from the terrace as well as the motive alleged to drive them out at the field, which is situated on the back side of Gopinath. It was submitted that in the first statement before the police, the witness has not named Kirpalsingh qua both the incidents and he has also not named the remaining three accused for the evening incident. He does make a reference only of the names in the mob without any further attribution to Bipin (A-44), Guddu and Suresh (A-25). It was submitted that as far as the SIT statement is concerned, the witness admittedly does not mention Kirpalsingh and Suresh in the evening incident and for the evening incident, the names of Bipin and Guddu are mentioned. It was submitted that before the SIT for the morning incident, the names of all the four accused are shown only as a part of the mob without attributing anything. It was submitted that the witness is not a reliable and trustworthy witness who in his entire examination-in-chief has narrated a new story.

144.84 The learned counsel for the appellants further submitted that this witness has been residing at Lane No.3, Hussainnagar since 12 years prior to the incident. It was submitted that the accused who were at the Noorani Masjid were either destroying the properties at the Noorani Masjid or attacking the Noorani Masjid, hence, the people standing at Chetandas-ni-Chali would be able to see the backs of those people, and hence, would not be in a position to identify them as they would not be able to see their faces. It was submitted

that in the cross-examination of this witness, it has come out that he had gone from Gangotri Society to Hussainnagar which is highly improbable inasmuch as when the incidents were at their peak, it was not possible for anyone to go from Gangotri Society to Hussainnagar. It was submitted that this witness has given evidence which is contradictory to the evidence of various other witnesses and certain facts stated by this witness have not been stated by any other witness. It was submitted that this witness has no occasion to come in contact with the named accused before the incident, and therefore, he has not given the name of the accused in his police statement and he gave those names only before the SIT and before the court. It was submitted that having regard to the overall testimony of this witness, the same does not inspire confidence and cannot be relied upon for the purpose of establishing the charge against the accused.

144.85 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the presence of this witness at the scene of offence is established. The witness has also identified Suresh and Kirpalsingh before the court and in case of accused Bipin, there was an exemption application, and hence, there is deemed identification. It was submitted that this witness has stated that the accused were armed with lethal weapons in the mob. He has not seen any incident of killing and he has, therefore, deposed only about the mob damaging the properties and setting them ablaze.

144.86 It was submitted that insofar as the accused No.62 is concerned, his name appears in the statement dated 2.6.2008 recorded by the SIT, but not earlier. It was contended

that in view of the fact that before the SIT he had already named accused No.62, not mentioning the name of the accused in the police statement, cannot be termed to be an omission amounting to contradiction.

144.87 It was submitted that when the defence has suggested some omission in respect of the statement before the police, there is no reference to the statement in further investigation, and therefore, the such omission cannot be termed as an omission as per law. It was submitted that therefore, the evidence of this witness is not in contradiction of the narration before the police and in the further statement, and hence, so far as the accused No.22, 44 and 62 are concerned, the prosecution has proved beyond doubt the presence of the accused through this witness.

144.88 ANALYSIS: Considering the entire evidence of this witness, it appears that a major part of what has been stated by him in his examination-in-chief has not been stated by the witness in his statement dated 13.4.2002 recorded by the police. The subsequent statement dated 23.5.2002 is in the nature of loss and damage analysis statement. After considering the omissions and contradictions brought out in the cross-examination of the witness, it emerges that on the day of the incident at around 9:00 to 9:30, he had heard that mobs had come from outside and were damaging shops near the Noorani Masjid and were burning the shops and houses. Upon hearing this, he came on the road and stood at the corner of Chetandas-ni-Chali where, at present, there is a police chowky and was watching from there. When he came out he saw a huge mob near the Noorani Masjid. One mob was

coming from the direction of Krushnanagar and another mob was coming from the direction of Natraj Hotel. Bipin Autowala was present in the mob. In the mob which was towards the Noorani Masjid, he had seen Guddu Chhara and Suresh Langdo. At that time, a Hindu mob was pelting stones at the Muslims. There was a firing by the police, due to which, they started running hither and thither in their lanes. It must have been around 12:00 to 12:30 in the afternoon. From the lanes, he went to his house in Hussainnagar, locked his house and took his family members, and till about 4 o'clock they were hiding in the lanes and thereafter, they all went and sat outside the S.R.P. compound wall near Jawannagar. It was around 4:30 in the evening at that time. Subsequently, they went near Gangotri Society and returned to Lane No.4 of Hussainnagar and went to the house of Umrudin Mansuri where many Muslims were hiding. Late at night, the police came and took them in a bus to Shah Alam relief camp.

144.89 From the testimony of this witness, after considering the omissions and contradictions, it is evident that the core part of his deposition, wherein he has named Kirpalsingh in the mob near the S.T. Workshop gate has not been stated by him in his statement recorded by the police. Thus, the witness is consistent only in respect of the presence of Bipin Autowala, Guddu Chhara and Suresh Langdo in the mob in the morning incident. None of the other facts had been stated by him in the statement recorded by the police. At a subsequent stage, after a period of more than six years, the witness has named Kirpalsingh in the statement recorded by the SIT and has also attributed specific role to him, one in the morning and the other in the evening. In the police statement,

the witness has attributed roles only to Bipin Autowala, Guddu and Suresh Langdo in the morning incident; however, before the SIT there is a considerable improvement in the statement wherein he has stated that he had seen all the four accused with weapons. The allegation made insofar as the evening incident is concerned, is that he had seen some of these persons climb on the terrace of Tiniya Marathi's house and pelt stones from there. Insofar as this version is concerned, no other person has given such a version regarding stones being pelted from the terrace. The testimony of this witness runs into as many as 89 pages, comprised of 139 paragraphs. In case of almost every witness, the defence has cross-examined them at such a great length bringing on record relevant as well as irrelevant material and thus unnecessarily burdening the record.

144.90 From the cross-examination of the witness (paragraph 91), it emerges that at the time when the police vehicle came to pick them, there was a child with the police, who had sustained burn injuries on its hands and legs. The witness has admitted that the custody of this child was handed over to someone and that the child had sustained burns on its hands and legs and the police had found the child crying amidst the corpses and had brought the child there. This part of the testimony of the witness corroborates the testimony of PW-294 Shri Gondia, who has stated that he has rescued a child from the heap of dead bodies.

144.91 On an overall analysis of the testimony of this witness, it appears that he has made substantial improvements in his original statement and does not come

across as a truthful or credible witness. The testimony of this witness cannot be taken into consideration insofar as accused Kirpalsingh is concerned, inasmuch as, his name has been revealed for the first time after more than six years in the statement recorded by the SIT. Insofar as accused No.22 Suresh Chhara and accused No.44 Bipin Autowala is concerned, there is no omission or contradiction as regards their presence in the mob in the morning. Therefore, to that extent, the testimony of this witness is required to be taken into consideration.

145. **PW-158 Naemuddin Ibrahim Shaikh** has been examined at Exhibit 1124. This witness has deposed that he was residing at Chetandas-ni-Chali since he was one and a half years old and was residing at Hussainnagar Lane No.3, since the last fifteen years. In the year 2002, he was residing with his family which was comprised of his mother Abedabibi, his father Ibrahimbai, his wife Zarinabanu, his daughter Fauzia, his brother Maheboobsultan, his brother's wife Kausarbanu, his brother's daughter Mahenoorbanu, his divorcee sister Saidabanu and her daughter Gulnazbanu. In 2002, his father used to ply a rickshaw and he used to sell bakery products like biscuits, toast, bread etc. from lane to lane going around on a bicycle. His brother used to drive a rickshaw and his sister used to do tailoring work.

145.1 The incident took place on 28.2.2002. On that day, the Hindu Parishad had given a call for Gujarat bandh.

145.2 On that day at around 6:30 in the morning he went to Jawannagar to sell his bakery items. After selling the goods,

he returned home at around 9:00 in the morning. When he returned home, Hajrabibi Abdulrahim Shaikh who is known as Jadikhala asked him if he had heard something and that the atmosphere does not appear to be proper. While they were talking, they could hear shouts from outside and there were sounds of '*Maaro! Kaapo!*' (Kill! Cut!), which were horrific. Sounds of gas cylinders bursting could also be heard and he was very worried.

145.3 On account of these sounds he ran in front to where Rashidbhai's house is situated. Rashidbhai's house is situated towards the S.T. Workshop in the lane in front of his house. Rashidbhai's house is two storeyed and he had climbed on its terrace. Upon climbing the terrace he could see the Noorani Masjid clearly and loud voices could be heard saying '*kill and cut the Miyans*' and the mobs were pelting stones. Mobs were also coming from Krushnanagar and Patiya. The people in the mobs coming from both the sides were mostly armed with swords, hockey sticks and other weapons. Only a very few people did not have any weapon in their hands.

145.4 He saw that the people in the mob were attacking the masjid. Out of the persons from their chawl who had gathered below someone told him '*Naem run, the atmosphere is very bad*'. Abid has been injured by a police bullet and is dead and Khalid has also sustained a bullet injury on his stomach and is alive. Upon all this happening, he was worried and went home.

145.5 Upon returning, he saw that Khalid was made to lie down at Jadikhala's house and he was bleeding profusely.

Khalid was brought to Jadikhala's house in a cart. His mother suggested that they read the Quran as in such time it is only Allah who can support them. Their entire family was reading the Quran Sharif and they must hardly have read a little when they could hear people saying that the mob has entered everywhere in Jawannagar and Hussainnagar and is burning people alive, and hence, they told them to come out. At this time out of fear, they locked the house and left it and the entire family went towards Jawannagar.

145.6 There was a house in Jawannagar where they secured the chain from inside and hid. They must have hardly stayed in the house for about half an hour when they started hearing sounds of gas cylinders bursting there also and the mobs had started coming. Hence out of fear they went from there and took shelter in Gauriapa's house which is on the rear side. There were many frightened children, old people, youth, women, men and many persons of their chali were sitting and hiding there. The people there were saying that it was certain that now they would have to die, hence out of her they went from there to Gangotri Society where he used to go to sell buns and came down from the staircase of Gauriapa's house and went to Gangotri Society. Other persons from their chali also came with them.

145.7 When they were at Gauriapa's house, it must have been around 1:30 to 2:00 in the afternoon. When they went to Gangotri, there was a hosiery factory in a closed condition. This was a very big place and many Muslims had gone to this place. All of them hid in the factory. At that time the shutter was half closed and from the half open shutter an S.R.P. person

told them that they should hide and sit there. He does not know the name of the S.R.P. person but his surname was Malek. They sat at that place till 5:00 to 5:30 in the evening.

145.8 At around 5:00, an S.R.P. person came and lifted the shutter of the factory and told them that arrangement for their safety has been made and that police vehicles would take them to the safe places and therefore they should go. Trusting the S.R.P. person they set out towards Gopinath Society at that time Kudratbibi's and Hajrabibi @ Jadikhala's families and people from their chawl and his family were there.

145.9 Till they reached Gopinath Society they could not see any police vehicle and hence they were worried. Till the end of Gopinath Society there was nothing, viz., there was no arrangement for their safety or police vehicle. At this spot there is an open ground. In this ground a mob with weapons was coming towards them shouting "Cut! Kill!" Such mob was coming from the direction of Naroda Navyug School. On seeing the mobs, they were frightened but there was no other way.

145.10 To escape from this ground, they tried to go inside the S.R.P. Quarters where there were S.R.P. people and police, all of whom were in uniform. They went to them for help and folded their hands and beseeched them; however they did not let them enter the S.R.P. Quarters. Jadikhala, who is overweight, had fallen at the feet of the policemen and the S.R.P. personnel and requested them that even if they do not take the men inside, they should at least take the women and children amongst them inside for their protection. However, the police and the S.R.P. present there jabbed them with the

butts of their guns and sticks and did not let them enter the S.R.P. Quarters.

145.11 Since they had no alternative, his mother Abedabibi had said *"Let us go home, if we die, at least we will die at home!"*, hence to return to their home they took the road from Gopinath Society. They had gone only slightly further from Gopinath Society, when the people of Gopinath Society and Gangotri Society in the form of a mob surrounded them and when they reached the water tank situated there, the mob comprised of people from Gopinath and Gangotri and others, who were wielding weapons like swords, dharias, hockey sticks, bamboos, etc., started assaulting them and pelting stones at them. When they were near the water tank the mob surrounded them from both sides and attacked them. They were indulging only in killing and hacking, and were saying *"cut and kill the miyas"* and were attacking them. Majority of the people in this mob were from Gopinath Society and Gangotri Society and there were other people also. The witness has deposed that he can identify the people from Gopinath and Gangotri Society if he sees them.

145.12 The witness has deposed that even today when he closes his eyes, he can see twenty five to thirty persons from the mob in front of his eyes and he cannot forget the manner in which they had hacked and killed with the weapons. At this time, Kudratbibi's entire family, Jadikhala @ Hajrabibi's entire family, Jadikhala's two daughters-in-law and his family etc. were there. Over and above them, Kausharbanu's family, Kausharbanu's maternal aunt's family, Gauriapa's brother in law Salaam, Farzanabanu, Farhanabanu and others were there.

145.13 At this time, his wife Zarina, his daughter Fauzia, his paternal cousin Abdulaziz, Haroon, Yunus, Yunus' wife from their chawl, etc. fled by jumping over the wall in the lane in front. The people, who had got separated from them and had gone in this manner, were surrounded by the mobs wherein his wife was pulled by four persons in the mob and was being beaten. He saw with his eyes that her left hand was cut with a sword and she was struck with a sword on her right hand and a sword blow was also inflicted on her head and she was hit with a hockey stick on her leg.

145.14 They started tugging at his wife's clothes and tearing them and continued till there was not a single cloth on her body. At last she was rendered totally naked. He had seen the entire incident.

145.15 Apart from this, where they were standing near the water tank shouts of "Kill! Cut!" were continuously heard and the mob had continued attacking different persons with whatever weapons they had. At this time there were four women from the society who were giving kerosene to the people in the mob and were telling that after they kill these people they should burn them, all of which he had heard and seen. He knows all the four women by their faces, because he used to go to sell bread, biscuits, etc. in their area and their family members had the bakery items which he used to sell for breakfast.

145.16 At this time, the people in the mob hit him on his right hand with an acid bottle, due to which his shirt was torn

and his muscles had come out from his right shoulder and he was wounded. Thereafter he was also struck on the thigh with something and he was hit on the head and hand with a sword. There are still marks on his head and hand. At that time screams of "*Help! Help!*" were heard from all four sides.

145.17 The witness has deposed that they had relations of exchanging pleasantries with the people of Gangotri and Gopinath Society; however they did not even feel pity on their screams for help and today also he is astonished by the extremely inhuman behaviour of the people of Gangotri and Gopinath Society towards them.

145.18 The mob comprised of the people of Gangotri and Gopinath Society and others, including the four women, poured kerosene over his entire family namely his mother Abedabibi, his sister Saidabanu, etc, Saidabanu's daughter Gulnazbanu, Jadikhala and Kudratbibi's family and set them ablaze. His sister Saidabanu was severely burnt.

145.19 Out of those who died at the water tank spot, out of Kudratbibi's family Kudratbibi was severely burnt and ultimately died in the Civil Hospital, Kudratbibi's son Sabbir died on the spot in this very incident, his mother Abeda also died on the spot, his sister Saida's daughter Gulnazbanu also died on the spot and his sister did on the next day at the civil hospital on account of being burnt in the incident. Kausharbanu's mother and her maternal aunt died on the spot. Kausharbanu was pregnant; she also died on the spot. In this very incident, Farzana's daughter Farhanabanu and Gauriappa's brother in law Salaam died on the spot. Jadikhala

and her two grandsons also died in the incident. At that time he and Abdulaziz's two sons Wasim and Salim were lying with him in a wounded condition. In front of his eyes, a woman from Gopinath Society came and pulled Wasim and Saleem on the tank and in front of his eyes she threw them from the tank into the fire and in this manner both the children died on account of being thrown in the fire.

145.20 The entire incident took place prior to seven in the evening and it was still bright and it was not dark. In the incident he lay on the spot in a wounded condition. He lay there in a partly unconscious position.

145.21 He has also stated before the SIT that he knows the people who committed the incident by face however, the SIT people did not take him anywhere. He had also told the SIT about his wife Zarina's incident however, nothing had happened in this regard in the SIT.

142.22 All of them were lying in a different manner on account of being burnt or attacked with weapons out of whom, Farzana, he, Maharooof, Maharooof's son, daughter, Farzana's daughter Reshma, Bibibanu, her daughter Parveen, Jadikhala's both daughter-in-laws Sufiya and Shabana, Sabera and his sister Saidabanu etc. were there. Out of whom, Farzanabanu was in a half naked condition, his sister and Sabera were in a totally naked condition all of which he had seen. Even he was beaten on the back and his pant was torn.

145.23 At this time, sounds of painful voices and screams of his mother, Jadikhala and others were coming and the

children lying nearby were screaming. His dying mother, till her last breath kept saying his name Naem Naem. She and Jadikhala and others were also saying "*Ya Allah! Ya Allah!*" There was unimaginable fire on all four sides.

145.24 All of them were lying in a half dead condition at the spot. After a long time the police vehicle had come. All of them were very terrified and frightened and they thought that maybe someone must have come to kill. However the police came and uttered unbearable abuses and kicked their bodies and asked as to who was alive and he mustered courage and said that he was alive and they said that they should lie in the same position and that they were coming with a big vehicle. After some time they came with a vehicle. The police did not help him in going from there to the vehicle and said that throw those who are alive in the truck. Those of them who were alive both naked and burnt helped each other and somehow reached the vehicle. Kudratbibi who was alive was overweight however, taking support of each other they had reached the vehicle brought by the police. The police told them that their heads must not be seen or they will be set on fire and they hid themselves in the vehicle and they took them to the Civil Hospital.

145.25 It was only when they actually reached the Civil Hospital that they had felt they had reached the hospital; otherwise, they had felt that these people would kill them and that they were taking them to kill them. The witness has stated that though the treatment was not satisfactory, they were given treatment. They stayed at the Civil Hospital for six to eight days.

145.26 His brother told him that his wife is alive and that her hand has been cut and she is at the V.S. Hospital. Thereafter, he went to meet his wife at the Vadilal hospital. His wife had 56 stitches on her head and her hand had been operated and a rod was inserted and even today her left hand is useless and she cannot do anything with her left hand. She was required to take stitches on her right hand also and even today there are marks of stitches. She also has marks on her left hand till date. He stayed at the V.S Hospital for two days and then went to the Shah Alam Relief Camp and his wife came after her treatment was over.

145.27 In the entire incident their house and their world was destroyed before their eyes.

145.28 At the Shah Alam Camp his wife's mental condition was very bad. She used to remain lost throughout the day and used to remember the events of the day of the incident and become very melancholic and used to say that the moment she remembered the incident she felt that a nerve in her brain would burst. Today also she gets very upset when she remembers the incident.

145.29 After eight days at the Shah Alam Camp she told him that when she was running in the passage of Gopinath and Gangotri on the day of the incident, four youth had attacked her on her hand and head and had also raped her. While narrating this incident she was crying profusely and was saying that he should not tell anyone about it, or they would lose their prestige. She had also told him that she did not know any of them,

but they four youths appeared to be Marathis.

145.30 The police had recorded their statements about the incident, however, at that time their condition was so bad that they were not even in a position to speak. They had given their statements to the police but did not know as to what they were writing down and only Allah knows. They did not read over their statements to them.

145.31 The police had recorded their statements several times. The police must have recorded his statement around four to five times. He does not know exactly. They used to come, record his statement and go away. The S.I.T. people had called him. He had made an application to S.I.T. after which he was called to Gandhinagar. The S.I.T. had also called him a second time and recorded his statement a second time.

145.32 Even today, he can identify the four persons who pulled his wife. Over and above that he can also identify all the persons involved in the incident near the water tank. The witness has thereafter identified accused No.30 Shashikant @ Tiniyo Marathi as being near the water tank and hacking and killing people.

145.33 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he was engaged in the business of selling biscuits, buns and bread, etc. since the last nine years prior to the incident. He used to make rounds from six to ten in the morning. The witness has admitted that ordinarily he would be acquainted with the people at whose houses he went to sell the biscuits etc. The witness is cross

examined regarding the topography and the manner in which he used to sell biscuits etc.

145.34 In the cross-examination of this witness, it has come out that he has not seen Khalid being injured by a bullet but has seen Khalid being taken in a cart after he was injured with his own eyes. When Khalid was brought to Jadikhala's house, he was there. Khalid was made to lie down on a cot in the Jadikhala's compound. It may be noted that PW 135 Hussainabanu in her testimony has stated that her brother was tied to an upside down cot and a blood stained mattress was placed over him. This part of the testimony of this witness supports the version given by Hussainabanu.

145.35 In his cross-examination it has further come out that he cannot say as to at what time they had left their house, because the situation was such that one would not know about it. From their house they had taken refuge in a house in Jawannagar and till they were in that house, no one had attacked them. From that house, they had gone to Gauriapa's house. He does not know how long they stayed at Gauriapa's house and has stated that his family, Kudratbibi and Jadikhala had left Gauriapa's house together. It has further come out that Gangotri Society starts immediately after Gauriapa's house. Gangotri Society starts from the rear wall of Gauriapa's house. They had crossed Gauriapa's terrace and gone to a place which was a factory. They had stayed for about two and a half to three hours in the factory. It has further come out that an S.R.P. person had told them to hide in the factory whose name was Manek. The water tank was at a distance of five minutes from the factory. The water tank is situated at the end

of Gangotri Society and there are residential houses near the water tank.

145.36 In his cross-examination it has been elicited that he was struck on the thigh due to which his pant was torn. He was hit with a bottle which was filled with something and upon being hit, it burned the body and the clothes would tear. It has further come out that he, Hajrabibi and Kudratbibi's families never got split up, while his wife and daughter Fauzia were separated from him. It has further come out that Kausharbanu and her family was also with him.

145.37 It has further come out that when the police vehicle came, other than him there were people who could not walk namely Saberabanu, his sister Saida, Kausharbanu's brother Sarmuddin, Mahammadmaharroof's son and daughter, Kudratbibi, etc. he, Maharroof and Jadikhala's two daughter-in-laws were instrumental in lifting the wounded in the vehicle. In his cross examination it has further come out that he was admitted in the E-7 ward at the Civil Hospital together with Mahammadmaharroof, Mahammadmaharroof's son and daughter, Bibibanu's daughter Parveenbanu, Farzana, Farzanabanu's daughter Reshmabanu and Sarmuddin. Sarmuddin who was extensively burnt died in E-7.

145.38 It has further come out that he had not asked Zarina as to whether she had narrated the incident to the doctor and has stated that he too had not informed any doctor at V.S. Hospital for the reason that at that time they did not have the courage to talk about this incident to anyone. It has further come out that he had stayed at the relief camp for

about two and a half months. After leaving the camp, out of fear, they did not return to their house but rented a place at Sundaramnagar. It is further elicited that at the time when he was admitted to the hospital he was under such a shock that he was not in a mental condition to talk.

145.39 In his cross-examination it has been elicited that while he was at the hospital he did not talk with the doctors and nurses and that due to shock he did not talk with anyone. He has admitted that the police had come to record his statement at the Civil Hospital and has stated that he may have given his name and address but he does not remember exactly what as to whether his statement was recorded on 3.3.2002. The witness is confronted with the contents of his statement dated 3.3.2002 without seeking to contradict any part of his testimony, which the witness has denied. In such statement it has been recorded thus: “.... On 28.2.2002 on *jhummerat* in the evening at 7 o'clock mobs of several Hindu people with swords, dharias, sticks, burning rags and cans filled with kerosene and petrol had charged upon the houses of Muslims in Hussainnagar shouting hack, kill. ...” “Therein these mobs were looting properties and setting them on fire due to which the scattered families of people ran out of their houses to save their lives and near Gopinath Society, the people in the mob surrounded me and sprinkled kerosene and set me ablaze due to which I have sustained burns on both my legs and hand and on the back of my waist and have sustained a stone injury on my head. In the meanwhile upon the police arriving, the people in the mob ran helter skelter and the police brought me to the hospital.” “I do not know anything regarding the condition of my other family members. The people in the mob

belonged to the Hindu community.” “I do not know the names and addresses of the people who sprinkled kerosene on me and set me ablaze and pelted stones at me.” Insofar as the statement dated 3.3.2002 of the witness is concerned, the court has noticed that the concerned assignee officer has recorded more or less identically worded statements of all the witnesses and does not appear to have recorded the statements as stated by the witnesses. The assignee officer has recorded that in the meanwhile, upon the police arriving there the mob started running helter skelter and the police had sent him to the hospital, which is not the case of any of the witnesses or even the police. Moreover, the witness has stated that he did not sustain any injury on his leg and he was injured on the head with a sword and not with a stone and he has not stated the facts as recorded in the statement. Evidently, therefore, such statement cannot be relied upon to contradict the witness.

145.40 The witness has admitted that on the date of the incident he was not set ablaze by sprinkling kerosene and throwing a burning rag on him. The witness has stated that something was thrown on his waist and right shoulder which caused burn injuries and was very explosive in nature and he clearly remembers that the injury on his head was caused with a sword.

145.41 The witness is also sought to be contradicted as to his dying declaration Exhibit 841 recorded by Urvashiben Silvansh Gohil, an Executive Magistrate.

145.42 The witness has admitted that he has not named

any accused or given their physical description or identification marks in any of his statements.

145.43 The witness is confronted with almost his entire statement dated 19.4.2002 recorded by Shri M.T. Rana, Assistant Police Commissioner, without pointing out which part of his testimony is sought to be contradicted. The witness has partly admitted and partly disowned the contents thereof. The witness has admitted that he had seen Hindu mobs on the terrace of the shops and they had poured kerosene and thrown burning rags on the people below and set them ablaze and pelted stones at them. In his cross-examination, it has come out that in his statement dated 19.5.2002, he had stated that he does not know the names of the persons who had sprinkled kerosene on the persons named in therein and burnt them alive but he is of the belief that they are residents of Gopinath Society and he can identify them if he sees them. The incident has taken place in front of his eyes and he himself is a victim who has sustained burns and hence he can identify them if he sees them.

145.44 The witness is also confronted with his statement dated 13.5.2002 which was in the nature of a loss and damage statement. The entire procedure adopted for cross examining the witness leaves a lot to be desired, inasmuch as the witness is first confronted with all his statements recorded by the investigating agencies without pointing out as to which part of his testimony is sought to be contradicted and in the process the entire contents of the statements recorded under section 161 of the Code are brought on record, which is impermissible in law. In view of the provisions of section 162 of the Code, a

statement recorded under section 161 can only be used to contradict a witness in the manner provided in section 145 of the Evidence Act. However, in this case the provisions of law have been given a go by and the witness is first confronted with his previous statements and subsequently at a much later stage, the omissions and contradictions are sought to be brought out.

145.45 The witness has admitted his signature of the application Mark 644/03 as well as the contents thereof and the same is exhibited as Exhibit 1130. The witness is thereafter cross examined regarding the manner in which the application was made.

145.46 The witness has admitted that his statement was recorded by the SIT on 27.5.2008. The witness (in paragraph 141) is confronted with a part of such statement without seeking to contradict any part of his examination-in-chief, which is not admissible in evidence.

145.47 The witness is cross examined regarding the topography of the area and he has admitted that his house is situated next to Jadikhala's house.

145.48 The witness has admitted that at the time of the incident near the water tank of Gopinath Society, Jadikhala was with him. The witness has admitted that Jadikhala was set ablaze near the water tank and had died there. The witness has admitted that Kausharbanu was with them in the hosiery factory as well as when they went to Gopinath Gangotri and Teesra Kuva. She was with them when they went to S.R.P.

Quarters and when they returned to the Gopinath Gangotri road.

145.49 In the cross examination of the witness it is brought out that the SIT people have not shown different people to him to identify the accused. The SIT people have not shown him photographs of the accused to verify as to whether any of them were involved in the offence.

145.50 In his cross examination, it has been elicited that his wife Zarina was under treatment for about two to two and half months. For two years after the incident she was required to undergo physiotherapy, however she could not lift her hand. For two years she needed her mother's help for her daily routine. Thereafter, she could manage on her own, but her hand is not working. He has further stated that the incident has had a very adverse effect on her mind and she becomes anxious and tense if there is any talk about the 2002 incident.

145.51 The witness is sought to be contradicted with his statement dated 3.3.2002 recorded by PW 296, however as discussed hereinabove, since the statement has not been recorded in terms of what the witness has stated, the contradictions and omissions qua such statement have no relevance. It may be noted that while the learned counsel for the defence had confronted the witness with his police statement in the context of various paragraphs of his examination-in-chief, he was not contradicted qua the contents of paragraph 21 thereof. However, for reasons best known to the learned Assistant Special Public Prosecutor, he has pointed out to the court that the contents of paragraph 21 of his

examination-in-chief have not been stated by the witness, though the defence had not sought to bring out such omission, which makes one wonder whether there was any prosecution at all.

145.52 The contents of paragraph 4 from the 6th line at page 3 to the end, the contents of paragraph 5 at page 4 from the second to the fourth line, the contents of paragraph 6, the contents of paragraph 7 except the last two lines, the first five lines of paragraph 8 at pages 5 and 6, the contents of paragraph 8 from the 3rd line to 6th line at page 6, the contents of paragraph 9 from the last line at page 6 to the end except for the last two lines, the contents of paragraph 10, the first five lines of paragraph 11, the contents of paragraph 12 except for certain facts in the last line, the first four lines of paragraph 13 and the last five lines thereof, the contents of the first four lines of paragraph 14, the contents of paragraph 15 and 16, the contents of paragraph 17 from the 6th line to the end, the contents of paragraph 18 and 19, the first two lines of paragraph 20, the last six lines of paragraph 21, the first two lines of paragraph 22, the last line of paragraph 24 at page 16 and two lines at page 17, the contents of paragraph 25, 26 and 27 and the contents of paragraph 30, 31 and 34 of his examination-in-chief are read over to the witness, to the effect that he has not stated such facts in his statement dated 19.4.2002 recorded by Shri Barot, which the witness has denied. Insofar as the contents of paragraph 19 of his examination-in-chief are concerned, the same are merely an expression of his emotions and cannot be said to be an omission.

145.53 Here also it may be pertinent to note that while the defence has sought to contradict the witness qua the first four lines of paragraph 14, the ever enthusiastic learned Assistant Special Public Prosecutor has pointed out to the court that the entire contents of paragraph 14 are not there in the statement.

145.54 The witness is thereafter read over various parts of his examination-in-chief to bring out omissions and contradictions as to his statement dated 19.4.2002 recorded by Shri M.T. Rana, his statement dated 13.5.2002 as well as his statement dated 27.5.2008 recorded by the SIT.

145.55 It may be noted that even in case where the witness has stated something in his previous statement, he is sought to be contradicted with that part of his testimony as to his subsequent statements. In this regard, it may be noted that once a witness has stated something in his first statement, he is not required to reiterate the same facts again and again in his subsequent statements which are only in the nature of further statements and therefore, not having stated facts already stated in the first statement would not amount to an omission and hence, the defence ought not to have been permitted to put such questions to the witness which has resulted in unnecessarily long and confusing deposition. Though this fact regarding a fact once stated in the first statement if not stated in the subsequent statements would not amount to any omission, was brought to the notice of the learned counsel on several occasions, the learned counsel persisted in pointed out all the so called omissions qua all the statements recorded.

145.56 The defence has cross-examined the Investigating Officer/assignee officers who have recorded the statements of this witness from time to time to bring out the omissions and contradictions in the testimony of the witness as to the statements recorded by them.

145.57 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. In view of what is discussed hereinabove as regards the veracity of the statement recorded by the assignee officer, the omissions and contradictions as to such statement are not required to be referred to.

145.58 PW-277 Shri M.T. Rana has admitted that he has recorded the statement of this witness. After he had recorded the statement he had signed that it was recorded in his presence. He has admitted that he had read over the statement to the witness and he had accepted that the contents thereof were correct. PW-277 has admitted that this witness has stated before him that since S.R.P. people were residing in this society they had kept them in a closed factory and had pulled down the shutter from outside and had, accordingly, saved them for three hours. That the witness had stated that, therefore, they had gone towards Gopinath where there was a mob from the direction of Naroda which was assaulting Muslims. He has further admitted that this witness had stated before him that as there was fire there, he had got burnt on his back and upon his wife trying to flee, the people in the mob had cut her hands and had struck her on the head with a sword and thereafter he does not know where she had

gone. The contents of paragraph 4 wherein the witness has stated that Hajrabibi Abdulrahim Saiyed, who is also known as Jadikhala who lives in the neighbourhood, had told her whether she had heard that the situation is not proper. Upon this talk between them, from outside they could hear her shouts and sounds of “kill” “cut” started coming and the sounds were horrendous. That sounds of gas cylinders bursting started coming and she was terrified as well as the contents of paragraph 5, contents of paragraph 6 from the second line till the end and the contents of paragraph 7 except for the last two lines, the contents of paragraph 8 except the last three lines, the facts stated in paragraph 9 “however, his surname is Manik” and the contents of paragraph 10 of her examination-in-chief are read over to the witness, who has admitted that the witness has not stated the above facts stated in paragraphs 4, 5, 6, 7, 8 and 9 before him. He, however, in the context of paragraph 10 has stated that the witness had stated that the S.R.P. people had kept them in a closed factory and had downed the shutter from outside and they had opened the shutter and told them that now there is no danger and now they should escape towards Naroda, due to which they had all gone towards Gopinath, have been stated by him. The other facts stated in paragraph 10 have not been stated by him. The contents of paragraph 11 of the examination-in-chief of this witness, wherein he has stated, till Gopinath Society they could not see any police vehicle and hence, they were afraid. In this manner, till Gopinath Society ended, there was nothing and there was no arrangement for any police vehicle for their safety. All the contents of paragraph 12 of his examination in chief have not been stated by him in the statement recorded by him. The contents of paragraph 14 of his deposition, wherein he has

stated that even today if he closes his eyes, faces of 25 to 30 people appear before his eyes and that he cannot forget the manner in which they had killed and cut with weapons. Insofar as the facts stated in paragraph 14 of his examination-in-chief, the same is merely an expression of the belief of the witness, which can hardly be said to be an omission. The contents of paragraph 15 of the examination-in-chief wherein he has stated that at this time his wife Zarina, his daughter Fauziya, his brother Abdul Aziz, Harun, Yunus, Yunus's wife etc. from their chawl had tried to escape in the next lane and had jumped over the compound wall and fled. At this time, the people who had got separated from them and had gone were surrounded by the mob wherein four people had pulled his wife and had started assaulting her; he had seen with his own eyes that his wife was struck with a sword on her left hand and her left hand was cut and the sword blow was inflicted on her right hand and she was also given a sword blow on her head and a blow with a hockey on her leg are read over to the PW-277, who has admitted that the witness had not stated the facts stated in paragraph 14 of his examination-in-chief. He, however, has denied that all the facts stated in paragraph 15 of his examination-in-chief have not been stated by the witness. He has stated the facts that, the fact that they started assaulting her, have not been stated by him, however, the remaining facts have been stated by him.

145.59 The contents of paragraph 17 from the fifth line till the end thereof, the contents of paragraph 18 and 19, the reference to four women also being there in paragraph 20 and the last six lines of paragraph 21 are put to PW-277 in his cross-examination and he has admitted that all these facts

have not been stated by this witness in the statement recorded by him. The witness has voluntarily stated that there is reference to the incident in the statement, however, there is mention of throwing alive from the terrace into the fire.

145.60 PW-277 has admitted that this witness has not stated the facts stated by him in paragraph 22 of his deposition that the entire incident had taken place before 7 o'clock when there was light and it was not dark have not been stated by him in the statement recorded by him. He, however, has clarified that the witness had stated that the incident took place by 7 o'clock. The contents of last five lines of paragraph 24, the contents of paragraph 25, as reproduced in paragraph 141 of the deposition of PW-277, the contents of paragraph 26, have been put to PW-277 as well as the contents of paragraph 31 to the extent reproduced therein, have been read over to PW-277 and he has admitted that this witness has not stated such facts in the statement recorded by him.

145.61 PW-277 has further admitted that this witness Naemuddin had not stated before him that he can identify the four people who had pulled and taken away his wife. However, he has clarified that the witness has stated before him that he knows those persons but does not know their names, namely, that he knows those persons who were involved in burning people alive. He has admitted that this witness has stated before him that in burning them alive there were people of Gangotri and Gopinath Societies which he knows because he used to go to sell biscuits but he does not know their names. PW-277 has admitted that this witness has not described the physical features of any person on his statement and has

further admitted that he has not carried out any test identification parade of the people residing in Gangotri Gopinath Societies through this witness.

145.62 PW-302 D. A. Rathod, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that this witness has not named any accused before him. It may be noted that the witness in his examination-in-chief has not named any accused and hence, there is no omission or contradiction in that regard, despite which such question is permitted to be put to the assignee officer. Various omissions and contradictions have been proved through the testimony of this witness, however, with a view to avoid prolix the same is not referred to in detail.

145.63 PW-178 Shri P. N. Barot, the Investigating Officer has admitted that he has recorded the statement of this witness on 19.4.2002.

145.64 The Investigating Officer has admitted that this witness in the statement recorded by him had not stated any fact to the effect that the incident at Gopinath Society took place in day light. The contents of the statement recorded by the Investigating Officer are put to the Investigating Officer, who has admitted that the witness had stated such facts in the statement recorded by him. However, most of the contents of the statement had been put to the witness without seeking to contradict any part of his primary statement and hence, the same is not admissible in evidence. The Investigating Officer has admitted that this witness in the statement recorded by

him had not named any accused. The Investigating Officer has further admitted that this witness in the statement recorded by him had not stated any facts regarding his wife having been raped.

145.65 The contents of paragraph 4 from the third line to the sixth line of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

145.66 The contents of paragraph 5 on page 4 from the second line onwards, the contents of paragraph 6, the last two lines of paragraph 7, certain extracts of paragraph 8, certain extracts of paragraph 9 from the last line on page 6 to the end, are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

145.67 The contents of paragraph 10 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that the witness had not stated such facts in the statement recorded by him and has stated that the witness had stated before him that two or three people from Gangotri Society, whose names he does not know, had opened the shutter of the hall where they were hiding and had told them that there are no people of the Hindu mob and that they can escape from the road on the rear side, the road is safe. Upon informing them about this and saying that, the police and military vehicles are present there, they started going through Gopinath Society towards the open field.

145.68 The contents of first five lines of paragraph 11 and the contents of paragraphs 14, 19, 25, 26 to 30 as well as 31 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that these facts have not been stated by the witness in the statement recorded by him. Certain extracts of paragraph 12 of the examination-in-chief of the witness and the first four lines of paragraph 13, are read over to the Investigating Officer, who has admitted that the witness had not stated such facts in the statement recorded by him.

145.69 The last five lines of paragraph 13 of the examination-in-chief of the witness are read over to the Investigating Officer, who has clarified that the witness had stated before him that he knows the people of Gopinath Society by their faces and that the rest of the facts have not been stated by the witness in the statement recorded by him.

145.70 The contents of paragraphs 15 and 16 and the sixth line to the last line of paragraph 17 of the examination-in-chief are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

145.71 The contents of paragraph 18 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that all these facts have not been stated by him in the statement recorded by him. The Investigating Officer has stated that the witness had stated before him that, therefore, it was difficult to escape from such a situation and

his clothes were also burnt and somebody had struck him on the head with something like a stone and at this time, in front of his eyes his mother Abeda, as he had sustained burns on his body, he mustered courage and went near the police jeep.

145.72 The first two lines of paragraph 20 and the last six lines of paragraph 21 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the contents of the first two lines of paragraph 20 have not been stated by the witness in the statement recorded by him, however, insofar as the last six lines of paragraph 21 are concerned, the witness had stated before him that his nephews Wasim and Salim were burnt to death in the incident.

145.73 The first two lines of paragraph 22 are read over to the Investigating Officer wherein the witness had stated that the entire incident took place before 7 o'clock in the evening when it was day light and it was not dark. The Investigating Officer has denied that the witness had not stated such facts in the statement recorded by him. The Investigating Officer has stated that in the statement recorded by him, the witness had stated that the incident took place after 5:30 and hence, the fact regarding the incident having taken place before 7 o'clock has been stated by the witness. The other facts have not been stated by the witness in the statement recorded by him.

145.74 Certain extracts of paragraph 24 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by

him.

145.75 The contents of paragraph 34 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that he can identify the four persons who had pulled his wife and taken her away on the day of the incident. Moreover, he can also identify all the people, who were involved in the attack that took place near the tank on the day of the incident. The Investigating Officer has denied that the witness had not stated such facts in the statement recorded by him and has clarified that the witness had stated that his mother as well as his sister Shahidabanu and her daughter Nagma as well as brother-in-law Mohammad Yunus and his paternal uncle's son Abdul Aziz's two sons Salim and Wasim were done to death by sprinkling kerosene on them and setting them ablaze. He does not know the names of such persons, however, he believes that they are people from Gopinath Society whom he can identify by their faces but he does not know their names, and the incident having taken place in front of his eyes and he himself being the victim thereof and having sustained burn injuries, he can identify those people if he sees them.

145.76 The Investigating Officer has admitted that no test identification parade of the accused has been carried out through this witness. The Investigating Officer has admitted that the witness was not taken to Gopinath and Gangotri Society for the purpose of pointing out any person there. The Investigating Officer has admitted that during the course of his investigation, the witness has not named any accused before him.

145.77 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statements of this witness on 27.5.2008 and 15.10.2008. He has admitted that this witness in his statement dated 27.5.2008 has stated that his earlier statements dated 3.3.2002, 19.4.2002 and 13.5.2002 have been read over to him which are as dictated by him and are correct and proper. That he has received police protection and that he is not receiving any threats from any accused. Since this part of his statement recorded by the Investigating Officer has been put to the Investigating Officer only to bring on record the contents thereof, without seeking to contradict the witness qua any part of his primary statement, the same is not admissible in evidence.

145.78 The Investigating Officer has admitted that this witness in his statement dated 27.5.2008 had stated that the incident between Gopinath and Gangotri Society must have taken place at around 7 o'clock in the evening; he was lying against a pan-galla between Gopinath and Gangotri Society; he was injured and was in a semi-conscious condition. The Investigating Officer has admitted that the statements of this witness came to be recorded on 15.10.2008 at SIT, Gandhinagar. That he had casually questioned him at Jawannagar and had made certain notes in this regard. He has stated that at present, he does not remember as to whether he had made other casual notes in his case diary, but that he had orally examined the witness is certain.

145.79 The Investigating Officer has admitted that in his

statement dated 15.10.2008, the witness has stated that his business was of a commission agent. He was a resident of Khanpur, Ahmedabad. That upon asking personally, he says that his statement dated 27.5.2002 has been read over to him today, wherein the facts recorded are correct and proper and in this statement, he had stated facts that amongst the persons who had assaulted his wife, he can recognize four Marathi boys from Gangotri Society and four women from Gopinath Society who were there in the mob whose names he does not know, but he can identify them by their faces. Such facts have been stated by him and after the incident, even in his earlier statements, he had stated such facts and on that basis, during the course of investigation, to identify or to obtain the name and address of four Marathi boys and four women, it was necessary to carry out investigation in his presence and that the officer had sent summons to him and called him, pursuant to which he had come before him to give his statement and that the Investigating Officer had explained him to identify four Marathi boys and four women from Gopinath and obtain their names and addresses and the witness had stated that because he knows them by their faces, he would ascertain their residential houses and obtain their names and give the correct information to him.

145.80 In the opinion of this court, such facts which have been stated by the witness as recorded in the above paragraph could not have been brought on record as they do not relate to the incident in question, nor are they put to the witness to contradict any part of his testimony. This part of the testimony of the witness is, therefore, not admissible in evidence. Moreover, the conduct of the Investigating Officer is required

to be taken note of. Instead of carrying out a test identification parade to identify the accused, the Investigating Officer has called upon the witness to find out the names and addresses of such accused which clearly reflects on the nature of the investigation carried out even by the SIT.

145.81 Certain omissions and contradictions in the statement of this witness have been brought out in his cross-examination.

145.82 SUBMISSIONS: The learned counsel for the appellants submitted that this witness implicates Shashikant @ Tiniyo only by identifying him for the first time before the court without naming him in any of his four statements before the police and two statements before the SIT and also before the Nanavati Commission. It was submitted that identification in the court for the first time in the circumstances of this case is not at all credit worthy and should not be accepted against the accused. It was submitted that all the major facts stated by this witness in his examination-in-chief are not there in his statement dated 3.3.2002. It was submitted that none of the facts regarding Jadikhala; Khalid being brought to Jadikhala's house in an injured condition in a cart; places where the witness says they have hidden, namely, house in Jawannagar, Gangotri Hosiery Factory; the fact regarding an S.R.P. opening the shutter and asking them to go as safety provisions are made; on request being made to the SRP to let them go inside the Quarters they were beaten; they were coming back home, and while they were on their way, they were surrounded and set ablaze; and other incidents referred to by him; including hate utterances being made by the accused; people of

Gangotri and Gopinath being part of the mob; fact of recollection of faces when he closes his eyes; have been stated by him in any of this statements. It was submitted that the incident of his wife Zarina being beaten and stripped, and four ladies supplying kerosene and instigating; injuries to himself; incident of Wasim and Salim viz. that a woman took them up and threw them in the fire; Farzana, his sister Syeda and Sabira being in a half naked or naked condition; his mother and Jadikhala shouting specific words; the police kicking them at night and asking; treatment at the hospital not being proper; his say that he can identify the persons in the mob; all these major facts were not there in the first statement. Many are not there in the second statement dated 19.4.2002 and some are missing even in his statement before the SIT.

145.83 Next it was submitted that the witness did not state anything about the accused or their identification, etc., either before the doctor who treated him or before the Executive Magistrate who recorded his dying declaration.

145.84 The next submission advanced by the learned counsel for the appellants was that in his statement dated 3.3.2002, the witness has stated that he cannot identify the persons in the mob even if he saw them (paragraph 80). He has specifically stated at two places in his deposition that he has not given any physical description or identification marks of the accused (paragraphs 95 and 115). Next it was submitted that the witness has specifically stated in his police statement on 19.4.2002 before the Investigating Officer PW-178 that he had hidden below a paan galla at one of the sides, which is a different story, which he has not even stated in his

examination-in-chief. The witness has specifically stated that the incident of Jadikhala has taken place near the water tank and she died there only. It was submitted that this may be seen with reference to the postmortem of Jadikhala Exhibit-348 and inquest panchnama Exhibit-357.

145.85 It was submitted that if the witness has seen the incident of Kausarbanu and Kausarbanu was with them, there is no reference to the incident of Kausarbanu' stomach having been cut, her foetus having been taken out etc. Therefore, whether such an incident has occurred is doubt.

145.86 Lastly, it was submitted that even after his last statement recorded by the SIT dated 15.10.2008, he has admitted that till the date of his deposition, he has not given any description, identification marks, names, addresses, etc., of the four women and four Marathi boys (paragraphs 161 read with 163). He has admitted that even before the Nanavati Commission, he has not given any particulars as contained in paragraph 174. It was urged that having regard to the totality of the facts, where the court would believe the first time identification before the court and such identification whether lends any assurance about criminal complicity of accused No.13 in such a serious incident.

145.87 The learned counsel for the appellants submitted that this witness has given a version which is contrary to the version of the other witnesses, as none of the other witnesses have said that they went to the S.R.P. Quarters after going to Gopinath and again after going to the S.R.P., they came to Gopinath, and hence, his presence at the khancha (passage) is

doubtful. It was submitted that this witness wants the court to believe that after the attack on him, he was semi-conscious, and after he fell down, he had seen the incident of his wife across the wall which is highly improbable. It was submitted that his version before the court is completely different from the version given by him in various police statements and even in his police statements, he has improved his version step by step and ultimately before the court, he has stated a completely improved version. It was submitted that it is highly doubtful that whatever has been stated by this witness before the court was seen by him. It was submitted that the evidence of this witness is inconsistent with the evidence of other witnesses like PWs 106, 198, 191 and other witnesses. It was urged that though this witness is residing in this area since thirty years, he has not given the names of any local residents in any incident, except the accused whom he has identified before the court. It was submitted that in the case of this witness, no test identification parade has been carried out and without stating any identification marks or physical description in the statements recorded by the police, he has identified the accused for the first time before the court. It was further stated that no other witness has stated anything regarding two boys being taken and thrown from the top of the tank. It was submitted that the version of this witness is not corroborated by his wife Zarina who says that after jumping over the wall, she came back to the khancha. It was submitted that the evidence of this witness is inconsistent with the evidence of other witnesses and that he does not come across as a credible witness and no part of his evidence can be relied upon to establish the charge against the accused.

145.88 ANALYSIS: After omitting that part of the testimony of the witness in respect of which omissions and contradictions as to his previous statements in accordance with law, (viz. if something has been stated in a previous statement and not stated in the subsequent statement, it would not amount to an omission. It may be noted that while doing so the statement dated 3.3.2002 has not been taken into consideration for the reasons set out hereinabove), it emerges that the witness has stated that on 28.2.2008 he had gone to sell his bakery products at Jawannagar early in the morning and had returned home. Thereafter, he heard commotion and climbed up on the terrace of Rashidbhai's house, which has two floors and is situated towards the S.T. Workshop. From the terrace one could see the Noorani Masjid clearly. He saw mobs armed with weapons coming from both sides of the road. Thereafter, he, together with his family, left their house and went towards Jawannagar. They took shelter in Gauriapa's house. From there they went to Gangotri Society. When they went to Gauriapa's house, it must have been around 1:30 to 2:00. When they went to Gangotri, there was a hosiery factory there, which was in a closed condition. It was a huge place and many Muslims had gone to this place and had hidden in the factory. The S.R.P. people had told them to stay inside the factory and had downed the shutter from outside. At around 5:00 in the evening, the S.R.P. people opened the shutter and told them to escape, therefore, they had all gone towards Gopinath. There was an open ground there wherein there was an armed mob which charged towards them shouting "kill, hack". Upon seeing the mob they were terrified. To escape from the open ground they tried to go towards the S.R.P. Quarters, but they were not permitted to go inside. When they reached a little ahead of

Gopinath Society, a mob of people from Gopinath and Gangotri Society encircled them and when they reached near the water tank there was a mob comprised of people from Gopinath and Gangotri Society as well as from outside. The mob was armed with weapons and started assaulting them and pelting stones at them. At the water tank, they were surrounded by mobs from both the sides, which attacked them and started thrashing and hacking. At this time, Kudratbibi's entire family, Jadikhala's entire family, Jadikhala's two daughters in law, his family, etc. were there. Moreover, Kausarbanu's family, Kausarbanu's maternal aunt's family, Gauri Apa's brother-in-law Salam, Farzanabanu, Farhanabanu, etc. were present. Near the water tank where they were standing, there were shouts of "kill, hack" and the people in the mob were attacking their people with whatever weapon they were armed with. The mob sprinkled kerosene on all the people mentioned in paragraph 20 of his examination-in-chief and set them ablaze. Out of those who died at the water tank spot, from Kudratbibi's family, Kudratbibi was severely burnt and ultimately died in the Civil Hospital, Kudratbibi's son Sabbir died on the spot in this very incident, his mother Abeda also died on the spot, his sister Saida's daughter Gulnazbanu also died on the spot and his sister died on the next day at the Civil Hospital on account of being burnt in the incident. Kausarbanu's mother and her maternal aunt died on the spot. Kausarbanu was pregnant; she also died on the spot. In this very incident, Farzana's daughter Farhanabanu and Gauriappa's brother-in-law Salaam died on the spot. Jadikhala and her two grandsons also died in the incident. At that time, Abdulaziz's two sons Wasim and Salim were lying with him in a wounded condition. The witness was lying wounded at the scene of offence in a semi conscious

condition. Thereafter, late at night, the police came and took them to the hospital.

145.89 It may be noted that while the witness claims to have seen four youths drag away his wife, this part of his deposition does not appear to be credible for the reason that as per the version given by the witness, on the one hand he says that his wife and some others jumped over the wall and fled and then he says that those who had got separated from them and had gone were surrounded by the mob and he had seen his wife being pulled by the mob and assaulted and her clothes being stripped off, etc. Moreover, in paragraph 31 of his examination-in-chief, the witness has stated that at the Shah Alam camp, after eight days his wife had told him that on the day of the incident when she was running in the lanes of Gopinath and Gangotri, four youths had attacked her on her hands and her head and had raped her. Therefore, it appears that it is at this stage that he came to know about such incident. However, this witness is an injured eyewitness and to the extent he has deposed about all the persons referred to hereinabove being with him and being killed or injured in the incident that took place at the passage of the water tank, he is consistent right from the beginning, and therefore, through the testimony of this witness it is established that the main massacre took place at the passage of the water tank and the persons named by him either died or were injured in the incident that took place there.

145.90 Insofar as the complicity of the accused in the incident is concerned, in his entire examination-in-chief, the witness has not named any accused but has identified accused

No.30 Shashikant @ Tiniyo Marathi son of Yuvraj Patil as the person who was assaulting them in the incident near the water tank of Gopinath Society. It may be noted that though the witness in his statement dated 19.5.2002 had stated that the people in the mob were from Gopinath and he could identify them if he sees them, none of the investigating agencies have thought it fit to carry out any test identification parade to identify the accused and on the contrary had called upon the witness to ascertain the names and addresses of such people. In these circumstances, the accused has been identified for the first time before the court. Ordinarily when the accused has not been named by the witness, the court would not accept such identification when it is at a belated stage and that too, before the court for the first time. However, if such a stand is adopted in this case, it would amount to playing in the hands of the concerned Investigating Officers, who for reasons not far to seek, have made no efforts to carry out a test identification parade to identify the culprits. However, the evidence of this witness qua the accused identified by him would still be in the nature of weak evidence and can only be used for the purpose of corroboration.

145.91 It may be noted that though this witness has not named any accused and has identified one accused in the dock, his testimony runs into 220 paragraphs out of which is examination-in-chief is comprised of 37 paragraphs.

145.92 The testimony of this witness would support the prosecution only for corroborative purposes insofar as accused No.30 Shashikant @ Tiniyo Marathi son of Yuvraj Patil is concerned.

146. **PW-159 Shabbirahemad Munirahemad Shaikh**, aged 22 years, has been examined at Exhibit-1143. The witness has deposed that in the year 2002, he was residing at Jawannagar and was learning tailoring work. He was residing with his parents as well as brother, sister-in-law and nephew. In the year 2002, he was residing with his father Munirahemad, mother Jenabbibi, elder brother Mebalahussain, his wife, his nephew Mohsin, his second elder brother Mahammadhussain, his wife Noorjahan, Mahammadhussain's children, viz., Ahemadhussain and Hamidarzana and his younger brother Anwar, Sabir and sister Hamida. All were residing together.

146.1 The incident took place on 28.2.2002. On that day, in the morning, he was at home. There was a call for bandh. The sounds of shouting "the mob has come, the mob has come" were heard, and hence, at about 10:30 in the morning, he came out to see. At that time, his elder son met him on the way and he had told him to go home. Thereafter, he had not gone on the road and had returned home. Thereafter, he remained at home till 6:00 to 6:30 in the evening.

146.2 At around 7 o'clock in the evening, a mob of five to six thousand people armed with weapons had come to Jawannagar, wherein people had tied saffron bands on their foreheads. The people in the mob were looting and assaulting and the public was frightened and was fleeing. He had not seen the face of any member in the mob.

146.3 Thereafter, out of fear, he started going towards Gangotri society. His sister-in-law Noorjahan, his nephew

Mohsin, his sister Hamida, his second nephew Ahemadraja and Hamidraja were with him.

146.4 They must have reached the water tank, at that time, from the rear side, from the direction of Teesra Kuva, a mob of around three to four thousand people had come, there were disturbances and a hubbub and the people jumped over the wall and were falling on each other. At this time, he was standing near the water tank when somebody hit him on the head with a hockey stick and he fell down and became unconscious. At the place where he fell down and became unconscious, there was a fire, and hence, he had sustained burn injuries. He had sustained burn injuries on his left leg. He had sustained burn injuries, but his pant had not been burnt.

146.5 The witness has stated that he was unconscious on that spot when the police came and woke him up and took him to the Civil Hospital for treatment. When he reached the Civil Hospital, he learnt that he had sustained burn injury on his left leg. He was admitted in the Civil Hospital for three months for the purpose of treatment.

146.6 From the Civil Hospital, he had gone to the Shah Alam camp. While he was at the Civil Hospital, the police had come and had recorded his statement as regards the manner in which he was burnt. After treatment, he had gone to the Shah Alam camp and stayed there for two and a half months.

146.7 His sister-in-law Noorjahan was also burnt near the water tank in this incident and had died. His nephew Mohsin was also with his sister-in-law Noorjahan. His nephew Mohsin

was totally burnt on the spot in this incident.

146.8 CROSS EXAMINATION: This witness has not named any accused. The witness has been cross-examined by the learned advocates for the accused and it has been elicited that the witness does not know any person who was involved in the incident near the water tank regarding himself, his sister-in-law Noorjahan as well as his nephew Mohsin.

146.9 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. The assignee officer has admitted that this witness has not given the name of any accused in the statement recorded by him. When the witness has not named any accused, there was no question of putting such question to the assignee officer. The assignee officer has admitted that this witness in the statement recorded by him had not verbatim stated that he had come out in the morning and his elder brother had told him to go back, that the witness had seen the incident of Noorjahan and his nephew and that at the time of fleeing, his sister-in-law and nephew were with him but the witness had stated that his family members were with him.

146.10 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has been residing at Jawannagar since fourteen years prior to the incident. It was submitted that this witness was around fourteen years of age at the time of the incident. No police statement of this witness has been recorded. It was submitted that this witness has categorically stated that the incident at the passage of the

water tank took place after 7:00 p.m. and it was dark and there was no electricity in that area on that day. It was submitted that the witness has also categorically stated that the mob which came from Teesra Kuva, encircled the victims at the passage and that the mob was involved in the incident at the passage. It was submitted that according to this witness, no incident took place at Jawannagar till 7:00 p.m. It was pointed out that this witness is the brother of PW-76 Mahammad Hussain Munirbhai Shaikh and PW-111 Mehblahussain Munirahmed Shaikh.

146.11 ANALYSIS: This witness is an injured witness, whose sister-in-law Noorjahan and nephew Mohsin have died in the incident that took place at the passage of the water tank. From the testimony of this witness it emerges that a huge mob had come to Jawannagar at around 7 o'clock in the evening. The mob was huge and was committing loot and assault. Out of fear, he, together with his family members fled towards Gangotri Society. When they reached near the water tank, a huge mob came from the side of Teesra Kuva and there was rioting and people tried to jump over the wall and escape and in the process fell over each other. While he was near the water tank, someone inflicted a blow on his head and he became unconscious. There was fire near where he had fallen and he was burnt on both his legs. The witness has not named any accused; hence, his testimony would not come to the aid of the prosecution to prove the charge against any specific accused. However, the witness has given a credible version of how the incident had taken place.

147. **PW-161 Shahjahan Kabirali Shaikh**, aged 25

years, has been examined at Exhibit-1146. The witness has deposed that in the year 2002, she was doing the work of making elastic at home. At that time, she was around thirteen to fifteen years old.

147.1 In the year 2002, she was residing in *Lane No.3, Hussainnagar, Naroda Patiya* together with her parents and six brothers and sisters. Her elder sister was Noorjahan, thereafter her brother Mahammadali, then her sisters Farzana, Saira and her brother Shahrukh. Her mother's name is Afseraben.

147.2 In the year 2002, her father used to ply a rickshaw and her mother used to do labour work.

147.3 The incident took place on the 28th day in the year 2002. It was a *jumme raat* on that day. She, her brother and sister, all were at home on the day of incident. On that day in the morning at around 9 o'clock, they could hear the sounds of mobs from the road outside. She had not gone out on road, but had stayed at home. The people of their mohalla had told them that they should all go towards the S.R.P., hence, she took her brother and sister outside the house in the morning and all of them went outside the S.R.P. and sat there. Thereafter, the S.R.P. people told them that there were no orders for them to sit there and told them to go away from there, and hence, they all went away from the S.R.P. Quarters.

147.4 At around 4 o'clock, in the aforesaid circumstances, they went away from the S.R.P. Quarters to Gopinath Society. At this time, from the open ground near Gopinath Society, the mobs started coming and they were surrounded on all four

sides by the mobs. The place they were all surrounded was near the water tank. They were all set on fire near the water tank. Kerosene, petrol and burning rags were thrown on them from the terrace and they were set ablaze.

147.5 She herself was burnt in the accident. Her brother Shahrukh who was in her lap was also burnt along with her. She was burnt on the right side of her body. In the same incident, her sister Noorjahan who was with her was also burnt to death. Her maternal aunt (*mami*) by the name Saliya was also burnt on the same spot and she also died there. Her maternal aunt's daughter Muskan also died on the spot in the same incident. Her maternal aunt's son Subhan was also burnt and died in the incident on the spot. In the incident, her entire face was burnt and both her hands were also burnt. (The trial court has noted that the signs of burns on the face of the deponent could be clearly seen even on that date.).

147.6 During all this, her father together with her brother Mahammad had got separated from them. Her other brother and sisters, namely, Farzana, Saira were with her maternal aunt (*masi*) and had got separated from them, whereas she, her sister Noorjahan, her brother Shahrukh and her maternal aunt and their children had got separated.

147.7 The witness has stated that she saw all the above persons being burnt and she also had sustained injuries and had become unconscious. Thereafter, several people with swords and sticks, etc. came there and were hitting them and ascertaining as to whether they alive or dead. She was beaten twice on her head to ascertain whether she was dead,

however, she pretended to be unconscious and lay there. She does not remember as to how long she was lying there in this condition, however, at night when the police came, she pretended to be unconscious. The police came and said that those who are alive should come with them. At that time, she had thought that there was a little life left which she did not want to lose. Thereafter, the police had stated that they had come to save them and the police took them to the Civil Hospital. She stayed in the Civil Hospital for two months for taking treatment and thereafter, stayed at the relief camp for one month. Thereafter, they got a house at Faizal Park and they went to live there.

147.8 When she was at the Civil Hospital, the police had come and had asked about their name and surname and written down something, however, she does not know what the police had written down.

147.9 The witness has stated that her father's name was Kabirali and she has never stated that her father's name was Kabir Ahemad. Her father's name was wrongly written in the injury certificate (Exhibit-376) and the name Kabir Ahemad written in her statement is also incorrect. The police have also written this fact incorrectly.

147.10 CROSS EXAMINATION: The witness has been cross-examined by the learned advocates for the accused. In her cross-examination, she has admitted that while they were sitting outside the S.R.P. Quarters at 4 o'clock, till then, nobody had come near them. The witness has, however, voluntarily stated that on the other side, sounds of gas cylinders bursting

and disturbances were coming and hence, the S.R.P. people had told them to get up.

147.11 The witness has admitted that they had gone near S.R.P. from Hussainnagar and the pit. The witness has admitted that when they were near S.R.P., no mobs or vehicle had come from the direction of Uday Gas Agency and has voluntarily stated that they were cutting and burning near the tank near Gopinath Society. The witness has admitted that while they were sitting outside the society, other Muslims were also sitting there. She has admitted that while she was sitting near the S.R.P., she has not seen that any person who had been beaten by anyone or who had sustained any bullet injury had come there.

147.12 The witness has admitted that till she was there, she has not seen anyone being set ablaze in the open ground. The witness has admitted that when she went to Teesra Kuva which is on the rear side of Gopinath Society, it was dark. The witness has admitted that, to go to the open ground, they have to go through *Jawannagar-ni-Chali*. The witness has admitted that while they were going through the Jawannagar, no one had stopped them and has voluntarily stated that they were beaten and driven away from Gopinath Society and were not permitted to go. The witness has admitted that while she went from Jawannagar, no incident had taken place in Jawannagar. The witness has admitted that the Teesra Kuva ground comes after crossing Gopinath Society. The witness has admitted that while they were going towards the Teesra Kuva open ground, there were mobs there also. The witness has admitted that while they were going, vehicles full of mobs were coming. The

witness has stated that she had seen the mob of persons coming with swords and pipes. She has stated that they were surrounded by the mob near the water tank of Gopinath Society. The witness has admitted that she did not know any of the persons in the mob and has voluntarily stated that she felt that they were the persons from Gopinath Society. The witness has admitted that she had occasion to go to Gopinath Society as several Muslims were residing there. The witness has denied that the faces of the persons in the mob were covered.

147.13 To prove the omissions and contradictions in her testimony as to her police statement dated 3.3.2002, the defence has cross-examined PW-296 Shri J. V. Surela, the assignee officer, who in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. The assignee officer has admitted that this witness has not given the name of any accused in the statement recorded by him. The assignee officer has admitted that this witness had stated before him that on Thursday 28.2.2002, in the evening at around 7 o'clock several people belonging to the Hindu community entered their chawl shouting "kill" and "cut" and they had cans filled with petrol and kerosene in their hands which they were sprinkling on houses and at that time, she and her father, brothers and sisters entered their house with her mother had gone for her job and she was outside and kerosene and petrol were sprinkled upon them and which was ignited by throwing burning rages and they were set on fire. At this time, they were shouting and screaming, due to which, the people in the mob had fled and at this time, upon the police coming they were sent to the Civil Hospital for treatment. She does not know the names and addresses of the people who

burnt them.

147.14 SUBMISSIONS: The learned counsel for the appellants submitted that this witness was residing at Lane No.6, Hussainnagar. It was submitted that considering the age of the witness at the time when she deposed, she must have been between 13 to 15 years of age at the time of the incident. It was submitted that from the testimony of this witness, it transpires that they were encircled and attacked by the mob which came from Teesra Kuva. It was submitted that this witness has clearly stated that they were attacked at the passage of the water tank by a mob which came from Teesra Kuva. She has further admitted in paragraph 22 of her deposition that the incident at the passage took place when it was dark. It was submitted that this witness has not implicated any of the accused.

147.15 ANALYSIS: From the testimony of this witness, it emerges that they could hear the sounds of the mob on the road in the morning, but she had not gone on the road. The people of their mohalla said that all of them should go together towards S.R.P., and therefore, she took her brothers and sisters and came out of the house in the morning. They were sitting outside the S.R.P. till 4 o'clock in the evening and till then no one had come near them. At around 4 o'clock the S.R.P. people had driven them away and they went to Gopinath Society. At this time mobs came from the open ground near Gopinath Society and encircled them from all sides near the water tank and set them all ablaze. Rags were being soaked in kerosene and petrol and thrown from the terrace nearby and they were being set ablaze. The witness and her brother sustained burn

injuries and her sister Noorjahan, her aunt Saliya and her cousins Muskan and Subhan were burnt to death on the spot.

147.16 In her cross-examination, no omission or contradiction in her testimony has been brought out as to her previous statement recorded by the police. The witness is simply confronted with the contents of her police statement without reference to any part of her testimony, therefore, that part of her deposition is not admissible in law.

147.17 This witness has not named any accused, and in her cross-examination she has admitted that she could not recognize any person in the mob, but has stated that they were under the impression that they were people from Gopinath Society. This witness is an injured witness, whose family members have died in the incident. The version given by her is credible and trustworthy and there is no reason to disbelieve her.

148. **PW-163 Usmanbhai Valibhai Mansuri** has been examined at Exhibit-1155. The witness has stated that he knows Gujarati. The witness has stated that at the time when the SIT recorded his statement in the year 2008, he was residing at Musibatnagar, Ugamna Talav, Dehgam, District Gandhinagar. The witness has deposed that he was working in a gum factory at Surendranagar and was residing in a room allotted by the factory and at present, he was residing alone. His family was residing at Dehgam.

148.1 In the year 2002, he was residing in Hussainnagar, Naroda Patiya at Ahmedabad, with his wife Sakinabanu and

son Yasin. In the year 2002, he used to work as a hawker and sell and purchase old sarees. The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. On that day, on account of the bandh call, he, his son and his wife were at home. On that day, at around 9 o'clock, from outside, from the public which was coming and going in their chawl, they came to know that there were riots outside, and hence, he came out and went and stood near his house. In the afternoon, at about 12 o'clock, the people in the mob started coming inside towards their house, and hence, out of fear, all of them started going to the rear side. They left their house and went away. The people in the mob had pipes, sticks, swords, etc. This mob was assaulting and was damaging houses. To escape they had fled towards S.R.P. There they had tried to enter the S.R.P. Quarters; however, they were not permitted to go inside. Upon them not being permitted to go inside the S.R.P. Quarters, they had gone towards Jawannagar and from the terrace of Gangotri Society gone on the rear side. There people were saying that they should go from the rear side towards Naroda and hence, he had gone on that side.

148.2 At around 5 to 6 o'clock in the evening, a mob came from the open ground near the closed well. Upon seeing the mob, they turned back, when they returned back there was another mob there. They were surrounded between both the mobs. There was a constructed shed near the water tank with walls on three sides; they were surrounded in the shed. There stones were pelted on them. In the stone pelting, he was injured on the head and he was required to take stitches. At the place where they were surrounded, the people in the mob had plastic bags and they were burning them and throwing

them on them. Upon throwing them in this manner, the people were getting burnt by the plastic bags and were burning. In the incident that took place, he had sustained burn injuries on his waist and his son Yasin had sustained burn injuries on both his legs.

148.3 Since he was injured on the head, he became unconscious and his son on account of his burns was lying with him. On all four sides, everything was burning.

148.4 At night, the police had come there and had woken them up and taken them to the Civil Hospital. His son had woken him up. Both of them went to the Civil Hospital in this manner and there they were given treatment. He was under treatment for fifteen to twenty days and his son was given treatment for one and a half to two months. Thereafter, he had stayed with his son at the Civil Hospital.

148.5 In the disturbance, he and his son had got separated from his wife. His wife, together with the other women had taken shelter in a house and they were taken to the relief camp by the police at night.

148.6 The police had recorded his statement at the Civil Hospital. Thereafter, the SIT had recorded his statement. After the treatment was over, he and his son had gone to the relief camp. From the relief camp, he had gone to Vatva and from there they had gone to Dehgam and his permanent address is at Dehgam.

148.7 CROSS-EXAMINATION: In the cross-examination

of this witness, it has come out that he was residing in lane No.3 at Hussainnagar. He has admitted that till 12:00 to 12:30, no incident had taken place in his lane at Hussainnagar. However, the mobs had come. The witness has admitted that at 11 o'clock in the morning, mobs of people were standing on the road. He has admitted that at around 6 to 7 o'clock in the evening, a huge mob of people had entered Jawannagar and the other chawls and both these facts have been stated by him in his statement dated 3.3.2002.

148.8 The witness has admitted that he has stated before the police that since the people in the mob had come from outside, he could not recognise anyone. The witness has voluntarily stated that when he stated from outside, he meant that from the road outside the chawl. He has stated that since he was absolutely new in this area, he did not know anyone including the neighbours.

148.9 The witness has admitted that the SIT had recorded his statement on 3.3.2002 and at that time, his dying declaration was read over to him and the facts stated therein were correct. The witness has admitted that he has stated such facts in the statement recorded by the SIT. The witness is shown his signature below the dying declaration Exhibit-844 and he has identified the same.

148.10 The witness has denied that in his statement dated 3.3.2002, he has not stated before the police that to escape they had gone towards the S.R.P. Quarters but they had not let them enter.

148.11 The witness has admitted that in his statement dated 9.6.2008, he has not stated any fact regarding the S.R.P. Quarters before the SIT, but has stated that he has stated such facts in the statement recorded at the Civil Hospital.

148.12 The contents of paragraph 8 of the examination-in-chief of the witness are read over to him to the effect that he has not stated such facts in his statement dated 3.3.2002, which the witness has denied. The witness is also confronted with the facts stated in paragraph 8 of his examination-in-chief to the effect that he has not state such facts in his statement dated 9.6.2008, which the witness has admitted.

148.13 The witness has stated that they gone to the S.R.P. Quarters through Jawannagar and had reached there at about 3 o'clock. He has admitted that when he reached Jawannagar, at that time, he had not seen any incident taking place and had not seen any mob and has voluntarily stated that there were mobs outside.

148.14 The witness has stated that they had stayed outside the S.R.P. for about one to two hours, but thereafter, they were driven away from there. The witness has denied that no such incident had taken place at the S.R.P. The witness has stated that there were mobs at that spot and that they were shouting. The witness has stated that he cannot say as to whether incidents have taken place at any other place and has voluntarily stated that out of fear, they had remained near S.R.P.; however, riots were going on nearby. The witness has stated that at the place where he was sitting near the S.R.P., no incident had taken place during the two hours that he was

there.

148.15 The witness has denied that he has not seen any incident and that he is falsely deposing before the court.

148.16 PW-296 Shri J. V. Surela, the assignee officer, in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. The assignee officer has admitted that the witness has not stated the name of any accused in the statement recorded by him. He has admitted that this witness had not stated before him that they had gone to S.R.P. Quarters to save themselves and that they were not permitted to enter inside. He has further admitted that this witness in the statement recorded by him had not referred to occurrence of any incident between 5 to 6 o'clock in the evening but has stated facts regarding the incident of 6 to 7 o'clock. He has admitted that this witness had not stated that the mob had come from the direction of the open ground where there is a closed well and upon seeing the mob, they had turned back and on the way back, another mob was there. The assignee officer has admitted that the witness has not stated before him that there was a shed with three walls constructed near the water tank and that they were surrounded in the shed and there was stone pelting on them and in the stone pelting, he was injured with a stone and was required to take stitches on his head. He, however, has clarified that the witness has stated that to protect themselves they had run from the chawl and when they were going in front of Gangotri Society, the people from the mob surrounded them from all four sides and had injured him with a stone on his head, had poured acid and kerosene and burnt him, due to

which, he was burned on the stomach, left leg and hand. At that time, his son Yasin was also burnt on both his legs. The assignee officer has admitted that the witness has not stated before him that at the place where they were surrounded, the people in the mob were burning plastic bags and throwing them on them and that people were getting burnt by the plastic bags thrown in this manner and that in this manner, the witness was burnt on his waist and his son was burnt on both his legs.

148.17 SUBMISSIONS: The learned counsel for the appellants submitted that this witness and his son were injured in the incident at the passage of the water tank and were taken to the Civil Hospital. It was submitted that this witness has not implicated any accused, including the local residents and that this witness has not stated in his police statement as well as the statement recorded by the SIT that he and his son were injured in the incident at the passage. Moreover, there are contradictions between his police statement, deposition and the statement recorded before the SIT.

148.18 ANALYSIS: This witness was residing at Hussainnagar at the relevant time. From his examination-in-chief and the facts elicited in his cross examination, it emerges that at round 12 o'clock in the afternoon the mobs started coming towards their chawl. Out of fear they went towards the rear side. The mob was armed and was assaulting people and damaging properties. They went towards the S.R.P. Quarters, but were not permitted to enter inside and hence, they went towards Jawannagar and from a terrace of Gangotri they went on the rear side. From his cross examination, it emerges that

the mobs had come to Jawannagar and other chawls at around 6 to 7 o'clock in the evening. According to this witness, he and his son were injured at the passage of the water tank: however, the description of the incident as given by this witness is different from the narration of facts given by other witnesses. An omission has been brought out that the witness had not stated such facts in his previous statements. This witness has not named any accused and hence, his testimony does not come to the aid of the prosecution for proving the charge against the accused.

148.19 Insofar as the contention raised in behalf of the appellants that the witness has not implicated any local accused is concerned, from the contents of paragraph 14 of his deposition, it is apparent that this witness had newly come to reside in that area and therefore, he did not know anyone.

149. **PW-164 Yasin Usmanbhai Mansuri**, aged 24 years, has been examined at Exhibit-1156. The witness has deposed that in the year 2002, he was residing at *Lane No.2, Hussainnagar, Naroda Patiya*, with his parents. At that time, he was doing the labour work in Sonia Biscuit Factory.

149.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh. He and his parents were at home on that day. In the morning at around 9 o'clock, they came to know from outside that the mob of Hindus had come and that they had swords and sticks in their hands and were saying "kill the Miyas" and hence, all three of them had hidden in their house.

149.2 Till 12:00 in the afternoon, they were hiding in their house, however, as and when the mobs started coming, they started going to the chawls on the rear side and were hiding in other houses. In the meanwhile, stone pelting continued. While they were doing so, it became 5 to 6 o'clock in the evening.

149.3 At around 6:00 in the evening, they were hiding on a terrace of Gopinath Society. At that time, the people in the mob had continued pelting stones. From the terrace, they had climbed down towards the interior side of Gopinath Society. Two or three S.R.P. men were standing there. The S.R.P. men told them that the military had come on the rear side and that they would take them to some other place for their safety. Thereafter, they proceeded towards the open ground behind Navyug, where a mob surrounded them. At this time, there was a water tank near the Gopinath Society, where the mob had surrounded them from both sides. They were encircled between one hundred to one hundred and fifty people on both sides. The people in the mob started assaulting them with pipes and sticks. The mob threw kerosene, petrol etc. from the top of the water tank and started setting them ablaze.

149.4 In this incident, his left hand was fractured and he had sustained burn injuries on both his legs. He and his father were together at that time. His father was injured on the head and had become unconscious and he had sustained burn injuries on his stomach. He had feigned unconsciousness and was lying there. The mob went away and there was no light on this spot and upon it became dark, they just lay there. At 11 o'clock at night, the police came and took him and his father and other injured persons to the Civil Hospital. He was treated

at the Civil Hospital for about two to two and a half months. While he was at the hospital, his statement was recorded by the police. After being treated at the Civil Hospital, they had gone to the Shah Alam camp from where, he had gone to stay at Dehgam and his father had gone to reside at Vatva.

149.5 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that the houses in his lane are in a straight line and on one side of the lane of his house there is the S.T. Workshop compound wall and on the other side the lane is closed. He has admitted that the wall on one side of their lane was the Uday Gas Agency wall. The witness has denied that at the scene of incident at Gopinath Society referred to by him, only kerosene and petrol was being thrown from above the tank and there was assault and no other incident had taken place. The witness has voluntarily stated that many other incidents had taken place, but he was not aware of all them and he had not seen them. The witness is confronted with his previous statement dated 3.3.2002 as to what has been stated by him in paragraphs 3 and 4 of his examination-in-chief and he has admitted that he has not stated such facts because the police had only asked his name, address, place of service and preliminary questions and had not asked anything else, and hence, he had not stated anything more. The witness has admitted that at first, they had hidden on a terrace, but he does not know as to on the terrace of which house in Gopinath Society they were hiding. The witness is certain that they had climbed down from the terrace towards the interior side of Gopinath Society. The witness has admitted that the incident had taken place after they had climbed down from the terrace. The witness has further stated

that they had reached the terrace at around 6:30 and must have hidden there for around an hour. The witness has denied that the incident took place one hour after they got down from the terrace and has voluntarily stated that immediately the mobs from both the sides came there. The witness has denied that after getting down from the terrace of Gopinath Society, they had gone towards the open ground and has stated that he had seen the mob which was coming from the open ground at a distance of about twenty to twenty five feet. The witness is cross-examined with regard to the topography of the area.

149.6 PW-296 Shri J. V. Surela, the assignee officer, in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. The assignee officer has admitted that this witness has not named any accused before him. He has denied that he had only asked the witness his name, address and place of service. The assignee officer has admitted that this witness had stated before him that he was at home, in the meanwhile, at around 6 o'clock in the evening. therefore, they had come out of their house.

149.7 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has been residing at Lane No.2, Hussainnagar. He has not stated about anybody having gone to the S.R.P. Quarters. Referring to the contents of paragraph 5 of his deposition, it was submitted that the version given by this witness is highly improbable. It was submitted that the contradictions between the testimony of this witness and his father (PW-163, Usmanbhai Valibhai Mansuri) would render the evidence of both of them unreliable. It was submitted that this witness talks of only one mob which

had come from Teesra Kuva. Referring to the contents of paragraphs 13 and 15 of his cross-examination, it was submitted that the witness is stated to have been injured at 7:00 p.m. and hence, the incident at the water tank must not have taken place before 7:00 p.m. on the day of the incident.

149.8 ANALYSIS: From the testimony of this witness it emerges that he and his father were surrounded by the mob near the passage of the water tank, near Gopinath Society. They were assaulted with pipes and sticks and petrol and kerosene, etc. were thrown on them from the top of the water tank and thereafter they were set ablaze. The witness is an injured eye witness, who had taken treatment at the Civil Hospital. The injury certificate Exhibit 375 issued by the hospital reveals that the witness has sustained 1st to 3rd degree burns on his lower limbs, on the front side. Therefore, the version given by the witness is duly corroborated by the injury certificate issued by the hospital. The witness has not named any of the accused involved in the incident. However, the testimony of this witness supports the prosecution case that Muslims were cornered near the passage of the water tank near Gopinath Society and were assaulted and set ablaze by sprinkling kerosene, petrol and other inflammable substances on them from the top of the water tank.

150. **PW-165 Pirmahammad Allabax Shaikh**, aged 47 years, has been examined at Exhibit-1157. The witness has deposed that from the year 1986, he was residing at *Lane No.1, Hussainnagar, Naroda Patiya*. In the year 2002, he was residing there with his mother, his wife Khurshidabanu, his two daughters Noorjahan and Najmunnisha, his son Badesaab, all

were residing together.

150.1 The witness has deposed that he used to do the work of colouring the buildings and hence, he was known as “Piru Painter” in the chawl. His son also used to do colouring work with him and his mother and wife used to do the labour work of sweeping and mopping at the Ice Factory. His father has passed away in the year 1985.

150.2 On that day, he was at home when at around 9:30, his wife woke him up and told him that a lot of commotion could be heard from outside and asked him to go and see what was happening. He asked his wife where his daughters were and she said that they had gone to fetch water, and hence, he went out of his house to bring his daughters back. He came out and went straight to the road where there are water taps. There, at the Noorani Masjid, the people were saying “*Shri Ram, Shri Ram*” and had attacked it. There was a lot of public at the entrance of the chawl; however, he had gone to look for his daughters. At this time, from somewhere, a bullet came and struck him on the leg. His right leg was injured by the bullet, whereupon he fell down on the spot. It must have been approximately 9:45 at that time. The bullet had injured him below his knee and the people standing there had lifted him and taken him home because he could not walk. In the firing, his leg was fractured, and hence, he could not walk.

150.3 His wife had heated a knife and asked him to remove the bullet because it was stuck in his leg. Somebody had told him to extricate the bullet, or else the poison would spread. He himself had extricated the bullet from his leg with a

knife. At that time, he, his wife and his mother were crying profusely. Thereafter, he started feeling drowsy.

150.4 At that time, the residents of the chawls were saying that the mobs have come inside the chawls, and hence,, they should all flee from there. Everybody was fleeing towards the rear side. His wife and his son lifted him and took him from his house to the house of one Akhtarbhai Bhangarwala.

150.5 He did not find his daughters at all. The rest of the members of his family left the house, taking him along in a wounded condition. When they reached Akhtarbhai's house, it was around noon time.

150.6 When they reached Akhtarbhai's house, there was a lot of commotion by the public. While they were sitting at Akhtarbhai's house, iron scraps and burning rags were being thrown on them. Stones were also pelted at them from the S.T. Workshop. The burning rags fell on many people present there. Upon seeing this, everybody started fleeing from Akhtarbhai's house. Since the people had started fleeing, his wife and son lifted him and started walking towards Jawannagar. At this time, his mother got separated from them.

150.7 They went and sat in the house of one Pinjara in the fourth lane of Jawannagar. When they reached the Pinjara's house, many Muslims from their chawl were sitting on the terrace as well as in the rooms. He was taken there and made to lie down. They stayed at Pinjara's house till about 5:30 to 6:00.

150.8 At that time, in front of lane of Jawannagar, where shops are situated, mobs of Hindus came chanting "*Shri Ram, Shri Ram*". The people in the mobs burnt the flour mill which was situated close by, due to which sparks were flying and cement sheets also started flying. People started saying that "*the situation has deteriorated immensely, hence, run, run!*" His wife and son lifted him and took him near a small gap for going inside the S.R.P. Quarters.

150.9 At that time, his wife and son requested the S.R.P. men to let them enter the S.R.P. Quarters as the witness was injured by a bullet; however, they did not accede to their request and started prodding them with sticks and guns and were saying that they should run towards the rear side. At that time, they found his mother and daughters, who were sitting outside the S.R.P. Quarters compound wall.

150.10 His nephew's wife Sajjobanu, who was pregnant, had taken all of them and was sitting there. At that time, his daughters and mother were overcome with emotion and hugged him and started crying. He could not bear the physical pain on account of the injuries sustained. At that time, there was a house in Jawannagar, which was locked. His son broke the lock and made them sit inside the house.

150.11 Near that house, there was a chawl and in that chawl, the people in the mob were passing by shouting "*Kill the Miyas*" and "*Jay Shri Ram*" which he could hear. There, some person was saying, "*Hey Guddu, call that Bipin, that Miya is running away*", which he had heard. He could hear

these voices from outside. At that time, his nephew's wife started becoming unconscious and due to fear, the rest of his family members shut their mouths and started crying. They were constantly wondering as to whether or not they would survive. They had remained inside, and outside, they could hear the cries of "*Mujhe bachao! Mujhe bachao!*" (Save me, save me). The witness has deposed that he is not aware as to who was shouting in this manner.

150.12 They were apprehending that they would not escape and were wondering as to whether they could escape if someone broke the door.

150.13 He does not remember as to how long they had stayed in that house. However, when the noises from outside stopped, they sprinkled water on his nephew's wife and woke her up and after lifting him, all his family members went to the terrace of a house in Jawannagar and made him lie down on a cot. The police came to the terrace at night and told them that they would take them to the camp and since the public was climbing down, they too started climbing down. He was lifted and taken to the police vehicle which took them to the Shah Alam camp. From the Shah Alam camp, he was taken for treatment to the V.S. Hospital, where he was treated. He was admitted in the V.S. Hospital for eighteen days and was operated.

150.14 While he was under treatment at the V.S. Hospital, the police had recorded his statement twice. Upon being discharged from the hospital, he had gone to the camp where the police had again recorded his statement. They had stayed

at the Shah Alam camp for around six months after which, they had returned to Patiya. The SIT people had recorded his statement in the year 2008. The witness has deposed that it had not happened that he was hiding in the house and from there, he had seen the mobs and had seen as to who was there in the mob.

150.15 The witness has further deposed that it had not happened that while they were in the first house, he had seen several members of the mob with his own eyes and had identified them and that the members of the mob had burnt a man alive and that he had witnessed such incident with his own eyes. The witness has stated that he had heard voices but he had not seen any such thing. At this stage, the learned Assistant Public Prosecutor stated that the witness does not support the case of the prosecution and sought permission to cross-examine him.

150.16 CROSS EXAMINATION: The witness was then confronted with his statement dated 21.6.2008 recorded by the SIT. He, however, has stated that he does not remember the same. The witness has further stated that he knows that Guddu Chhara is dead and does not know Bipin Autowala. That he had heard his name, but he does not know Bipin Autowala. The witness has denied that he knows Bipin Autowala, but is deposing falsely at his instance.

150.17 ANALYSIS: This witness has been injured in the firing that took place on the main road in the morning. According to the version given by this witness, he had gone out of his house on the road, when suddenly a bullet came

from somewhere and struck him on his leg. Thereafter, he was lifted by the people who were standing there and taken home. Upon the mobs entering chawls, he was lifted by his wife and taken to Aktar Bhangarwala's house where they reached in the evening. From the testimony of this witness it emerges that burning rags, etc. were being thrown from the S.T. Workshop and stones were also pelted from there. Thereafter, his wife and son lifted him and proceeded towards Jawannagar to the Pinjara's house in the fourth lane. Upon the mob coming near, out of fear they left the Pinjara's house and went towards the S.R.P. Quarters, but were not permitted to enter inside. Thereafter, they broke open a lock of a house in Jawannagar and took refuge there. While hiding inside, he heard a person asking Guddu to call Bipin as the Miya was running away.

150.18 This witness has not named any accused and has been declared hostile by the prosecution as he is not fully supported by the prosecution case and has been cross-examined by the learned Special Public Prosecutor. However, even to the extent the testimony of this witness supports the prosecution case; he has not been cross-examined by the defence. Therefore, to the extent testimony of this witness supports the case of the prosecution, it can be accepted.

151. **PW-166 Shahinbanu Mahammadhasan Kureshi**, aged 30 years, has been examined at Exhibit-1162. The witness has deposed that she understands Gujarati to a certain extent but will depose in Hindi.

151.1 The witness has deposed that she was residing at *Lane No.7, Hussainnagar, Naroda Patiya, Ahmedabad*, since

her childhood. After the incident, she is not residing at Naroda Patiya. She is a native of *Gulbarga, Karnataka*.

151.2 The witness has stated that in the year 2002, she was residing in a rented house at *Lane No.7, Hussainnagar* with her husband Mahammadhasan, her three children, viz., son Mahammadnafish, daughters Nazneenbanu and Afreenbanu, together. Her in-laws used to reside at Karnataka and her parents used to live in Hussainnagar.

151.3 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. On the day of the incident, she was at home with her parents and children. At the relevant time, her husband used to run a provision store near her house.

151.4 At about 9 o'clock, she had prepared tea for her family members. Her husband had breakfast and had gone to his shop. He had gone to his shop and was cleaning it, when somebody told him that there was a call for bandh and that he should close his shop, hence, he closed his shop and came back home and sat on the veranda of their house and was sitting with his friends and talking.

151.5 At that time, they heard shouts from outside that a huge mob has come and hence, her husband had also gone out. Thereafter, since there was commotion, she lifted her daughter Afreen, who was seven months old in her lap and followed her husband. There is a flour mill before one reaches the main road, they went and stood there. At that time, there was a mob on the road. The mob was on the highway. There

was another mob towards the Noorani Masjid also.

151.6 The people in the mob had entered the masjid and were ransacking it, and hence, her husband and others from the chawl tried to go to the police. They wanted to tell the police to stop the mob from ransacking and to remove the mob from the road; however, before they could reach the police, her husband was injured by a bullet. Her husband was standing on her left side together with other men and she was standing with the women. The bullet which came from the road to where her husband was standing, hit him on the head. Upon her husband being hit by the bullet, he fell on the ground and started writhing in pain. At that time, her seven month old daughter was in her lap, and hence, she could not do anything. The other Muslims were very frightened. She shouted and asked for help, however, everyone was interested in saving his own life, and hence, no one came forward to help them. She requested people to pull her husband on one side; however, no one helped her.

151.7 At that time, tear gas shells were released at the spot and hence, her eyes were burning severely. Her husband was lying on the spot. In the meanwhile, several Muslims pulled her and took her away on one side to save her. At this time, after she was pulled towards the interior side she was watching and saw that the mob was advancing more and more. She was watching her writhing husband. The people in the mob put a quilt, cycle, etc. on her husband and burnt him. At this time, it must have been around 11:30 in the morning.

151.8 At this time, people from their chawl started

running away and hence, she too did not go home and went towards Gangotri Society taking her daughter with her. At this place, she found her other two children also and she asked for help for taking all her three children towards the S.R.P. Quarters. They went near the S.R.P. Quarters through the Gangotri Society. However, they were not permitted to go inside the S.R.P. Quarters. She could only understand that in Gujarati, they were refusing to let them go. Thereafter, she went on the terrace of Gangotri Society with her children, where there were other Muslims and they stayed there.

151.9 Thereafter at night, the people who looked like police came to take them and started saying that they would take them to a safe place; however, they could not trust them. They told them to have faith in them, and hence, they got down from the terrace at Gangotri and at night, she met her parents, brothers and sisters. Thereafter, all of them were taken to the Shah Alam relief camp. While she was going to sit in the vehicle, she stood where her husband was set ablaze and tried to see, however, she was told that there was fire and she could not go there and was also told to take care of those who are alive and to take care of her children.

151.10 They were taken to the Shah Alam camp in the vehicle. She could not identify anyone in the mob at the place where her husband had sustained bullet injury and was burnt. In the other mob also, she had not seen any person whom she knew.

151.11 The witness has deposed that she stayed at the camp for around six months during which period, the police

had come to record her statement.

151.12 From the Shah Alam camp, she went to stay at Faizal park, Vatva. She does not remember as to how many times the police had recorded her statements. The SIT had also recorded her statement at Naroda Patiya and that she had stated whatever she knew before the SIT.

151.13 In the incident, their house as well as their provision store was looted.

151.14 The witness has stated that she does not know anyone from the mob which set her husband ablaze. However, she knows several people from the mob at Gangotri Society and she has named the two persons whom she knew as **Jaybhavani** and **Guddu**.

151.15 The witness has stated that she knows that Guddu and Jaybhavani have passed away. However, since both of them were staying in that area, she knew them since her childhood.

151.16 CROSS EXAMINATION: In the cross-examination of this witness, she has admitted that since she resides in the Naroda Patiya area since her childhood, she knows the people residing in the neighbourhood. When she looked from the terrace of Gangotri Society, she had seen Jaybhavani and Guddu Chhara walking and that from the terrace of Gangotri, she had seen both of them walking, roaming about and standing. The witness has voluntarily stated that she had seen them two to three times and that she was on the terrace of

Gangotri for hours.

151.17 The witness has stated that she does not know as to which house in Gangotri Society is Jaybhavani's house. She has denied that she had seen him at the place where he was residing. She has stated that she had seen Jaybhavani at a distance of about six houses from his house. She has stated that she does not know whether Guddu has a house in Gangotri Society and that she had seen him in the area. The witness has stated that between Gangotri Society and the S.R.P. Quarters, there is a small wall and that many Muslims had jumped over the wall and gone to the S.R.P. Quarters. She too had tried to do so, however, the S.R.P. people told her not to come in. The witness is cross examined with regard to the topography of the area.

151.18 The witness has admitted that she has no complaint against the SIT, but has denied that when the SIT read over her statements dated 12.5.2002 as well as 22.5.2002, she had stated that they were proper and correct. The witness has voluntarily stated that it is true that the statements were read over to her, however, certain things were wrongly written therein in connection with which she had drawn the attention of the SIT and had informed them that certain facts in the earlier statements were incorrect. The witness is sought to be confronted with certain parts of her statement dated 12.5.2002, however, the facts referred to therein cannot be said to be in the nature of omissions amounting to contradictions or material contradictions so as to affect the credibility of the witness. In paragraph 27 of her deposition, the witness is confronted with her statement dated 22.5.2002

wherein she had stated that on that day in the morning at around 9:30, a huge mob of about five to seven thousand had come and the mob was shouting “kill, kill and cut” and hence, all the people in their chawls ran towards Jawannagar and at that time, her husband was injured by a bullet and fell down, whereafter the mob dragged her husband and burnt him and she along with her children ran towards Jawannagar and hid in a Muslim chawl and on 1.3.2002, at around 1:30, the police vehicle came and took them to the relief camp. The witness is further confronted to her statement to the effect that she had stated therein that she does not know the names or any details of the people who were in the mob and she had not recognized any person in the mob. The witness is thereafter confronted with certain parts of her examination-in-chief to the effect that she had not stated the facts stated therein in her statement recorded by the police.

151.19 From her cross-examination, a contradiction is brought out to the effect that the facts stated by her in paragraph 9 of her examination-in-chief, viz., she had not gone home, but has first gone to the S.R.P. Quarters for help through Gangotri Society; however, the S.R.P. people did not let them enter, whereafter she went to the terrace in Gangotri Society with her three children where there were other Muslims and had stayed there, were not stated by her in any of her police statements.

151.20 PW-301 Devendragiri Himmatgiri Goswami, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that she had stated before him

that both of them were sitting on the platform in front of their house and were talking, when suddenly a mob came from the side of Krushnanagar and Sardarnagar. At that time, the police had lobbed tear gas at the mob. Suddenly, her husband was injured by something like a bullet. Thereafter, in the evening at around 2:30, they were on the terrace when the police came. They asked them to come down and assured them that they would take them to a safe place and told them that they would take them to Shah Alam and had thereafter, left them there and since then, she is staying there. The assignee officer has admitted that this witness had mentioned before him that as her eyes were burning, she could not see anything. The assignee officer has admitted that this witness had stated before him that she and her husband were sitting in the platform (Otla) outside their house.

151.21 The assignee officer has admitted that this witness has not used the words "There was a mob on the road, the mob was on the highway and there was a mob in the direction of the Noorani Masjid also." However, the witness had stated before him that suddenly, the mobs came from the side of Sardarnagar and Krushnanagar; however, the remaining facts were not stated by her.

151.22 The contents of first five lines of paragraph 7 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness has stated that the people in the mob were entering the masjid and were damaging it, and hence, she, her husband and other people from the chawl were trying to go near the police. They wanted to tell the police to stop the mob which was causing damage

and remove it from the road. The assignee officer has admitted that the witness has not stated such facts in these words to him, however, the witness had stated before him that she and her husband both had gone to ask for help from the police towards the mob outside their houses, when he was injured by something like a bullet.

151.23 As is evident from what is stated in paragraph 7 of the examination-in-chief of the witness and what is stated by the witness in the police statement, the witness has merely used a different form of expressing what she had stated in her police statement while deposing before the court. Therefore, there can hardly be said to be any omission or contradiction insofar as the contents of paragraph 7 of the examination-in-chief of the witness is concerned.

151.24 The contents of paragraph 9 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness had stated that she had lifted her daughter and gone from there to Gangotri Society. At this place, she had found her two other children. In this manner, she had taken her three children and asked for help to go inside the S.R.P. Quarters. They had gone from Gangotri Society near S.R.P. Quarters. They were not permitted to go inside the S.R.P. Quarters. She could only understand that they were saying "No" in Gujarati. The assignee officer has admitted that the witness had not stated such facts in the statement recorded by him.

151.25 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he

has recorded the statement of this witness on 22.6.2008. Certain extracts of paragraph 5 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that he had come to the platform of their house and was sitting. He was sitting and talking to his friends. The Investigating Officer has admitted that this witness has not stated before him that she was talking with her friends. In the opinion of this court, non-mentioning the fact that the witness was sitting with her friend and talking with her, can hardly be said to be so material so as to amount to a contradiction.

151.26 The contents of certain extracts of paragraph 6 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that at this time, there was a mob on the road. The mob was on the highway. There was also a mob in the direction of the Noorani Masjid. The Investigating Officer has stated that the witness had stated before him that a mob had come from the direction of Krushnanagar and another huge mob had come from the direction of S.T. Workshop, but the facts stated in the examination-in-chief were not stated by her.

151.27 Certain extracts of paragraph 7 of the examination-in-chief of the witness, are read over to the Investigating Officer, who has denied that the witness has not stated such facts in the statement recorded by him. That her husband and other Muslim persons from their chawl were going from the flour mill which was outside their house to ask police for help, when suddenly her husband was injured on the head with a bullet.

151.28 Certain extracts of paragraph 9 of the examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that the witness has not stated such facts in the statement recorded by him.

151.29 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants submitted that this witness has stated that her husband had sustained a bullet injury and was thereafter set ablaze by the mob. It was submitted that none of the other witnesses have said that anyone injured with a bullet was set on fire. It was submitted that when all the others who were injured were lifted by the people from their chawl, it is not possible that this witness's husband would have been left out. It was submitted that the story propounded by this witness about her husband is not believable. It was submitted that the witness has named two people, viz., Jaybhavani and Guddu, however, in her examination-in-chief, she has not stated as to where she had seen them and in any case, no overt act has been attributed to them.

151.30 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has stated in her police statement that her husband was injured in police firing and the mob had set him ablaze. It was submitted that from the testimony of this witness, she comes across as a truthful witness and there is no reason to disbelieve her.

151.31 ANALYSIS: From the testimony of this witness, it emerges that her husband had sustained a bullet injury in the police firing and was set ablaze by the mob, which version has

been consistently given by the witness in her police statement as well as in her deposition. However, to the extent the witness has stated in her examination-in-chief that upon the mob coming, she had fled to the S.R.P. Quarters and then to a terrace of Gangotri Society, she has given a contradictory statement before the police to the effect that she had fled towards Jawannagar with her children and had hidden in a Muslim chawl till the police came at around 1:30 on 1.3.2002 and took them to the relief camp. Thus, to the extent the witness has stated that she had gone to Gangotri Society, the version given by her is not consistent with her police statement. The witness has, in her examination-in-chief, stated that she could not recognize anyone in the mob that had burnt her husband, but has referred to two persons in the mob at Gangotri Society, viz., Jaybhavani and Guddu. Therefore, to the extent the witness has referred to Jaybhavani and Guddu as having been spotted by her at Gangotri Society, such version is not consistent with her police statement and to that extent, her deposition does not appear to be credible. In any case, both Jaybhavani and Guddu have passed away prior to the recording of the evidence of this witness, under the circumstances, nothing much turns upon that part of her testimony.

151.32 Since the witness has named only two of the deceased accused, her testimony would not help the prosecution in establishing the charge against any of the accused.

152. **PW-167 Mahammadhussain Kaiyumbhai Shaikh**, aged 35 years, has been examined at Exhibit 1163.

The witness has deposed that he is a native of *Village Kutvadi, District Solapur, Maharashtra* and that he is residing in *Lane No.1, Hussainnagar* since the last about twenty five years.

152.1 The witness has deposed that in the year 2002, he was residing in his house in *Lane No.1, Hussainnagar* with his father Kaiyum Abdul, mother Merunisha, wife Khatunbibi, son Saeed Anwar, daughters Gulshanbanu, Tabassumbanu, and son Gulamrasul. In the year 2002, he was doing the iron welding, that is fabrication work.

152.2 The incident took place on 28.2.2002. On that day, he had gone on his bicycle at around 9 o'clock in the morning for his work. When he had set off and reached near the S.T. Workshop compound wall, near the water tap, at that time, he had seen that a Hindu mob was coming from the direction of Natraj. Another mob of Hindus was coming from the direction of Mahajaniyavas. He had also seen a mob which came from the direction of Krushnanagar.

152.3 This mob was a very huge mob and there were people wearing khakhi shorts and white shirts and some of them had also worn saffron bands. He thought that the people in the mob belonged to the Vishwa Hindu Parishad and Bajrang Dal. He saw that the people in the mob had weapons like pipes, swords, trishuls, etc. The Hindu mob was pelting stones at the Muslims, at that time, firing commenced and tear gas shells were also being lobbed.

152.4 The people in the mob were shouting, "*hack and burn the miyabhais*" and "*bring them out and kill them*".

152.5 In this incident, his paternal aunt's son Pirmahammad was injured by a bullet, and hence, he fell down. He ran to pick him up and at that time, he was hit by a bullet on the elbow of his left hand. The bullet had come from the crowd. He and Pirubhai were lifted by the people of their chawl and taken to Rasidaben's provision store near Lane No.1, Hussainnagar, and he was made to lie down. In this incident, Khalidbhai and Khalidbhai's brother Majidbhai were also injured by bullets on their stomach and leg respectively.

152.6 The people of the chawl brought them both and made them lie down next to them. In the incident, Abidbhai had sustained a bullet injury on his private parts and had died on the spot. At that time, it must have been approximately 10 o'clock in the morning. The mob started assaulting and there was firing from the mob as well as from the police and all the Muslims, with a view to save their lives, fled towards the rear side of their chawls.

152.7 Noorbhai Ibrahimbhai resides next to his house. His wife took him on his terrace and made him lie down there. Apart from his wife, his parents as well as Noorbhai Ibrahimbhai's family members, in all, approximately thirteen persons were there. At this time, it must have been around 12:00 to 12:30 in the afternoon.

152.8 They stayed on the terrace for one to one and a half hours.

152.9 On this day, in the mob which had come from the

direction of Natraj Hotel, he had seen **Manoj Videowala** (A-41), who was saying, "*hack the Miyabhais, kill them! Don't leave them alive*".

152.10 In the mob which had come from the direction of Mahajaniyavas, he had seen **Suresh Langdo** (A-22) who had a sword in his hand. He too was shouting "*kill the Muslims, cut them! Burn them*". The people in this mob were pelting stones at the Noorani Masjid and on the carts and stalls near it.

152.11 He had seen **Lakha** (A-34) in the mob which came from Krushnanagar, who had a trishul in his hand and was saying, "*Cut the Miyas, burn them, loot them, don't spare them.*"

152.12 While they were on the terrace, Noorabhai Mansuri's mother was standing down, and since they are Mansuris, their attire is similar to the attire of Gujaratis and his mother could speak Gujarati fluently and she also wore such attire, and hence, the people in the mob asked her whether she was a Hindu or Muslim and she said that she was a Hindu, and hence, in the incident, their house was not looted on that day. The people in the mob had not entered and ransacked their house.

152.13 On the terrace, his father had done his dressing by putting some Dettol and tying a bandage.

152.14 There is a paan cabin outside the second lane of Hussainnagar, which was run by a boy called Modin, who was suffering from polio in his leg. This boy was put in his paan

cabin and set ablaze by the mob. He could hear his screams for help from the terrace. It must have been around 1:00 to 1:30 in the afternoon.

152.15 They were on the terrace till 1:30 at night whereafter, a police vehicle came. When they got down from the terrace, Modin's dead body was lying near the paan cabin and the paan cabin was completely burnt. The dead body was charred. When the police took them to the road for boarding the bus, he had seen the charred dead body.

152.16 While they were going in the vehicle to the Shah Alam camp, there was a mob on the road, which tried to stop them and pelted stones and was saying that just like they had burnt the train at Godhra, they would burn them also.

152.17 Upon the police lobbing teargas shells, the road was cleared and the vehicle was taken towards Saijpur tower. The vehicle was stopped by a mob near Saijpur and stones were pelted at them and rocks were put to stop the vehicle. At this time, the police had fired in the air and had cleared the road and they took the Kalupur road and dropped them near the door of the Shah Alam camp.

152.18 From the Shah Alam camp, they were taken to the V.S. Hospital for treatment, where he was treated for one and a half months.

152.19 In the incident, his brother Gulamrasul was injured on the leg and was experiencing severe burning sensation in both of his eyes because he continued to suffer for eight days

and had taken treatment for the same at the relief camp.

152.20 After being treated at the V.S. Hospital, he was taken to the Shah Alam camp, where he stayed for six months.

152.21 In the incident, his house and household articles along with ornaments, cash, etc., were looted.

152.22 While he was at the V.S. Hospital, the police had come once to record his statement, however, they had asked him details like his name, address, etc. and had gone away. During the period when he was at the camp also, the police had come and recorded his statement. Thereafter, the SIT had also recorded his statements, once at Gandhinagar and once at Naroda Patiya.

152.23 He has stated that he can identify Suresh Langdo (A-22), Lakho (A-34) and Manoj Videowala (A-41) whom he had seen in different mobs and has, accordingly, identified all the three accused, namely, accused No.22, 41 and 34 correctly.

152.24 CROSS EXAMINATION: In the cross-examination of the witness, it has come out that he does not know who the members of the Vishwa Hindu Parishad or Bajrang Dal are. The witness has admitted that he was always residing at Lane No.1, Hussainnagar. The witness is cross-examined with regard to the topography of the area. He has admitted that if he stands in his house, he cannot see the gate of the S.T. Workshop, and that from his house he cannot see the roads from Krushnanagar and Kubernagar. The witness has denied that there is a tap at the corner of the lane and has admitted

that the water tap is situated at the corner of the S.T. Workshop where presently there is a police chowky.

152.25 The witness is cross-examined at length with regard to the topography of the area, etc. In his cross-examination, it has come out that the mob from the side of Krushnanagar was comprised of about one thousand people and that the mobs from Mahajaniyavas and Natraj were also approximately comprised of one thousand people. The witness has said that he had seen the first mob towards Natraj and that he had then seen the mob towards Mahajaniyavas and then, he had seen the mob towards Krushnanagar and that except for the three mobs, he had not seen anything else on the road. The witness has voluntarily stated that he had also seen the accused. He has admitted that the very same accused whom he has identified in the court, had been seen by him in the mob. He has admitted that except for them, out of these three mobs of one thousand people each, he had not identified any other accused. The witness has admitted that the three accused whom he had identified were in different mobs and has stated that he cannot say as to exactly at what time he had seen the three accused, but has stated that he had seen them in the morning.

152.26 The witness has admitted that Manoj did not have any weapon with him and has further admitted that he had not seen any of the three accused assaulting anyone. The witness has admitted that at the time of the incident, he did not know Lakha's full name. He has admitted that he knows Suresh Langda. He has denied that only the mob that came from the side of Mahajaniyavas, was pelting stones and other mobs

were not doing anything.

152.27 The witness has admitted that his statements were recorded on 12.6.2008 as well as 25.9.2008. The witness is sought to be contradicted as to his statement dated 12.6.2008 to the effect that he had only referred to the mob which came from Chharanagar Mahajaniyavas, had come near Noorani Masjid in the passage on the road and were damaging Noorani Masjid as well as the carts and stalls nearby and there was stone pelting. The witness has denied the suggestion that the other mobs were not indulging in looting and ransacking.

152.28 In his cross-examination, the witness has stated that he had reached the scene of incident at 9 o'clock and had stayed there at around 10 o'clock and was injured by a bullet at 10 o'clock.

152.29 The witness has admitted that his statement was also recorded on 1.3.2002. The witness is confronted with the contents of his statement dated 1.3.2002 to the effect that he had stated therein that on 28.2.2002, he was at home and at that time, in the evening at around 6 o'clock, in the riots that erupted in the city, a mob of about three to four thousand people came inside Jawaharnagar and was pelting stones and attacking with sharp edged weapons and was sprinkling kerosene and burning things. At this time, there was a stampede and he too had fled and come on the road. At this time, the police had released tear gas shells and upon the tear gas shells being lobbed, there was smoke and in the sudden firing, he was wounded by a bullet on the shoulder of his left hand, whereupon he was taken to Shah Alam and from there

he was taken to the Vadilal Hospital. He does not know the names and addresses of any one in the mob. It may be noted that the witness is simpliciter confronted with his previous statement without seeking to contradict any part of his testimony; therefore, this part of his deposition is inadmissible in evidence. Moreover, if one peruses the contents of the statement, there is reference to a mob of three thousand to four thousand people coming into Jawannagar at 6 o'clock in the evening and the attacking them with weapons and committing arson and the witness fleeing from there and coming on the road and the police lobbing tear gas shells and resorting to firing, wherein the witness sustained the bullet injury, which is totally contrary to the facts on record. Therefore, it appears that the assignee officer had not recorded the statement of the witness correctly, inasmuch as there was no police firing on the road after 6:00 p.m. and it is the specific case of the witness that he was injured in police firing on the road in the morning. The witness is, therefore, justified in denying the contents of such statement.

152.30 The witness is also confronted with his statement dated 7.3.2002 to the effect that he had stated therein that on 28.2.2002, there was a call for Gujarat Bandh in connection with the incident that had taken place at Godhra and he was present at home. In the meanwhile, at around 11:00 to 11:30 in the morning, a huge mob came from the direction of Saijpur Patiya and started shouting and pelting stones and the police lobbed tear gas shells to disperse the mob and resorted to firing, despite which, the mob did not disperse and started damaging the houses and setting them on fire and he was injured with a bullet on the elbow of his left hand. Since there

were many people in the mob, they were surrounded on all four sides and hence, his family members had hidden themselves and at night, upon the police vehicles coming, they were taken to Shah Alam and from there, he was admitted in the Vadilal Hospital for treatment. That he does not know any person in the mob and does not know where any of them is residing. The witness has of course denied such suggestion.

152.31 Apart from the fact that this part of his previous statement is put to the witness without seeking to contradict any part of his evidence, and is therefore, inadmissible in evidence, insofar as the statement dated 7.3.2002 is concerned, the same is recorded by PW-276 Shri P.U. Solanki, an assignee officer, at the V.S. Hospital, wherein he has recorded the statement as referred to hereinabove. As noted in detail in the evidence of PW-205, this officer has recorded statements of PW-145 Shahnawazkhan Abbaskhan Pathan, PW-152 Parveenbanu Salambhai Qureshi, PW-154 Ahemadbadshah Mehboobhussain, PW-156 Abdul Majid Mohammed Usman Shaikh, PW-205 Zarinabanu Naeemuddin Shaikh and this witness PW-167 Mohammedhussain Kayumbhai Shaikh. During the cross-examination of the assignee officer, the police statement of each of the above witnesses, as recorded by him has been brought on record. On a conjoint reading of the statements of all the above witnesses, it is found that the statements are identically worded, except the names, addresses and particulars of family members as well as names of family members, who are injured or who have died in the incident and injuries sustained by the witnesses. The main part of statements of each witness is absolutely identically worded. Evidently, therefore, this officer appears to have written down

the statements as per his own whims and has not written down what is stated by the witnesses. Such statements, therefore, cannot be said to be statements of the concerned witnesses and no part of such statements can therefore, be used to contradict the witnesses.

152.32 The witness has denied the suggestion that he has not named any accused in either of the above two statements. The witness has admitted that the mob which was committing loot was near Noorani Masjid. He has denied that the police had fired at the mob which was looting and has voluntarily stated that the police were firing at the Muslims.

152.33 The witness has admitted that in his statement recorded by the SIT, he has not made any clarification as to whether he was injured in police firing or private firing. The witness has denied that in his statement dated 12.5.2002, he has stated that in the mob, apart from the above three persons, there were about forty to forty five thousand people, out of whom, they could identify the above three persons who were in the mob.

152.34 The witness is cross-examined with regard to the persons who were injured in the firing and as to who was injured prior in point of time. In his cross-examination, it has come out that stone pelting was going on. He had gone where Pirubhai was and that he too was injured by a bullet on the *kachcha* road. The people took him and Pirubhai to Rasidaben's ota (a raised platform). From Rasidaben's ota, he alone was taken to Mansuribhai's terrace. The witness has denied that where he was hiding on Mansuribhai's terrace he

was lying down and has voluntarily stated that the terrace being open, it was not possible to hide. The witness has admitted that in his statement recorded by the SIT, he has stated that from 12 o'clock in the afternoon till 1:30 at night, they were sitting and hiding on Noorbhai's terrace. The witness has admitted that he does not know where Abid, Khalid and Majid had sustained injuries and admitted that he was not at the spot where these three persons were injured by bullets. In his cross-examination, he has denied that he and Pirubhai had sustained bullet injuries between 10 to 11 o'clock and has voluntarily stated that first Pirubhai was injured by a bullet and thereafter, at 10 o'clock, he was injured by a bullet.

152.35 In his cross-examination, the witness has stated that he has never gone to Lakha's house and has voluntarily stated that when he used to go for fabrication work at Saijpur Fadeli, at that time he had come to know that he had a liquor business there. The witness has denied that he was saying that Lakha was engaged in the liquor business at the instance of somebody else and has stated that he has seen him with liquor bags in his hands, and that prior to the incident, he had seen Lakha in this manner, several times. The witness has admitted that prior to his identifying the accused before the court, he has not identified him before any other authority. The witness has admitted that he has stated before the police as well as the SIT that he does not know Lakha's full name. The witness has admitted that in his statement dated 25.9.2008, he has stated that out of the people in the mob who were involved in rioting, one person, viz., Lakho, whose full name he does not know, resides at Saijpur Fadeli, whose name he had given.

152.36 The witness has admitted that no test identification parade of Suresh Langda or Manoj Videowala was carried out in the presence of any authority. The witness has admitted that he has no relations of visiting Manoj and Suresh Langda at their homes nor did he have any occasion to talk with them or sit and have tea with them. The witness is confronted with the 3rd and 4th lines of paragraph 6 of his examination-in-chief, wherein he had stated that he set off and reached near S.T. Workshop, viz., at the water tap near the wall, and is further confronted with the first six lines of paragraph 7, as well as the contents of paragraph 8 of his examination-in-chief, to the effect that he had not stated such facts in his statement dated 12.5.2002, which he has denied.

152.37 The witness is confronted with the contents of paragraph 9 of his examination-in-chief wherein he had stated that in the incident, his paternal aunt's son Pirmahammad was injured by a bullet due to which he had fallen down; he had run to pick him up; at that time, he was injured on the elbow of his left hand by a bullet, the bullet had come from the crowd; the people of the chawl who were standing there lifted him and Pirubhai, and made them lie down in Rasidaben's provision store which is located at Lane No.1 of Hussainnagar; in the incident, Khalidbhai as well as Khalidbhai's brother Majidbhai had sustained bullet injuries on the stomach and leg respectively; has not been stated by him in his statement dated 12.5.2002, which the witness has denied. It appears that after stating that the witness and Pirubhai had sustained bullet injuries, the witness in his statement dated 12.5.2002, had stated that the people from their chawl took them to their house and made them lie down on the terrace of the adjoining

house.

152.38 The witness is further confronted with the facts stated in paragraph 10 of his examination-in-chief to the effect that he had not stated such facts in his statement dated 12.5.2002. The witness is further sought to be contradicted as regards the contents of paragraphs 14 and 15 of his examination-in-chief, wherein he has stated that in the mob which came from Natraj Hotel, he had seen Manoj Videowala; in the mob which came from Mahajanyavas, he had seen Suresh Langdo; and he saw Lakha in the mob coming from the direction of Krushnanagar to the effect that these facts have not been stated by him in his statement dated 12.5.2002. It appears that the witness has named all the three accused as being in the mob in his statement dated 12.5.2002, but the other facts stated in these paragraphs have not been stated by him. The witness is also confronted with the facts stated in paragraphs 16, 17 and 18 of his examination-in-chief, to the effect that he had not stated any such facts in his statement dated 12.5.2002. The witness is further contradicted with the facts stated in paragraphs 19, 20 and 22 of his examination-in-chief to the effect that he had not stated such facts in his statement dated 12.5.2002. The witness is confronted with the facts stated in lines No.4 and 5 of paragraph 20 of his examination-in-chief, wherein it has been recorded that "just like people have been burnt in the train at Godhra, burn them in the same manner" to the effect that such fact had not been stated by him in his statement recorded by the SIT. The witness is thereafter cross-examined with regard to the topography of the area.

152.39 In the cross-examination of the witness, he has stated that he does not know in which lane Lakho resides. He has denied that he and Suresh were in service together. In the cross-examination of the witness, it has come out that on the day of the incident when he reached the road for the purpose of going for his job, the riots had not started. However, the people were standing on the road. The mob from Krushnanagar had started pelting stones after a little while. The witness is read over the contents of paragraph 8 of his examination-in-chief. He has denied that in view of the facts stated therein, the people in the mob were speaking very loudly and therefore, there was commotion and a lot of noise on the road. The witness has admitted that till the time he was on the road, none of the mobs had entered their chawl. The witness has stated that he does not know as to whether he was first taken to Rasidaben's ota after he was injured by a bullet and as to whether they had stayed there for about ten minutes. The witness has admitted that from Rasidaben's ota, they had gone to hide on the terrace. The witness has admitted that while he was on the terrace, he had not seen what was happening in their chawl. The witness has stated that he has not seen Lakho, Suresh or Manoj in the mobs which had entered the chawls and has voluntarily stated that he had seen them on the road. The witness has denied that since he was working for Naranbhai Desai who had enmity with Lakha, he was falsely naming Lakha at the instance of Naranbhai. The witness has further denied that at the instance of the leaders of their community, at the relief camp a note was handed over to him with the names of Manoj and Suresh and he had, accordingly, falsely implicated them.

152.40 The omissions and contradictions in the testimony of this witness as to his previous statements recorded by the investigating agencies are sought to be proved by the defence through the cross-examination of the concerned Investigating Officer or the assignee officer of the concerned Investigating Officer.

152.41 PW-274 Shri K.K. Mysorewala, in his cross-examination, has admitted that the statement of this witness was recorded by Shri Katara (deceased) on 1.3.2002. The Investigating Officer has admitted that this witness apart from the formal statements in his statement dated 1.3.2002, had stated that on 28.2.2002, he was present at home. At that time, in the evening at around 6 o'clock, upon the riots erupting in the city, a mob of about three to four thousand people charged into Jawannagar and attacked by pelting stones as well as with sharp edged weapons and started sprinkling kerosene and burning. At this time, there was a pandemonium and he too ran from there and came to the road. At this time, the police were bursting tear gas shells. Upon releasing tear gas shells, there was a smoke and in the sudden firing, he was injured on the shoulder of his left hand by a bullet and upon being injured, he had gone from there to Shah Alam and from there, he was taken for treatment to the Vadilal Hospital. He did not come to know of the names and addresses of any of the people in the mob and that he was fully conscious and his treatment was going on.

152.42 The Investigating Officer has admitted that the witness has not stated before Shri Katara that the mob had come from the side of Natraj, Mahajanyavas as well as

Krushnanagar, but had stated that a mob of about three thousand people had charged into Jawaharnagar.

152.43 The Investigating Officer has further admitted that before Shri Katara, the witness has not stated regarding Khalid and Majid being injured by bullets. The Investigating Officer has further admitted that before Shri Katara, the witness has not stated any fact regarding a boy named Modin being put in a pan-galla and burned. The Investigating Officer has further admitted that the witness has, in his statement recorded by Shri Katara, not stated that he had taken a cycle for the purpose of going for his job and then, he had reached near the water tap. The Investigating Officer is shown the contents of paragraph 10 of the examination-in-chief of the witness and he has admitted that the witness has not stated such facts before Shri Katara. In paragraph 10 of the examination-in-chief, the witness has stated that the people in the mob, like them, had also brought both of them and made them to lie down next to them. Abid was injured by a bullet on his private parts in the incident and had died on the spot. The time must have been around 10 o'clock in the morning.

152.44 The Investigating Officer has admitted that before Shri Katara, the witness has not stated that he was doing fabrication work at Saijpur Fadel.

152.45 It may be noted that insofar as the witness is concerned, in paragraph 64 of his testimony, during the course of his cross-examination, he has, in general, been confronted with his entire examination-in-chief to the effect that he had not stated any such facts in his statements dated 1.3.2002 and

7.3.2002. The witness is not contradicted in respect of specific parts of his examination-in-chief, whereas specific parts of his examination-in-chief are put to the Investigating Officer to bring out omissions and contradictions in his previous statement. The mode and manner of bringing out the omissions and contradictions and proving them, leaves a lot to be desired.

152.46 PW-276 Shri P.U. Solanki, the assignee officer has stated that he has recorded the statement of this witness on 7.3.2002 at the V.S. Hospital. He has admitted that this witness, in his statement dated 7.3.2002, had stated before him that yesterday, that is, on 28.2.2002, there was a call for Gujarat Bandh in connection with the incident that had taken place at Godhra and he was present at home. In the meanwhile, at around 11:00 to 11:30 in the morning, a very huge mob had come to Saijpur Patiya and started shouting and pelting stones and the police had released tear gas shells and resorted to firing to disperse the mob, despite which the mob did not disperse and started damaging the houses and torching them and he had sustained a bullet injury on the elbow of his left hand and since there were a large number of people in the mob and they were surrounded on all four sides, he and the members of his family had hidden themselves and upon the police vehicle coming at night, they were taken to the Shah Alam camp and from there, he was taken for treatment to the Vadilal Hospital. At that time he was under treatment. His wife and children were safe and sound. He did not know as to who were the people in the mob. He did not know them and also did not know where they were residing. PW-276 has admitted that this witness has not named any accused before

him.

152.47 Insofar as this part of the cross-examination of the assignee officer is concerned, the same has been dealt with hereinabove and hence, it is not necessary to reiterate the same.

152.48 The assignee officer has also admitted that this witness in his statement dated 7.3.2002 has not stated that he had gone for his job on his cycle and had reached near the water tap. The assignee officer has also admitted that the witness in his statement dated 7.3.2002 has not stated the facts stated by him in paragraphs 9 and 10 of his examination-in-chief, wherein he has stated that in the incident, his paternal aunt's son Pir Mohammad was injured by a bullet, and hence, he had fallen down; he had lifted him up and run; at this time, he was injured by a bullet on the elbow of his left hand; this bullet had come from the crowd; the people of the chawl who were standing there had lifted him and Pirubhai had made them lie down near Rasidaben's provision shop in Hussainnagar, Lane No.1; in this incident, Khalidbhai and Khalidbhai's brother Majidbhai were injured by bullets in their stomach and leg respectively; the people in the chawl had also brought both of them and made them lie down next to them; in the incident, Abidbhai was injured by a bullet on his private parts and hence, he had died on the spot; at this time, it must have been around 10 o'clock in the morning.

152.49 In the cross-examination of the assignee officer, he has admitted that the facts stated by the witness in paragraphs 44 and 45 of his deposition, have not been stated

by him in the statement recorded by him. It may be noted that this assignee officer has not recorded the statement dated 1.3.2002, therefore, the question of cross examining him qua the contents of that statement did not arise inasmuch as he could not have proved the omissions and contradictions as to the statements recorded by some other officer. What is disturbing is that this kind of cross-examination has gone unchecked, both by the prosecution and the court.

152.50 PW-298 Shri M. B. Gohil, the assignee officer has admitted that this witness in the statement recorded by him had stated that the mob from Noorani Masjid started pelting stones on them and at this time, it must have been about 10 o'clock in the morning. In the meanwhile, the police first lobbed teargas on the people who were standing on the corner of the chawl and then resorted to firing, due to which his paternal aunt's son Pirmohammad Allabax Shaikh, aged 32 was injured by a bullet and he fell near the road. Hence, he (the witness) threw his cycle and went to rescue him, when a bullet fired by the police struck him on the elbow of his left hand and the people from the chawl took him home and he was made to lie down on the terrace of a house adjoining their house. In this mob these three people as well as about forty thousand to forty five thousand people were there, out of whom he could identify these three people.

152.51 The assignee officer has admitted that this witness in the statement recorded by him has not stated that Khalid, Abid and Majid were injured by bullets. The assignee officer has admitted that this witness has stated before him that "he and all his family members had hidden on the terrace of

Mansuribhai Noorabhai's house which is situated next to their house. Thereafter, the people in the mob" The assignee officer has further admitted that this witness has not stated before him that he had come out and gone near the S.T. Workshop, namely, near the compound wall where the water tap is situated.

152.52 Certain extracts of paragraph 7 and the contents of paragraph 8 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him. Certain extracts of paragraph 9 and the contents of paragraph 10 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated the contents of paragraph 10 of his examination-in-chief in the statement recorded by him but has stated that the witness has said that an incident had taken place wherein he and Pirmohammed were injured by bullets which had taken place at around 10 o'clock in the morning.

152.53 The assignee officer has admitted that the witness had not stated before him that Manoj Videowala was saying "*Cut the Miyabhais. Kill them. Do not leave them alive.*" while he was coming in the mob from the side of Natraj hotel in the statement recorded by him, but has clarified that the witness has stated that Manoj Sindhi Videowala, who has a shop in 'A' Ward in Kubernagar was in the mob and that the witness knows him.

152.54 The contents of paragraph 15 of the examination-in-chief of the witness are read over to the assignee officer, who

has admitted that the witness has not given the names of accused Lakha and accused Suresh Langdo as stated in the examination-in-chief, but has clarified that the witness had named both the accused and had stated that they were present in the mob which had entered the chawl.

152.55 The contents of paragraphs 16 to 20 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated these facts in the statement recorded by him, except that they had reached the Shah Alam camp.

152.56 The contents of paragraph 22 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that such facts were not stated by the witness in the statement recorded by him.

152.57 The assignee officer has admitted that the witness had not stated any fact regarding any firing from the mob, but had stated that there was firing by the police.

152.58 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statements of this witness on 12.6.2008 and 25.9.2008. He has admitted that this witness in the statement recorded by him, had stated that therefore, to protect themselves from the mob, the Muslims standing at the entrance of the chawl had also resorted to pelting stones. It may be noted that in a question put to the witness in the cross-examination, he has denied that there was any cross stone pelting and to contradict such part, reference is made to the

statement of the witness. The Supreme Court in the case of **Tahsildar Singh v. State of U.P.** (supra) has held that through the process of cross-examination, the contents of the statement recorded by the police cannot be brought on record. Therefore, when the witness in his examination-in-chief has not made any assertion in this regard, something elicited in the cross-examination cannot be sought to be contradicted with reference to the statement made under section 161 of the Code, inasmuch as, it would result in eliciting what has been stated in the police statement through the process of cross-examination. The Investigating Officer has admitted that at the time when the SIT recorded his statements, the witness has not made any grievance that the facts stated by him had not been recorded properly in the earlier statements.

152.59 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the contents of paragraph 12 of the examination-in-chief of the witness to submit that the witness was made to lie down on the terrace and therefore, it was not possible for him to see the incident narrated in paragraph 18 of his deposition. It was submitted that the witness has not named any accused in the first two statements and has named them for the first time in his third statement. It was submitted that even in the third statement, the witness has referred to the accused as Lakha and not by his full name. It was submitted that in such circumstances, a test identification parade ought to have been held.

152.60 It was submitted that the names of the three accused have surfaced for the first time in the third statement of this witness recorded on 12.5.2002. Even if the facts stated

in the third statement are taken at face value, the only allegation is that they were seen as a part of the mob without any overt act and on an admission that he had not seen any of them causing any injury to anyone. It was submitted that in the examination-in-chief, the witness has tried to attribute utterances of hate words to all the three accused separately, but they were not stated even in his third statement and all this is stated for the first time only before the SIT. It was submitted that this witness had no acquaintance with accused No.22 and 41 and even as far as accused No.38 is concerned, he had not even given his full name and no test identification parade was held to establish the identity of the accused beyond reasonable doubt. It was submitted that this witness has given different timings about the incidents that he had witnessed in all his three police statements and therefore, it is very doubtful whether in fact he had seen any incident or the accused at all.

152.61 It was further submitted that the witness has been residing at Hukamsing-ni Chali since many years, but the names of the persons he has given are not residents of any of the chawls or Gangotri Society. It was submitted that this witness has referred to the presence of three mobs, whereas most of the witnesses have referred to two mobs. It was submitted that the main infirmity in the statements of this witness is that he does not refer to any attack on the Noorani Masjid, burning of the Noorani Masjid, the tanker dashing against the Noorani Masjid, bursting of gas cylinders in the Noorani Masjid, and the burning of tea stalls and shops near the Noorani Masjid. It was submitted that all these facts would create a doubt as to whether the witness was on the spot and

had seen the accused persons in the huge mob.

152.62 It was submitted that this witness does not refer to any weapon in the hands of Manoj, whereas another witness says that Manoj had a weapon in his hand and therefore, there is an inconsistency *inter se* between the testimonies of the witnesses.

152.63 Referring to paragraph 18 of his deposition, it was submitted that the witness has stated that he was on the terrace of a house in Lane No.1. It was submitted that Noorabhai's house is also in Lane No.1 and therefore, he could not have seen the incident that took place in Lane No.2. It was submitted that the witness does not have to pass by the cabin to go out on the road. It was argued that the witness has not named any of the accused in the first and second statements recorded by the police and has named them only after he went to the camp. It was submitted that the witness has only sustained an injury on his elbow, and hence, was not in a condition where he could not give a proper statement. It was submitted that from the cross-examination of the witness, it is evident that he had no occasion to come in contact with the named accused and in the absence of a test identification parade, the accused cannot be said to have been properly identified. Referring to paragraph 101 of the deposition of the witness, it was pointed out that till 10:00 to 10:30 a.m., no one had entered the chawl. Referring to the contents of paragraph 102 of his deposition, it was submitted that this witness has not seen any incident in his chawl and hence, he could not have seen the Modin incident.

152.64 It was urged that there are vital and important contradictions in the deposition of this witness and in his statements before the police. That the witness has identified the accused after more than eight and a half years from the date of the incident without there being a test identification parade and he had no occasion to come in contact with the accused in the past and therefore, his evidence does not inspire confidence and cannot be relied upon.

152.65 Mr. Prashant Desai, learned Special Public Prosecutor, with all the vehemence at his command submitted that when in the statement dated 12.5.2002 the names are given by a victim and he has also given the names before the SIT in his further statement which was brought in his examination-in-chief and when the Court is considering all the statements recorded by the police, if the names are there in three of such statements, not to believe those names only because they are not given in the statements dated 1.3.2002 and 7.3.2002 would not be proper. It was argued that if the defence wants to contend that when on 1.3.2002 and 7.3.2002, the witness does not remember the names and gives them on 12.5.2002, he is tutored, then it is for the defence to establish that the witness, in fact, has been tutored. It was emphatically argued that no inference can be drawn only because in the statements dated 1.3.2002 and 7.3.2002, no names have been given and only on 12.5.2002, the names of the accused have been disclosed and hence he seems to have been tutored or that the accused have been named as an afterthought. Such an inference is uncalled for and cannot be drawn.

152.66 It was submitted that this witness is an injured and natural witness and an affected victim. He took treatment at the V.S. Hospital, which shows that he was injured, and therefore, it cannot be said that this witness cannot be believed as regards the three accused whose names have been stated by him. It was urged that the witness has named the accused in his statement dated 12.5.2002, as well as in the statement recorded by the SIT and in his examination-in-chief and it cannot be said that the names given on 12.5.2002 or before the SIT and in the court cannot be believed without any further evidence on record. It was submitted that the prosecution has placed the witness in the witness box and he has deposed and if the defence wants the witness not to be believed it is for the defence to make efforts for the same.

152.67 ANALYSIS: As per the testimony of this witness, when he came out on the road at about 9 o'clock in the morning, he had seen the three accused in different mobs. He has stated that he had seen accused No.41 Manoj Videowala in the mob coming from the side of Natraj Hotel and has attributed certain utterances to him. He has deposed that he had seen accused No.22 Suresh Langda with a sword in his hand in the mob coming from Mahajaniyavas, and he had seen accused No.34 Lakha with a trishul in his hand in the mob coming from the side of Krushnanagar and has attributed certain utterances to him. In his cross-examination (paragraph 37), the witness has admitted that he had not seen any weapon in the hands of accused Manoj. He has further admitted that he had not seen any of the three accused assault anyone. Thus, he has not attributed any overt act to the accused except having attributed certain utterances to two

of the accused.

152.68 The witness has admitted that Pirubhai was injured in the firing before him. He does not remember the exact time, but says that he must have reached near Pirubhai within five to six minutes of his being injured by the bullet. In his cross-examination, he has further stated that Pirubhai was looking for his daughters and was calling out their names and that he was injured by the bullet on the kuccha road in front of the public tap. PW-165 Pirmohammed Allabax Mansuri has deposed that his daughters had gone to fetch water and he had gone out of his house to bring them back. After coming out of his house, he straight away had gone to the road where there were taps. He was looking for his daughters, when all of a sudden a bullet came from somewhere and he was injured on the leg. In his cross-examination, the witness has also stated that he was injured by a bullet when he went to the kaccha road where Pirubhai was. PW-165 has stated that he was injured by the bullet at about quarter to ten, whereas this witness has stated that he (the witness) was injured after Pirubhai at around 10 o'clock. Thus, on a conjoint reading of the testimony of this witness and the testimony of PW 165, it can be seen that they corroborate each other.

152.69 Insofar as acquaintance with the named accused is concerned, the same is clearly brought out in paragraphs 67, 72 and 104, qua accused No.34 Lakha. Insofar as accused No.22 Suresh Langda and accused No.41 Manoj Videowala are concerned, the witness has admitted that no test identification parade had been carried out to identify these two accused. He has further stated that he had no social or any other relations

with them. A suggestion has been made in paragraph 104, that Suresh Langdo used to serve with him, which the witness has denied. Therefore, qua these two accused, acquaintance has not been specifically established.

152.70 As regards the omissions and contradictions as to the previous statements recorded by the police, initially while the witness was in the hospital, his statements came to be recorded on two occasions, firstly, on 1.3.2002, and secondly, on 7.3.2002. Subsequently, another statement came to be recorded by the police on 12.5.2002. In the first two statements the names of the accused were not disclosed and for the first time the names of the accused were disclosed in the statement dated 12.5.2002 and thereafter in the statement recorded by the SIT in the year 2008, and then in his examination-in-chief before the court. However, while referring to the cross-examination of the witness, the nature of the statements dated 1.3.2002 and 7.3.2002 recorded by the respective assignee officers has been discussed and this court has come to the conclusion that neither of such statements appear to have been recorded in terms of what the witness has stated, and therefore, cannot be used to contradict the witness to bring out any omissions and contradictions in his testimony. This court has assigned detailed reasons in that regard.

152.71 On behalf of the appellants it has been urged that the witness had not disclosed the names of the accused in the first two statements and had disclosed such names for the first time in his statement dated 12.5.2002, which leads to an inference that the naming of the accused in such statement is a result of tutoring. The learned Special Public Prosecutor, as

noted hereinabove has vehemently and emphatically made submissions to counter this argument. Alas, if only the efforts put in the matter, had matched the vehemence with which the submissions had been made! As can be seen from the submissions advanced by the learned Special Public Prosecutor, very simplistic submissions have been put forth to the effect that if the names are given in the subsequent statement the same have to be considered and not naming the accused in the previous statements would not lead to an inference that the witness is tutored. The court had called upon the learned Special Public Prosecutor to show as to why the witness had not given any names in his first two statements and for the first time on 12.5.2002, he had named the accused. However, instead of coming with a plausible explanation based on the material of record, the learned Special Public Prosecutor appeared to be annoyed by the query and shrugged it aside with a facile answer that all the statements of the witness have to be taken into consideration in their totality and as long as a fact is mentioned in one statement, no matter the length of the delay, there is no omission. Consequently, despite the fact that the learned Special Public Prosecutor was assisted by a battery of lawyers, all at the expense of the exchequer, the burden of scrutinizing the evidence minutely, fell upon the court.

152.72 In the opinion of this court, for the reasons recorded while considering the cross-examination of this witness and the concerned assignee officers, the statements dated 1.3.2002 and 7.3.2002 alleged to have been given by the witness are required to be ignored. Therefore, the statement dated 12.5.2002 would be the first legitimate statement of the

witness, wherein he has named all the three accused. Certain omissions and contradictions have also been brought out in the testimony of this witness as to the statement dated 12.5.2002, which have been proved through the testimony of the concerned Investigating Officer. In his cross-examination, a contradiction has been brought out that in the above statement the witness had not referred to any firing from the mob and had only referred to firing by the police. From the cross-examination of the witness it further emerges that he had named the accused as stated in paragraphs 14 and 15 of his examination-in-chief and had referred to their presence in the mob committing offences, but the other facts stated therein whereby certain weapons and utterances have been attributed to the accused have not been stated by him in his statement dated 12.5.2002. Further omissions have been brought out which reveal that the witness had not stated any fact regarding Noorabhai Mansuri's mother having told the mob that they were Gujaratis, etc.; the fact regarding the incident of Modin, etc.; were not stated by him in his statement dated 12.5.2002. In this regard it may be noted that insofar as reference to Noorabhai Mansuri's mother and the incident of Modin are concerned, the witness has not implicated any accused in connection with either of those incidents. Therefore, any omission to state such facts would not affect the prosecution case when the core of his testimony, viz. that he had seen the three accused in the mobs in the morning, stands unshaken. The witness is consistent insofar as the presence of the three accused in the mob on the road in the morning though he has made certain improvements in his statement before the SIT and in his testimony before the court.

152.73 Thus, while there are improvements and embellishments in the testimony of this witness, the core of his testimony remains unshaken and he is consistent regarding he and Pirmahammad having sustained injuries in the police firing, which proves his presence on the road in the morning; as well as he having seen the three accused in the mobs on the road in the morning. Insofar as A-34 Lakha is concerned, the acquaintance qua him is also established. Insofar as the other two accused, viz. Manoj Videowala (A-41) and Suresh Langda (A-22) are concerned, since the acquaintance is not duly established, the evidence of the witness qua those accused would have to be appreciated accordingly.

153. **PW-168-Ayeshabibi Abdulkadar Shaikh alias Malvari**, aged 60 years, has been examined at Exhibit-1168. This witness has deposed that she was residing at *Jigarhasan-ni-Chali, Opp. Excise Chowky, Naroda Patiya, Ahmedabad* since the last 25 years. In the year 2002 also, she was residing at *Jikarhasan-ni-Chali* with her husband, two married sons, their wives and six grand children.

153.1 In the year 2002, she used to prepare Islamic frames and sell them. At the relevant time, her husband working with a person who used to sell coconut water. Her elder son Abduljabbar used to and is still working in an elastic factory since 2002. Her younger son Abdulrazak used to do tailoring work in the year 2002. He, however, had died in an accident in the year 2003.

153.2 The witness has deposed that the incident took place on 28.2.2002, which was a Friday. On that day, there

was a call for bandh. She did not know who had given such a call.

153.3 On the day of the incident, her entire family was at home with her. On that day, at around 9:00 to 9:30 in the morning, people from outside came fleeing to their house and told them that a lot of disturbances were going on outside and they had come to hide there. She had given in her house shelter to those who had come and had let them sit there. Even thereafter, many people were coming to their chawl and they had let them sit in the chawl.

153.4 Upon hearing all this, she and her two sons went outside their chawl where Babu's Hotel is situated and stood there. At that time at a very short distance from Babu's Hotel, they had seen many mobs. At that time, the people in the mob were throwing stones as well as glass bottles filled with something at them.

153.5 At that time, in view of the riots, her son Jabbar had suggested that they should go home, whereupon she had told him "*We are standing here, but you people go home as you are young*". Jabbar had told her that "*We do not have anything to face these people*".

153.6 On the day of the incident, she had seen **Jaybhavani, Guddu Chhara (both deceased)** and **Suresh Langdo (accused No.22)** in the mob.

153.7 The witness has deposed that she would be in a position to identify all the above three persons if they were

present before her.

153.8 The witness has further deposed that on the day of the incident, since there was a lot of tension, they had stayed awake outside their house the entire night. On that night, a police vehicle had come, however, they could not find enough space to sit in it and hence, they remained awake near their house the entire night.

153.9 Thereafter, on the next day, at around 2 o'clock in the afternoon, a vehicle came wherein her entire family had gone to the Shah Alam camp, where they have stayed for six months.

153.10 Around eight days after the incident, the police had recorded her statement at the camp and she had stated whatever she had seen to the police. The witness has thereafter wrongly identified accused No.50 Badal Ambalal as Suresh (A-22). Thus, the witness has not been able to identify the only living accused named by her.

153.11 CROSS EXAMINATION: In the cross-examination of this witness, she has admitted that she has not stated the facts stated by her from the second line to the last line of paragraph 5 and the entire facts stated in paragraphs 6 and 7 of her examination-in-chief, in her police statement dated 12.5.2002. The witness has denied that she has not named Suresh Langda in her statement recorded by the police. The witness has been cross-examined with regard to the topography of the area. In her cross-examination, the witness has admitted that Babu's Hotel is situated behind Noorani

Masjid and has further admitted that there are two chawls between Noorani Masjid and Babu's Hotel. The witness has admitted that for the purpose of coming to the road, one has to take the road immediately adjoining Noorani Masjid and has admitted that the road through the chawls is a curved one. The witness has further admitted that from Babu's Hotel, one cannot see the national highway. The witness has admitted that from Babu's Hotel, she had returned home and that on the day of the incident, both her sons had come home in the evening between 4:00 to 5:00 p.m.. The witness has admitted that she knew that Jaybhavani used to live in the field and Suresh used to live in Chharanagar. The witness has further admitted that prior to coming to the court, she had not identified the accused either before the police or before the Executive Magistrate.

153.12 PW-279 Shri B. J. Sadavrati, the assignee officer, has admitted that he had recorded the statement of this witness on 12.5.2002. He has admitted that this witness has not given the name of Suresh in the statement recorded by him, but had stated that a lame person who resides in Chharanagar was there. He has admitted that this witness had stated before him that Jaybhavani and Guddu Chhara reside in Chharanagar. He has also admitted that this witness had not stated that Jaybhavani resides in a field and that he does not know where Guddu Chhara was residing.

153.13 SUBMISSIONS: Mr. Y.S. Lakhani, learned counsel for the appellants submitted that this witness has stated that she had seen the accused in front of Babu's Hotel. The attention of the court was invited to the topography of Babu's

Hotel to submit that there are two chawls between Babu's Hotel and the Noorani Masjid and hence, it is in no manner possible for a person standing in front of a Babu's Hotel to see what is going on in front of the Noorani Masjid or on the Highway. It was submitted that in any case this witness has named three accused, namely, Jaybhavani, Guddu Chhara and Suresh Langdo. Jaybhavani and Guddu Chhara are dead and the witness could not identify accused No.22 Suresh Langdo correctly. It was submitted that, therefore, the evidence of this witness would not in any manner support the prosecution case against accused No.22.

153.14 ANALYSIS: This witness who is a resident of Jikarhassan-ni-Chali, which is one of the chawls situated behind the Noorani Masjid, claims to have seen Jaybhavani, Guddu Chhara and accused No.22 Suresh Langdo in the mob pelting stones while she was standing near Babu's Hotel. This witness had not named accused No.22 in her statement dated 12.5.2002, but appears to have given some description of the accused. Considering the topography of the area, it would not have been possible for the witness to see the mob. Last but not least, the witness failed to identify the sole living accused named by her in the dock. The testimony of this witness, therefore, does not support the prosecution case in any manner.

154. **PW-169 Belim Jubedaben Mahammadidrish**, aged 43 years, has been examined at Exhibit-1169. This witness has deposed that in the year 2002, she used to reside in *Badarsing-ni-Chali, Behind Pandit-ni-Chali, Next to ST Workshop, Naroda, Ahmedabad*. The witness has stated that

she used to reside at *Badarsing-ni-Chali* since about fifteen years prior to the incident, in fact, she was residing in the Naroda Patiya area since birth, but after her marriage, she had gone to live at Sabarmati. However, thereafter, she had come to reside at *Badarsing-ni-Chali*. The witness has deposed that her husband died on 14.11.1993 and she has a daughter called Asma who is twenty years old.

154.1 The witness has deposed that she has studied up to the 12th standard and that her parents, brother and sister-in-law live in a house of their ownership in Pandit-ni-Chali. Her parents were residing in the house since about fifty years prior to the incident, and after her father died, she and her daughter went to reside in the house at *Badarsing-ni-Chali*, whereas her in-laws used to live at Sabarmati.

154.2 The incident took place on 28.2.2002 on the day when there was a call for Gujarat Bandh.

154.3 On that day in the morning at around 9 o'clock, she and her daughter Asma were at home. She was doing the household chores when she heard voices of people in the neighbouring chawls and her nephew came to call her. They, namely, a few of the women in the chawl, her daughter Asma, her sister-in-law, etc. came out of the house to the road to see what was happening. They had gone to the corner of their chawl, where at present the Naroda Police Chowky is situated on the road near the S.T. Workshop.

154.4 They saw that the people in the mob were shouting and they had deadly weapons like pipes in their hands. They

were directly attacking them and were throwing stones at them. These people were breaking the carts and cabins nearby. They were also vandalizing the houses and buildings nearby. Upon all this happening, all the women who were with her, went back towards their chawl.

154.5 In the morning at around 9 o'clock, when they were on the road, Salimbhai, a neighbour was with them. Salimbhai was injured by a stone in the incident and was bleeding profusely. The situation was such that the mob was not permitting them to stand in their chawls. In these circumstances, the Muslim women started looking for each other. They had gone near the Noorani Masjid to look for Mustaq, son of Sharifakaki of their mohalla. At that time, they had seen that the Noorani Masjid was in flames and that the area on side of the Noorani Masjid and everything else was being set on fire by the people in the mob by sprinkling kerosene.

154.6 They had seen that at the place where Shivabhai sells vegetables on the opposite side of the Noorani Masjid after one crosses the national highway, Mustaqbhai was injured by a bullet. Mustaqbhai fell down there. The Muslim people present there, took Mustaqbhai to the open ground of Gangotri Society for treatment.

154.7 On the day of the incident, on account of the attack by the mob, the situation was such that they could not remain standing and hence, with a view to save themselves, they started moving towards the rear side. Together with her, there were around eighty Muslim persons who started going towards

the rear side of their chawl and while they were moving towards the back, the mob had continued pelting stones and was attacking them with weapons. In the incident, she was injured on the leg with a pipe and her daughter Asma was injured with a stick on her left hand which was fractured.

154.8 At this time, many people from their mohalla were screaming and were coming from the opposite side and it could be seen that they were Muslims; however, it was difficult to recognize them.

154.9 They went in this manner to the terrace of the house of a Harijan in Gangotri Society which was locked. Her parents, brother, sister-in-law and their two daughters etc. were with her.

154.10 In the incident, her nephew Imran remained missing for five days. Thereafter, a team of Aaj Tak Channel had discovered around twelve boys hiding in the Uday Gas Agency, one of whom was her nephew, and in this manner, they had found him again.

154.11 In the incident, her brother was injured with a hockey stick and her sister-in-law had sustained a stone injury. The Gangotri Society is situated where the chawls end, and the S.R.P. Quarters are situated on the opposite side and between them, there is a huge open ground, where there were mobs which were shouting, "kill, cut" and that if she remembers their appearance, even today, she is frightened.

154.12 The place where her brother and sister-in-law were

injured was the road in front of the S.T. Workshop.

154.13 They were hiding on a terrace of Gangotri when between 7 to 8 o'clock in the evening, they saw from the terrace that the Patiya was in flames on all four sides and it was not possible to escape alive from any direction. From the terrace, they could hear screams of many people. Smoke was coming out from all the houses of the Muslim population and not a single house of their population must have been left unburnt. From the terrace, they saw a mob armed with deadly weapons and they had identified many people in the mob and they knew that they were from their area.

154.14 In the riotous mob, she had recognized four people who were standing with the mob armed with deadly weapons. In the mob, she had seen and recognized Bipin (A-44), Guddu, Suresh Langdo (A-22) and Bhavanising.

154.15 They remained on the terrace of the house in Gangotri Society till 1 o'clock at night. At 1 o'clock at night, a police vehicle came to fetch them. When the police vehicle came, they did not come down because they were very frightened. She had seen the police give two blows with a stick to her mother, and hence, they did not get down when the first vehicle came. Subsequently, at 1:30 at night, when another vehicle arrived, they had gone in it. The police took them to the Shah Alam relief camp.

154.16 At the Shah Alam relief camp, they did not receive treatment immediately and in their own way, instead of bandages, they tied a cloth and stayed there. Thereafter, they

received treatment at the relief camp, where they stayed for approximately six months.

154.17 The people in the mob had ransacked and burnt her house at *Badarsing-ni-Chali* and looted the household articles and the house was not fit to live.

154.18 The police had recorded her statement in respect of the incident at the Shah Alam camp.

154.19 The SIT, however, had recorded her statement at Gandhinagar. She had stated whatever she knew about the incident to the SIT.

154.20 The witness has stated that she does not know as to whether Guddu and Bhavani are alive, but that she can identify all four of them. The witness has thereafter returned without identifying any of the accused and has stated that in view of the long lapse of time, she believes that she will not be able to identify any of the accused and therefore, has not identified any accused.

154.21 The witness has voluntarily stated that at present, she is residing at Naroda Patiya with her 20 year old college going daughter. That she was very frightened. She has stated that as she is a woman, she does not go out and that she had no occasion to meet the accused and at present, she cannot recognize them.

154.22 CROSS EXAMINATION: This witness in her cross-examination has admitted that she has no monetary relations

with Bipin Panchal and has no relations whatsoever with him. The witness has denied that she had no occasion to meet Bipin Panchal till date. The witness has admitted that after the incident, she had no occasion to ever meet him. The witness has admitted that in her statements dated 12.5.2002 and 23.5.2008, she has not given the full name of Bipinbhai or his address. The witness has admitted that she knew that there was a Bipin Auto Centre at the time of the incident. The witness has voluntarily stated that at present, Manan Auto Centre is situated there. The witness has stated that she is not aware as to whether Bipin Auto Centre had been set ablaze. The witness has denied that she was involved in setting Bipin Auto on fire. The witness has denied that while she was at the camp, she had received information that Bipin Auto Centre has been burnt wherein the names of Muslims are also going to be given, and hence, she had falsely given Bipin Auto's name.

154.23 In her cross-examination, it has come out that no member of her family was injured in the incident. The witness has admitted that prior to police recording her statement, she had not made any attempt to lodge any complaint in this regard. The witness has admitted that Ilyas had not referred to any disturbances or mob on the road. She had asked Ilyas as to why she was being called and he had said that the crowds have gathered on the road and hence, they are calling you. The witness has admitted that after Ilyas came, in a little while, she and her daughter Asma locked their house and went to her brother's house. The witness has denied that at that time, she, her mother, father, brother and sister-in-law and their family members had fled from there towards Jawaharnagar khada. The witness has stated that the sequence of events is as

stated by her in her examination-in-chief. The witness has denied that in her police statement dated 12.5.2002, she has stated that she had gone to her brother's place and from there, her mother, father, her brother, sister-in-law and their family members together fled from Pandit-ni-Chali towards Jawannagar khada. At this time, very huge mobs had gathered and were shouting "kill, cut", therefore, they fled from there together with their family members and went to the terrace of the houses in Gangotri Society nearby and hid there. The witness has voluntarily stated that all these facts are partly correct and that firstly, she had gone on the road and all the facts and sequence of events are as stated by her in her examination-in-chief. The witness has admitted that on the entire day of the incident, they had not gone on the highway road. The witness is cross-examined with regard to the topography of the area. In her cross-examination, it has come out that she was working in an anganwadi which is managed by an organization named Dharti Vividhlakshi.

154.24 In her cross-examination, it has come out that she did not have any talk with Imran regarding since when he was hiding in Uday Gas Agency. She has stated that she had no conversation with her nephew Imran as to when he went to Uday Gas Agency; how he went there; under which circumstances; and what he ate and drank for five days; and whether he had contacted anybody. The witness has stated that she had a conversation with regard to how he came out after five days and she came to know that upon the Aaj Tak team coming there, they had brought them to the camp.

154.25 The witness has admitted that they were hiding on

the terrace of Gangotri to protect their lives and was sitting in such a manner that no person from outside could see him. The witness has admitted that while they were on the Gangotri terrace, they were waiting for it to become dark.

154.26 The witness has admitted that they could hear the sounds of the mob on the terrace till 10 to 11 o'clock at night. The witness has denied that on that day at night at 10 to 11 o'clock, they had felt that now there was safety. The witness has stated that in fact, till the police came to take them, they had not felt safe.

154.27 The witness has denied that on the day of the incident, since it was winter, it had become dark prior to 7:00 in the evening and has voluntarily stated that at 7 o'clock also, it was not so dark that they could not see anything. The witness has denied that after 7 o'clock, they were not in a position to recognize anyone there. The witness has admitted that in none of her statements, she has stated as to which accused, had which weapon. The witness has denied that as it had become dark, she could not recognize the accused and hence, she had not stated these facts.

154.28 The contents of paragraph 7 of her examination-in-chief from the fifth line to the last line are read over to the witness to the effect that she has not stated such facts in both her police statements. The contents of paragraph 8 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in her statement dated 12.5.2002.

154.29 The contents of paragraph 9 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in her police statement. The witness has voluntarily stated that however, she had seen all this, and hence, she was speaking about it before the court in her deposition. The contents of paragraph 10 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in her police statement dated 12.5.2002.

154.30 The attention of the witness is drawn to the facts stated in paragraph 10 of her examination-in-chief, wherein she has mentioned the place where Mustaqbhai was injured on the neck by a bullet. The witness has admitted that in her statement recorded by the SIT, she has not mentioned the spot where Mustaqbhai was injured by a bullet. The witness has admitted that she had not mentioned the spot where Mustaqbhai was injured by a bullet because she did not have any idea as to where Mustaqbhai was injured.

154.31 The contents of paragraph 11 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in her statement dated 12.5.2002 which the witness has partly accepted and partly denied. The contents of paragraph 12 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in her statement dated 12.5.2002. The contents of paragraph 13 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in her both statements.

154.32 The contents of paragraphs 14, 15 and 17 of her

examination-in-chief are read over to the witness to the effect that she has not stated these facts in both her statements. The contents of paragraph 16 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in her statement dated 12.5.2002. The contents of paragraph 16 of her examination-in-chief, from fourth line to the eighth line are read over to the witness to the effect that she has not stated these facts in her statement recorded by the SIT.

154.33 The witness has admitted that her brother and sister-in-law had sustained injuries when they were going through the lanes of Jawannagar and Hussainnagar. The witness has denied that these incidents did not take place on the main road leading to the lanes. The witness has voluntarily stated that the road opposite the S.T. Workshop which she has mentioned is the road going to the lanes.

154.34 The contents of paragraphs 18 and 19 of her examination-in-chief are read over to the witness. The witness has denied that in none of her statements, she has stated that they were hiding on the terrace of Gangotri Society and that a mob had come with deadly weapons, wherein she had seen Bipin, Guddu, Suresh Langda and Bhavanisingh and recognized them, have not been stated by her.

154.35 [The trial court has made a note below that in her statement dated 12.5.2002, the witness has stated that she was hiding on the terrace of Gangotri Society and at that time, there were mobs on the road and that she had seen the above four accused in the mob. In her statement dated 23.5.2008,

the witness had stated that she had gone towards Gangotri Society and had hidden on the terrace of Gopinath Society nearby. The witness has mentioned having seen the four accused in the mob and that they were instigating the mob and were shouting.]

154.36 The contents of paragraph 20 of her examination-in-chief, from the second line to the seventh line, are read over to the witness who has admitted that she has not stated these facts in both her statements. On a perusal of the contents of paragraphs 20 and 21 of her examination-in-chief, it is evident that the witness has only referred to what has transpired after the police vehicles came to take them at night which has no direct relation to the offence in question, and hence, not mentioning such facts in the statements recorded by the investigating agencies, cannot be said to be an omission amounting to a contradiction.

154.37 In her cross-examination, it has further been elicited that when the witness came out from her father's house and went towards Gangotri Society, at that time it must have been around 1 to 2 o'clock in the afternoon. They had gone through the Badarsing-ni-Chali road. The witness has admitted that while going from this road, Jawannagar khada comes in between and they had passed through it. The witness has denied that on the way, they had stayed at Jawannagar khada. The witness has stated that after they passed from Jawannagar khada, they had gone towards the S.R.P. Quarters compound wall. The witness has denied that from there, they had gone via Gangotri to the terrace of Gopinath and has voluntarily stated that they had gone to a terrace of Gangotri Society. The

witness has stated that they must have sat on the terrace of Gangotri Society from around 6:00 to 7:00 in the evening. The witness has admitted that when they went from Pandit-ni-Chali till they reached Gangotri Society, on the route, there was no attack on them; however, thereafter, the witness has stated that there was an attack.

154.38 The witness has admitted that the injury sustained by her was when she came out of Pandit-ni-Chali. The witness has denied that after she sustained injury at Pandit-ni-Chali, nothing had occurred. The witness has denied that her daughter Asma was also injured where she herself was injured. The witness has stated that her daughter Asma was injured while they were stealthily going to Hussainnagar and Jawannagar. Asma was injured near the corner of Hussainnagar. The witness has admitted that they were not injured in the Jawannagar khada. The witness has denied that when they passed through the Jawannagar khada, there was no Hindu mob. The witness has admitted that the mobs were in huge numbers.

154.39 The witness has admitted that the mob from Jawannagar had surrounded the khada on all four sides. The witness has denied that they went through the mob. The witness has admitted that the mob was armed with deadly weapons. The witness has denied that Jawannagar khada is situated in such a manner that if any person is standing at any corner of the khada, then the person can see the entire khada. The witness has stated that the khada which she has mentioned being on the left side, no one can see. The witness has stated that she is talking about the left side where the lane

ends.

154.40 In her cross-examination, it has come out that she had not seen Muslim mobs at Jawannagar. Till she reached Gangotri Society from Pandit-ni-Chali, she had not seen any Muslim mobs and has voluntarily stated that she had seen scattered Muslims.

154.41 The witness has admitted that she had no social, monetary or any relations with the four accused named by her till the year 2002.

154.42 In her cross-examination, it has come out that when she went to the SIT to record her statement, she had made an application to the SIT for giving her statement. There were people from the SIT there who were writing down the applications. The application made by her was an application for obtaining compensation. The witness has admitted that after writing down the facts regarding the incident, she had put her signature thereon.

154.43 PW-281 Shri D. S. Vaghela, the assignee officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that before him, the witness had stated that Ilyas who was residing in Pandit-ni-Chali had come to her house and informed her that at Naroda Patiya and in the area surrounding it, the mobs of twenty thousand to twenty five thousand Hindus have gathered and they had swords, sticks and other dangerous weapons in their hands and they were pelting stones and severe riots were going on and hence, she should go home with him. That she had gone to her

brother's house and from there, together with her parents, her brother, sister-in-law and their family members, they had fled from Pandit-ni-Chali and gone towards Jawannagar pit. At this time, huge mobs had gathered above and were shouting, "kill, cut", and hence, they had fled together with their family members and gone to a terrace of a house in Gangotri Society which were nearby and hidden there.

154.44 The contents of paragraphs 10 and 11 of the examination-in-chief of this witness are read over to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him. The contents of paragraph 11 of the examination-in-chief of this witness are read over to the assignee officer who has admitted that the witness has not stated all these facts in her statement before him. He has stated that the witness had stated before him that at this time, huge mobs had gathered on the road and were shouting "kill, cut" due to which, they had fled together with their family members and had hidden on the terrace of houses in Gangotri Society nearby. Except for these facts, the witness had not stated any other facts

154.45 The contents of paragraph 14 of the examination-in-chief of this witness are read over to the assignee officer who has denied that all the facts stated therein were not stated by the witness before him. He has stated that the witness has stated that they had hidden on the terrace of houses of Gangotri Society, but the rest of the facts were not stated by her.

154.46 The contents of paragraph 16 of the examination-in-

chief of the witness are read over to the assignee officer who has denied that she had not stated all such facts in her statement recorded by him. The assignee officer has stated that the witness had stated before him that in these riots, her brother Mohammad was injured on the leg with a hockey stick and that the other facts are not stated by her.

154.47 The assignee officer has admitted that the witness has verbatim not stated before him that they were hiding on the terrace of Gangotri Society and that there were mobs with dangerous weapons wherein she had seen Bipin, Guddu, Suresh Langda and Bhavanisingh and recognized them. The assignee officer has stated that the witness had stated before him that they were hiding on the terrace of Gangotri Society and prior thereto, while going to Gangotri Society, the witness had gone towards the Jawannagar pit. At this time, huge mobs had gathered on the road and were shouting "kill, cut" due to which, the witness together with their family members had fled and climbed on the terrace of a house in Gangotri Society nearby and hidden there. He has also stated that the witness had stated the facts regarding having seen the four named accused in the mob. The assignee officer has admitted that the witness has not stated having seen the four accused from the terrace of Gangotri.

154.48 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 23.5.2008. He has admitted that this witness had stated before him that she had left her house and gone to her father's house at Pandit-ni-Chali and there too, the mob had attacked, hence, they,

together with her parents, brothers, sister-in-law had fled and gone towards Gangotri Society and had gone and hidden on the terrace of the quarters of the Bhangi people at Gopinath Society.

154.49 The contents of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that while they were going, the houses of Harijans in Gangotri Society were in a closed condition; they had gone on the terrace of those houses and hidden; together with her, her parents, brothers, sister's two daughters, etc. were there. The Investigating Officer has admitted that in the examination-in-chief of the witness, the witness has referred to Gangotri Society, whereas in her statement, she had mentioned Gopinath Society. The Investigating Officer has clarified that in the statement dated 12.5.2008, the witness has stated that they had gone to the terrace of Gangotri Society and that the statement recorded by him was in the nature of a further statement and that what was stated earlier is also included in the investigation papers.

154.50 The Investigating Officer has admitted that the witness had not stated before him that she had seen the four accused in the riotous mob from the terrace of Gangotri Society. He has clarified that the witness in her statement had stated that they were hiding on the terrace of Gangotri Society and at that time, she had seen the four accused in the mob on the road. The witness had stated before him that they had gone towards Gangotri Society and had hidden on the terrace of nearby Gopinath Society and that in both the statements, she had stated regarding having seen the four accused in the

riotous mob. The Investigating Officer has admitted that this witness had stated before him that when the police resorted to firing and lobbed tear gas shells, her distant paternal uncle Mustaqbhai Razakbhai was injured by a bullet on the neck.

154.51 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the examination-in-chief of the witness to submit that the sequence of events has been changed from what was stated in her police statement. It was pointed out that majority of the facts stated by the witness in paragraphs 8 to 21 of her examination-in-chief have not been stated by her before the police and a few important facts have also not been stated before the SIT. It was submitted that the version given by this witness is not reliable and not believable and that she has stated different stories before the police, before the SIT and her deposition. It was pointed out that the first version given by this witness was at a belated stage, that is, seventy two days after the incident took place.

154.52 It was submitted that this witness has named four accused including Suresh (A-22), but could not identify any accused. It was submitted that she has referred to the accused only by their first names and their full names were not given, and hence, in absence of a test identification parade, it would not be possible to establish the identity of such accused. Moreover, the witness has failed to identify the accused before the court. It was argued that the version given by this witness is not believable and she has stated different stories before the police, SIT and in her deposition. The witness is, therefore, not reliable and not trustworthy as far as two named accused are

concerned.

154.53 Referring to the contents of paragraph 55 of her cross-examination, it was submitted that the witness has not seen Mustaq sustain a bullet injury and is lying before the court. It was submitted that no medical certificate regarding the injuries sustained by any of her family members has been produced. It was submitted that considering the evidence of the witness, she has not seen the incident of Mustaq being injured in the firing. There is no acquaintance with the accused, inasmuch as Bipin and Suresh are not residing in her area. There are vital and substantial contradictions in her deposition and in her statements and her statements before the police and the SIT. The witness has not identified the accused, and hence, her evidence is not reliable and does not inspire confidence.

154.54 Mr. P.G. Desai, learned Special Public Prosecutor, submitted that the presence of this witness at the scene of offence has been established. She has narrated the incident of the morning where Mustaq had sustained bullet injury. So far as the incident in question is concerned, there is no major contradiction and therefore, she should be believed qua the incident.

154.55 ANALYSIS: From the testimony of this witness it appears that she has given a different version of the incidents that took place on 28th February, 2002 than the version given by other witnesses. In respect of most of her examination-in-chief, omissions and contradictions as to her previous statements recorded by the police, have been brought out and

proved. The witness had named four accused persons in her examination-in-chief viz. Bipin (A-44), Guddu (deceased), Suresh Langdo (A-22) and Bhavanisingh (deceased) and had also named them in her statement dated 12.5.2002 as well as in her statement dated 23.5.2008 recorded by the SIT; however, she has failed to identify any of the accused before the court. Having regard to the quality of her evidence, the witness does not come across as a credible and trustworthy witness. No part of her testimony can, therefore, be relied upon to prove the charge against the accused.

155. **PW-170 Mahammadjalaluddin Ibrahimbhai Shaikh**, aged 31 years, has been examined at Exhibit-1174. The witness has deposed that in the year 2002, he was residing in *Lane No.1, Hussainnagar* with his pregnant wife and two nephews. His native place is Village Solapur, Post Shahpur, Karnataka State.

155.1 At the time of the incident, his wife was pregnant and a son was born in the camp, where they went after the incident, he named him Shoaib. In the year 2002, he used to do tailoring work at home.

155.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh, which was in the context of the incident at the Godhra railway station on 27.2.2002.

155.3 On that day, in the morning at around 9:00 to 9:15, they were all at home and were having breakfast. There was commotion outside and the people of the chawl started going hither and thither. He left his breakfast and went out to see. He

went to the tap near the S.T. Workshop at the corner of their chawl where at present there is a police chowky and saw that a mob of ten to fifteen thousand people was coming from the direction of Natraj Hotel shouting “kill, cut”. The people in the mob had come with swords, dharias, pipes etc. The mob had reached near the S.T. Workshop and was pelting stones.

155.4 Out of the people whom he saw in the mob, he could recognise six persons. They were **Bhavanisingh, Guddu Chharo (both deceased), Mungado Chharo (A-39), Hariya Chhara (A-10), Suresh Langdo (A-22)** and **Bipin Panchal (A-44)**.

155.5 These six persons were leading the mob and were managing it. It was they who had brought the mob from Natraj Hotel to the S.T. Workshop.

155.6 The people in the mob started attacking the houses near the Noorani Masjid. The people in the mob attacked the hand carts, cabins and houses near the Noorani Masjid and set them on fire. Some of them came to save the Noorani Masjid at which point of time, the mob was on the side of the S.T. Workshop. He was watching all this from the water tap near the S.T. Workshop, where presently there is a police chowky. At this time, the Hindu mob was pelting stones. They were bursting tear gas shells and their eyes started burning and after a little while, firing started.

155.7 In this incident, Pirubhai, Mahammadbhai, etc. were injured by bullets.

155.8 A police jeep was standing near the S.T. Workshop. They thought of asking the help from the police as well as for calling an ambulance because they had lifted the people who were injured and brought them to where they were standing and an ambulance was necessary for providing them treatment. At this place, they were going to ask for help from the police when two – three Muslim women standing there, told them that they (the women) would go and ask for police help and thereafter, three women went to the police for help and they immediately returned by running.

155.9 The women told them that the Police Inspector had beaten them with sticks/baton and the same Police Inspector had held a gun near the woman's earlobe and told her to go away.

155.10 After a little while, the violence by the mob increased and they started bursting shells, firing and increased the intensity of stone pelting. The mob advanced from the S.T. Workshop towards their chawl. In this mob, he had recognized three people. From this mob, half the mob was going towards the chawls and the other half was going towards the Noorani Masjid. In the mob which was going towards Noorani Masjid, he had seen **Hariyo Chhara (A-10), Mungada Chhara (A-39) and Suresh Langda (A-22)**. At that time, he was standing near the tap, near the S.T. Workshop when somebody fired a bullet at him which hit a person standing behind him. Since the firing was going on at that time, all of them ran towards the chawls. A person behind him was injured with a bullet. Thereafter, he (the witness) had gone home.

155.11 After going home, he took his wife and his two nephews and left his house and went to the S.R.P. camp, next to the chawl. They were able to go inside the S.R.P. camp. They stayed at the camp at night when at around 3:30 to 4:00, a Government vehicle came to take them. He and other people from his chawl who were in the S.R.P. camp, all of them sat in the vehicle and went to Shah Alam camp, where they stayed for around six months.

155.12 While they were at the camp, the police had come to record his statement on 12.5.2002. After his statement was recorded by the police, his son was born.

155.13 The witness has said that he would try to identify six persons whom he had seen in the mob. He has stated that he had learnt that Bhavanisingh and Guddu Chhara are dead. The witness has thereafter identified accused No.39, 22, 44 and 10 correctly.

155.14 CROSS EXAMINATION: This witness in his cross-examination has stated that he had given his statement before the police in Hindi at the camp. At the time when his statement was recorded, the statements of many other people were also recorded. In his cross-examination, it has further come out that the statement which was recorded was not read over to him by any one. The witness has stated that he had not asked the police as to what they had written down while recording his statement even with a view to ascertain what they had written. The witness has admitted that on the date when his statement was recorded as well as even today, he does not know as regards the police has recorded in his statement. The witness

has further deposed that he came to know that his statement was to be recorded on that day because people had declared it on that day that everyone's statement has to be recorded and his name was also mentioned and hence, he came to know. The witness has further stated that they were not calling them on the mike. The witness has denied that his statement dated 12.5.2002 had not been recorded by the police and hence, he had not inquired as to what he has stated was written down by the police in his statement. The witness has thereafter been cross-examined with regard to topography of the area. In his cross-examination, he has stated that he can approximately say that when he returned home, it must have been around 11:30 to 12 o'clock. During the period when he was standing near the water tap, the mob had pelted stones at him. The witness does not remember as to how many stones had hit him. He has stated that he had not availed of treatment because he had gone to the camp where he was treated. The witness had admitted that he has not stated the fact regarding his being injured by the stones to anyone because he had been only slightly injured by the stones. The witness has stated that he had seen other persons standing or sustaining more serious stone injuries. The witness has admitted that except for the incident which he has narrated in his examination-in-chief, he had not seen any occurrence on the date of the incident. The witness was confronted with his statement dated 12.5.2002 to the effect that he had stated therein that at around 9 o'clock in the morning a mob comprised around ten to fifteen thousand Hindus were shouting "kill", "cut" and was screaming and was armed with sticks, swords, pipes, dharias and were assaulting the people residing in the front side of their chawls and had started damaging the houses of the Muslims of their chawls

and were setting them on fire and he and his wife having seen this from far, left their house open and he took his wife and children and went to the S.R.P. camp near their chawl and hide there. The witness has voluntarily stated that the sequence of events took place as has been stated by him in his examination-in-chief, and on the day of the incident, he did not have any child of his own. The witness has denied that in his statement before the police he has stated that while he was in the chawl, he had seen the named accused in the mob.

155.15 The witness has stated that when he went home, namely that when he returned from the corner of the chawl thereafter, he had immediately taken his family members and left his home. The witness has admitted that immediately after leaving from home, they had gone to S.R.P. Quarters. In his cross-examination, it has further come out that before it became dark, around fifty to sixty Muslims had come to take shelter at the S.R.P. Quarters. The witness has admitted that when he returned from the corner and took his family to the S.R.P. Quarters, nobody stopped him on the way or attacked him. The witness has voluntarily stated that at that time, burning rags were being thrown at them from the S.T. Corporation. The witness has stated that while he was going to the S.R.P. Quarters, he had not seen any mob coming either behind them or in front of them and he had not seen the people in the mob burning anything. He has stated that when he ran from the corner to his house, there must be around fifty to sixty other people with him. The witness has stated that when the person behind him sustained a bullet injury, he had not gone to help him and has voluntarily stated that he saved his life and ran away.

155.16 The witness has admitted that his sole statement dated 12.5.2002 was recorded at the relief camp in the presence of D.S. Vaghela, P.S.I, D.C.B. The witness has stated that it is only partly true that in his statement dated 12.5.2002 he has stated that on 28.2.2002 he had stated that there was a call for Gujarat bandh and they were at home having tea and snacks when in the morning at around 9 o'clock a mob of ten to fifteen thousand Hindus armed with sticks, swords, pipes, dharias etc. was shouting "kill" "cut" and screaming and was assaulting the people residing in the anterior side of their chawls and were damaging and burning houses of Muslims, and he and his wife, upon seeing it from far, left their house and went to the S.R.P. Quarters, which was near their chawl and hid there. Thereafter, on 1.3.2002 at 4 o'clock at night, the police arrived with a vehicle, wherein all of them had gone to the Shah Alam relief camp. In that incident, he and his wife were not injured.

155.17 The witness has further deposed that the Hindus in the mob were wielding swords, sticks, pipes, rods, etc. in the riots, from whom he knows some persons. In the mob he had seen (i) Bhavanisingh, is an A.M.T.S. driver, and (ii) Guddu Chhara, (iii) Mungda Chhara and (iv) Hariya, resides in Krushnanagar and (v) Suresh Langda. Except for them, he did not recognise any other person in the mob. After the incident, he and his wife had not gone to their above house and he did not know whether his house had been burnt or whether any damage had been caused to his house. The witness has voluntarily stated that he had given his statement in terms of what he had deposed before the court. Several facts from the

statement that was read over to him were true; however, all the facts had not been recorded as stated by him.

155.18 The attention of the witness is drawn to the third line of his examination-in-chief as well as to paragraphs 8 to 16 of his examination-in-chief, to the effect that he had not stated such facts the witness in his statement recorded by the police, which the witness has denied.

155.19 The witness has admitted that he had no financial, social or other relations with the accused whom he has named and identified before the court. The witness has admitted that there has been no occasion when he needed any of the accused or that the accused had any work with him in connection with which they were required to meet each other. The witness has admitted that there was no occasion for him to identify the accused before a Magistrate or any authority. The witness has denied that on the day of the incident, he had not gone out of his chawl and had not seen any accused and that he had straightway gone from the chawl to the S.R.P. Quarters and in the meanwhile, he had not seen any accused.

155.20 In his cross-examination, it has further come out that it must have been noon time when he went to the S.R.P. Quarters. It has further come out that from the relief camp he had firstly gone to reside at Naroda Patiya and from there he had gone to Ektanagar. The relief committee had given him this house to stay. He had admitted that the relief committee has not taken any consideration from him towards the house.

155.21 To prove the omissions and contradictions in the

testimony of the witness as to his previous statements, the defence has cross-examined the concerned Investigating Officer/assignee officer who had recorded such statement.

155.22 PW-281, Shri D. S. Vaghela, the assignee officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that this witness has stated before him that at around 9 o'clock in the morning, a Hindu mob of around ten to fifteen thousand people armed with sticks, swords, pipes, dharias in their hands, had come shouting and screaming "*kill, cut*"; they were assaulting the people residing on the anterior side of their chawl and were damaging and burning the houses of Muslims in their chawl, which he and his wife saw from far; they left their houses open and he, his wife and children together went to the S.R.P. camp near their house and hid there.

155.23 The contents of paragraph 6 from the third line to the last line of the examination-in-chief of this witness as well as the contents of paragraphs 8 to 16 thereof, are read over to the assignee officer, who has admitted that this witness has not stated the facts as stated in paragraphs 6, 8 to 14, in her statement recorded by him. He, however, has denied that the witness has not stated the facts stated in paragraph 15 of her examination-in-chief before him because the witness has mentioned the morning mob and has also stated that she had seen all the accused. However, in the statement, she has not stated that the mob was going towards Noorani Masjid and that the mob was divided into two parts and that the other facts have also not stated by her in her statement before him. The assignee officer has denied that the facts stated in

paragraph 16 of her examination-in-chief have not been stated by the witness and has stated that all the facts have been stated by her, except that instead of two nephews, she has mentioned two children.

155.24 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants invited the attention of the court to the identification of the accused by this witness to submit that accused No.10 Hariya had been identified in the third attempt and to submit that the court ought not to have granted such permission. It was submitted that the version given by the witness before the police and before the court are different. Both the versions do not match and particularly when the witness claims that he had gone to the S.T. Workshop and had seen six persons there only as a part of the mob without doing anything. It was submitted that in view of the proved omissions, whether the witness could have seen them at some other place, as brought out through the testimony of the Investigating Officer, is very doubtful. It was submitted that the witness says that he has not given any complaint, and therefore, when his statement has been recorded after such a long time, his claim should not be believed. It was submitted that reading the examination-in-chief and having regard to the proved omissions, no overt act whatsoever has been attributed to any of the accused nor has any weapon been attributed to them, and therefore, even if his statement is taken at its face value, all that the witness has stated is that the accused were found present in the morning mob between 9:00 to 9:30. It was pointed out that, if his police statement is taken into consideration, as proved by PW-281 in paragraph 31 of his deposition, it is very doubtful whether he has seen any of the

accused, as claimed by him. It was argued that considering the fact that in paragraph 43 of his deposition, the witness has admitted that he has no acquaintance whatsoever with any of the accused at any point of time prior to or after the incident, he could not have named any of them as he does not say as to how he knew the accused to be able to name them in his examination-in-chief. It was pointed out that, as stated by the witness in paragraph 44 of his deposition, no test identification parade has been held to identify the accused and, therefore, this witness should not be believed to be a truthful and reliable.

155.25 Mr. B. B. Naik, learned counsel for the appellants submitted that out of the six accused named by the witness Guddu is shown to be in the mob from Krushnanagar, Suresh Langdo is shown by one witness as coming from Mahajaniyavas and Bipin Panchal is shown in the mob from Krushnanagar by other witnesses. It was submitted that the version given by this witness, of having seen only one mob from Natraj side is contradictory to the version of other witnesses who refer to mobs from Krushnanagar and Mahajaniyavas. It was submitted that the fact regarding the mob having gone to the S.T. Workshop when they went to defend the Noorani Masjid is not stated by any other witness. It was contended that the people going towards the Noorani Masjid would have their backs towards the S.T. Workshop, and hence, it would not have been possible for the witness to identify them. It was submitted that most of the witnesses have stated that after 10 o'clock in the morning no one was permitted to enter the S.R.P. Quarters, which falsifies the story of this witness and gives credence to the version stated by him

before the police. It was submitted that the deposition of the witness is required to be closely scrutinised and on close scrutiny, it clearly transpires that the witness is not telling the truth and has not seen any incident. No other witness has stated that mob had retreated from Noorani when some Muslims gathered at Noorani Masjid. According to this witness, he left his home around 12.00 in the afternoon and thereafter gone to S.R.P. Quarters, which is not possible because as per say of other witnesses, after 10:00 or 10:30 a.m. no one was permitted to enter the S.R.P. Quarters.

155.26 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that only one statement dated 1205.2002 of this witness has been recorded. The witness has named all the accused together with weapons. No contradiction has been brought out by the defence insofar as the names of the accused are concerned and the incident which he has narrated in his examination-in-chief and in his statement dated 12.5.2002 are not so contradictory to each other as can be said to be material contradictions. The evidence of this witness is, therefore, reliable, dependable and credible.

155.27 ANALYSIS: From the testimony of this witness, it emerges that before the court he has deposed that at around 9:00 to 9:15, upon hearing commotion outside, he had gone out near the S.T. Workshop at corner of their chawl near the water tap, where he had seen a mob comprised of around ten to fifteen thousand Hindus shouting "kill" "cut", coming from the direction of Natraj Hotel. The people in the mob were armed with swords, dharias, pipes, etc. and the mob had come

to the S.T. Workshop and had pelted stones. In the mob, he had seen Bhavanisingh (deceased), Guddu Chhara (deceased), Mungdo Chhara (A-39), Hariyo Chhara (A-10), Suresh Langdo (A-22) and Bipin Panchal (A-44), all of whom were leading the mob and managing it. The mob attacked the houses near the Noorani Masjid and set the houses and stalls on fire. The witness has also deposed regarding the incident of lobbing of teargas shells and firing and Pirubhai and Mohammadbhai being injured in the firing. That the mob grew larger and the aggression increased and half the mob went towards the chawls and the other half went towards the masjid. He had seen Hariyo Chhara, Mungdo Chhara and Suresh Langdo in the mob going towards the Noorani Masjid and since firing was going on and people were wounded by bullets, they all went towards their houses, from where he took his wife and his two nephews and left his house open and went to the S.R.P. Quarters next to his chawl. However, a contradiction is brought out in his police statement to the effect that before the police, he had stated that at around 9 o'clock in the morning, a mob of around ten to fifteen thousand Hindus came shouting "kill" "cut", the mob was armed with weapons like sticks, swords, pipes, dharias and they were assaulting the people residing in the chawl on the anterior side and were damaging the houses of Muslims in the chawl and burning them, and upon seeing this from far, he and his wife had left their house open and together with their children gone to the S.R.P. camp next to their chawl and hidden there. The witness has further stated before the police that in the mob which was armed with weapons he could identify Bhavanisingh, Guddu Chhara, Mungdo Chhara, Hariyo and Suresh Langda. Thus, while there is a discrepancy in the narration of the incident by the witness,

namely, that before the police he had stated that he had seen the mob when it entered their chawl and had identified the above accused, before the court he had stated that he had come out on the road and seen the accused in the mob. Thus, while there is a discrepancy in the sequence of events and the place from where he saw the accused, insofar as his having seen the accused in the mob is concerned, the witness is consistent and has named the accused even in his statement recorded by the police. Therefore, to the extent of the involvement of the named accused in the offence in question, there is no contradiction. The witness has also identified all the named accused before the court. Though the witness has been cross-examined by the learned counsel for the accused, nothing substantial has been brought out to falsify the version given by the witness to the extent he has stated that he had seen the accused in the mob. Considering the fact that the witness was deposing before the court around eight years after the incident, there are bound to be some discrepancies in this testimony. Moreover, the minor discrepancy may only be a different manner of expressing the same thing. Therefore, the discrepancy regarding from where the witness had seen the accused cannot be given undue weightage so as to discard the testimony of the witness.

155.28 Thus, while the witness has improved upon his original version by stating that he had seen the accused on the road and has also attributed overt acts to them to the effect that they were leading and managing the mob, to the extent of their involvement in the offence in question, the witness is consistent, and hence, there is no reason to discard his testimony *in toto*. Thus, through the testimony of this witness,

the prosecution has duly established the presence of the named accused viz. Mungdo Chhara (A-39), Hariyo Chhara (A-10), Suresh Langdo (A-22) and Bipin Panchal (A-44) in the mob which was damaging the houses and stalls near the Noorani Masjid and setting them on fire.

156. **PW-171 Shaikh Mustaqahemad Abdulrazak**, aged 42 years, has been examined at Exhibit-1177. This witness has deposed that he was residing in *Kumbhaji-ni-Chali* since his birth. He used to park his cart in front of the Noorani Masjid and sell omelettes. His family was comprised of his wife Nazmabanu and three daughters, viz., Afreenbanu, Afsanabanu and Jubedabanu and all of them were residing together. He has studied in the Gujarati medium up to the 7th standard.

156.1 In the year 2002, his daughter Jubeda was not born and at that time, he, his wife and his two daughters were living together.

156.2 The incident took place on 28.2.2002. At that time, when he woke up in the morning at 10 o'clock, there was a huge mob on the road. His wife informed him that his egg cart was being damaged and hence, he had woken up. Upon hearing this, he had gone to his egg cart near the Noorani Masjid and seen that there was a huge mob. The mob had started damaging his cart. They were also causing damage to the shops nearby. They were also damaging the masjid. They were damaging the carts, cabins and nearby shops. The mob was shouting "*Jay Shri Ram*".

156.3 He saw Guddu Chharo and Suresh Langda (A-22) in the mob. Both of them were indulging in vandalism in the mob and they were also instigating the public. Suresh Langdo had something like a stick in his hand and Guddu had a weapon like a sword in his hand. Upon seeing this, with a view to save his life, he went towards the rear side of the masjid to Jigarhasan-ni-Chali. His wife and his children were separated from him and he stayed in Zikarhasan-ni-Chali till night. Thereafter, at night, a vehicle came and took them to Shah Alam camp, where he met his wife and children.

156.4 He stayed at the camp for six months. At the camp, the police recorded his statement. Thereafter, the SIT people also recorded his statement. Over and above this, the SIT people also recorded his statement at Naroda Patiya. He went back to stay at *Kumbhaji-ni-Chali* from the camp.

156.5 His egg cart from which he carried on his business as well as all his household goods had been damaged and broken in his house during the incident.

156.6 Guddu Chhara has died and he can identify Suresh Langda. The witness has correctly identified Suresh Langda in the court.

156.7 CROSS EXAMINATION: The witness has been cross-examined by the learned advocates for the accused. A contradiction has been brought as to his statement dated 12.6.2002 to the effect that he had not stated that his wife had woken him up as his egg cart was being damaged and that he had not stated in his statement dated 12.5.2002 that the mob

was shouting "Jay Shri Ram". A further contradiction has being brought out to the effect that the witness had not attributed any weapons to the named accused in his statement dated 12.5.2002. A further contradiction is brought out to the effect that he had not stated before the police that thereafter, he had gone to Zikarhasan-ni-Chali behind the masjid and that he and his wife were separated. The witness has also been cross-examined as regards the topography of the area. In the cross-examination of this witness, it has come out that he used to keep his cart at the place where he used to park it while carrying out his business. The witness has stated that when he went to the road, the mob had spread all over the road. The witness has admitted that when he came out from the S.T. Workshop, at that time, both the sides from Krushnanaqar to Natraj Hotel, there was a continuous mob. The witness has denied that the road was jam-packed and has stated that there were a lot of people; however, there was space to go on the road. The witness has stated that he does not know whether there were other spectators like him standing on the road and has voluntarily stated that he was only worried about his egg cart. The witness has admitted that when he went to the Noorani Masjid, he went through the mob. When he reached there, he saw that his cart was broken. In his cross-examination, the witness has admitted that he had seen both the accused near the lane behind the Noorani Masjid. He has admitted that there were so much noise that it was difficult to hear what anyone was saying. The witness has admitted that except for seeing two accused for two – four minutes, he has not seen them throughout the day. The witness has admitted that he has no enmity or friendship with Suresh Langda and has denied that he has named him at the instance of the

leaders of their community at the camp. The witness has admitted that he has identified Suresh Langda in the court for the first time and has denied that he had not seen the named accused at the time of the incident.

156.8 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who recorded such statement.

156.9 PW-279 Shri B. J. Sadavrati, the assignee officer has admitted that he has recorded the statement dated 12.5.2002 of this witness. He has admitted that this witness had stated before him that on that day, from the morning the situation had become tense and by 9:30, the mobs of people started gathering and that at around 11:00 to 13:30 hours, the riotous Hindu mob attacked the chawl and since their chawl was on the highway side, in their defence, they had pelted stones, but the Hindu mob was very huge and had assumed a very violent form, hence, they had retreated and together with his children, with a view to save themselves, fled on the rear side and these riotous mobs had started looting their houses and setting them on fire and they together with their children entered a house in the middle of their chawl and hid there and late at night, the police came with vehicles and at that time, the police had called them and seated them in the police vehicles and brought them to the Shah Alam camp and since then, they had taken shelter at the relief camp.

156.10 The contents of last two lines of paragraph 4 of the examination-in-chief of this witness, wherein the witness had

stated that his wife had informed him about the damage caused to his egg cart and had woken him up, had not been stated by him in the statement recorded by him.

156.11 (As to how the witness woke up in the morning can hardly be said to be an omission amounting to a contradiction. Under the circumstances, such question ought not to have been put to the assignee officer.)

156.12 The contents of paragraph 6 of the examination-in-chief of the witness, wherein he has stated that the mob was shouting and they were chanting "Jay Shri Ram" has been stated, are put to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him.

156.13 The assignee officer has admitted that this witness has not stated before him that Guddu Chhara and Suresh Langda had caused any damage or that they had instigated any member of the public. The assignee officer has also admitted that this witness had not stated before him that he had gone to Zikarhasan-ni-Chali on the rear side of the masjid and that at that time, his wife and children got separated from him and that the witness had stayed at Zikarhasan-ni-Chali at night.

156.14 The assignee officer has admitted that this witness has not stated before him as to which accused, at which place, and where they were, and at what time the witness had seen the accused. The assignee officer has voluntarily stated that the witness had stated that Suresh Langdo, resident of

Mahajanyavas, Prakash Chhara, Chharanagar, Mahajanyavas, Manoj Sindhi of "A" Ward as well as Parbho Pandit of Naroda Patiya, whom the witness knows, had been seen by him in the violent Hindu mob. The assignee officer has admitted that the witness had mentioned the names of the accused as being part of the violent Hindu mob; however, he has not mentioned any acts committed by them. The assignee officer has admitted that the witness has not stated as to at what time and at what place and from where, the witness had seen the accused. The assignee officer has further admitted that the witness had not stated before him as to which accused had which weapon with him.

156.15 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 27.6.2008. He has admitted that this witness had not stated before him as to at what time he had seen which accused. He, however, has clarified that the witness had stated before him that on the day of the incident, he had woken up at 10 o'clock and gone outside and had seen the mob. That the witness has mentioned having seen Suresh Langda and Guddu with weapons.

156.16 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants has submitted that no place, time overt act or weapon is attributed to the accused No.22 except that at about 10:00 a.m., while he has gone on the road, he has seen both the accused as part of the mob. Therefore, the attribution about both the accused instigating the accused, ransacking the property and having weapons like sticks and swords in the

hands of the accused No.2 and Guddu respectively, are stated for the first time before the SIT in 2008, which is indicative of the fact that the witnesses have not only tried to improve their versions at a subsequent stage, but deliberately added such facts which increases the seriousness of the complicity of the accused. Such an attempt itself is sufficient to draw a reasonable inference that there is even no guarantee of the allegations of the witnesses made even in his first statement which is recorded after a period of more than seventy days. Thus, the witness cannot be relied upon.

156.17 Mr. B. B. Naik, learned counsel for the appellants has referred to the contents of paragraph 5 of the examination-in-chief of the witness in juxtaposition with the contents of paragraph 20 of his deposition, to submit that the version stated by the witness in his examination-in-chief, is dislodged in his cross-examination that he had seen the accused in the lane behind the Noorani Masjid. It was submitted that no test identification parade has been carried out. The witness had no occasion to meet Suresh. There is no involvement of the accused in the mob and the identification of the accused is also doubtful.

156.18 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the presence of this witness at the scene of offence has been established beyond reasonable doubt. It was submitted that there is no cross-examination to discredit the witness prior to the statement dated 12.5.2002. It was submitted that the omissions and contradictions brought out in the testimony of the witness are only with regard to the statement dated 12.5.2002 recorded by the police and there is

no omission as regards the statement dated 27.6.2008 recorded by the SIT. It was argued that the witness has named the accused in his first statement recorded by the police and that his examination-in-chief is in consonance with the statements recorded by the SIT, wherein he had stated that Suresh Langdo had something like a stick in his hand. It was submitted that the statements of this witness have been recorded in the years 2002 and 2008 and there are no major contradictions in the two statements, except for the reference to stick, which could be said to be a further explanation. It was submitted that the fact regarding the presence of the mob and Suresh Langdo in the mob have been stated in the statement recorded by the police in the year 2002. In conclusion, it was submitted that this witness is credible and there is no reason to discard his evidence qua the morning incident.

156.19 ANALYSIS: From the testimony of this witness, it can be seen that certain omissions that have brought out in the cross-examination of the witness, are material in nature, viz. that in his police statement the witness had not stated that he had seen the two named accused resorting to vandalism and instigating the public and had also not attributed any weapons to them. But, he did say that he had seen both the accused in the mob.

156.20 If the testimony of the witness is considered after discarding the portion in respect of which omissions amounting to contradictions have been brought on record and proved, it emerges that the witness has stated that at 10:00 in the morning there was a huge mob on the road and the people in the mob started damaging his cart and were also damaging

the shops and stalls in the vicinity. In the mob he had seen Guddu Chhara (deceased) and Suresh Langdo (A-22). Therefore, to the aforesaid extent the testimony of this witness is consistent with his previous statement recorded by the police. It may be noted that the statement of this witness was also recorded by the SIT in respect of which there is no material omission. However, in the opinion of this court, the SIT having recorded statements after a period of more than six years from the date of the incident, it would be hazardous to place reliance upon such statements as the witness would be amenable to tutoring, etc. and it is possible to concoct a case based upon what is heard from other persons in the camp. Therefore, the court has not taken into consideration the fact that though there may be omissions as to the statement recorded by the first investigating agency, there may not be any omissions as to the statement recorded by the SIT.

156.21 The testimony of this witness to the extent he is consistent with the first version given by him before the police, therefore, deserves to be accepted. From the testimony of this witness it is established that on the day of the incident, in the morning at around 10:00 a.m., he had seen deceased accused Guddu and accused No.22 Suresh Chhara in mob which was vandalizing and damaging shops, stalls and carts on the road.

157. **PW-172 Arifali Kasamali Saiyed**, aged 31 years, has been examined at Exhibit-1186. This witness has deposed that he is residing at *Imambibi-ni-Chali* since his birth. In the year 2002, he used to reside at the same place with his wife Rahishabanu and his daughter Muskanbanu. At that time also,

he used to do tailoring work at home.

157.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. The bandh was declared on account of a train being burnt at Godhra.

157.2 On the day of the incident, he was at home. In the morning at around 9:00, he went out to buy threads for sewing. He was going towards Krushnanagar to buy threads when he saw the mob.

157.3 He had seen the mob outside his house. When he came out, he saw a mob on the side of Patiya vandalizing the shops and setting them on fire.

157.4 On seeing all this, he returned home. Thereafter, he took his wife and daughter and went to Jawannagar. He was at Jawannagar till 7 o'clock in the evening.

157.5 After 6:00 in the evening, he took his wife and daughter to a terrace of Jawannagar. He was there on the terrace till the police vehicle came at around 8:00 to 9:00 at night. In the vehicle, he, his wife and daughter had gone to the Shah Alam camp, where they stayed for around four months.

157.6 The witness has stated that the household articles, sewing machine, etc. in his house at Imambibi-ni-Chali had been damaged and burnt by the people in the mob.

157.7 The witness has further stated that on the day of the incident, he had seen Guddu Chhara and Naresh Chhara in

the mob coming from the direction of Krushnanagar. Guddu Chhara is dead, but he can identify Naresh Chhara. The witness has correctly identified Naresh Chhara (A-1).

157.8 CROSS EXAMINATION: In the cross-examination of this witness, a contradiction has been brought out as to his sole police statement dated 12.5.2002, to the effect that what is stated by him in paragraph 7 of his examination-in-chief wherein he has stated that at around 6 o'clock, he, his wife and daughter went on the terrace of Jawannagar till the police vehicle came at around 8 to 9 o'clock has not been stated by him in his statement recorded by the police. In the cross-examination of this witness, it has come out that he had come out of his house at about 9:00 to 9:15 in the morning. He has admitted that one mob was coming from the direction of Krushnanagar and another mob was coming from Patiya. He has admitted that there was an open space between the two mobs. The witness has stated that he had remained on the road for approximately ten minutes. The witness has admitted that the mob from the direction of Krushnanagar was comprised of about twenty to twenty-five thousand people and that about the same number of people were there in the mob on the side of Patiya. The witness has denied that all the persons in the mob were wearing white undershirts and khakhi shorts and admitted that they had tied saffron bands on their heads. The witness has admitted that while he was going from his house to Jawannagar, nobody had tried to stop him or assault him on the way. The witness has denied that while he was at Jawannagar, till then, namely till 6 o'clock, no incident had taken place at Jawannagar. The witness has admitted that till he gave his statement before the police, he had not named

Naresh Chhara and Guddu Chhara at any other place.

157.9 To prove the omissions and contradictions in the testimony of this witness as to his police statement recorded on 12.5.2002, the defence has cross-examined PW 279, Shri B. J. Sadavrati, the assignee officer, who has admitted that he has recorded the statement of this witness on 12.5.2002. The contents of the first four lines of paragraph 7 of the examination-in-chief of this witness are read over to the assignee officer, wherein the witness has stated that in the evening after 6 o'clock, he took his wife and his daughter and went to a terrace of Jawannagar. When he was on the terrace, the police vehicle came. The police vehicle must have come at around 8 to 9 o'clock. The assignee officer has admitted that this witness has not stated all the facts stated in paragraph 7 of his examination-in-chief in the statement recorded by him, but had stated that till 6 o'clock, he was in the chawl and at night at around 3 o'clock, upon the police coming, they had gone to the camp.

157.10 The assignee officer has further admitted that the witness in his statement had not stated that he had seen Guddu Chhara and Naresh Chhara in the mob coming from Krushnanagar. The assigning officer has clarified that in his statement, the witness has mentioned a mob from Krushnanagar as well as from Patiya and that he had seen both of them with his own eyes in the mob. The assignee officer has admitted that from his statement, it is not clear as to whether he had seen the accused in the mob coming from Krushnanagar or from Patiya.

157.11 SUBMISSIONS: The learned counsel for the appellants submitted that until the witness's statement was recorded on 12.5.2002, he has not disclosed the names of either of the accused at any place before anybody. When the witness claims that he had come out of his home and come on the road, he had seen large mobs of about twenty to twenty five thousand people each, on both sides, it is nearly impossible to identify two persons, that too, in the mob coming from Krushnanagar, as alleged. Therefore, after these many days, his claim of having seen the accused is very doubtful. It was submitted that even if the evidence of this witness is taken on its face value, without any attribution of any overt act, merely the presence of the accused is shown in the mob in the morning at 10 o'clock.

157.12 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has named the accused in his statement dated 12.5.2002 recorded by the police. This witness is a natural witness, who has seen the mobs coming from two sides and in the mob coming from Krushnanagar side he has seen accused Guddu and Naresh in the mob. Guddu has expired and the witness has identified Naresh Chhara. It was submitted that in the entire cross-examination of this witness, no omission which amounts to a material contradiction has been elicited and therefore, this witness cannot be said to be not a credible witness or a believable witness and his testimony alone would be sufficient to implicate accused Naresh in the offence in question.

157.13 ANALYSIS: This witness has deposed that he saw

mobs on both the sides of the road when he came out of his house. The witness resides in Imambibi-ni- Chali, which is the first chawl towards the side of the highway. The witness has deposed that the mob was indulging in vandalism and arson. At around 11 o'clock in the morning he went to Jawannagar with his family and stayed there till 7:00 p.m. The only omission as to his police statement is that he had not stated that he had gone with his family to a terrace in Jawannagar at 6:00 in the evening and was there till the police vehicle came and took them to the relief camp. In the opinion of this court, this omission cannot be said to be an omission that is so material so as to amount to a contradiction, inasmuch as, the witness has stated that he had gone to Jawannagar and was there till 7:00 p.m. The witness has further stated that in the morning, he had seen Guddu Chhara (deceased) and Naresh Chhara (A-1) in the mob from the Krushnanagar side and has identified Naresh Chhara in the dock. The omission in this regard is to the effect that he had not stated as to in which mob, he had seen the accused. In the opinion of this court, notwithstanding the fact that the fact regarding the specific mob in which the witness had seen the accused has not been stated, even then it would not detract from the fact that the witness had seen the named accused in the mob on the road in the morning. The witness has named both the accused in his police statement and is consistent in his version. In his cross-examination nothing substantial has been elicited to dent the credibility of the witness. Under the circumstances, the testimony of this witness against accused No.1 Naresh Chhara deserves to be accepted.

158. **PW-173 Mahammadnasim Shaikhbuddhu Shaikh**, aged 60 years, has been examined at Exhibit-1190. This witness has deposed that he was residing at *Hukamsing-ni-Chali* since the year 1989. In the year 2002, he was serving in Reliance and he and his family were residing in his hut at *Hukamsing-ni-Chali*. At that time, his wife Aminabibi, his daughter Rabiyaabibi, his daughter Raziyaabibi, son Gulamhussain, all of them were residing together. His elder son Khurshid was residing separately with his family at Naroda Patiya at the relevant time.

158.1 His native place is District Faizabad, Uttar Pradesh. In the year 2002, while he was in service, his timings were from 7:00 in the morning to 3:00 in the afternoon.

158.2 The incident took place on 28.2.2002.

158.3 On the day of the incident, he was at home in the morning with his family members. On the day of the incident, he woke up in the morning and went to the Noorani Masjid, opposite his house early in the morning. After offering namaz at the Noorani Masjid, he must have stayed there for around half an hour, whereafter he had returned home and was reading the Quran. While reading the Quran, he fell asleep.

158.4 A little further from the Noorani Masjid, on the interior side there is an old masjid in Jikarhasan-ni-Chali. On that day, at around 8:00 to 8:15 in the morning, a person from Juni (Old) Masjid came to call him. He told that the Maulana had called him as the police had come to the masjid. He, therefore, went to Juni Masjid and met the Maulana. The police

went around the masjid and verified that no weapons were kept in the masjid, whereafter the police went away from there as they could not find anything in the masjid. He stayed at Juni Masjid for some time and then left.

158.5 He left Juni Masjid and went towards his house. There, on the road, Babu's Hotel is situated, where he went and read the newspaper. On reading the newspaper, he came to know about the Godhra incident. While he was reading the newspaper, he heard the voices of people saying, "*Run, run, people are throwing stones at Noorani Masjid*". He came out of the hotel and went on the road towards the Noorani Masjid. Upon going towards the Noorani Masjid, he saw that people were pelting stones at it. He had also seen a mob of people near the S.T. Workshop pelting stones on the chawls.

158.6 On seeing this, instead of crossing the road from the Noorani Masjid to go home, he changed his route and went into the lanes to his house. When he reached his house, his wife and children had locked the house and gone away. At that time, his younger daughter Raziya was standing outside his house and was crying. His wife and children had gone to the opposite side of their lane to the terrace of one house of Yusufbhai. He asked his daughter as to what had happened and she told him that people were throwing stones at the chawl. He advised her to go to her mother and hence, she had gone to Yusufbhai's house's terrace. Thereafter, he went out of his house to the entrance of the chawl to the road to see what was happening. At that time, the people were standing outside the S.T. Workshop and the police were also standing there. A little further from the gate of the S.T. Workshop where it meets

the main road, many people were pelting stones there. The police standing there was releasing tear gas shells. In a little while, the police also resorted to firing.

158.7 In this incident he saw that after a little while, Abidkhan, who was residing in his neighbourhood, Piru and others were injured by bullets. In a little while, as tear gas was released, his eyes were closed and a stone from the mob injured him on his head, that is, on the right side of his forehead. At this time, Muslim people from their maholla who were standing there caught him and put him in the rear side, because he was feeling dizzy and his eyes were burning. They told him to go home. His house was closed and hence, he started going straight. He reached Hussainnagar, where water was coming from the tap. There, he washed his face and drank a little water and thereafter, went a little further.

158.8 While he was going, a youth by the name of Mustaq Kaladiya, was injured by a bullet and his mother and brother had put him in a cart and pushing the cart and bringing him. They told him that they should make Mustaq Kaladiya lie down somewhere, and hence, he went with them till Jawannagar. They made him lie down on the verandah of the house of one Abdulbhai Ghadiyali. Thereafter, he came out of the chawl and went to the main road of Jawannagar on foot. Thereafter, he stayed at Jawannagar, where people started coming from the road of Uday Gas Agency and started pelting stones. From the S.T. Workshop also, burning rags were being thrown. Hence, he went on the rear side towards Gangotri Society and sat there.

158.9 He went and sat in the lane between Jawannagar

and Gangotri Society, where he sat for a long time. He was very tired. After a little while, he searched for his children and his wife. He found his wife and children outside the compound wall of the S.R.P. and he sat there with them.

158.10 There people started saying to move from there as the mobs would come there also. At that time, he and his children were there at Jawannagar. They were told that from the terrace of a house there, one can get down to Gangotri Society. Accordingly, he and his children got down into Gangotri Society from the terrace of Jawannagar. At that time, his son Khurshid and his wife were not with him. He could not find them.

158.11 He sat there. At that time, his daughter Razia climbed on the terrace and started crying and she told him to come to Gangotri Society where they were. At that time, there was a rickshaw lying where he was sitting. At that time, the *Bangi* who used to say *Azaan* at Noorani Masjid and his grandson were sitting in a rickshaw and were sleeping. He thought that they must be very tired. He went to the rickshaw and woke both of them and told them to come with him. All three of them climbed the staircase which was there and climbed down into Gangotri Society.

158.12 At that time, many people from their mohalla were at Gangotri Society in the house of Tiwari, who is a conductor, and his wife and children were also there. This Tiwari used to reside in their neighbourhood earlier. He also went to Tiwari's house. He sat at Tiwari's house for a long time. Thereafter, they could hear the sounds of crying, gas cylinders bursting

and sounds of “help .. help” coming. At that time, it was around 7 o’clock.

158.13 At that time, Tiwari told them to go from there towards Naroda as arrangements had been made for them there. They were a lot of people there and slowly they came out of Tiwari’s house. Out of them, everyone started going towards where they thought it was proper. Some went towards the S.T. Workshop, some went towards the S.R.P. Quarters and some went towards Naroda also. After they came out, they went a little further and thought that Naroda is too far and hence, they turned towards the S.R.P. Quarters. They crossed Gangotri and Gopinath Society and went towards the S.R.P. Quarters.

158.14 As per his knowledge, those who had gone towards Naroda were killed. He had heard these things and learnt about it.

158.15 They went towards a wire fencing of the S.R.P. Quarters, where an SRP person was standing and he told them not to go inside. However, his wife and children were crying, hence he felt pity on them and let them go inside the quarters. In this manner, they went inside the S.R.P. Quarters.

158.16 When they went inside the S.R.P. Quarters, they saw that many people were sitting there and they also went and sat there. They stayed there for the whole night. At dawn, it was still dark, when the policemen came in a vehicle and took them to the Shah Alam camp. When they reached the Shah Alam camp, it was morning.

158.17 At the Shah Alam camp, he met the Maulana of their masjid, his elder son Khurshid and other people from their chawl. His elder son Khurshid asked about his wife Shabnam, and he told him that Shabnam was not with him. Later on, he learnt that Shabnam had died on the day of incident.

158.18 They had stayed at the camp for about four and a half months, where he was treated for the stone injury that he had sustained.

158.19 A gas cylinder had been burst in his house due to which, the walls and the roof of the house and all the household goods had been destroyed.

158.20 When he was at the camp, the police had recorded his statement. The SIT authorities had also recorded his statement at Naroda Patiya. He had informed the SIT about the facts that he knew about the incident and they had recorded his statement.

158.21 The witness has deposed that he knows Tiwari Conductor and has, accordingly, correctly identified him.

158.22 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that the witness has received compensation of Rs.5,00,000/- towards the death of his daughter-in-law Shabnam, injuries sustained by his son as well as the damage caused to his house and his son Khurshid has also received compensation of Rs.1,25,000/- and that he has also received Rs.27,800/- towards the damage caused to his

house. The witness has voluntarily stated that thereafter, he has not received any other compensation. The witness has admitted that the SIT had recorded his statement on 21.6.2008 at Naroda Patiya and that prior thereto, the police had recorded his statements on 12.5.2002 and that prior thereto, he had lodged a complaint from the camp on 6.3.2002. In his cross-examination, the witness is contradicted with his previous statement dated 12.5.2002 to the effect that he had stated before the police that he does not know any person in the mob and that the people in the mob were pelting stones in the chawls and hence, his children had locked the house and had gone towards Jawannagar and that he too had followed them and they had gathered together near Gangotri Society and had climbed down from a terrace of Gangotri Society and hidden themselves. The witness is confronted with the fact that he has not stated any facts in the context of Tiwari or any role played by him as deposed by him in his examination-in-chief as well as in his statement dated 12.5.2002, which the witness has denied. The witness is cross-examined with regard to the topography of the area. In the cross-examination of this witness, he has admitted that Piru, Abid, Mohammad Karim Shaikh and Mustaq Kaladiya were injured in police firing and that at the time when they were injured by bullets, the Muslims and Hindus were pelting stones against each other. He has further admitted that at that time, he was standing near the road and he had not identified anyone.

158.23 In the cross-examination of this witness, it has further come out that Tiwari whom he has identified, has his house in Gangotri Society and that when he went to Tiwari's house, around fifty to hundred Muslim persons had taken

shelter there and were sitting there. As his daughter came to call him, he had gone there. He has admitted that for a long time, he, together with other Muslims, had stayed there. He has further admitted that till then, nothing had happened to anyone in Tiwari's house and that at that time, Tiwari was outside the house. The witness has denied that he was falsely naming Tiwari at the instance of people of his community, but has admitted that upon the mob coming near their house and shouting, Tiwari had asked them to leave his house.

158.24 To prove the omissions and contradictions in the testimony of the witness as to his previous statements recorded by the investigating agencies, the concerned Investigating Officer and or/his assignee officer have been cross examined by the defence.

158.25 PW-293 Shri B.T. Karoliya, the assignee officer has in his cross-examination admitted that he has recorded the statement of this witness on 12.5.2002. The contents of paragraphs 13, 18 and 19 of the examination-in-chief are read over to the assignee officer, who has admitted that the witness has not stated the facts stated by him in paragraphs 18 and 19 of his examination-in-chief in the statement recorded by him. However, in so far as the contents of paragraphs 13 of his examination-in-chief are concerned, the assignee officer has stated that this witness had stated before him that he had gone up to Jawannagar. However, the rest of the facts have not been stated by him. The assignee officer has admitted that the witness had stated before him that a mob of around fifteen thousand people belonging to the Hindu community had come from the direction of Krushnanagar and Kubernagar. On

account of the people in the mob, the people of Gangotri Society told them to run away from there, due to which, they had gone towards the S.R.P. camp, where also there was a mob from the opposite side, hence, they had gone towards the S.R.P. Quarters and were sitting there in the open ground till late at night. At about 2 o'clock in the night, upon the police coming, they were taken outside in the police vehicle. It may be noted that this witness has not been confronted with the contents of his previous statement qua the contents of paragraphs 18 and 19 of his testimony, therefore, the question of proving such omission through the testimony of the assignee officer would not arise. Therefore, to that extent the testimony of the assignee officer is inadmissible in evidence. It is surprising as to why the prosecution has not raised any objection in this regard.

158.26 PW 327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 21.6.2008. He has admitted that this witness had stated before him that he had made an application dated 6.3.2008 to the Police Commissioner, Ahmedabad and the facts stated therein are correct and that his application is included in Naroda Police Station I – C.R. No.127/02 and that today, he has been explained by the Investigating Officer that this offence is included in Naroda Police Station I – C.R. No.100/02. That the witness has stated that he does not know the name of any person in the mob. The entire cross-examination of the Investigating Officer qua this witness is inadmissible in evidence inasmuch as the first part regarding the contents of the application dated 6.3.2008 have not been put to the

Investigating Officer to contradict any part of the primary evidence of the witness. Insofar as the part regarding the witness not knowing the name of any person in the mob, the witness in his examination-in-chief has not stated that he has seen any person in the mob, therefore, there was no contradiction which was required to be proved, despite which the trial court has allowed such question to be asked and the prosecution has not objected to such question being asked.

158.27 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants, submitted that this witness has named Tiwari in whose house they had taken shelter and has identified him. It was submitted that accused Tiwari takes the support of the testimony of this witness to show that he had, in fact, given shelter to many Muslims. It was submitted that no criminal complicity has been alleged by the witness and that the facts stated in paragraphs 18 and 19 of his deposition as well as before the SIT and the court, indicate that Tiwari had given shelter to many Muslims, who stayed there for a considerable time and finding the mob coming in the evening, he had asked all of them to go to another place. He has, therefore, tried to help the Muslim inhabitants of the locality.

158.28 Mr. B. B. Naik, learned counsel for the appellants, invited the attention of the court to the contents of paragraphs 19 and 56 of the testimony of this witness, to submit that on reading this, it can be culled out that the witness and others left Tiwari's house on their own upon hearing the sounds of the mobs approaching.

158.29 Mr. Prashant Desai, learned Special Public

Prosecutor, submitted that the witness has stated regarding the gathering of the mob and leaving the house with his family members and taking refuge in Tiwari's house, in a natural way, without any exaggeration and that in the deposition, the role attributed to Tiwari does not indicate any complicity. It was submitted that considering the admission of this witness, he is a truthful witness and his testimony cannot be brushed aside on the ground of minor contradictions.

158.30 ANALYSIS: From the testimony of this witness it emerges that his daughter-in-law Shabnam died in the incident. The witness had lodged a complaint dated 6.3.2002 while he was at the camp, and his statement was recorded by the police on 12.5.2002. The witness has admitted that Piru, Abid and Mahammadkarim Shaikh were injured in police firing. He has further admitted that when these persons were injured by bullets, cross stone pelting was going on between Hindus and Muslims. It may be noted that the only omission brought out in the testimony of the witness is regarding the facts stated in paragraph 13 of his examination-in-chief wherein he has mentioned about Mustaq Kaladia being taken by his mother in a cart after he sustained a bullet injury. The rest of his testimony goes unchallenged. Therefore, from the testimony of this witness it is established that the police had inspected Juni Masjid to ascertain that no weapons or such things have been kept in the masjid. The witness has also seen Abidkhan, Piru and others being injured by bullets. Tear gas shells were lobbed and the witness himself was injured during the stone pelting. From the testimony of this witness it is further found that he and several other Muslims had taken refuge in Tiwari's house and had left after the mobs started

coming there. The witness, however, has stated that Tiwari (A-25) had told them to go towards Naroda, where arrangements were made for them. The witness comes across as a truthful witness and there is no reason to disbelieve his testimony.

158.31 This witness does not attribute any overt act to accused No.25 Tiwari, and says that he had given them shelter in his house. The only incriminating part of his testimony is that he has stated that Tiwari had told them to go towards Naroda as arrangements had been made for them. From the evidence of several witnesses, it emerges that they were told by different persons to go towards Naroda as arrangements were made to take them to a place of safety, but when they reached near the open ground beyond Gopinath Society, a huge mob was present and when they tried to come back, they were confronted by other mobs and ultimately the massacre took place near the water tank. Thus, though no arrangements for their safety had actually been made, the victims were lead into a trap by misleading them.

159. **PW-174 Abdulalim Abdulmajid Chaudhari**, aged 52 years, has been examined at Exhibit-1198. This witness has deposed that he was residing at *Lane No.1, Jawannagar, Naroda Patiya*, prior to 2001 together with his family and in the year 2002, he used to ply a rickshaw.

159.1 In the year 2002, his wife Kamar Sultana, who used to do tailoring work and his children, viz., three sons – Mahammadshakeel, Mahammadfarid and Faruk and daughters Noorbanu, Khatunbibi and Shabnam, were all residing

together. In the year 2002, his elder son Mahammadshakeel was 20 years old and used to work at his father-in-law's rationing shop and also used to work in a press for printing books.

159.2 The incident took place on 28.2.2002, which was a Thursday and on that day, there was a call for Gujarat Bandh. On the previous day, in the Godhra incident, a train had been burnt and on the next day, that is, on the 28th, there was a call for Gujarat Bandh. Since there was a call for bandh, he had not gone for his work and was at home. His elder son Mahammadshakeel was at his maternal grandparents' home and the other five children and his wife were at home.

159.3 On that day, in the morning, his elder son Shakeel came home with his friends at around 9:00 to 9:15. Their house was on the interior side from the road and hence, one would not know what is happening, however, his son Shakeel and his friends came and told him *"Don't you know that outside near Natraj Hotel a mob has come and there is rioting and stones are being pelted there, all of you come out"*.

159.4 Upon hearing this, he and the other people from their chawl came out of their chawls and all of them went near Noorani Masjid to see. There was a lot of commotion there and stones were being pelted.

159.5 There, the people in the mob were shouting *"Kill the Miyas"* and Dalpatsing, Bhavanisingh, Guddu, Suresh and Manoj Videowala were leading the mob. He had also seen Babubhai Bajrangi in this mob. He was also in the front of the

mob. In this mob, Guddu had a sword, Suresh had a spear as well as a trishul (trident) and Manoj Videowala was stealthily firing from near the S.T. Workshop compound wall.

159.6 All these people were at the head of the mob and were calling the people of the mob inside and were telling them to cut and burn the Miyas. From that place, he went straight to Hussainnagar to his in-laws' house. He took his mother-in-law and father-in-law and was returning home when it was around 4:30 to 5:00 in the evening, at that time, Bhavanisingh was near Gayatri and Gangotri Society and he told them that he wanted to cook khichdi for them and that they should all go inside the society, but he did not go there. He had not gone there for the reason that somebody had told him that there were more problems inside, and hence, he should not go inside. Therefore, he did not go where Bhavanisingh told them to go.

159.7 From there, he had gone home and thereafter, he took his family and between 5:30 to 6:00 in the evening, he had gone to hide in the house of a barber from the S.R.P., whose house was near his house and was open as he had gone away leaving it open and he (the witness) had hidden there. The people from his chawl were also hiding there. The last time when his elder son Shakeel had come home was at around 5:30 in the evening and he had drunk some water and gone away and was not with them at the barber's place. While they were at the barber's place, at around 7:30 to 7:45 in the evening, he felt that he should go and see what the situation outside was like. When he came out, there were several other people outside and some were talking in Sindhi and some were

talking in Chhara language. On account of his rickshaw driving business, he knew both the languages. He stood where they could not see him and heard them saying in their language that, *"Now, the time is over; let us go to the Mukhi and take money. From eight to eight, twelve hours time is over"*. Amongst the persons talking like this, were Suresh, Dalpat, Bhavanisingh, Manoj Videowala. Others were also there whom he does not know. However, he had heard these people talking.

159.8 All these people went on the terrace and were playing songs of the movie *"Kabhi Khushi Kabhi Gam"* on the terrace. The Sindhis were playing the songs of *Jhulelal*. All of them were expressing their happiness that all the Miyas are finished.

159.9 He returned to the barber's house and they stayed there till 11 o'clock at night. At 11 o'clock at night, the police came and took them in a police vehicle to Shah Alam camp. There, he searched for his elder son. He went and looked for him in all the chawls, however, he could find his son and lastly, at 2:00 p.m., a police vehicle came and he too went in that vehicle to the camp.

159.10 His younger son had sustained an injury on account of stone throwing during the incident. He too had sustained a stone injury on his leg in the afternoon at around 3:30 to 4:00 when they had gone at home. When he was injured in this manner, his elder son Shakeel took him to somebody else's house and made him lie down on a cot and told him not to go out. He and his son Farid were treated at Shah Alam camp,

where they stayed for six months.

159.11 His elder son Shakeel lastly met him on the date of the incident when he drank water and went and thereafter, is missing and despite his having made attempts, he could not find him till date.

159.12 During the incident, when he left his house, he had locked it; however, somebody had looted his house and had burnt everything inside.

159.13 In connection with the incident, the SIT had recorded his statement.

159.14 The witness has stated that he has learnt that from the people whom he had seen in the mob, Bhavanisingh, Guddu Chhara and Dalpat are dead and has stated that he can recognize Suresh and Manoj even today also. Since the incident had taken place long time ago, he will not be able to recognize Babu Bajrangi, but he would try to do so.

159.15 The witness has thereafter identified Suresh (A-22) and Manoj Videowala (A-41) correctly.

159.16 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that prior to 16.6.2008 he had not lodged any complaint at the Shah Alam Relief Camp. The witness has stated that he has not given any statement before the police at the camp on 12.5.2002 and that the police have not orally examined him and recorded any statement in his

presence in the year 2002. The witness has stated that many years ago, he was residing at Pandit-ni-Chali in the joint family. However, since the last fifteen years, he was residing separately at Jawannagar. He had separated about four to five years prior to the incident. The witness has admitted that in his sole statement dated 16.6.2008, he had stated before the SIT that at that time his son Shakeel had come and pulled him and taken him to Jawannagar and made him sit on a cot and had brought water from someone's house for him to drink and thereafter, he does not know where he went from there. Upon being asked again, he has stated that his wife and his mother had told him that his son Shakeel had come to his house at around 5 o'clock and after drinking water, he had gone away at 5 o'clock in the evening.

159.17 The witness has admitted that in his statement before the SIT, he had stated that he was looking for his son Mohammad Shakeel in the chawls but could not find him. The witness has admitted that on the day of the incident, his son Shakeel was with his (the witness's) in-laws since morning and he used to stay there.

159.18 The contents of the first two lines and the last three lines of paragraph 6 of the examination-in-chief are read over to the witness and he has admitted that he has not stated these facts before the police. The witness has stated that he does not know that in his statement before the SIT, he has stated that in the morning at around 9:00 to 9:30, a Hindu mob had come opposite the Noorani Masjid next to the S.T. Workshop and had started pelting stones wherein Muslims had pelted stones to protect themselves and there was a stampede

amongst the Muslims in the chawl and they had come to know that the riots had started on the road, due to which, he had come to the corner of the chawls on the road and cross stone pelting was going on between Hindus and Muslims. The witness has admitted that such incidents had happened. In the opinion of this court, this part of the statement recorded by the SIT has not been brought on record to contradict any part of the evidence of the witness and, therefore, is inadmissible in evidence.

159.19 The witness has admitted that in his statement recorded by the SIT, he had stated that there were people belonging to the Sindhi and Chhara communities in the mob and that he had gone to Hussainnagar where his in-laws were staying. Thereafter, he had taken his in-laws who reside in Hussainnagar and had gone home.

159.20 In the cross-examination of the witness, it has come out that if he enters his lane, his house is approximately the eighth house in that lane. The witness has admitted that when he brought his in-laws and came to the barber's place, there was a mob in the Jawannagar pit, which must be comprised of around five thousand to six thousand people. He has admitted that the people in the mob were wearing khakhi shorts and undershirts and had tied saffron bands on their heads and black cloths on their face. The witness has admitted that these people had weapons with them and they had participated in the attack. In the cross-examination of the witness, it has come out that the mobs had also come from the other side and they too had attacked. He has admitted that the mob which came from the other side must also have been comprised of

around five to six thousand people and that they too had tied saffron bands on their foreheads and had tied black cloths over their face and were armed and wearing khakhi shorts and undershirts.

159.21 The witness has admitted that he had seen both the mobs when he was in the barber's house. He has admitted that the barber's house is in the last lane of Jawannagar. The witness has admitted that when he was in the barber's house, he had seen the road from the Uday Gas Agency. The witness has admitted that there is no compound wall between Jawannagar and the Jawannagar pit.

159.22 The witness is cross-examined with regard to the topography of the area. The witness has admitted that on that day, he had seen Bhavanisingh outside his house. The witness has stated that he does not know whether at that time, there were one hundred to one hundred and fifty people in Bhavanisingh's house. The witness has voluntarily stated that he had seen him in front of the mob.

159.23 In the cross-examination of the witness, it has come out that prior to his statement being recorded, he was orally examined by the Crime Branch at Gaekawad Haveli in connection with his missing son. The witness has admitted that till date, there is no trace of his son and his dead body has not been found. The witness has admitted that the people in the mob were loudly shouting "kill" "cut". He has voluntarily stated that he has given the names of those people whom he had seen from a close distance. The witness has admitted that from Jawannagar, he had not gone to Gangotri Society and that

from Jawannagar, he had seen the terraces of Gangotri Society. The witness has stated that he had heard sounds from these terraces. He has further admitted that all the people on the terraces of the Gangotri Society were Hindus. The witness has admitted that on the day of the incident, he had not gone from Jawannagar to Gopinath Society. The witness has admitted that on the day of the incident, in the area in which they were residing at Naroda Patiya, water and electricity supply were shut down.

159.24 In his cross-examination, it has come out that he had no monetary or social relations with the accused Manojbhai and Sureshbhai and that he neither had enmity or friendship with them.

159.25 The contents of paragraphs 7 and 8 of the examination-in-chief of the witness are read over to him to the effect that he has not stated such facts in the statement recorded by the SIT. The witness has denied the suggestion that he has not seen any accused on the day of the incident. The first three lines of paragraph 9 of his examination-in-chief are read over to the witness to the effect that he has not stated these facts in the statement recorded by the SIT. The contents of paragraph 9 of the examination-in-chief of the witness from the fourth line to the last line are read over to the witness to the effect that he has not stated these facts in the statement recorded by him.

159.26 The contents of the first four lines of paragraph 11 of the examination-in-chief of the witness at page 6 are read over to the witness to the effect that he has not mentioned the

names of Dalpat, Bhavanisingh and Manoj Videowala in the statement recorded by the SIT. The seventh line of paragraph 15 of the examination-in-chief of the witness is read over to him to the effect that he has not stated such facts in the statement recorded by the SIT. The witness has denied that at the instance of the leaders of the Muslim community, after six years, he was wrongly implicating the accused in the offence.

159.27 The omissions and contradictions in the testimony of this witness as to his statement recorded by the SIT have been proved by the defence through the cross-examination of PW 327 Shri V. V. Chaudhary, the Investigating Officer (SIT), who, in his cross examination, has admitted that he has recorded the statement of this witness on 16.6.2008. He has admitted that this witness had stated before him that in the morning, at about 9:00 to 9:30, mobs of Hindus had gathered next to the S.T. Workshop, opposite the Noorani Masjid and had started pelting stones, wherein the Muslims in defence had resorted to cross stone pelting and the Muslims were running helter skelter in the chawls and were telling them that riots have started on the road, hence, he had come on the road at the corner of the chawl and saw that the Hindu and Muslim mobs were pelting stones against each other. He has further admitted that the witness had stated before him that he has not received any threat from the accused or anyone and at present, he does not need police protection and that as and when he needs police protection, he would make an application and ask for it.

159.28 The contents of paragraphs 7, 8 and 9 of the examination-in-chief of the witness are read over to the

Investigating Officer, who has admitted that except to the extent of the facts stated in paragraph 7, wherein the witness had stated that he had come on the road at the corner of the chawl, the rest of the facts have not been stated before him. The Investigating Officer has denied that all the contents of paragraph 8 of his examination-in-chief have not been stated by the witness before him. He has stated that the witness in the statement recorded by him has stated that in the evening at about 5 o'clock, from the road which comes to their chawl from next to the S.T. Workshop, from the direction of Uday Gas Agency, from behind Gangotri Society, huge mobs of Hindus with swords had come and had surrounded the Muslims who were hiding there, from all four sides. In this mob, Bhavanisingh, Dalpat Chhara, Mukesh Guddu Chhara, Suresh Langda, Babu Bajrangi, Manoj Videowala, were in the forefront of the mob and they were instigating the mob and saying "kill and cut the Miyas, burn them". However, the rest of the facts have not been stated by him.

159.29 The contents of first three lines of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that the witness has stated these facts in connection with the incident that occurred at 5 o'clock in the evening and not in the context of the morning incident. The last four lines of paragraph 9 of the examination-in-chief of the witness are put to the Investigating Officer who has admitted that the incident of Bhavanisingh has been described by the witness from 9:00 to 9:30 in the morning to 5 o'clock in his deposition; the time stated is 4:30. The Investigating Officer has stated that in his statement, the witness has sequentially narrated the incidents that took place

after 9 o'clock, one after the other, and the entire statement refers to the incidents that took place from 9:00 to 9:30 till 5 o'clock. The Investigating Officer has admitted that this witness has not clearly stated that when he saw Bhavanisingh, his mother-in-law and father-in-law were with him.

159.30 Certain extracts of paragraph 11 of the examination-in-chief of this witness are read over to the Investigating Officer, who has admitted that the witness in the statement recorded by him has not stated that at the time when he heard the conversation, viz., *"Now our time is over, let us go to the Mukhi and take our money and the time of twelve hours from eight to eight is over"*, Dalpat, Bhavani and Manoj Videowala were also present. He, however, has clarified that the witness has stated with regard to such conversation which took place between Suresh Langda and other Chharas. Additionally, the witness has also stated that Sindhis in their language were saying certain things as reproduced in that paragraph. Moreover, the witness has stated that since he was residing in this area since many years, he knew the Chhara and Sindhi languages.

159.31 In the opinion of this court, when a contradiction is sought to be proved through the testimony of the Investigating Officer, he can at best explain that part of the statement of which a contradiction is sought to be proved, however, any additional facts stated by the witness in his statement recorded by the Investigating Officer, cannot be brought on record unless necessary to explain the contradiction. In the present case, to the extent the Investigating Officer has clarified that the witness had stated regarding such

conversation having taken place between Suresh Langda and other Chharas, he is justified. However, the additional part stated regarding what was spoken by the Sindhis in their language and the fact regarding the witness having stated before him that as he was a resident of that area, he knew the Sindhi and Chhara languages, ought not to have been stated by him.

159.32 SUBMISSIONS: The learned counsel for the appellants submitted that the witness has identified only accused No.22 Suresh Chhara and accused No.41 Manoj Videowala but has failed to identify Babu Bajrangi accused No.18. It was submitted that no statement of this witness was recorded by the police, and that for the first time, his statement was recorded by the SIT on 16.6.2008. Therefore, whatever he has stated has come on record only six and a half years after the incident and even in this statement, there are vital omissions. The learned counsel drew the attention of the court to various omissions in the deposition of the witness as to his statement recorded by the Investigating Officer (SIT), to submit that this witness has remained silent for six and a half years and even though the statement was given at such a belated stage, the version given before the SIT and the version given before the court are completely contradictory as regards the time, place, weapon and role attributed to the accused. It was submitted that this witness is residing in this area since many years, yet he has implicated only two of the local accused. It was submitted that this witness is not a reliable witness and as regards the place from which he saw the incident, there is a contradiction in the statement recorded by the SIT and what he has deposed before the court. It was

submitted that in view of the contradictions brought out in paragraph 38 of his deposition, the witness was not in a position to identify any one.

159.33 ANALYSIS: The evidence on record shows that no statement of this witness had been recorded at the relevant time when the incident had taken place nor had he lodged any complaint, despite the fact that his elder son Shakeel was missing since the day of the incident. This witness had taken shelter at the Shah Alam Relief Camp, where statements of witnesses were being recorded by the police. No explanation has come forth as to why this witness had not got his statement recorded at the time when statements of other witnesses were recorded at the camp. For the first time after a period of more than six years of the incident, the statement of his witness has been recorded by the Investigating Officer (SIT) on 16.6.2008, wherein he has named six accused viz. Dalpatsingh, Bhavanisingh, Guddu, (all three deceased) Suresh (A-22), Manoj Videowala (A-44) and Babubhai Bajrangi (A-18), and has attributed weapons to them. He, however, has failed to indentify Babubhai Bajrangi in the dock. The witness has also alleged that Manoj Videowala had a revolver and he was firing by using the S.T. Workshop compound wall as a buffer.

159.34 Apart from the fact that the first version given by this witness has come on record at a highly belated stage, there are several omissions and contradictions even qua such statement. Considering the quality of the testimony of this witness, he does not appear to be a very credible witness. The court is, therefore, of the view that it would be very hazardous to place reliance upon the testimony of this witness to prove

the charge against the accused named by him.

160. **PW-175 Saiyed Yakubali Kasamali**, aged 40 years, has been examined at Exhibit-1205. This witness has deposed that he is residing at *Imambibi-ni-Chali* since his birth and at present also, he is residing there.

160.1 He has studied up till S.S.C. and from the year 1999, he is working as a dailywager driver with the A.M.T.S.

160.2 He is residing at home with his wife and children. His wife's name was Sairabanu and he had a daughter named Sainbanu, sons Shahrukhali and Mohsinali.

160.3 At the time of communal riots, he, his wife and children were residing in a separate house which was next to the house where his parents, brothers and sisters were residing. In the third house, his brother, his wife and three children were residing together, but separately.

160.4 The incident took place on 28.2.2002. At this time, there was a call for bandh. He was at home and at that time, his wife and children were also with him at home.

160.5 On the day of the incident, at around 9:30 in the morning, the mobs had started coming on the road from Krushnanagar and S.T. Workshop. These mobs were comprised of approximately ten thousand to fifteen thousand people. The people in the mob had pelted stones at their chawls. At that time, he and his family kept going in and out of the house

because they were frightened on account of the stone pelting.

160.6 On account of the incident, for their safety, he had sent his wife, his mother and his brother Arifali's wife and Arifali's three daughters as well as his children and his sister, to the S.R.P. Quarters at around 10 o'clock in the morning. At that time, he, his brother Arifali and his father stayed outside their house. While they were standing there, the frenzy of the mob increased. They went out to see where his father was injured with a tear gas shell. He had seen that the people in the mob had swords, pipes, dharias and sticks in their hands.

160.7 Upon all this happening, he, his father and his brother went to Tiwari's house at Gangotri. Tiwari and his father were both serving in the A.M.T.S., and hence, his father knew him. They went to Tiwari's place at around 4 o'clock in the evening and thereafter, they stayed there. Upon more and more mobs coming into Gangotri Society, several people went and lay down on the terrace of Gangotri. Tiwari told them that now it was not within his control and that they should make their own arrangement.

160.8 Upon Tiwari saying so, all three of them left Tiwari's house. They were going from the road on the rear side, where no one else was there, and hence, they were able to go to the S.R.P. Quarters where the relatives of his younger brother Arifali's in-laws were residing and thus, they had gone to their house. At the S.R.P. Quarters, he met his wife, children and mother as well as his brother's children. All of them were safe and no one was injured.

160.9 His father, as stated earlier, was injured on the leg with tear gas, while his younger brother Arifali was stuck up where he had gone for his service, but he was not injured. All three of them had reached the S.R.P. Quarters at around 5 o'clock in the evening.

160.10 At 1:30 in the afternoon, he had seen **Bipin Auto Centrewala - Bipin Panchal (A-44), Guddu Chhara, Hariya Chhara (A-10), Manoj Videowala (A-41)** and **Suresh Chhara (A-22)** in the mob. In this mob, Bipin Panchal had a sword in his hand, Bhavanisingh and Manoj Videowala were leading the mob, Suresh and Hariya Chhara had pipes in their hands. The people in the mob were pelting stones and burning houses. They had brought cans of kerosene and some inflammable substances and were burning everything after sprinkling it. They stayed at the S.R.P. Quarters till about 10:30 at night, whereafter a Government vehicle came, wherein he and his family went to the camp on the same day.

160.11 They stayed at the camp for around five to six months. His father was being treated at the Shah Alam camp. While he was at the Shah Alam camp, the police had recorded his statement. While he was at the camp, he had made an application to the Police Commissioner. The application made to the Police Commissioner has been presented with a list Exhibit-1206. The witness has stated that he had made an application in connection with the incident in the year 2002. The witness is shown a printed application where the blank spaces are filled in with signatures and the last part is shown to him. The witness has admitted his signature on the document. The witness has admitted the contents of the

application except the names of the persons involved in the offence as reflected at Serial No.7 and 8 and their surnames.

160.12 The witness has stated that after residing at the camp, they had gone straight to their native place. They were given police protection. They had stayed at their native place for around six months and thereafter, they had returned to Naroda Patiya and he had joined his services at the A.M.T.S.

160.13 In the incident, his house was ransacked and was set on fire. The SIT had recorded his statement in connection with the incident.

160.14 The witness has stated that he knows all the people whom he had stated that he had seen in the mob on that day. As per his information, Guddu Chharo and Bhavanisingh have passed away and he can identify the rest of the accused. The witness has thereafter identified Haresh Chharo (A-10), Manoj (A-41), Bipin (A-44) and Suresh (A-22) correctly before the court.

160.15 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that the handwriting in the application Exhibit-1207 is not his and that he has only signed it. The witness has voluntarily stated that everything has been written by the police. The witness has admitted that he had not read the contents of the application Exhibit-1207 before signing it nor had the police read it over to him. The witness has stated that he has signed the application Exhibit-1207 at the Relief Camp. He has admitted that he has not got the printed part of the application printed and that the police had

come to get his signature.

160.16 The witness has admitted that prior to putting his signature he had not asked the police as to why they were taking his signature and has voluntarily stated that the facts written down in the application had been stated by him. The witness is cross-examined with regard to the manner in which such application was made. The witness is further cross-examined with regard to the topography of the area.

160.17 In the cross-examination of the witness, it has come out that at about 9:00 to 9:30 in the morning, he was outside his house. Upon hearing the commotion, out of curiosity he had come out of his house. The witness has admitted that when he first came out, he had not seen the mob of ten to fifteen thousand people and that the mob must have been comprised of around five to seven thousand people and after that the mob kept on increasing. The witness has stated that after coming out of his house, he had seen the mob from a distance of 100 to 150 feet. The witness has stated that when he came out of his house, the mob had spread out in front of his house. When he came out the mob was not in front of his house but was on the right and left side, namely, on the side of Krushnanagar and the S.T. Workshop. The witness has stated that after he first came out, he had gone back after half an hour and used to keep going in and out.

160.18 The witness has admitted that during the half an hour that he stood there, no one had come to assault him but has stated that during this period, the mob was pelting stones at their chawls. The witness has stated that he had come out

of his house and was standing on the road. The witness has denied that his house is situated on the Highway and has voluntarily stated that there is a shop in front of his house. Upon entering their chawl, behind the shop, his house is first in the line. The witness has stated that on the Highway firstly there are shops, thereafter there are shops of Imambibi-ni-Chali and his house is behind them.

160.19 The witness has denied the suggestion that on that day in the morning, he had gone to the S.R.P. Quarters with his family. He has denied that while he was on the road, the people from their chawl had pelted stones and acid bulbs. The witness has denied that he and around five hundred to six hundred people were pelting stones in defence. The witness has denied that he had gone with his family to S.R.P. camp right from the morning. The witness has denied that he had gone with his family to the S.R.P. Quarters and they were not permitting them to go in. They had stood outside from 10 o'clock in the morning to 5 o'clock in the evening and thereafter, stealthily he and his family had entered inside the S.R.P. Quarters in the evening. The witness has denied that in his statement dated 12.5.2002, he had stated that on 28.2.2002 there was a call for Gujarat Bandh, due to which, he had not gone for his job with A.M.T.S. and was present at home. At this time, in the morning at around 9 o'clock, a mob of around ten to fifteen thousand people came to their chawl from the direction of Krushnanagar and started pelting stones as well as acid bulbs and resorted to private firing towards them, due to which, in their defence, they had started pelting stones at the mob and that there are around five hundred to six hundred houses of Muslims and Hindus in their chawl and

all the families in their chawl were together defending the chawls and the people in the mob had entered their chawl, due to which the Muslims of their chawl had fled towards S.R.P. camp to escape from the mob. However, the S.R.P. camp people did not permit them to enter and from 10 to 5 o'clock they had remained near the S.R.P. camp and thereafter had quietly entered the S.R.P. camp.

160.20 The witness has denied the suggestion that he had gone with his family to S.R.P. camp in the morning and from there they had gone to some other relative's place and then to the camp. The witness is confronted with his statement dated 12.5.2002 to the effect that he had stated therein that after they left their house and fled, till 4 o'clock, they stayed in the house of a Muslim Officer at the S.R.P camp and had not waited to even lock their house and had left their house and fled, whereafter the people from the Hindu mob had damaged and looted their house and set it on fire and at night at around 4 o'clock, the police came with Government vehicles to the S.R.P. camp and took them in the vehicles and brought them to the Shah Alam relief camp. The witness has voluntarily stated that the sequence of events were as stated by him in his examination-in-chief. The witness has stated that he came to know the facts regarding his house being destroyed and damaged subsequently. The witness has admitted that when he left the house on the day of the incident, no damage had been caused to it.

160.21 The witness has admitted that the police had recorded his statement, but has voluntarily stated that they had not read it over to him. The witness has admitted that he

has not asked the police to read over the statement to him and has voluntarily stated that at that time, the situation was such that all of them were very frightened and they felt that if they ask for the statement to be read out, the police might be displeased.

160.22 The witness has denied that only Muslim people had come to the camp and has stated that a Hindu lady who was residing nearby had also come to the camp. The witness has denied that he has not stated as to at what time, he had seen the accused named in the examination-in-chief in his statement recorded by the police. He has stated that he had seen them at around 1:30 in the afternoon. The witness has admitted that in his application dated 12.5.2002, he has not stated before the police as to at which place and at what time, he had seen the accused. The witness has denied the suggestion that he had not gone to the place of the incident, as stated by him and that the people belonging to the Muslim community had prepared him and that he was tutored to intentionally implicate some accused and, accordingly, he is falsely deposing before the court and that his statement recorded by the SIT has been stated as tutored to him six years after the incident. The witness has denied the suggestion that he was not present at the scene of incident and, therefore, in his statement dated 21.5.2008, he was not able to state the exact role of the accused in the incident. The witness has denied the suggestion that the accused named by him were not present at the spot on the day of the incident. He has denied the suggestion that he was falsely implicating the accused.

160.23 The witness has stated that he is not aware how many people in the mob had tied saffron bands. He has stated that he has not seen Ashok Chhara, Dalpat Chhara and Munna alias Vijay Chhara in the mob on that day. The witness has admitted that in his statement recorded by the SIT, he had stated that he has not seen Dalpat Chhara, Munno alias Vijay Chhara in the mob and he does not know them; however, he had heard the names of these two persons from the people in the relief camp, and hence, had given their names. He has not seen them in the mob. The witness has admitted that in the very statement, he had also stated that he does not know Ashok Chhara and that he was not there in the mob. The witness has voluntarily stated that he has stated so only in respect of those whom he had not seen.

160.24 The witness has admitted that before the SIT, he has not stated that ten to fifteen thousand people in the mob started pelting stones on their chawl and the people of their chawl also pelted stones in defence. They got tired of defending themselves against the mob which was pelting stones and at around 1:00 to 1:30, the residents of the chawl left their houses open and went towards the S.R.P. Quarters to protect their lives. The witness has voluntarily stated that in this part, he was not talking about himself, and that he had gone as stated by him in his examination-in-chief.

160.25 The witness has stated that he had no occasion to visit Bipin Auto Centre. He has admitted that Bipin Auto Centre is on the left side when one comes from Krushnanagar to Noorani. He has admitted that he has no monetary or social dealings with Bipin Auto Centrewala. The witness has stated

that he is not aware as to how Bipin Auto Centre came to be burnt on the day of the incident. He has stated that he is not aware as to whether Bipin Auto Centre was burnt in the incident. He has denied that because Bipin Auto Centre was burnt by the people of the Muslim community, their community had decided to give his name as an accused in this incident. That Bipinbhai was not present on the day of the incident.

160.26 To prove the contradictions and omissions in the testimony of this witness as to his statement dated 12.5.2002, the defence has cross examined PW-282 Shri K. S. Desai, the assignee officer, who has admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that when he went to record his statement, no complaint was given to him, nor was he instructed to record any statement in connection with such complaint. (The witness has given a printed complaint, Exhibit-1207, which is on record). The assignee officer has admitted that this witness had stated before him that on 28.2.2002, there was a call for Gujarat Bandh due to which, he had not gone for his job at the A.M.T.S. and was present at home. At that time, in the morning at about 9 o'clock, a mob of around ten to fifteen thousand people came from the direction of Krushnanagar and started pelting stones at their chawl and also started throwing acid bulbs and resorted to private firing against them, due to which, to protect their lives, they (the witness and others) had started pelting stones at the mob and that in their chawl, there are in all five hundred to six hundred houses of Muslims and Hindus and all the families were together defending themselves and the people in the mob had entered inside their chawls and the Muslims of their chawls, to save themselves, had fled towards

the S.R.P. camp, however, the S.R.P. camp people did not let them enter and from 10:00 to 5:00, they had remained near the S.R.P. camp. Thereafter, they stealthily entered the S.R.P. camp. That after fleeing from their houses, till 4 o'clock at night, they had stayed in the house of some Muslim officer at the S.R.P. camp and that they had not even stayed back to lock their houses and had fled from their homes, whereafter the Hindu mob had damaged, looted and burnt their houses and at 4 o'clock in the morning, the police came with a Government vehicle to the S.R.P. camp and brought them to the Shah Alam camp in the vehicle and from that day till date, they were residing at the relief camp. This part of the testimony of the assignee officer is not admissible in evidence, because when the witness's attention was drawn to this part of the police statement, it was not with a view to contradict any part of his evidence, and hence, is not in consonance with the provisions of section 162 of the Code read with section 145 of the Evidence Act. When the witness was not sought to be contradicted, the question of proving any such contradiction would not arise.

160.27 The assignee officer has admitted that the witness has not stated before him as regards at what time he had seen them. He has also admitted that the witness had not stated before him as to which accused had which weapon, but has stated that the witness had stated before him that he had seen the mob at about 9 o'clock; that the witness had seen only one mob and he had seen the accused therein. The assignee officer has admitted that the witness had not stated before him that a mob had also come from the S.T. Workshop.

160.28 SUBMISSIONS: The learned counsel for the appellants referred to the deposition of the witness to submit that, according to this witness, he saw the mob at about 9 o'clock in the morning from a distance of about 100 to 150 feet, and this is the only mob which he had seen. It was submitted that the witness has not stated as to at which point of time, he had seen the other mob in the noon. It was submitted that he has not stated in his examination-in-chief as to where he was at 1:30 and which is the mob and at which place he had an opportunity to see it. It was submitted that, therefore, the version of the witness that he had seen the accused at 1:30 with weapons, is a complete improvement, bringing out a totally different set of facts than that stated by him before the police. It was submitted that in the examination-in-chief, the witness has referred to weapons in the hands of the three accused, namely, sword in the hands of accused No.44, pipe in the hands of accused No.2 and a pipe in the hands of Hariyo, (Accused No.1), which has not been stated by him in his statement recorded by the police. It was submitted that the witness has also given a contradictory version about the time when he had seen the accused and the gap is so substantial viz., from 9:00 a.m. to 1:30 p.m. in the noon, that having regard to the sequence as stated in the examination-in-chief, it cannot be reconciled. Therefore, it is highly doubtful whether his say in his examination-in-chief about having seen the accused at 1:30 in the noon can be accepted, particularly when he does not say at which place and from where he had seen all of them. It was submitted that no other witness has stated that Bipin was in the chawl at 1:30 and that it is highly doubtful whether the witness has seen any of the accused.

160.29 ANALYSIS: This witness is the brother of PW 172 Arifali Kasamali Saiyed. The witness has deposed that a mob of around ten to fifteen thousand people came from Krushnanagar and the S.T. Workshop and was pelting stones on their chawls, due to which, they were afraid, and, therefore, he and his family members kept going in and out of the house. The witness is a resident of Imambibi-ni-Chali, which is the first chawl touching the highway. As per the version given by this witness, on the day of the incident, at around ten in the morning, he had sent his wife, his mother, his brother Arifali's wife and his three daughters as well as his children to the S.R.P. Quarters, while he, his brother Arifali and his father stayed outside their home. The mob became violent and all three of them went to Tiwari's house at Gangotri at around 4:00 p.m. When the mobs started coming to Gangotri, Tiwari told them that the situation was not within his control and they should make their own arrangements, whereupon all three of them went to the S.R.P. Quarters to the house of his brother Arifali's in-laws, who were residing there.

160.30 The witness claims to have seen Bipin Panchal (A-44), Guddu Chhara (deceased), Hariyo Chhara (A-10), Manoj Videowala (A-41) and Suresh Chhara (A-22) in the mob in the afternoon at 1:30 and has identified all the accused in the dock.

160.31 From the cross-examination of the witness, it has been elicited that the witness in his statement dated 12.5.2002 [recorded by PW 283] has named the accused, but has not stated as to where he had seen them. It may be noted that no

omissions or contradictions as to his police statement have been brought out in the cross-examination of the witness. Certain parts of his police statement are put to the witness, without seeking to contradict any part of his testimony, which is not in consonance with the provisions of section 162 of the Code read with section 145 of the Evidence Act; therefore, such part of his testimony is not admissible in evidence. Nonetheless, it cannot but be noticed that this witness is the brother of PW 172 Arifali Kasamali, and the versions given by both the witnesses are totally different. While Arifali does not even mention the name of this witness, this witness claims that Arifali and his father were with him. While Arifali says that he, together with his family went to Jawannagar and stayed there till 7:00 p.m., this witness says that their family members were sent to the S.R.P. Quarters to the house of Arifali's in laws. In the cross-examination of the witness no omissions or contradictions as to his police statement are brought out. However, it appears that in his police statement, he had given a different version. Therefore, this witness appears to have improved upon the version given by him before the police. Besides, neither in the police statement, nor in his deposition before the court, has the witness stated as to where he had seen the accused. The witness has deposed that he had seen the above named accused in the mob at 1:30 in the afternoon, without stating anything more, which is highly vague. This witness, therefore, does not appear to be a credible and truthful witness, and, therefore, it would be hazardous to place reliance upon such vague evidence to establish the charge against the accused. No part of the testimony of this witness can be relied upon against the named accused.

161. **PW-176 Zulekhabanu Sardarahemad Chaudhary**, aged 49 years, has been examined at Exhibit-1212. This witness has deposed that her native is *Village Timbapur, Taluka Sorapura, District Gulbarg, Karnataka State*. She is residing at *Kumbhaji-ni-Chali* since the last twenty five to thirty years. In the year 2002 also, she was residing at *Kumbhaji-ni-Chali*.

161.1 In the year 2002 as well as at present also, she is engaged in the business of selling vegetables and her husband in casual labour work.

161.2 In the year 2002, her family was comprised of her husband, four daughters and two sons as well as her uncle Rahimbhai. All of them were residing together. Her in-laws were residing at Gulbarg at the relevant time.

161.3 At the time of the incident, her younger brother-in-law Faiyazahemad had come to her house to attend her sister's marriage. About twenty four persons had come from Gulbarg for her sister's marriage.

161.4 On 27.2.2002, there was a dinner on the occasion of the marriage of her sister at Chamunda, Saraspur and all of them had gone there. Prior thereto, they had learnt that a train had been burnt at Godhra. After having a meal at her sister's house at Saraspur, they had set out at about 6:30 to 7:00 for returning home. When they reached Ashok Mill, one rickshaw had been burnt there. Thereafter, they came home and learnt

that an egg-cart near Krushnanagar had also been set on fire and that the situation was bad. Upon learning this, they had remained awake till about 2:00 to 2:30 at night.

161.5 On 28.2.2002, there was a call for Gujarat bandh.

161.6 On 28.2.2002, at around 7:30 to 8:00 in the morning, she had gone to Kalupur to purchase vegetables and her family was at home. She returned home at around 9 o'clock in the morning with her vegetable cart and as per her routine, she put her vegetable cart next to the S.T. Workshop and started her business. She had sold vegetables worth around Rs.80 when her brother-in-law Faiyaz made a phone call from Chamunda and told her that the situation there was not good and asked her as to what the situation at Patiya was like. She informed him that there did not appear to be anything wrong there. She talked on the telephone and returned back to her vegetable cart immediately. When she reached her cart, sounds of screaming started coming. She went there and saw that there were mobs of Hindus. Certain people in the mob had tied saffron bands on their heads and were wearing shorts and undershirts. The Sindhis in the mob were wearing kurta and pajamas.

161.7 The mob was shouting "*Kill, cut the Miyas, bring them out and burn them*". Since the sounds came from the side of the road, she came towards that side to look and after looking, she returned back to her cart. She left her cart as it was, and went home, took her children, locked the house and told her husband to stay in the house and took her children and went towards Jawannagar Gangotri.

161.8 From Jawannagar, they went to Gangotri, and from there, they went to the S.R.P. Quarters. When they went to the S.R.P. Quarters, policemen were standing there. They (the witness) told the policemen to let them go into the S.R.P. Quarters; however, they were refusing to do so, whereupon she requested them that it was alright if they don't take her, but at least they could take her children inside. However, the S.R.P. people told her that it was their last day.

161.9 Thereafter, from the S.R.P. Quarters, she went to the open ground near Gangotri Society where many Muslims were sitting and sat there for some time.

161.10 There is a shorts and undershirts factory at Gangotri. She does not remember as to exactly at what time they went to the factory as she was very tense. She and her children went to the factory. They must have stayed at the factory for about one to one and a half hours; after which, they came out of the factory and went towards Gopinathnagar. There is an open ground near Gopinathnagar and they ran towards that open ground. There was a huge mob in the open ground also, which was comprised of Hindus. At that time, her son Maheboob told her, *"Mummy, here, it does not appear that we will be saved, let us go back."*

161.11 From there, they came back to Gangotri Society, where there is a water tank. There, the Muslims were sitting and hiding behind the tank when the mob poured kerosene, diesel and put quilts on the Muslims and burnt them, which she herself saw. From there, they went to Gangotri Society. They

went to a terrace of a house in Gangotri Society. Out of the Muslims who were burnt near the tank, those who were able to escape were coming towards the house in the Gangotri Society. At this place near Gangotri Society, there was a mob of Hindus, who were saying, "*Now, you cannot escape*", which she had heard and thereafter, they climbed on the terrace.

161.12 In the mob which she had seen at Gangotri Society, she had seen **Manu Harijan (A-28) and Tiwari Conductor (A-25)**. They had acquaintance with Tiwari Conductor and hence, she requested him to let her and her children sit in his house at Gangotri Society. Tiwari Conductor kicked her sister-in-law and hence, her sister-in-law's son Sabbir, who was in her arms, fell down and injured his head. They stayed at the terrace of Gangotri Society till 11:30 at night, whereafter the police vehicles came. The police had come to pick them up. While they were going from Gangotri Society to the vehicle, on the road, they saw many dead bodies of women and men. Thereafter, they came and sat in the vehicle which took them to the Shah Alam camp.

161.13 The witness has further deposed that in the mob which she saw from 9:00 to 9:45 in the morning on the road, she had seen **Mayaben Kodnani (A-37)** also and she had recognized her.

161.14 The witness has further deposed that apart from her vegetable business, she was also running a business of confectionery and biscuits nearby. In the incident, her cart, shop and house everything was burnt and her house was reduced to the rubble.

161.15 She had stayed at the camp for six months and during that period, the police had recorded her statement. Thereafter, the Islamic Committee had constructed a house for them, and hence, she had gone to stay in that house. Her husband is educated and he had read facts about the SIT in the newspaper, and hence, they came to know about it. She had given a statement before the SIT.

161.16 The witness has stated that she knows Tiwari Conductor, Manu Harijan and Mayaben and can identify them. The witness has correctly identified accused No.28, 37 and 25.

161.17 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that she cannot write or read in Gujarati. Her husband has studied upto the tenth standard in Urdu medium and he can read Gujarati. He, however, cannot speak or write in Gujarati. The witness has admitted that she does not know as to what the police had written down during the course of investigation but has stated that she knows that the police have not properly investigated their case. The witness is shown the application Mark-644/6 and she has identified her thumb impression at the end of the document. The witness has denied that she was informed by Nazir Master or Mohammad Maharooof that the investigation was not carried out properly. She has stated that from the information given in the newspaper, she had felt that the investigation was not proper. The witness has stated that nobody had asked her to go to Gandhinagar but since everyone was sending their applications, she felt that she should also make an application. The witness does not remember as to who sent the application,

but has stated that many people had sent applications. The witness has thereafter, been cross-examined with regard to the mode and the manner in which the application was made and sent. The application Mark-644/6 is read over to the witness, who has admitted the contents thereof and the same is exhibited as Exhibit-1213.

161.18 The witness has admitted that she has not given the names of any accused in the application Exhibit-1213. She has voluntarily stated that she had not thought it fit to name the accused in the application for the reason that earlier her statement was recorded at the camp wherein she had named the accused.

161.19 The witness has stated that Kumbhaji-ni-Chali where she resides is situated on the opposite side of the S.T. Workshop compound wall after leaving two chawls from the road. She has admitted that she used to park her cart outside the S.T. Workshop wall. She has admitted that the way for going into their chawl was parallel to the S.T. Workshop compound wall. She has admitted that the road going from near their chawl goes straight to Hussainnagar, Jawannagar, Gangotri and Gopinathnagar Society. The witness has admitted that behind Gangotri Gopinath, there is an open ground and Teesra Kuva.

161.20 The witness has admitted that in her statement dated 12.5.2002, she had stated that since more mobs had come from the direction of Krushnanagar, Patiya and Saijpur Bogha they could not oppose them and, therefore, they were feeling more frightened and went away to their homes. The

witness has partly admitted and partly denied the contents of her above statement to the effect that she has stated therein that in the evening at around 4:30 to 5:00 a mob of Hindus entered their chawls and started damaging and setting their houses on fire. Hence, they had hidden on the terrace of Gopinath Society and could hear sounds of police firing, etc. and upon the policemen coming at around 11:30 at night they had taken the people of their community out of their chawls and seated them in police vehicles and brought them to the Shah Alam relief camp at 2 o'clock at night. The witness has stated that she has not given any timing in respect of the entire incident as she actually did not know anything on that day. The witness, however, has stated that she knows the time of the morning incident, but other than that, she does not know the time of the other incidents.

161.21 In the cross-examination, she has admitted that in the incident no person in her family had died. The witness has denied that she has not recognised anyone in the riotous mob on the day of the incident. She has denied that in her statement dated 12.5.2002, she had stated that she could not recognise any person in the riotous mob.

161.22 The witness has denied that in her statement dated 12.5.2002, she has not named the accused that she has identified in the court nor has she attributed any role to them. She has voluntarily stated that she had stated before the police but if they did not write down the names, what could she do. The witness has admitted that she has identified the accused in the court for the first time and has voluntarily stated that she knew them from the beginning.

161.23 The witness has stated that she had no occasion to visit Manu Kesha Harijan's house. She has stated that Manu used to come to her house and her shop. He used to sweep and used to take food and money from her. She has denied that as their diet included meat, mutton and fish, Manu had refused to take the garbage, and therefore, there was a dispute with him and out of vengeance, she has wrongly given his name.

161.24 She has stated that their friendship with Tiwari Conductor was to the extent that he had a provision store and they used to buy goods from there. The witness has voluntarily stated that it is in view of such relations that she had gone to his house so that he would hide them.

161.25 In her cross-examination, it has come out that when they reached Tiwaribhai's house, it was around evening. At that time, it had not become dark. She has stated that she does not know whether before them, like her, other Muslims had gone to Tiwaribhai's house to take shelter and he had given them shelter. She has denied that in her presence, Tiwaribhai had told the other Muslims that it is now not within his means and that they should find their own shelter. She has denied that they had reached Tiwaribhai's place at such a time when he was not in a position to give them shelter. The witness has voluntarily stated that if it had been so, he should have told them about it, but by kicking a woman with a child, he had also caused injury to the child. The witness has denied that while coming out, in the pulling and pushing that took place between the Muslims who had taken refuge in

Tiwaribhai's house, Sabir fell from her sister-in-laws arms. She has denied that since Tiwaribhai had given everyone shelter and had not given her shelter, out of vengeance, she was falsely giving his name.

161.26 The witness has partly admitted and partly denied that she had stated before the SIT that upon remembering, she is saying that in the morning at around 9:30 to 9:45, Mayaben Kodnani was also in the mob. She has clarified she has not used the words upon remembering but has stated the rest of the facts.

161.27 The witness has denied that the accused whom she has named in her examination-in-chief have not been seen by her throughout the day and, therefore, in her statement dated 12.5.2002 and the other statements in the year 2002 as well as the application Exhibit-1213 she had not given their names. She has denied that in the year 2008, the Muslim organisations reminded her for the first time and told her to give certain names and hence, for the first time, she had given the names of the accused mentioned by her in her examination-in-chief. She has denied that she has not seen any of the accused, and hence, nowhere has she stated as to when and where she had seen the accused and what they were doing at that time.

161.28 To prove the omissions and contradictions as to her previous statements recorded by the investigating agencies, the defence has cross-examined the concerned Investigating Officer/ assignee officer who had recorded such statement.

161.29 PW-280 Bhanushanker Chhaganlal Joshi, the

assignee officer has been cross examined by the defence, but in no part of his testimony is any omission or contradiction in the statement of the witness sought to be proved. Therefore, any reference to the contents of the previous statement of this witness recorded by the assignee officer is inadmissible in evidence. The assignee officer has admitted to there being certain corrections in the date of the statement of this witness and has admitted that whenever any change is made in a statement, he is required to put his short signature and has admitted that he has not put his short signature while making the changes.

161.30 PW 292 R. C. Pathak, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness in the statement recorded by him, has stated that at that time, at around 9:45, a mob of Hindus belonging to the Chhara, Sindhi and other communities had gathered and started pelting stones at the houses of people belonging to their Muslim community, due to which, the people of their community in their defence, had pelted stones against them. At that time, at around 4:30 to 5:00 in the evening, a mob belonging to the Hindu community had entered their chawls and had started damaging and burning their houses, due to which, they had gone and hidden on a terrace of Gangotri Society and they could hear sounds of police firing outside. At 11:30 at night, the police came and took out the people of their community from the chawls, took them in police vehicles to the Shah Alam relief camp at 2 o'clock. That she does not know anyone who was involved in the riots. The assignee officer has admitted that this witness

has not given the name of any accused before him, but has stated that the accused belonged to the Chhara, Sindhi and other communities. Since the contents of the police statement of the witness are sought to be brought on record without seeking to contradict any part of her evidence, the same is not admissible in evidence. Therefore, except to the extent the assignee officer has admitted that the witness has not named any of the accused in such statement, the rest of the evidence of the assignee officer is inadmissible in evidence.

161.31 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the fact that in her police statement, the witness has not named any accused but has stated that they were Chharas, Sindhis and people belonging to other communities. The attention of the court was invited to the contents of paragraph 56 of the cross-examination of the witness to point out that in her statement dated 12.5.2002, the witness has specifically stated that she could not recognise any person involved in the rioting and that such contradiction has been proved through the testimony of PW-292. It was submitted that this witness in her police statement has not given the names of any of the three accused named by her in her examination-in-chief, and on the contrary, she has categorically stated that she does not know any of the miscreants who have committed the offence. It was submitted that she has named the accused for the first time before the SIT, which clearly indicates that all the three names that she has given, have been given at the instance of someone else which, ultimately, has come on record in the court and that the same may not be accepted. Referring to the application Exhibit 1213 made by the witness, it was submitted

that the application contains certain allegations, and that though the witness states that the application has been dictated by her, she has disowned both the allegations contained in the application. Therefore, there is reason to believe that such allegations are also at the instance of someone else.

161.32 ANALYSIS: The witness has deposed that she has seen Manu Harijan (A-28) and Tiwari Conductor (A-25) in the mob near Gangotri Society. She has also stated that Mayaben Kodnani (A-37) was present in the mob that she had seen in the morning at 9:30 to 9:45. In her cross-examination the witness is confronted with her previous statement dated 12.5.2002 recorded by the police, to the effect that in such statement she had stated that she did not know any of the persons indulging in rioting. This omission has been proved through the testimony of PW 292 Shri R. C. Pathak, the assignee officer, who has admitted that the witness has not given the name of any accused before him. Therefore, the names of the accused have come up for the first time after a period of six years, in her statement recorded by the SIT. Insofar as accused Manu Harijan and Tiwari are concerned, their names have been disclosed by other witnesses in their statements recorded by the police and the police have taken down their names, therefore, there was no reason as to why the assignee officer would not write down their names in the statement given by this witness. As regards Mayaben Kodnani, she being an MLA of the ruling party and being perceived as an influential person, it could be said that the police may have been reluctant to record her name as an accused. However, if the testimony of this witness is seen, except for a passing

reference at the end of her examination-in-chief, wherein she has stated that she had also seen Mayaben in the mob in the morning, nothing has been stated as regards the place and time when she had seen her, and no role has been attributed to her.

161.33 However, as regards the version given by the witness regarding she having gone on the road; and thereafter having gone to Gangotri via Jawannagar; and from there having gone to the S.R.P. Quarters where the police did not permit them to enter; having gone from the S.R.P. Quarters to the ground near Gangotri; having gone to the hosiery factory in Gangotri where they remained for one to one and half hours; having gone from the factory towards Gopinath Society and having fled towards the open ground near Gopinathnagar; a huge mob having come from the field; the witness and others having gone back to Gangotri Society; the Muslims having hidden behind the water tank; and petrol, diesel and quilts having been thrown on the Muslims and they having been set ablaze, it goes unchallenged despite the fact that the deposition of the witness runs into 78 paragraphs. Therefore, the version given by the witness, except to the extent she has named the accused, can be accepted.

161.34 Thus, though the testimony of the witness cannot be used to prove the charge against the named accused, it would come to the aid of the prosecution to establish the sequence of events regarding how the incidents took place on that day.

162. **PW-177 Ishratjahan Parvezhussain Saiyed**, aged 29 years, has been examined at Exhibit 1218. This witness has deposed that in the year 2002, she was residing at *Lane No.4, Hussainnagar* in a rented house with her two sons – Hassan Abbas and Aman Abbas, her husband, her sister Nasreenjahan, her brother Sabbirhussain and her second sister Nooreafsa.

162.1 Her in-laws were residing at Gomtipur. At the relevant time, her husband was in service and doing embroidery work.

162.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh and she was at home with her family. On that day, in the morning at around 9:00 to 9:30, there was a commotion in their chawls. The people from their chawl were running on the road because somebody had said that the mobs have come. Upon seeing and hearing all this, she too went on the road. On the road, she saw that the mobs of people were coming from Natraj and Krushnanagar, who had swords, pipes and hammers etc. in their hands. Out of them, some of the people had tied orange bands. From the side of Patiya, a mob of Sindhis was coming and from the direction of Mithumal Ni Building, Natraj, a mob of Chharas was coming.

162.3 The people in the mob started vandalizing the Noorani Masjid and attacked it and also set the shops and houses nearby on fire. The mob near the masjid was pelting stones due to which, the Imam of the masjid was injured on the head and his face was full of blood. He had put his hand on his head. All of which she herself had seen.

162.4 Upon seeing all this, she was frightened and she went home to inform her husband about it. Upon going home and informing her husband, he also ran to the road to watch it. Thereafter, she followed him.

162.5 The people in the mob thereafter attacked their chawl. At around 10 o'clock in the morning, firing started and tear gas was released and there was intense stone throwing. In front of her, five to six persons were injured by bullets. Mahammad, Pirubhai, Salim, Khalid, Gosvali Khala's son-in-law were amongst the persons who were injured with bullets, etc. Later on, she learnt that a man named Abid was also injured by a bullet and had died thereafter.

162.6 In the stone throwing that had taken place there at that time, her husband had also sustained injuries on his leg and head. They were there and she was frightened. She and her husband returned home. After coming home, her husband said that they should take their children and go and hide somewhere and hence, they left their house and she along with her husband and children went to the Pinjara's house, opposite their house where her brother and sister had also come. At that time, it must have been around 12 o'clock in the afternoon.

162.7 They sat in the room on the upper floor at the Pinjara's house. There were many other Muslims at this place. There was a balcony in the front and on the upper floor of Pinjara's house; there were two rooms, a kitchen and a balcony.

162.8 At around 2:00 to 2:30 in the afternoon, the mob had committed vandalism, arson and looting, and had entered their chawl. They had seen from above that the mob had entered their chawl. **Sahejad Chhara (A-26), Ganpat Chhara (A-4)** and **two Chhara women** were in front of the mob. The Chhara women were looting. Sahejad Chhara had ignited a match stick in the first house of their chawl which was Zayeda Apa's house. After Sahejad set the house on fire, the mob started roaming around their chawl. The people in the mob came back and started knocking on the door of the room in which they were hiding and Sahejad Chhara loudly said that all the men inside should come out. Inside, they were all very frightened and she had lost her voice. Other Muslim women had replied to Sahejad Chhara that there are only women and children inside. Whereupon Sahejad told, "*You give your children*". At this time, the women inside started pleading as to what harm they had caused to them and as to what would they do by taking their children, whereupon Sahejad told them that they would take their children on the road and burn them alive. All the women inside the room, due to the fear, became silent and everyone started crying.

162.9 The people in the mob stood there sometime and while going, they stated, "*Today, you will not escape and if by chance you escape, then you should go to Pakistan.*"

162.10 Thereafter, they stayed in the room till night. At night, a police vehicle came in which they were taken to Shah Alam camp. When the policemen came to call them, she had come out of the room. On the road, she had seen two dead

bodies which were lying in a burnt condition. Out of the two, one dead body was of a handicapped boy. Thereafter, they were taken to the Shah Alam camp.

162.11 She and her family stayed at the Shah Alam camp for around six to seven months. Her husband had taken treatment at the Shah Alam camp for the stone injury.

162.12 A gas cylinder was burst in her house due to which her house was damaged and her house was looted.

162.13 When she was at the camp, the police had recorded her statement. Thereafter, her statement was also recorded by the SIT at Gandhinagar. Before the SIT, she had stated all the facts which she had seen or heard.

162.14 The witness has stated that she can identify Sahejad Chhara and Ganpat Chhara whom she had seen and even now, she can identify both of them. She has stated that she can also identify the two Chhara women who were with them. The witness has thereafter identified Ganpat Chhara and Sahejad Chhara. She has stated that she does not know the names of the Chhara women, but she has identified one of the women as Ramila. The witness has, accordingly, identified **Ganpat (A-4), Sahejad (A-26)** and **Gitaben, daughter of Ratilal alias Jaybhavani Rathod (A-56)** and **Ramilaben (A-61)**. However, Gitaben has not been identified by her name.

162.15 CROSS EXAMINATION: The witness has initially been cross-examined with regard to the topography of the area. In her cross-examination, it has come out that on the day

of the incident she had gone near the S.T. Workshop from Hussainnagar Lane No.4 to the last corner of their chawl. She has stated that Padmaben's vegetable shop and Gafur's house are situated there. She had gone there **alone, but** many Muslims were moving around there and several Muslims were standing there. She has stated that she was standing on the left side near Gafurbhai's house. Gafurbhai's house is in Chetandas-ni Chali and Chetandas-ni Chali at the relevant time was on the road and at present also was on the road. After she reached Gafurbhai's house, she returned in ten to fifteen minutes. The witness has admitted that first time she went near Gafurbhai's house and stood there, her husband was not with her but was sleeping at home. She has admitted that after she woke up her husband had come on the road and she had followed him and at that time also, she was standing near Gafurbhai's house. She has stated that when she again went there, the number of Muslims standing there had increased. When they came for the second time, she must have stood there for one to two hours. She has denied that at that time, the Muslims who had gathered there were pelting stones at the mob and throwing burning rags and petrol bulbs to drive away the mob. The witness has stated that she has not seen the Muslims who had gathered there having swords, sticks, pipes etc. in their hands. She has voluntarily stated they were being attacked.

162.16 The witness has admitted that she has not seen all these people whom she has stated were injured by bullets, actually being injured by the bullets but she has noticed that because of that they had fallen down. She has stated that it is only those persons who had come to the S.T. Workshop who

were injured by the bullets, the rest of the people were standing against the S.T. Workshop wall and hence, they could not be injured by the bullets. The witness has voluntarily stated that one person who was injured by the bullets was put in a cart, and upon others being injured, they were taken inside the chawl.

162.17 The witness has stated that she has seen the incident where people were injured by bullets. Thereafter, she and her husband had gone back because the mob had started coming towards their chawl. The witness has voluntarily stated that at that time, sounds of firing and teargas shells bursting were coming and there was intense stone pelting. There were stones over the entire road of their chawl. The people in the mob were pelting stones on them. Her husband was injured at two places by stones. She was not injured by any stone.

162.18 In her cross-examination, it has further come out that the mob had come till the gate of the S.T. Workshop as well as till Chetandas-ni-Chali when they were standing there. She as admitted that Gafurbhai's house is also in Chetandas-ni-Chali. The witness has admitted that no person in the mob tried to catch her and kill her. The witness has voluntarily stated that she was standing at a little distance and thereafter, out of fear, they had left. She has admitted that the mob did not chase her, but has voluntarily stated that the mob was advancing forward. She has admitted that till she reached home, no one in the mob had followed her. She has admitted that she was at a distance from where she could see the mob. The witness has admitted that she has not seen any other Muslim being injured in the incident and had also not seen

anyone falling down because of the mob, being picked up and taken away.

162.19 She has stated that Ramzani Pinjara's house is situated opposite her house and the distance between Ramzani Pinjara's house and her house would be around 3 feet. The witness has stated that she cannot give the number of her house in Lane No.4, but it was the fourth house after entering the lane.

162.20 In her cross-examination, it has come out that when they entered Ramzani Pinjara's house, it must have been around 12 o'clock in the afternoon. She has admitted that once they went inside Ramzani Pinjara's house in the afternoon they came out only at night. She has admitted that the room in which they had stayed had an iron door. She has voluntarily stated that near the staircase leading to the upper floor, there was an iron door and it was that door on which there was knocking. She has stated that there was a terrace above the room in which they were and there were several people on the terrace also.

162.21 In her cross-examination, it has come out that upon entering Ramzanibhai's house, there is a big hall with two doors wherein there is a toilet and thereafter adjoining the hall there are two rooms, thereafter there is a staircase for going to the upper floor. From the two rooms on the upper floor, there is also a kitchen; there is a terrace above it, where there is also a toilet. The staircase for going on the upper floor is on the outside where there is a big iron door. She has admitted that there were other houses in the lane of the Pinjara's house. She

has stated that after climbing on the first floor, there is a staircase for going to the terrace.

162.22 The witness has denied that on that day, the mob of around two to five thousand people had entered their chawl. She has voluntarily stated that so many people cannot enter their chawl as the lanes of their chawl are very narrow. The witness has stated that the mob came near the Pinjara's house at around 2:30 in the afternoon. The witness has admitted that except for the two persons she has named, no person from the mob had tried to come and kill them, for the reason that the door was closed. She has stated that the people in the mob did not try to throw inflammable substances and torch it for the reason that if they throw inflammable substances, the same would fall back upon them.

162.23 She has stated that they had gone to Ramzanibhai's house to protect their lives and that they were afraid that if someone saw them, they would kill them and hence, they were hiding. They were sitting in the gallery which was covered by a plastic sheet which was permanently put up by the Ramzanibhai to prevent the rain from coming in. The witness has denied that the people in the mob were shouting loudly and the sounds were so loud that they could not hear anyone speak. She has denied that the two accused whom she had named had not come near Ramzanibhai's house. She has denied that the two accused were not in the mob which came near Ramzanibhai's house and that there were no women in the mob. She has admitted that her younger sister's name is Kausarbanu and that at that time, her sister Kausarbanu was also with her in Ramzanibhai's house. She has admitted that

prior to this incident of communal riots, in the year 1991 her sister Kausarbanu had sustained burn injuries.

162.24 The witness has admitted that there was a quarrel between the nephew of accused Ganpat and her brother regarding kite flying prior to the communal riots. She has admitted that her sister had poured kerosene over herself and burnt herself. She has admitted that she was going to file a case but she was persuaded not to file the case and it was Ganpatbhai who has persuaded her. The witness has stated that she (Kausarbanu) herself did not want to file the case. She has denied that it is for this reason that she was falsely implicating Ganpatbhai. The witness has voluntarily stated that if she wanted to implicate him, why would she give other names?

162.25 In the cross-examination, it has further come out that she had studied till the third standard only. The witness has denied that in her statement dated 12.5.2002, she has not named or not described any of the accused. The witness has voluntarily stated that whatever she has stated in her examination-in-chief was stated by her before the police. The witness has admitted that prior thereto, no test identification parade of the accused had been carried out. The witness has denied that her statement dated 23.5.2008 before the SIT was given under the guidance of someone else and that in that statement she had given the names of accused as told to her by others.

162.26 The witness has stated that her statement dated 23.5.2008 was read over to her by the SIT. The witness has

partly admitted and partly denied that in her statement dated 23.5.2008 she had stated that she does not know the names of the two women, who were with them and cannot recognise them if she sees them. The witness has voluntarily stated that she had stated that if she sees them she can recognise them.

162.27 The witness has stated that from where she was standing she had seen Noorani Masjid being attacked. She has denied that she had seen burning rags being thrown there. She has admitted that she had seen the door and the walls being broken. The witness has voluntarily stated that she had seen stones being pelted and nearby shops being burnt. She had also seen hotels and carts being burnt and that the mobs were very huge. She has admitted that they were shouting “kills and cut the Miyas” and certain people in the mobs had tied saffron bands. She has admitted that on all the roads, Hindu mobs were coming shouting “kill, cut”. She has admitted that she had seen the mobs coming from Kubernagar, Naroda, Kalupur, Himmatnagar road and Naroda gam. She has stated that what she wants to say is that she had seen the mobs coming as stated by her in her examination-in-chief. The witness has admitted that there was a mob of one thousand to one thousand five hundred people and that afterwards the mob slowly started increasing.

162.28 The witness has denied that when she was at the Pinjara’s house till the evening, no Hindu mob had come and till she was there in the evening, no damage or riots had taken place. She has denied that she had seen everything burning from the Pinjara’s terrace and that she had remained hiding on the terrace and till 11:30 she was on the terrace whereafter

the police came and took them.

162.29 The witness has partly admitted and partly denied that in her statement dated 12.5.2002 recorded by the police she had stated that on 27.2.2002 the people belonging to the Muslim community had burnt alive Kar Sevaks in a railway coach at Godhra, due to which, the Vishwa Hindu Parishad had given a call for Gujarat Bandh on 28.2.2002, due to which, she and her family members were at home. At that time, in the morning at around 9:00 to 9:30 outside their chawl on the Naroda road, there was a lot of commotion and she came out to the corner of the chawl to watch. At that time, huge mobs of Hindus with weapons like sticks, swords, pipes were there on the road towards Naroda Patiya and Saijpur Tower and were shouting "cut and kill the Miyas", due to which, she immediately went home and woke up her husband who was sleeping, and told him about the above situation, whereupon her husband immediately came out to the entrance of the chawl and she had remained home with her children. After a little while, when her husband coming home, he was bleeding from the head and upon her inquiring about it, he told her that he was injured by a stone and that it appeared that the riots would increase and therefore, she should take the children and go to the Pinjara's building and hide and that he would shut the house and come, whereupon she took her children and together with her brother and sister, went to the terrace of Ramzani Pinjara's house and hid there and her husband had also come to the terrace of the Pinjara's house and in the evening, a mob belonging to the Hindu community entered their chawls and set houses on fire, which she saw from the terrace of the house and she and her family members, out of

fear, remained hiding on the terrace. At 11:30 at night, the police announced on the mike that those who are Muslims and ... and had brought them to the relief camp..... The witness has voluntarily stated that the events had taken place as stated by her in her examination-in-chief.

162.30 In her cross-examination, it has come out that she knows Jadi Khala whose house was in the third lane of Hussainnagar. She has stated that she does not know any Hussainabanu. She has admitted that just like there is a way for going into her lane, there is a way for going into the lane inside Hussainnagar.

162.31 The witness has denied that she has not seen any incident and that the people of her community had tutored her and sent her for deposing before the court. She has denied that she had received compensation in connection with the loss suffered by her. The witness has voluntarily stated that she has received only one cheque and has not received the second cheque till date. The witness has denied that she has not received any threat from any accused and has voluntarily stated that she has made an application in that regard. In the year 2002, she had given an application to the SIT and one application to the Naroda Police Station.

162.32 The witness has denied that from the place where she was standing in the morning, she had seen the police firing at the standing mob. The witness has voluntarily stated that the police was firing at the Muslims. On that day, she has not seen the police near the Noorani Masjid. She has stated that the mobs were spread near the Noorani Masjid, S.T. Workshop

and Krushnanagar, due to which, she does not know where the police were. She has admitted that she does not know from where the firing was done. The witness has denied that in her statement dated 12.5.2002, she has stated that the persons who were rioting belong to the Chhara community and Sindhi community and that she does not know their names. The witness has stated that she has given the names and description as stated by her in her examination-in-chief.

162.33 The Investigating Officer as well as the assignee officer of the then Investigating Officer, have been cross examined by the defence to prove the omissions and contradictions in the testimony of the witness as to the statements recorded by them.

162.34 PW-292 R. C. Pathak, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness in the statement recorded by him had stated that on 27.2.2002, the people belonging to the Muslim community had burnt the kar sevaks in a railway coach at Godhra due to which, on 28.2.2002, the Vishwa Hindu Parishad had given a call for Gujarat Bandh due to which, she and her family members were present at home. At that time, at around 9:00 to 9:30 in the morning, there was a commotion on the Naroda road outside their chawls and hence, she went out to the corner of the chawl to see. At that time, there were huge mobs belonging to the Hindu community on the road at Naroda Patiya and towards Saijpur tower and they had weapons like swords, pipes, sticks etc. in their hands and they were shouting "kill, hack the Miyas" due to which, she

immediately went home and she woke up her husband who was sleeping and told him about the above situation, whereupon her husband came out and went to the corner to look and she along with her children remained at home and after sometime, when her husband returning home, his head was bleeding and upon her inquiring about it, he told her that he was injured on the head with a stone and that it appears that the disturbances are going to increase. Hence, she should take the children and go and hide in the Pinjara's building and that he would lock the house and come there. Upon his saying so, she took her children and together with her brother and sister, went to the terrace of Ramzani Pinjara's house and hid there and her husband had also come to the terrace of Ramzani Pinjara's house and in the evening, the mob belonging to Hindu community entered their chawl and had resorted to arson which she had seen from the terrace of the house and she and her family members out of fear, remained hiding on the terrace. At around 11:30 at night, the policemen declared on mikes that the Muslim people and brought them to the relief camp.... Insofar as the aforesaid part of the testimony of the assignee officer is concerned, the same is inadmissible in evidence as the witness was not confronted with her police statement to bring out any omission or contradiction in her testimony as contemplated in section 162 of the Code read with section 145 of the Evidence Act. In the cross-examination of the assignee officer it has also been brought out that the witness in her above statement had stated that the people who were involved in the riots belonged to the Chhara and Sindhi communities whose names she does not know. The assignee officer has admitted that this witness has not stated any facts in connection with the names of the

accused and has also not given any physical description of the accused.

162.35 PW 327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 23.5.2008. He has admitted that this witness had stated before him that she does not know the names of the two women who were with them and that she cannot even identify them if she sees them.

162.36 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the deposition of the witness to submit that a contradiction has been brought out to the effect that the witness has not named or described any of the accused in her statement dated 12.5.2002, which contradiction has duly been proved through the testimony of PW-292. It was submitted that accused Ramila and Geeta have not been named either in the examination-in-chief or before the SIT and that neither their names nor their roles, as alleged have been stated by the witness in either of the statements as far as the female accused are concerned. It was submitted that reference to the female accused is made for the first time before the court without naming them and, therefore, their identification in the court is of no consequence, more particularly when no test identification parade has been carried out. It was submitted that insofar as accused No.26 and accused No.4 are concerned, their names were not given in the police statement and for the first time, their names appear in the statement recorded by the SIT. It was submitted that insofar as accused No.4 Ganpat is concerned, no role is attributed, whereas insofar as accused No.26 Sahejad is

concerned, the role attributed to him is not believable on the face of it, for the reason that after knocking on the door and having found that there were people inside, nothing has happened. It was submitted that if the accused had come there with a wrong intention, they would have not spared the people who were inside the house. Referring to the cross-examination of the witness, it was submitted that this witness could not have seen the accused or what they were doing. It was urged that the evidence of this witness does not inspire confidence and that she is not a credible witness and hence, her testimony cannot be taken into consideration for the purpose of proving the charge against the accused.

162.37 ANALYSIS: From the testimony of this witness, it emerges that she is a resident of Hussainnagar. On the day of the incident there was commotion in their chawl at 9:00 to 9:30. Upon hearing people saying that the mobs have come, she went on the road, and saw mobs armed with weapons coming from Krushnanagar and Natraj. The mob vandalised and attacked the Noorani Masjid and there was stone pelting near the masjid. At ten o'clock, the mob attacked their chawl. At that time there was firing and tear gas shells were lobbed and there was intense stone pelting. Amongst those who were injured by bullets were Mahammad, Pirubhai, Salim, Khalid, Goswali Khala's son-in-law. In the stone pelting her husband was wounded on his head and leg. Thereafter, she and her husband left the place, took their children and went to the Pinjara's house opposite their house, where her brothers and sisters also came. It was 12:00 in the afternoon. At about 2:30 in the afternoon, the mob had entered their chawl. From the upper level of the Pinjara's house she had seen Sahejad

Chhara (A-26), Ganpat Chhara (A-4) and two Chhara women committing loot. Sahejad set Jayeda Apa's house on fire.

162.38 When the police came to take them, on the way she had seen two corpses, one of which was a handicapped boy Modin's corpse. She has identified Sahejad and Ganpat and has also identified Ramila by name and has identified Geeta as the other Chhara woman. Insofar as naming and identifying the above accused is concerned, the witness was confronted with her statement dated 12.5.2002, wherein she had stated that the persons indulging in rioting belonged to the Chhara and Sindhi communities, whose names she did not know. This omission in her previous statement recorded by the police has been proved through the testimony of the PW-292 Shri R.C. Pathak.

162.39 From the cross-examination of PW-327, the Investigating Officer (SIT), it has been proved that the witness had stated before him that she does not know the names of the two women who were with the two named accused and that she cannot even identify them if she sees them. Therefore, insofar as the naming and identification of the above referred four accused persons is concerned, the same is in the nature of improvement. Sahejad Chhara (A-26) and Ganpat Chhara (A-4) were not named by the witness in her statement dated 12.5.2002 and have been named by her for the first time after a period of more than six years before the SIT. Insofar as Ramila (A-61) and Geeta (A-56) are concerned, even before the Investigating Officer (SIT), the witness had not named them and had in fact stated that she would not be in a position to identify them even if she saw them.

162.40 Insofar as the contention raised by the learned counsel for the appellants that if the accused had had come there with a wrong intention, they would have not spared the persons who were inside the house, is concerned, it may be noted that Ramjani Pinjara's house, where the witness had taken refuge is a brick house with a concrete slab. The outer door is made of iron. Therefore, it would be very difficult for the accused to set the house on fire. As aptly stated by the witness in her cross-examination, the reason why the people in the mob did not throw inflammable substance inside Ramjani Pinjara's house and set it ablaze, is because if they did so, such substance would have fallen upon them.

162.41 In the above backdrop, it would be very hazardous to consider the testimony of this witness to establish the charge against the above named accused. However, insofar as the remaining part of the testimony of the witness, except to the extent she has named the accused and ascribed roles to them is concerned, such part of her testimony has not been challenged in her cross-examination and can be considered for the purpose of ascertaining the sequence of events and the time of the incidents that took place on that day. Insofar as the unchallenged part of her testimony is concerned, the witness is credible and trustworthy and there is no reason to discard her entire testimony.

163. **PW-179 Naseembanu Abdulraheman Shaikh**, aged 40 years, has been examined at Exhibit-1240. This witness has deposed that she is residing at Citizennagar since the last eight years with her son Haiderali and that she is doing

embroidery work.

163.1 Her husband Abdulraheman has passed away and she has remarried. She has a daughter Rubina whom she had given to her sister by way of adoption and she resides with her sister at Godhra since her childhood.

163.2 In the year 2002, she was residing at *Lane No.8, Hussainnagar, Naroda Patiya*. At the relevant time, her second husband and Haiderali, her son from her first marriage, three of them were residing together.

163.3 The incident took place on 28.2.2002. At that time, there was a call for Gujarat bandh. In the morning of the incident, she was at home. At that time, the elders and the children in their chawl were shouting that huge mobs are standing outside, and hence, she went out to see. She went out to the entrance of the chawl near the S.T. Workshop and at that time, she had seen mobs of Hindus coming from Krushnanagar and Natraj. Thereafter, she went home and told her husband about it and both of them went outside.

163.4 The mobs had come inside the Noorani Masjid. The people in the mob were damaging the carts and stalls. They were entering inside the masjid and bursting gas cylinders. Thereafter, she went home to see her son Haider. She could not find her son at home, and hence, she came back to highway. In the meanwhile, the mob started coming from the highway to the interior side of the chawls.

163.5 They were standing there when the police released

tear gas and resorted to firing. In the firing, Khalid was injured by a bullet on his waist and Majidbhai also sustained a bullet injury on his leg. The people from their chawl took both of them towards the chawl.

163.6 She was looking for her son; however, as she could not find him, she and her husband had gone near the small gate of the S.R.P. Quarters to go inside. However, they were not permitted to go inside and were told *"Today, there are no orders for you to come inside."*

163.7 Since they were not allowed to enter the S.R.P. Quarters, she returned home, where, upon looking towards the open ground, she had seen a mob coming that from the road of Uday Gas Agency. She did not know the mob. The people in the mob had tied saffron bands on their heads. This mob was shouting, *"Kill, cut, burn"*. Upon the mob coming near them, they started running. While running, she was also searching for her son, however, he could not be found and they went on a terrace of Jawannagar. There were people from their chawl on the terrace. Upon looking from the terrace, the mobs were coming from the open ground. In the mob which was coming from the open ground, she saw that **Bipin Panchal** (A-44) was also there. The people in the mob had dharias and swords in their hands. Bipin Panchal was instigating the mob and was showing the people in the mob the places where the persons of Muslim were.

163.8 At this time, they were on the first terrace of Jawannagar. When they went to the terrace of Jawannagar, at that time, it must have been around 4 to 5 o'clock. Upon

seeing the mob, they were hiding below on the terrace, however, the people in the mob were moving around. On that day, a woman called Madinaben who is also from their area was also on the terrace and she had said *“This Bipin Panchal stays and eats and drinks with us, look at how he is behaving with us today. He is calling the people in the mob and showing them the places where the Muslims are hiding and instigating the mobs”*. She herself was watching Bipin Panchal doing this.

163.9 At this time, she had seen that from the interior side of the S.T. Workshop, burning tyres, rags, etc. were being thrown on their chawls. They sat on the terrace till around 5 o'clock though at that time they had not seen the time, but approximately it must have been around that time.

163.10 They felt that there was no chance of surviving on the terraces and hence, they got down from the terrace and went here and there to save themselves. The mob was shouting, “kill, cut”. They went from one lane to the other to save themselves. However, upon the mob coming closer and closer, they went on a terrace of Gangotri Society where there were other Muslims also.

163.11 While she was on the terrace of Gangotri, she felt very thirsty. The mob was coming nearer and nearer. To get water, she got down from the terrace and was going, when other Muslims on the terrace told her not to go and that if the mobs see her, they would come there; hence, she went and sat on the terrace.

163.12 While she was on the terrace, she could hear the

voice of a woman and she was saying that "*I am Zarina, please come and look at me, someone please get me water, I am in great difficulty.*" Upon hearing this, she got down half way on the staircase from the terrace and she saw that one hand of this Zarina was cut and on seeing this, she was terrified and she went back to the terrace. They sat on the terrace till late and she was very thirsty, and hence, she went down to search for water. There were cans lying there and under the impression that there must be water in the cans, she took some fluid from the can and it appeared to be kerosene. Thereafter, she went back to the terrace.

163.13 They were sitting on the terrace till late at night, whereafter, they heard voices of Muslims of their chawl and the police saying that they had come to take them to a safe place. They had heard the voices of their Muslim elders.

163.14 When they got down from the terrace, on all four sides, there was brightness of the flames. In the brightness of the flames, she saw that there were dead bodies on the road and everything was burning. Looking at all this they reached to the highway where the police vehicle was, and others were sitting in it and hence, they also sat in the vehicle.

163.15 While their police vehicle was going, there was a mob near Natraj and those people were making a lot of noise from far and shouting "kill" "cut" and were advancing forward. They stopped their vehicle and said "*So many Muslims should not escape, how have they escaped?*" However, the vehicle was driven away with immense speed and they were safe. They were taken to the Shah Alam relief camp.

163.16 In the incident, her husband and her son Haider, all three of them got separated. She could not find her son Haider for fifteen days and was very worried about him. She searched all the camps and after fifteen days, she found her son from the Dariyakhan Ghummat Camp. Her husband had also come to the Shah Alam camp after two to three days, where she met him.

163.17 When she met her husband, he was injured on the leg and there were stone injuries on his ribs and waist. Her husband got treatment at the camp as well as in a private hospital.

163.18 When the police recorded her statement at the camp, she had stated the facts regarding the incident. Thereafter, the police had taken her to draw a panchnama of her house. A panchnama of her house was drawn. After staying at the camp for six months, they went to stay at Citizennagar.

163.19 Thereafter, everyone was going to the SIT at Gandhinagar for recording their statements, and hence, she had also gone there and got her statement recorded.

163.20 In the incident, her house was vandalized and set on fire.

163.21 She can identify Bipinbhai Panchal whom she had seen in the mob on the date of the incident. The witness, however, has identified accused No.17 Nandlal as Bipinbhai Panchal. Thus, the witness could not identify the sole accused

named by her correctly.

163.22 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that in the year 2002, she was engaged in casual labour work. The witness is cross-examined with regard to the topography of the area. The witness is cross-examined as to her statement dated 12.5.2002 recorded by the police to the effect that she has stated therein that out of fear, she and her husband left their house and fled towards the gate of S.R.P. camp and the S.R.P. people standing at the gate, did not permit them to go inside. Therefore, they had gone on the terrace of one of the Hindu Societies situated nearby at around 7 o'clock and had hidden there. Thereafter, at around 12:15, a police vehicle came and a person named Abdulla from their chawl shouted that whoever is there on the terrace should come down as the police have come to help them, and they and around one hundred other Muslims were taken in the police vehicle. The witness has admitted that in this statement she has stated that when around two thousand to three thousand people belonging to the Hindu and Chhara communities set their chawl on fire and damaged it and burnt Muslim people alive, at that time, in the mob of two thousand to three thousand people, a person named Bipinkumar came running and was saying "*Loot the houses of the Muslims and burn them alive!*". The witness has partly admitted and partly denied that she has stated that this Bipinkumar works in an office which is constructed next to Uday Gas Agency outside their chawl and she knows him very well. The witness has voluntarily stated that she had stated that Bipinkumar used to visit the complex next to Uday Gas Agency, and hence, she knew him very well. The witness has stated that she does not

know the name of the complex which Bipinkumar used to visit and does not know whether the complex has two floors or three floors.

163.23 The witness has admitted that her statement was recorded at the SIT office at Gandhinagar in the year 2008. She came to know that her statement was to be recorded by the SIT upon receipt of a summons. The witness has stated that she does not know whether her neighbours at the Citizennagar were also served with summonses. She has stated that she had gone to Gandhinagar for recording her statement alone. The witness has stated that at the time of the incident, she was residing in Lane No.8 of Hussainnagar and her house was the second house in the lane.

163.24 The contents of paragraph 10 of her examination-in-chief are read over to the witness wherein she has stated that she had seen Bipinbhai in the mob coming from the direction of the open ground and that he was instigating the people in the mob and was showing the people in the mob the places where the Muslims were residing. The witness has denied that she has not stated so in her statement recorded by the police in the year 2002. The witness has voluntarily stated that she had stated before the police but she does not know whether the police have written it down or not.

163.25 The contents of paragraph 11 of her examination-in-chief are read over to the witness to the effect that she has not stated these facts in the statement recorded by the police in the year 2002, which she has denied. The witness has admitted that she has not paid even a rupee towards the

house at Citizennagar. She has denied that at the instance of leaders of their community as well as the leaders at the camp, at the relevant time, she had named Bipin Panchal. She has denied that she had given the name of Bipin Panchal at the instance of Madinaben. She has denied that she has not seen Bipin Panchal on the day of the incident and that she is falsely deposing before the court. It appears that the panchnama of the house of the witness was drawn on 26.6.2002. The witness is sought to be cross-examined with regard to the contents of the statement dated 26.6.2002. The witness is also cross-examined with regard to the topography of the area.

163.26 The witness has admitted that out of the people whom she had seen in the mob during the entire day, she knew only Bipinbhai and the other people were unknown to her and she had no occasion to meet them prior to the incident and till today, she has had no any occasion to see them. In her cross-examination, it has further come out that in the year 2002, she was residing in the Naroda Patiya area since the last seven to eight years. The witness has denied that she has not seen any incident and that she is falsely deposing before the court.

163.27 To prove the omissions and contradictions as to her previous statements, the defence has cross-examined the concerned Investigating Officer/assignee officer who recorded such statement.

163.28 PW-293 Shri B.T. Karoliya, the assignee officer has, in his cross-examination, admitted that he has recorded the statements of this witness on 12.5.2002 and 26.6.2002. The

assignee officer has admitted that this witness had stated before him that on 27.2.2002 when the incident took place at the Godhra Railway Station, she had gone for her job and had returned home in the evening. At that time, suddenly there was commotion and a mob of Hindus came from the direction of Chharanagar to the corner of their chawl and started pelting stones at their chawl, due to which, she immediately came near the gate of their chawl. Thereafter, out of fear, she and her husband left their house and ran near the gate of the S.R.P. camp. At that time, the S.R.P. people standing near the S.R.P. gate did not let them enter inside, and hence, they went to the terrace of a bungalow of the Hindu Society situated nearby and climbed there at around 7 o'clock and remained hiding there. The assignee officer has further stated that the contents of the above three paragraphs have not been stated by the witness in her statement dated 12.5.2002.

163.29 The assignee officer has admitted that this witness has not given the name of Bipin Panchal in both her statements but has given the name Bipin kumar.

163.30 The assignee officer has admitted that in her statement dated 26.6.2002, the witness had stated that the above articles were looted by the Hindu mob and that no person in her family had suffered any loss of life and that she could not recognise the people in the mob and does not know their addresses.

163.31 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has named only one accused, namely, Bipin Panchal, but has failed to identify him

before the court. It was further contended that the witness, in her police statement, had given the name of one Bipinkumar and not Bipin Panchal. It was submitted that this witness in her statement before the police had described Bipin as serving in an office in the building near Uday Gas Agency, whereas Bipin Panchal had a garage near Dhanurdhari Mata's temple. The name Bipinkumar does not establish the identity of Bipinkumar as Bipin Panchal of Bipin Auto. It was submitted that when she refers to a complex near Uday Gas Agency, it is completely vague and unidentified and there is nothing on record to show that Bipin Panchal had any occasion to visit any such complex for any work. It was submitted that, therefore, if she had referred to the name of Bipinkumar in her first available police statement dated 12.5.2002, the same does not establish beyond reasonable doubt, the identity of accused No.44 Bipinbhai Panchal.

163.32 Reference was made to the contents of paragraph 12 of her examination-in-chief, to submit that the witness has stated that she has seen burning tyres being thrown out of the S.T. Workshop which is practically impossible and, therefore, the witness has exaggerated the incident. Referring to the contents of paragraph 15 of her examination-in-chief where the witness has referred to Zarina having come near the terrace and asked for water, it was submitted that Zarina has not stated any such fact in her deposition. Referring to the contents of paragraph 18 of her examination-in-chief, it was submitted that in the evidence of many witnesses it has come out that they were taken in a police van to a safer place and they had found things and dead bodies lying at various places. Therefore, though till late at night the fire was not

extinguished, there is no evidence that the fire brigade was called nor was there any attempt to douse the fire. It was submitted that this witness has failed to identify the sole accused and that even otherwise, the identity of the accused is doubtful. Therefore, the evidence of this witness does not in any manner aid the case of the prosecution.

163.33 ANALYSIS: From the testimony of this witness it emerges that she, together with her husband, had come on the road and had seen that the mobs had entered the Noorani Masjid. The mobs were damaging the carts and stalls. The mobs came towards the chawls and while they were standing there, the police lobbed tear gas shells and resorted to firing wherein Khalid and Majidbhai were injured. Both of them were taken inside the chawls. They tried to enter the S.R.P. Quarters but were not allowed to go inside, whereupon she returned home and saw mobs coming to the open ground from the side of Uday Gas Agency. Upon the mobs coming near, they fled and took shelter on a terrace in Jawannagar. From the terrace she saw the mob coming in the open ground and that the people in the mob were armed with weapons. She had also seen tyres, burning rags, etc., being thrown from the S.T. Workshop. They had stayed on the terrace till around 5 o'clock. Seeing that on the terrace they had no chance of escaping, they came down and went into the lanes to protect themselves and upon the mob reaching near them; they had climbed on a terrace in Gangotri Society. Late at night the police came and took them to the camp. When they came down from the terrace, there was brightness everywhere on account of the fire, and in the brightness of the fire, they had seen corpses lying on the road, and everything was burning.

163.34 In the cross-examination of the witness, omissions and contradictions have been brought out only in respect of the contents paragraph 11, and the contents of paragraph 10 to the extent she has referred to the presence of Bipinbhai Panchal. The rest of her testimony has gone unchallenged. Several portions of her police statement and her statement recorded by the SIT have been brought on the record in the cross-examination of the witness, which is not admissible in evidence, inasmuch as, majority of the portion of the statements have been put to the witness without seeking to contradict any part of her testimony. The only admissible part is contained in paragraph 34 of her deposition, wherein it has been brought out that the witness has referred to a huge mob setting their chawls on fire wherein a man named Bipinkumar was coming running and was saying loot the houses of Muslims and burn them alive. Thus, in her cross examination, it has been brought out that the witness had named one Bipinkumar and not Bipinbhai Panchal in her statement before the police and no test identification parade had been carried out to ascertain the identity of the accused. Besides, the witness has failed to identify Bipin Panchal (A-44) in the dock. Therefore, her testimony would not help the prosecution to prove the charge against accused No.44.

163.35 Some parts of the testimony of the witness, like where she has referred to the voice of a woman named Zarina asking for water, apparently are in the nature of an exaggeration and could be the result of tutoring. However, that by itself is no reason to discard her testimony and to the extent her testimony is credible, it can be used to ascertain the

manner in which the incidents took place.

164. **PW-180 Aslambhai Samsherbhai Shaikh**, aged 42 years, has been examined at Exhibit-1251. This witness has deposed that after the incident, he is residing at Ektanagar, Vatva. His native place is Miradatar, District Mahesana. At the time of the incident, he was residing at *Hussainnagar, Lane No.3 or 4*, in a rented house belonging to Abdulbhai Mansuri.

164.1 At that time, he was residing with his wife Madina and his son Salman and Shahrukh and was working as a spray painter.

164.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. On that day, in the morning at around 9:00 to 9:15, he had come out of his house on the road. He saw that there were mobs on both sides. One mob was from the direction of Krushnanagar and the other was towards Natraj. All the people in the mob had weapons like knives, swords, sticks, dharias, etc. The mob was shouting “kill, kill” and was advancing forward. The mob started coming forward and pelting stones at the people from their mohalla. He recognized one of the persons in the mob who was pelting stones.

164.3 He stood on the road for a little while; however, since the mob was advancing forward, he went towards the interior side of his house. When he went home, his wife and his children were at home, but a chain had been latched on the door outside his house. Thereafter, he went to the house of a Chachi nearby. At that time, on the road behind Chachi’s

house, he met his friend Kurban, who told him that his son Shahrukh was at his house and he was crying there. The witness has stated that he came out of Chachi's house and went on the road on the rear side when he had met Kurban.

164.4 Thereafter, he went to Kurban's house and took his son Shahrukh and came out of the lane of Kurban's house. Thereafter, he entered the next lane, where four or five persons were standing. These four or five persons told him to go to the terrace and also told him that other persons were also hiding there. Hence, he took Shahrukh and went to the terrace. On the terrace, he found his wife and son Salman. They stayed on the terrace till 1:30 at night, whereafter upon the vehicles having arrived, they had gone to the Shah Alam camp with persons dressed in police uniforms.

164.5 After two days, he came to know that his house had been looted. The police had recorded his statement with regard to the incident at the camp. The witness has deposed that the person whom he had recognized in the mob was Suresh, who is also known as Suresh Langdo and that he can recognize him even today. The witness has identified accused-22 Suresh correctly.

164.6 CROSS EXAMINATION: The witness has been cross-examined as regards whether a card was given to him at the relief camp and the details thereof. The witness has deposed that he has stayed at the camp for around six months and that a card was issued to him at the camp. Various other questions have been put to him with regard to the issuance of the card and whether the managers used to to make

announcements on the mike, etc. The witness has admitted that amongst the managers, there were advocates also and that if anyone in the camp wanted to lodge a complaint, the advocates were doing the needful in that regard. The witness has stated that at the camp, he had given a complaint with regard to his son having sustained an injury with glass. The witness has admitted that in the complaint, he has not stated that he had identified anyone whom he had seen in the mob on the day of the incident. The witness has admitted that when the Hindu mob was pelting stones at them, the residents of their chawls had resorted to cross pelting against them. The witness has admitted that there were many people in their chawl and on the road that it was not possible to recognise them. The witness has admitted that Suresh Langdo had quarrels with the people of their chawl on two to three occasions and has voluntarily stated that he did not know him prior thereto, and because of this incident he has come to know about him.

164.7 SUBMISSIONS: The learned counsel for the appellants, referred to the contents of paragraph 17 of the deposition of this witness wherein he has admitted that there were so many people in the chawl and on the roads that it was not possible to recognise anyone, to submit that in view of the admission, the identification of Suresh would become doubtful. It was submitted that even if the presence of accused No.22 Suresh, as stated by the witness is taken at face value, he is stated to have been present there in the morning mob without any specific overt act being attributed to him. It was submitted that considering what is stated by the witness in paragraph 12 of his deposition, it is apparent that when his statement was

recorded, three persons from amongst the administrators of the camp were present and that the presence and help of the lawyers is also admitted. It was submitted that the fact that this witness does not say anything about the Noorani Masjid and the shops nearby being attacked, creates a doubt about his presence.

164.8 ANALYSIS: From the testimony of this witness, it emerges that he has seen accused No.22 Suresh Chhara in the mob which was pelting stones on the road. In the cross-examination of the witness, the acquaintance with the accused has been brought out, whereby he has stated that earlier he did not know the accused; however, on account of the disputes that he had in the chawl, he had come to know him. In his cross-examination, an omission has been brought out to the effect that in his statement dated 28.2.2002, he had not stated that all the people in the mob had arms like knives, swords, sticks, dharias, etc. and the mob was shouting "kill, kill" and was advancing forward. The omission which is brought out in the cross-examination of the witness is only to the aforesaid limited extent, namely, that he had not stated that the mob was armed and was shouting "kill, kill". However, insofar as the witness having seen accused No.22 Suresh in the mob which was pelting stones on the road is concerned, no omission or contradiction has been brought out in his cross-examination. Therefore, insofar as the version given by the witness in his deposition to the effect that there were mobs coming from both the sides, namely, from Krushnanagar and Natraj, which were advancing forward and were pelting stones at the people of their mohalla, wherein in the mob which was pelting stones, he had seen Suresh Chhara is concerned, the

witness is consistent, both in the version given before the police at the relevant time as well as in his deposition before the court. Though the witness has been cross-examined to a certain extent, nothing has been brought out to impeach the credibility of the witness. Hence, testimony of this witness to the extent that he has named accused No.22 Suresh and has deposed that he was pelting stones together with others in the mob on the road, deserves to be accepted.

165. **PW-181 Apsarabegam Kabirali Shaikh**, aged 47 years, has been examined at Exhibit-1252. This witness has deposed that after the riots, she was residing at *Faizalpark*. At the time of the riots, she was living in *Lane No.3, Hussainnagar*. The house in which she was residing was of her ownership which she has now given on rent.

165.1 She does tailoring work at home while her husband plies a rickshaw on hire. At the time of the incident, she was staying with her family comprised of her husband, two sons and four daughters. Her eldest daughter is Noorjahanbanu, then Shahjahanbanu, thereafter son Mahammadali, then daughter Farzana and the youngest son Shahrukh.

165.2 She does not remember the month. However, the incident took place on 28th day in the year 2002 and on that day, there was a call for Gujarat Bandh and she and her family were at home.

165.3 On the day of the incident, she had gone to the factory where she was serving at 9:00 to 9:15 in the morning. The factory in which she was serving belonged to Dilipbhai

Sindhi, and was situated next to Santosh Dairy at Naroda Patiya.

165.4 Upon going to the factory and commencing work, since there were disturbances on the road, her employer Dilipbhai went on the road to see what was happening while she, Kalubhai and Ganesh Marathi were at the factory. Her employer locked the door of the factory with all three of them inside and then went.

165.5 Thereafter, her employer came in and took Kalubhai and Ganesh Marathi who were working with her, outside and left her inside the factory. They had locked the door of the factory and gone.

165.6 Thereafter, at around 1:30 in the afternoon, their employer Dilipbhai came back and said that there were severe riots outside and things were being set on fire. She could also hear the sounds in the factory. Their employer came at around 4 o'clock in the evening and till then, she was at the factory.

165.7 At 4 o'clock in the evening, her employer took her and Kalubhai Shaikh, who was working with her, on his scooter and dropped them near the S.T. Workshop. When they got down on the road, there were police vehicles. Both she and Kalubhai were going towards their lane. At that time, she saw two dead bodies lying there. She saw that her own house was burning and their rickshaw was also burning. Since there was a lot of public, they stood near the compound wall of the S.T. Workshop. She saw the people in the mob looting and burning houses.

165.8 **Suresh Chhara** (A-22) was also in the mob and he had something like a stick in his hand. He was shouting “loot the houses of the Miyas” and was calling the people of his community. She was standing behind him and Suresh had not seen her.

165.9 Out of the two dead bodies which were burning, she could see the face of one of them, which was of Mullaji’s son who used to live next door. This boy was handicapped. She had seen the dead body of the handicapped boy burning and at that time, she was with Kalubhai. She and Kalubhai thereafter went from there towards the S.R.P. Quarters. At the S.R.P. Quarters, she told the policemen that she wanted to meet Hussainbhai inside and they said that since there were riots on that day she could not meet anyone. They threatened to beat her with the stick and drove her outside. Thereafter, she and Kalubhai went towards the Ice Factory where there were many people. There were riots, voices were coming and people were running hither thither. They met a person with a big moustache wearing a red striped jersey. She does not know his name. She asked this person as to whether her children are inside and he told that he had shut her children inside a shutter.

165.10 The people in the mob were running and sounds were coming. She could hear sounds of them burning people outside. However, she had not seen anything. In the mob, she had seen Guddu Chhara, Bhavanisingh and Suresh, who were looting.

165.11 In the melee, she and Kalubhai got separated. Thereafter, she went towards her factory. When she reached her factory, there was slight daylight and it was not yet dark. At the factory, the upper part was open from which she entered the factory and made a phone call to her employer and told him that she was looking for her children, but could not find them and hence, she had come back to the factory and asked him where she could go, whereupon, her employer told her to stay there. Therefore, she had stayed in the factory at night.

165.12 On the next day, at around 10 o'clock in the morning, her employer came to the factory. He gave her Rs.400/- and told her to go from there. She came out from the factory, took a rickshaw and went to Shahibaug because her paternal aunt Dolatbibi was living there.

165.13 She went to her paternal aunt's house and after she had freshened herself, they went to the camp next to her house, where they were writing down the details of children who were lost. Therefore, she also had stated that she could not find her family members.

165.14 At the camp, she met the daughter of one Ehsan Jafri. Her parents were also lost. Thereafter, upon a police vehicle coming, she and Ehsan Jafri's daughter went to different camps in search of their family members, however, they could not find their family members.

165.15 On the next day, she found her husband and three children at the Shah Alam camp. Her three children whom she

found were Farzana, Saira and Mahammadali. Her husband had sustained injury on account of bursting of tear gas and he could not get up. Her son Mahammadali had sustained a fracture on his hand and both of them were given treatment at the Shah Alam camp.

165.16 Her husband had informed her that as he was injured with tear gas, he could not get up and the children had got separated. She came to know that at Shah Alam camp, they were making announcements on the mike and she learnt that there were children at the Civil Hospital also and she inquired as to whether it was possible to go to the Civil Hospital and she was informed that since it was almost night time, she could not go there. However, she could go there in the morning.

165.17 On the next day in the morning, she, her husband and her brother Jainul Abedin went to the Civil Hospital, where she found that her daughter Shahjahan and her son Shahrukh, but her elder daughter Noorjahan could not be found. Her daughter Shahjahan was burnt all over the body and her son Shahrukh had sustained burns on his legs.

165.18 Her daughter Shahjahan informed her that her elder daughter Noorjahan had died in the incident. When her son Shahrukh was being burnt, she had caught hold of his shirt and tried to douse the flames, the mob also set her on fire. She informed her that the people in the mob had thrown kerosene on people and burnt them. Shahrukh also told her that at that time, her (witness's) sister-in-law, viz., her maternal aunt and her sister-in-law's two children were also there and all three of

them had died in the incident. Her sister-in-law's name was Saleha and her children's names were Muskan and Subhan.

165.19 Her children Shahjahan and Shahrukh had stayed at the Civil Hospital for two months for treatment. There was no trace of her daughter Noorjahan; however, she had been buried. The witness has stated that she says this because she was taken to identify Noorjahan's dead body; however, all the dead bodies were burnt to such an extent that it was not possible to recognize them. However, the dead bodies had been buried. She had received a burial receipt in respect of her daughter.

165.20 In the incident, she had sustained loss of around rupees two to two and a half lakh on account of the damage caused to her house. Her statement was recorded by the police. She stayed at the relief camp for two months. While they were at the relief camp, the police had come and recorded her statement. However, at present, she does not remember as to what she had stated before the police.

165.21 Thereafter, based of the information received by her, she had made an application to the SIT through someone and the SIT had called her. She had stated all the facts about the incident to the SIT.

165.22 She had learnt that Guddu Chhara and Bhavanisingh are dead and has stated that she would try to identify Suresh. The witness has thereafter correctly identified Suresh (A-22).

165.23 The witness is shown the application made by her to the SIT and she had identified her signature thereon and admitted the contents thereof. The application is exhibited at Exhibit-1253.

165.24 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that she was working with Dilipbhai five years prior to the incident. She has admitted that Dilipbhai's factory was situated on the road from Naroda Patiya to Kubernagar. The witness has admitted that on that day in the morning when she set out to go for her job at 9:00 to 9:15, at that time, no crowd of any kind had gathered on the road. The witness is not aware as to whether the traffic was normal on that day. The witness has voluntarily stated that one or two vehicles were passing by. She has admitted that on the day of the incident, after going to the factory, she had not come out till 4 o'clock in the evening. She has admitted that prior to her employer coming and informing her that there were riots outside; no one else had told her about it.

165.25 The witness has stated that by the time her employer Dilipbhai came to drop her and Kalubhai on his scooter, by then, the crowds had gathered near Naroda Patiya and S.T. Workshop corner. The witness has denied that when she, Dilipbhai and Kalubhai were coming on the scooter, the people in the mob had not stopped them. The witness has said that the true facts are that from Kubernagar from where they were coming, at that time there were no mobs there; however, there was a mob near the masjid. The witness has stated that her house is situated in the sixth line after the S.T. Workshop and is the third house in that line. The witness has admitted

that from S.T. Workshop till their chawl, she and Kalubhai did not come across any Hindu mob. The witness has voluntarily stated that it was because the people in the mob had already gone into the lanes inside.

165.26 The witness has admitted that she and Kalubhai had reached till the S.T. Workshop compound wall, opposite their house and had immediately returned from there. The witness has stated that at that time, she had seen her house burning. The witness has stated that she does not know that when she and Kalubhai went there in this manner, whether any other residents of Hussainnagar were there. She has stated that she immediately returned from the front of her house.

165.27 The witness has admitted that she and Kalubhai had gone to the S.R.P. Quarters through the highway. The witness has denied that the mob had not stopped them from going on the highway and has voluntarily stated that they had stealthily gone there. She has stated that when they were not permitted to go inside the S.R.P. Quarters, they had immediately left. They had returned from the S.R.P. Quarters from the same route.

165.28 The witness has stated that she does not know as to at what time she had again reached Dilipbhai Sheth's factory, but there was still light at that time.

165.29 The witness has stated that at the relevant time, she had given the names of her missing family members. Her paternal aunt had taken her to give the names of her children and address at the camp. On that day, she had only given the

names of the missing persons from her family at the camp. The witness has admitted that at the camp, she had met Shri Ehsan Zafri's daughter. The policemen present there had told her to go with the lady to search for her family members. Her paternal uncle's son Mehboob had introduced her to Ehsan Zafri's daughter on that day.

165.30 The witness has admitted that on that day, she had gone with Ehsan Zafri's daughter in a police vehicle to search for her family members. At that time, she had not given the details of the incident to the policemen in the vehicle and had also not stated the details of the incident to Ehsan Zafri's daughter. The witness has admitted that she had gone with the police to Bapunagar, Juhapura, Saraspur, Vohra Na Roja Camp. The witness is not aware as to whether she had gone with Ehsan Zafri's daughter in the police vehicle for two – three hours.

165.31 The witness has stated that her younger brother Jainulabedin was also at the camp. When she went to the Civil Hospital with her husband and her brother, after she had met her daughter Shahjahan, she had met the doctor. She has admitted that she had not stated the facts regarding the incident to the doctor. She has admitted that for two months, she had not stated the facts regarding the incident to the doctor.

165.32 The witness has stated that she does not remember as to whether prior to 12.5.2002, she had stated the facts regarding the incident to the police or anyone else and has voluntarily stated that she was all the while crying and since

her daughter's physical difficulties were not being cured and were increasing, eventually she had to state these things.

165.33 The witness has denied that at the instance of the leaders of their community, she has deposed the facts as stated by her before the court.

165.34 The witness has admitted that she has stayed with her daughter Shahjahan and son Shahrukh at the Civil Hospital for two months and during this period, both her children were conscious.

165.35 The witness has admitted that when she reached their chawl, the people had left their chawl and had gone away. The witness has denied that at that time, she had seen a mob of two to three thousand people in their chawl. The witness was confronted with her statement dated 12.5.2002, wherein she is alleged to have stated that two to three thousand people belonging to the Chhara community had come in the form of a mob. In the opinion of this court, this part of the evidence of this witness is not admissible in evidence, inasmuch as, the witness is first put a question in cross-examination and is then sought to be contradicted in respect of the answer elicited by her previous statement.

165.36 Certain extracts of her statement dated 29.5.2008 recorded by the SIT are put to the witness in paragraph 56 of her deposition, wherein she has stated certain facts stated by her husband to her. However, this part of her statement has not been put to her to contradict any part of her evidence and therefore, is not admissible in evidence. The witness is

thereafter cross-examined with regard to the application, Exhibit-1253 made by her to the SIT.

165.37 The witness has admitted that she has no social or monetary relations with accused No.22 Suresh. She has admitted that she has identified Suresh for the first time before the court who has stated that since he used to visit their area, she knew him prior thereto. The witness has denied that as the organizers of the camp had given her in writing, she had falsely given Suresh's name in her statement and that she has deposed as taught by them. The witness has denied that on that day at the time when she was coming to the court, Suresh was shown to her and therefore, she could identify him.

165.38 To prove the contradictions and omissions as to her previous statements, the defence has cross-examined the concerned Investigating Officer/assignee officer who recorded her statement.

165.39 PW-293 Shri B.T. Karoliya, the assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 12.5.2002, wherein the witness had stated that about two to three thousand people belonging to the Chhara community had come to their chawl in the form of a mob.

165.40 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 29.5.2008. He has admitted that this witness had stated before him that she had gone to meet the leaders of the community and had asked

them to arrange for a vehicle or make some other arrangement for going to the Civil Hospital.). That the witness had stated before him that her police protection was continued and that at present, she has not received any threat. She is illiterate, but can understand Gujarati. Therefore, the Investigating Officer had examined her in Hindi and had explained to her in Gujarati and written down her statement.

165.41 SUBMISSIONS: The learned counsel for the appellants have pointed out that this witness is the sister of Jainulabedin. It was submitted that this witness has stated that at about 9:00 to 9:15, when she had gone to her work place, no crowd had gathered on the road. She even says that while she was returning back with Dilipbhai and Kalubhai, she did not see any mob towards Krushnanagar. She has stated that even from the S.T. Workshop when she had gone to her chawl, to house No.3, Hussainnagar, she did not meet any mob and even as per her say, she was moving inside the chawl. She came out on the highway and went to the S.R.P. Quarters, but she had no occasion to meet anyone or see anything. It was submitted that the evidence of the witness creates a real doubt about her presence there and the story that she is telling.

165.42 Referring to the contents of paragraphs 10 and 11 of her examination-in-chief, it was submitted that in such a situation, she could not have seen anything as it was not safe to be there. It was submitted that if the evidence of the witness is seen together, the contents of paragraphs 10 and 11 are not believable that she could stand there at the S.T. Workshop wall and watch. Referring to the contents of

paragraph 12 of her examination-in-chief, wherein she has stated that she was standing behind Suresh Chhara, it was submitted that it was not possible for this witness to stand behind Suresh. Referring to paragraph 53 of her cross-examination, it was pointed out that the witness has stated that the people in the mob were in front of her, despite which, she could not identify anyone. It was submitted that she could not have reached the S.R.P. Quarters as there was a mob there. It was submitted that the submission of the witness that she went from Uday Gas Agency to S.R.P. and came back to the Ice Factory, is not probable. It was submitted that this witness is, therefore, not a credible witness and no part of her evidence can be used to establish the charge against the accused.

165.43 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has deposed that she had seen accused No.22 Suresh Chhara in the mob at 4:00 p.m. At 4:00 p.m. looting was going on and at that time people were being burnt and there were incidents of arson. It was submitted that the evidence of this witness is relevant for the purpose of proving that in the evening also there were riots and in the mob she had spotted Suresh with a stick and she has identified him in the court. It was contended that so far as Suresh is concerned, she is a credible witness and nothing adverse has been elicited in her cross examination about her statement before the police, and therefore, she is a believable witness.

165.44 ANALYSIS: This witness was not present at the scene of offence throughout the day. She had gone to her

workplace and was dropped near the S.T. Workshop by her employer together with her colleague Kallubhai. As per the testimony of the witness they went towards their chawl and saw her house and rickshaw burning. As there was a lot of public, they remained near the S.T. Workshop. She saw the mobs rioting and looting and in the mob she saw accused No.22 Suresh Chhara with something like a stick in his hand. She claims to have seen two dead bodies, one of which was of their neighbour Mullaji's handicapped son. In the mob which she had seen, Guddu Chhara, Bhavanisingh and Suresh committing loot. In her cross-examination, it has come out that they had not met any mobs, for the reason that the mobs had advanced towards the inner lanes.

165.45 In the cross-examination of this witness, no omission or contradiction has been brought out as to her statement dated 12.5.2002. Therefore, the witness is consistent insofar as the version given by her regarding having seen Suresh in the mob which was committing loot around 4:00 p.m. in the afternoon.

165.46 This witness's daughter Shahjahan and her son Shahrukh have sustained serious burn injuries in the incident and her daughter Noorjahan was killed in the incident near the water tank. Her sister-in-law Saleha and her daughter Muskan and son Subhan have also died in the incident. This witness has not seen those incidents and her testimony is relevant only to the extent she has testified against accused No.22 Suresh Chhara. The witness comes across as a credible witness and her testimony can be relied upon for proving the charge against accused No.22 Suresh Chhara to the extent stated by

her.

166. **PW-182 Bhikhabhai Habibbhai Mansuri**, aged 29 years, has been examined at Exhibit-1259. This witness has deposed that he is residing at *Ektanagar* since the last five years. In the year 2002, he used to reside at *Lane No.2, Hussainnagar, Naroda Patiya*. His native place is Village Sahada, District Nandurbar, Maharashtra.

166.1 In the year 2002, he was residing with his wife Ruksanabanu, daughter Tabbasum, sons Junaid and Shoaib, and his sister Rani as well as his parents. When he was residing at *Naroda Patiya*, he was working in the garage belonging to Sardar Manjitsingh, situated at Noblenagar.

166.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh. He had not gone to his workplace and was at home. On that day at around 9:00 to 9:30 in the morning, Bajrang Dal, Shiv Sena and the Hindu mobs with trishuls, swords etc., came on the road from the direction of Krushnanagar and Patiya.

166.3 At that time, his sister Rani had gone to the Noorani Masjid and he had gone to fetch her. When he went on the road, he saw the mob.

166.4 In the mob, he had seen **Guddu Chhara (deceased), Haresh Chhara (A-10)** and **Naresh Chhara (A-1)**. The people in the mob were pelting stones on the Noorani Masjid as well as at their people. They were shouting slogans like "*Jay Shri Ram*", "*Kill, cut the Muslims*". He took his

sister Rani from the madressa of the masjid and went home. He had felt that in a little while, the situation would calm down, and hence, he went home and waited there for some time. However, the situation did not become peaceful, and hence, he locked his house as well as his parents' house. He took his entire family with him to Lane No.4, Hussainnagar and hid in a two storeyed house there.

166.5 In the same house in which he was residing, his parents used to reside in the anterior part.

166.6 From the terrace, he had seen **Bhavanisingh** in the mob. The people in the mob were vandalizing and looting and were burning the houses belonging to Muslims. Thereafter, at around 1:30 at night, a police vehicle came, whereupon, they came down from the terrace and were taken to the Shah Alam camp in the police vehicle. They stayed at the Shah Alam camp for around five months.

166.7 While he was at the Shah Alam camp, the police had recorded his statement. His own house was looted in the accident. The SIT people had recorded his statement at Naroda Patiya.

166.8 The witness has stated that **Bhavanisingh** and **Guddu Chhara** have passed away and he can identify **Naresh Chhara** and **Haresh Chhara**. The witness has thereafter correctly identified accused No.10. Accused No.1 had filed an exemption application, which was granted and hence, he is deemed to be identified.

166.9 CROSS EXAMINATION: In the cross-examination of this witness, he has stated that he was residing at Hussainnagar about fifteen years prior to the incident. The witness has admitted that till date, he does not know as to where the offices of Shiv Sena and Bajrang Dal are situated and has admitted that prior to the Naroda incident, he had not seen any workers of Bajrang Dal and Shiv Sena. The witness has stated that in his deposition, he has stated that on that day, there were workers of Bajrang Dal and Shiv Sena for the reason that they had trishuls and swords in their hands.

166.10 In his cross-examination, it has come out that his sister Rani used to go to the madressa for learning since the last one month. The witness has admitted that in his statement dated 13.5.2002 recorded by the police, he has not stated the name of the owner of the two storeyed house on the terrace of which he had stayed. The witness has admitted that in the card which was given to them at the camp, details regarding their name, surname, etc. were written down. The witness has admitted that he had made an application through the camp people on 7.3.2002 which was addressed to the Police Commissioner. The witness has denied that such application was written in the presence of leaders of the camp and has stated that he has signed the application in Hindi. The witness has identified his signature on the document shown to him and has admitted that in the said application, he has not named any of the accused named by him in his examination-in-chief. The witness has voluntarily stated that when the application was made, only seven to eight days had passed since the incident and at that time, the situation was very tense, so he had not given such names and had thereafter given those

names.

166.11 The witness has admitted that the printed facts on the application were already written prior thereto. The application is read over to the witness and he had stated that it is his application. The witness has identified his signature below the Loss and Damage Analysis Form which is annexed to the application. The application is produced with a purshis Exhibit-1260. The application is exhibited as Exhibit-1261. The witness has stated that he does not remember as to who had filled in the details in the application Exhibit-1261. He has admitted that before the SIT, in his statement dated 18.6.2008, he had not stated that he had not named the accused in his application Exhibit-1261 because the situation was tense and for the reason that the SIT people had not asked him about it.

166.12 The witness has stated that he does not know that in May, 2002, the leaders of the Muslims of Hussainnagar had convened a meeting in which it was decided that the witnesses would state the names which are given to each of them in their statements before the SIT. The witness has denied that he has not seen the accused named by him in his examination-in-chief and that he is deposing as per the tutoring by the leaders of his community. Many questions have been put to the witness as regards the time when his sister used to go to the madressa, etc.

166.13 The witness has admitted that while he was standing at the road, there was stone pelting. He has stated that he has not pelted any stones, but has admitted that some

of the Muslims standing near him had pelted stones. He has stated that at this time, the stones which were being pelted by the mob on the opposite side, had not injured him. The witness has voluntarily stated that stone pelting was started first by the Hindu mob.

166.14 The witness has admitted that before he reached there, there was no stone pelting. About ten to fifteen minutes after he reached the spot, stone pelting had started. Thereafter, he had not gone home and had stayed there till 12 o'clock. Thereafter, he has stated that he, together with his family, had stayed inside his house till 12:30. The witness has admitted that as long as he was in the house in Lane No.4 of Hussainnagar, no person in the mob had come and caused him any injury. The witness is sought to be contradicted as to his statement dated 13.5.2002, namely, that he has not named accused Hareesh Chhara in his statement before the police. The witness has voluntarily stated that he had given such name, but the police had not written it down. In his cross-examination, it has come out that he had hidden on the terrace of the two storeyed house at Hussainnagar and that there were many other people with him on the terrace. They were all sitting quietly on the terrace and no one on the terrace was talking. The witness has voluntarily stated that they were all under tension and that they had gone on the terrace out of fear, to save their lives. The witness has admitted that if any person in the mob had seen him, they would have killed him.

166.15 PW-293 Shri B.T. Karoliya, the assignee officer who had recorded the statement of this witness has been cross-

examined by the defence to prove the contradictions and omissions as to such statement. The assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that this witness has not given the name of accused Haresh Chhara (Accused No.10) in the statement recorded by him. He, however, has stated that people belonging to the Chhara community were in the mob, which was damaging and setting things on fire.

166.16 SUBMISSIONS: The learned counsel for the appellants submitted that seven or eight days after the incident, the witness had given a written application in which he had not named any accused and that the witness has admitted that he has subsequently given the names of the accused. It was pointed out that even in his statement dated 13.5.2002, the witness has not named accused No.10 Haresh Chhara. It was submitted that it was only for the first time on 18.6.2008, when his statement came to be recorded by the SIT, that the witness had named accused No.10 Haresh. It was submitted that thus, this witness has added names stage-wise, namely, initially in his application he has not named anyone; thereafter in his statement dated 13.5.2002, he has referred to Guddu Chhara and Naresh Chhara and thereafter, before the SIT, he has added the name of Haresh Chhara.

166.17 Referring to the contents of paragraph 25 of the deposition of the witness together with the contents of paragraph 8 thereof, it was pointed out that in his examination-in-chief, he has stated that he had taken his sister Rani from the madressa in the masjid and had gone home,

whereas in his cross-examination, it has come out that he had found his sister Rani crying at the corner of the S.T. Workshop where at present there is a police chowky. It was submitted that therefore, it is doubtful as to whether or not, the witness had at all gone on the road and that it appears that the witness has just created a story of his sister being at the madressa and that he had no occasion to see any accused on the road. It was pointed out that the witness, in his examination-in-chief, has stated that from the terrace, he had seen Bhavanisingh in the mob which was damaging and looting and burning the houses of the Muslims, to submit that the witness has stated in his cross-examination that he was hiding, and therefore, he could not have seen anything. It was submitted that the version given by the witness, therefore, does not inspire any confidence. It was submitted that the witness has not recognized any person in the mob and subsequently after going to the camp, he has given these three names, therefore, such a witness cannot be relied upon as his evidence cannot be said to be unimpeachable.

166.18 ANALYSIS: From the testimony of this witness, it emerges that two statements of the witness have been recorded, one on 13.5.2002, by the then investigating agency, and the other on 18.6.2008, by the Investigating Officer, SIT. Prior to the first statement, the witness had given an application dated 7.3.2002, wherein he had not named any accused. However, in the statement recorded by the police, he has named all the other accused except accused No.10 Haresh. Insofar as accused No.10 Haresh is concerned, his name has been stated for the first time before the SIT on 18.6.2008. It is the case of the witness that though he had

named Haresh before the police, the police had not recorded it. In the opinion of this court, having regard to the fact that the police have, in fact, recorded the names of the other accused, there is no reason for the police not record the name of accused No.10 Haresh while recording his statement. Therefore, the submission that though, before the police, the witness had named the accused, they had not taken it down, does not merit acceptance.

166.19 However, to the extent he has named accused No.1 Naresh Chhara and the other deceased accused, the witness is consistent qua his earlier statement recorded by the police, the statement recorded by the SIT and his deposition. However, at the first instance when he had lodged a complaint together with the Loss and Damage Analysis Form, the witness has not named any accused. According to the witness, since the situation was very tense at that time, he had not named any accused in his application. Considering the fact that the witness has been consistent in his first statement recorded by the police as well as in the statement recorded by the SIT and in his deposition, the witness appears to be credible. Nonetheless, considering the fact that he had not named the accused in his complaint, the court would look for corroboration to the testimony of this witness for the purpose of convicting the accused named by him.

166.20 In the cross-examination of the witness, a discrepancy has been brought out and proved, to the effect that while he had stated that he had brought his sister from the madressa in the Masjid and returned home, in his cross-examination, it has come out that he had found his sister

crying at the corner of the S.T. Workshop. In the opinion of this court, this discrepancy in the testimony of the witness cannot be said to be so material a contradiction, so as to totally discredit the testimony of the witness.

166.21 The testimony of this witness would help the prosecution in proving the charge against **accused No.1 Naresh Chhhara**, subject to his testimony being corroborated by some other witness.

167. **PW-183 Basirbhai Usmanbhai Shaikh**, aged 32 years, has been examined at Exhibit-1263. This witness has deposed that he is residing at *Ektanagar* since the last seven years. In the year 2002, he used to reside at *Lane No.6, Hussainnagar, Naroda Patiya*, together with his family comprised of his wife, his two daughters, his two brothers, etc.

167.1 His native place is *Gulbarga, Karnataka State*. In the year 2002, he used to work in a factory.

167.2 The incident took place on 28.2.2002. On that day, he was on night duty. After his work hours, at 7 o'clock, he had returned home and went to sleep. At around 9 o'clock in the morning, he learnt that mobs have come to their chawls, and hence, he went out and saw that there was a mob. He had come out on the highway and seen that there were mobs at the Noorani Masjid, Krushnanagar, and on all four sides. This mob was pelting stones. The people in the mob were pelting stones at their people. In view of the stone pelting, he returned back to his chawl and took his wife and children and went to Gangotri Society.

167.3 In this mob, he had seen **Sahejad Chharo (A-26), Guddu Chharo, Bhavani (both deceased)** and **Hira Marwadi (A-42) and Guddu Chhara (deceased)** were holding swords in their hands.

167.4 At that time, he had guests from Karnataka at home as his sister Banubibi's son was to get married. The guests were also with him on that day. They went towards Gangotri Society, at which point of time, his family members and the guests had got separated. However, his wife and children were with him.

167.5 They went to the terrace of a house in Gangotri Society, where he, his wife and children had stayed till 11:30 at night. Thereafter, a police vehicle came and took them to the Shah Alam camp.

167.6 On the day of the incident, the people in the mob had vandalized his house and had caused damage. The guests who had come to his house and had got separated from them, had later met him at the Shah Alam camp. He stayed at the Shah Alam camp for around eight to nine months.

167.7 The police had come to the Shah Alam camp to inquire about the incident. The witness has deposed that at present, Bhavani and Guddu Chharo are dead and he can identify Sahejad and Hira Marwadi. The witness has, accordingly, identified both Hira Marwadi (A-42) and Sahejad (A-26) correctly.

167.8 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that on 27.2.2002 when he went for his job, the situation was normal and on 28.2.2002, when he returned from his job at 7 o'clock in the morning also, the situation was normal. The witness has admitted that he ordinarily goes through the road on the side of the S.T. Workshop.

167.9 The witness has admitted that on the previous evening when he went for his job, he had seen policemen on the road near the S.T. Workshop. The witness is cross-examined with regard to the topography of the area. In his cross-examination, it has come out that the time of 9 o'clock stated by him is an approximate time and that he had not seen the watch and it might be around 9:00 to 9:15.

167.10 The witness has admitted that while he was coming out towards the entrance of the chawl, the people from the chawl were coming running from the opposite side and that these people had told him not to go outside as there was danger to life. He has admitted that despite this, he was not afraid and had gone. He has admitted that when he reached near the corner of the S.T. Workshop, stone pelting was going on. He has admitted that he saw this while standing at the corner of the chawl.

167.11 The witness has admitted that like him, other Muslim people were also standing at the corner of the chawl and that the people from all the chawls were standing there. The witness has voluntarily stated that all of them had come to see what was happening. The witness has admitted that they

had pelted stones in opposition and that in the stone pelting, he was not injured by any stone. The witness has admitted that his surname is Shaikh and not Saiyed. Such suggestion appears to have been put to him in view of the fact that in his sole statement dated 13.5.2002, his surname is shown to be Saiyed.

167.12 In the cross-examination of this witness, it has further come out that he had stood at the corner of the S.T. Workshop where stone pelting was going on for about fifteen minutes and during that time, he had not seen any person being injured by bullets. The witness has admitted that there were a lot of people on the road and that there may be around twenty to twenty five thousand people. He has admitted that the mob was shouting a lot due to which, there was a lot of commotion and that in such commotion, one could not hear what anyone is saying.

167.13 In his cross-examination, it has come out that he had taken his wife and children who were standing outside and immediately gone away. At that time, it was around 11 o'clock in the morning. From near his chawl, they had gone straight to Gangotri Society through the S.T. Workshop road. The witness has admitted that after going to Gangotri, he had hidden on the terrace of someone's house. He has admitted that other Muslims were also hiding on the terrace and that the people sitting on the terrace were sitting in such a manner that nobody could see them, and that till the police vehicles came at night, they were sitting and hiding in this manner.

167.14 The witness has admitted that till the police came

and took them, they could hear the sounds of the mob and that on account of the sounds of the mob, out of fear, they remained sitting and hiding.

167.15 The witness has admitted that from the time he left his house till he reached Gangotri Society, he had not seen any incident and that till the police came to take them from the terrace of Gangotri Society, he had not seen any incident. He, however, has stated that he had seen the mob.

167.16 In the cross-examination of this witness, it has come out that Hira Marwadi has a house in Hussainnagar and that his father had constructed a house adjoining Hira Marwadi's house. The witness has admitted that first Hira Marwadi's house was constructed and that there was a common wall between Hira Marwadi's house and the house which his father had constructed. The witness has stated that he does not know that Hira Marwadi had asked his father that since he had constructed his house first in point of time, he should pay him half the costs. The witness has voluntarily stated that he does not know about any talk between Hira and his father, but knows that his father has paid half the cost of the wall. A suggestion is sought to be put to the witness that on account of the cost of the wall and rain water pipe, he was wrongly implicating Hira Marwadi. In his cross-examination, it has come out that he had gone to the second lane of Gangotri Society, where there is a temple. In his cross-examination, it has further come out that Sahejad's house was in the same line as his house and that there was a temple in Sahejad's house. He has admitted that Sahejad used to perform *puja aarti* at his house in the morning, evening and afternoon and lot of people

used to come to his house for *puja aarti*. The witness has admitted that the people used to loudly recite *puja aarti* and has denied that the Muslims did not like this and hence, he, his father and other Muslims had threatened Sahejad to stop the *aarti*, due to which, though he had not seen Sahejad, he was falsely implicating him.

167.17 The witness has admitted that in his statement dated 13.5.2002, he has not stated that Guddu and Hira Marwadi had swords in their hands. He has admitted that the accused persons whom he had named were standing in the mob. The witness has admitted that at night, he had seen Hira and Sahejad near their house. The witness has voluntarily stated that they were dancing. He asked them as to why they were doing so and they told him that now, they did not have any defence. The witness has admitted that when he saw Hira and Sahejad, they were sitting near their house at night.

167.18 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has named four accused, namely, Sahejad (A-26), Guddu, Bhavanisingh and Hira Marwadi (A-42). It was submitted that the witness has stated that Guddu and Hira Marwadi had swords in their hands. It was submitted that both Sahejad and Hira Marwadi are local residents residing in Hussainnagar. Hira Marwadi is the next door neighbour of this witness and Suresh/Sahejad was also residing in the same area and the witness had an axe to grind against both of them as suggested in the cross-examination. It was submitted that the role attributed to the accused is that Hira Marwadi had a sword. Referring to the cross-examination of the witness, it was pointed out that the witness has

admitted that he had not stated before the police that Guddu and Hira Marwadi had swords in their hands. It was further stated that the witness has admitted that he had seen the named accused standing in the mob. It was pointed out that in paragraph 35 of his cross-examination, it has come out that at night, Hira and Sahejad were at home and were dancing and had told him that now, they had no way to escape which shows that the witness had an axe to grind against them. It was submitted that in any case, there is no attribution except for their presence in the mob. It was further submitted that according to the witness, he had hardly stayed on the road and that after seeing the mobs, he had immediately gone back. It was submitted that the witness does not refer to any attack on the Noorani Masjid and burning of shops which the other witnesses say, which creates a doubt about his presence. It was submitted that no overt act is attributed so far as Sahejad is concerned and he does not attribute a weapon and does not say in which mob they were. It was submitted that it is doubtful as to whether this witness has seen these accused in the morning and whether he at all was present there. It was pointed out that the witness has stated that he saw the incident from the entrance of the lane from which it would not be possible to identify the accused. It was submitted that the witness has admitted that the mob was comprised of around twenty thousand to twenty five thousand people, and hence, it would be difficult to identify the accused in the huge mob. It was urged that the evidence of this witness is highly doubtful and cannot be termed to be unimpeachable evidence which inspires confidence.

167.19 Mr. Prashant Desai, learned Special Public

Prosecutor, submitted that this witness has named two accused in his first and only statement. He has narrated the whole incident. The witness is staying in the locality and there is no reason not to believe him.

167.20 ANALYSIS: As per the testimony of this witness, at around 9:00 in the morning, he came to know from the people of the chawl that a mob had come, whereupon, he came out on the highway and saw the mob. The mob was at the Noorani Masjid, Krushnanagar and on all four sides. The mob was pelting stones at the people of their community and in the mob he had seen Sahejad Chhara, Guddu Chhara, Bhavani and Hira Marwadi. Guddu and Hira had swords in their hands. Thereafter, at around 11:00 a.m. they had gone to the terrace of a house at Gangotri Society and had stayed there till the police came at 11:30 at night and took them to the Shah Alam Camp.

167.21 In the cross-examination of the witness, suggestions have been made to show that the witness had an axe to grind against the accused named and identified by him. Insofar as accused Hira Marwadi is concerned, the suggestion is that there was a common wall between their houses and the accused had asked his father to pay half the cost of the wall and that there was a dispute with regarding placing of a rain water pipe. In response to such suggestions, the witness has stated that he does not know about any talk between Hira and his father, but he knows that his father had paid half the cost. He has stated that he is not aware that his father had not agreed to put the pipe on the wall and has denied that in view of the above, there was any dispute between Hira Marwadi and

his father. In the opinion of this court, considering the nature of the dispute if any, it cannot be said to be of such a nature as to provoke the witness to falsely implicate the accused in such a serious matter.

167.22 Insofar as accused No.26 Sahejad Chhara is concerned, the suggestion made is that his house was in the same line as that of the witness and that he had a temple in his house and used to perform puja aarti three times a day and many people used to come to his house and perform puja aarti loudly. The witness has denied that the witness's father and other Muslims had threatened him to end the aarti, and therefore, he was falsely implicating the accused. In the opinion of this court, the reason sought to be put forth through the suggestion put to the witness to contend that there is false implication, does not appear to be such a strong reason so as to induce the witness to falsely implicate the accused in such a serious offence. However, through such cross-examination, the acquaintance with the accused has been established.

167.23 The witness has admitted that in his police statement he had not stated that Hira and Guddu had swords in their hands. However, there is no contradiction in the testimony of the witness insofar as their presence in the mob pelting stones at the Muslims is concerned. Therefore, the slight improvement in the testimony of the witness, to the extent he has stated that Hira Marwadi and Guddu has swords in their hands is not so material an omission, so as to impeach the credibility of the witness, more so, considering the fact that the witness is consistent as regards the names and the role of the accused, both, in his police statement as well as in his

deposition before the court. This witness is, therefore, consistent in his version and comes across as a credible witness.

167.24 Through the testimony of this witness, the prosecution has established the presence of **accused No.42 Hira Marwadi** and **accused No.26 Sahejad Chhara** in the mob pelting stones on the highway in the morning.

168. **PW-184 Mahammadhanif Yusufbhai Shaikh**, aged 40 years, has been examined at Exhibit-1271. This witness has deposed that he is a native of *Gulbarga, Karnataka State*. Since the last forty years, that is, since his birth, he is residing at *Pandit-ni-Chali*. In the year 2002, he used to do tailoring work of ready-made clothes at Gheekanta.

168.1 In the year 2002, his brother, his wife, his mother, his elder daughter and son were all residing together with him.

168.2 The incident took place on 28.2.2002, which was after the incident of 27th at Godhra. On that day, there was a call for bandh given by the Vishwa Hindu Parishad.

168.3 On that day, he was at home at 9:00 to 9:30 in the morning. At that time, there was a hubbub on the road. The mobs had come from Krushnanagar as well as Natraj Hotel side and both the mobs had merged.

168.4 The mob was attacking the Noorani Masjid. On that day, there was a police point in front of the S.T. Workshop. The people in the mob were attacking the Muslims.

168.5 The people in the mob had pipes, swords and other weapons in their hands. In the mob, he had seen **Kishan Korani (A-20) and Manoj Sindhi (A-41)** firing at the Muslim people.

168.6 He had also seen **Naresh Chhara (A-1), Haresh Chhara (A-10), Sahejad Chhara (A-26), Murli Sindhi (A-2), Ashok Sindhi Panvalo (A-45), Suresh Chhara (A-22), Bipin Autowala (A-44), Bhavani's son (A-49)**, whose name is not known to him. He knows all of them. All of them were instigating the mob and were attacking the Muslims.

168.7 At that time, the police lobbed tear gas shells. Kishan Korani and Manoj Sindhi snatched a gun and fired, whereas others whose names he has already mentioned had pipes, swords, dharias, etc. with them.

168.8 In this firing by Kishan and Manoj, a youth by the name of Abid died. All of them hid in the lane and the number of people in the mob started increasing. He went towards the interior side of Jawannagar near the S.R.P. Quarters compound wall. When he reached there, it was around 12 o'clock in the evening.

168.9 Since he did not find his family there, he was very frightened and hid there on the same spot for around two to three hours. He had hidden on a terrace of Gangotri Society. Initially, he was standing near the S.R.P. Quarters compound wall. Thereafter, he had gone to a terrace in Gangotri Society where he had hidden. He hid there till 6 to 7 o'clock and

thereafter, escaping the notice of everyone else, with great difficulty, he went inside the S.R.P. Quarters because at that time, nobody was permitted to go in. Thereafter, he had stayed at the S.R.P. Quarters till 5 o'clock in the morning of the next day.

168.10 On the next day at 5 o'clock, the police vehicle came and he went to the Shah Alam camp, where he stayed for around three to four months. While he was at the Shah Alam camp, the police had recorded his statement with regard to the incident. Thereafter, the SIT had also recorded his statement.

168.11 His house at Pandit-ni-Chali was looted and the entire house was burnt.

168.12 The witness has stated that he can identify all the persons whom he has named and has, accordingly, identified Murli Sindhi (A-2), Haresh (A-10), Sahejad (A-26), Naresh (A-1), Manoj (A-41), Suresh (A-22), Bhavani's son (A-40), Kishan (A-20) and Bipin (A-44). The witness, however, failed to identify Ashok Sindhi alias Panwala, though he was present before the court.

168.13 CROSS EXAMINATION: This witness, in his cross-examination, has admitted that his first statement was recorded on 12.5.2002 and his second statement was recorded on 14.9.2008. The witness has admitted that his statement dated 12.5.2002 was recorded while he was at the camp and his statement dated 14.9.2008 was recorded by the SIT at Naroda Patiya. At Patiya, the witness was called to a school in

Jawannagar. The witness has admitted that he had not made any application or written any letter to the SIT to record his statement. He has admitted that when he went to the SIT for recording his statement, other people were also present like him. The witness has denied that the leaders of the Muslim community were present at the school together with the SIT people.

168.14 In his cross-examination, the witness has stated that his house in Pandit-ni-Chali as well as the lane did not have any number. The witness is cross-examined with regard to the owner of the house in which he was residing. The witness has denied that in his statements dated 12.5.2002 and 14.9.2008, he has not stated that on the day of the incident, at 9:00 to 9:30 in the morning, he was at home. The witness has admitted that in both his statements, he has not given the number of his house and the number of the lane, because in Pandit-ni-Chali, there are no house numbers and lane numbers. The witness has admitted that he had not made any application to any Government Department in connection with his house having been burnt. He has stated that he had gone for drawing the panchnama together with the police. It has further come out that the panchnama of his house was drawn about one and a half months after his statement was recorded. He has admitted that in the context of his house being burnt, he had received Rs.15,000/- as compensation from the Government. The witness has admitted that till date, he is provided police protection. The witness has admitted that when the SIT recorded his statement, on that day his statement dated 12.5.2002 was read over to him. The witness is cross-examined with regard to the topography of the area.

168.15 In his cross-examination, it has come out that on that day, he had seen two mobs, one from Krushnanagar and another from Natraj and both had merged. He has stated that he cannot specifically say as to whether he had seen both the mobs at 10:00 to 10:30 in the morning. The witness has admitted that on that day, he had come out on the road through the S.T. Workshop road. The witness has admitted that when he came out, he had stayed there for half an hour to one hour. He has admitted that when he first saw both the mobs, they were separate and has voluntarily stated that thereafter, both had come together. He has admitted that as soon as he went on the road, he had seen both the mobs. The witness has also admitted that the people in the mob had tied saffron bands on their foreheads. The witness is not aware as to what kind of clothes the people in the mob were wearing. He has stated that he has not seen that the people were wearing shorts and undershirts and had tied black cloths around their faces. The witness has voluntarily stated that he had seen the mob for one to two hours and that he had hidden in the lane and seen them. That he was watching from the line of the S. T. Workshop. The witness is extensively cross-examined with regard to the number of people in the mob, direction from which the mob had come, the kind of clothes the people were wearing, regarding pelting of stones by the mobs and by the Muslims in defence, etc.

168.16 The witness has admitted that he had stayed there for about one and a half to two hours and had thereafter, gone to Jawannagar. He has stated that he had seen the accused named by him before the court on the open ground that near

the S.T. Workshop. They were all standing opposite the S.T. Workshop. He has admitted that they were standing opposite the S.T. Workshop gate. The witness has admitted that he had not seen the accused near the Noorani Masjid. He has admitted that in the entire day, he had seen the accused only once and except for that, he had not seen them.

168.17 The witness is confronted with his statement dated 12.5.2002, to the effect that he has stated therein that upon being asked with regard to the communal riots on 28.2.2002, he has stated that in the morning at around 9:30, a mob of around ten thousand people from the side of S.R.P. as well as a mob of ten thousand from the direction of Natraj Hotel were coming on the road towards the Noorani Masjid, wherein in the mob from the direction of S.R.P., Bipin Autowala and Guddu Chhara, who resides near Jawannagar as well as his brothers Naresh Chhara and Haresh Chhara were present. They were taking the leadership from the S.R.P. side, and from the Natraj side, Bhole Nath Pan-gallawala Ashok Sindhi, Bhavanisingh Chharo, Manoj Sindhi, who is a builder and Sahejad Chharo, were taking the lead. The witness has voluntarily stated that in the statement recorded at the camp, some part is correct and some part is incorrect. Thereafter, everything was stated before the SIT.

168.18 The witness has stated that because he is not educated, when for the first time his statement dated 12.5.2002 was read over to him at the SIT, he came to know that certain facts which he had stated, have not been taken down. He has stated that he came to know from the SIT that certain facts have not been written down by the police. He has

voluntarily stated that the police were writing down many things on their own.

168.19 The witness has admitted that the fact regarding Kishan Korani and Manoj Sindhi having snatched a gun from the hands of the police and fired, had been stated by him in his statement dated 12.5.2002, but the police had not written it down and that Murli and Kishan were present there on the day of the incident, but though he had stated so, the police had not written it down. The witness has denied that he has not stated the name of Murli Sindhi in his statement dated 12.5.2002.

168.20 The contents of the last three lines of paragraph 7 of his examination-in-chief, the contents of the second and third lines of paragraph 9 of his examination-in-chief and the contents of the first two lines of paragraph 10 of his examination-in-chief are read over to the witness, wherein there is a reference to Kishan Korani and Manoj having fired, to the effect that he has not stated these facts in his statement dated 12.5.2002, which the witness has denied. The witness has denied that before the SIT, he has stated that on the day of the incident, the Muslims had resorted to cross stone pelting. The witness has denied that in his statement before the SIT, he has stated that Abid had died in police firing. The witness has voluntarily stated that he had stated that Abid had died due to firing by Kishan Korani and Manoj Sindh as stated in paragraph 46 of his deposition.

168.21 The witness is confronted with his statement recorded by the SIT, however, this part of the statement is not put to him to contradict any part of his evidence and is,

therefore, not admissible in evidence.

168.22 The witness has admitted that in his statement recorded by the SIT, he has stated that at that time, the police had resorted to firing and the police had released tear gas only at the people belonging to their community and had fired at them wherein four to five Muslims had been injured.

168.23 The witness has denied that in his statement, he had stated that a person named Abid was injured by a bullet and had died. The witness has voluntarily stated that he has not stated that a person named Abid died in police firing, but he had stated that he died in firing by Kishan and Manoj. The witness has denied that he has not given the names of Suresh Chhara and Bhavanisingh's son in his statement dated 12.5.2002.

168.24 The witness has admitted that on the day of the incident, at around 12 o'clock, he had reached near the S.R.P. Quarters compound wall. He has admitted that he had stayed there for one to one and a half hours. He has admitted that from there, he had straightaway gone to the terrace of Gangotri Society and hidden there. He has admitted that the terrace of Gangotri Society where he went, is adjoining the S.R.P. compound wall. He has also admitted that he had stayed on the terrace for around two to three hours on that day. He has denied that till the police came, he was on the terrace. The witness has voluntarily stated that thereafter, he had gone inside the S.R.P. Quarters at around 6 o'clock in the evening. The witness has stated that his brother and his brother-in-law had come with him from Gangotri to the S.R.P. Quarters. He

has denied that when they had gone to the S.R.P. Quarters, nobody had tried to stop them and has voluntarily stated that they were not permitted to go inside; however, they had stealthily gone inside.

168.25 The witness has denied that on that day, he had not gone from his house to the road and has not seen any incident and has not seen any accused on the road. The witness has denied that as soon as the mob came near, he had straightaway gone to the S.R.P. Quarters. He has denied that in his statement before the police, he had stated that upon these people coming near, he had fled at around 11 o'clock and had gone near the compound wall of the S.R.P. camp and was standing there. The witness has denied that after fleeing from there, they had climbed on a terrace of Gangotri Society and had stayed there till 12 o'clock at night when the police vehicle came and took them to the relief camp. He has denied that in either of his statements, he has not stated that he had gone to the S.R.P. camp.

168.26 The witness has admitted that he has not stated the fact regarding his having seen the accused as well as regarding the firing prior to 12.5.2002. The witness has denied that in both his statements, he has wrongly given the names of the accused at the instance of the organizers of the camp and the leaders of their community.

168.27 In his cross-examination, it has further come out that he has studied up to the 3rd standard. He has stated before the police that he does not know Gujarati and has voluntarily stated that he had given his statement in Hindi. He

does not remember the name of the policeman or the officer who had recorded his statement.

168.28 In his cross-examination, it has further come out that he had stayed near the S.R.P. Quarters for one and half to two hours. During this period, no Hindu mob had tried to assault him. He has stated that from where he was standing, he had not seen any Hindu mob. He has admitted that thereafter, he had peacefully gone ahead. He has admitted that when he went ahead, no one had stopped him or assaulted him.

168.29 The witness has stated that he does not know as to how many sounds of firing he heard on that day. He does not specifically know as to who and how many people were injured in the firing, but he knows that about four to five people were injured. He has stated that in the police firing and tear gas, four to five people were injured. He has denied that there was a police point at the S.T. Workshop and has stated that there was a police point near the Noorani Masjid, opposite S.T. Workshop.

168.30 The witness has admitted that there was so much commotion on the road that nobody could hear what anyone was speaking and that he could not hear the sounds of slogans.

168.31 In his cross-examination, the witness has stated that he knows Manoj Builder and has voluntarily stated that he knows Manoj Videowala. He has stated that he does not know which buildings have been constructed by Manoj Builder. He

has stated that in his statement dated 12.5.2002; he has stated Manoj Sindhi who is a builder. He has admitted that he has not made any clarification regarding Manoj Builder before the SIT.

168.32 The witness has admitted that his statement recorded by the SIT was read over to him. He has admitted that before the SIT, he had stated that in his earlier statement, the police had not written down the names of Kishan Korani and Murli Sindhi and had written down only the name of Suresh Langda Chhara, other than that, he had not made any other complaint. He has admitted that he has not stated before the SIT that Manoj Builder and Manoj Videowala are one and the same person.

168.33 The witness has denied that with a view to falsely implicate the accused Manoj, Kishan, Suresh, Murli and Bhavani's son, at the instance of the people of his community, he had gone before the SIT to get his statement recorded. The witness has denied that he was one of the persons involved in burning Bipin Auto and with a view to see that Bipinbhai does not take any action against him and compromises with him, he had given his name in his statement.

168.34 To prove the contradictions and omissions in his previous statement, the defence has cross-examined PW-278 Shri R. B. Joshi, the assignee officer, who has admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness in his statement dated 12.5.2002 has not stated before him that on the day of the incident, he was at home at 9:00 to 9:30 in the morning.

The assignee officer has admitted that this witness had stated before him that upon his asking him about the communal riots that took place on 28.2.2002, he is stating that in the morning at 9:30, from the direction of S.R.P. a mob of about ten thousand people and from the direction of Natraj Hotel a mob of around ten thousand people, was coming on the road towards the Noorani Masjid, wherein, in the mob from the side of S.R.P. Bipin Autowala, Guddu Chhara who resides near Jawannagar as well as his brothers Naresh Chhara and Haresh Chhara were present and they were leading the mob from the side of S.R.P. and the mob which was coming from the direction of Natraj was being led by Bholenath Pan-gallawala Ashok Sindhi, Bhawanisingh Chhara, Manoj Sindhi, who is a builder and Sahejad Chhara. The assignee officer has admitted that this witness has not stated before him that Kishan Korani and Manoj Sindhi had snatched guns from the hands of the police and fired. That it has not happened that the witness has stated such facts but he has not written them down and that Murli and Kishan were present on the day of the incident, which the witness has stated to him, despite which, he had not written that down and that the witness had given the name of Murli Sindhi in the statement recorded by him.

168.35 The assignee officer has admitted that parts of paragraphs 7, 9 and 10 of the examination-in-chief which are read over to him, have been stated by the witness in the statement recorded by him, namely that in the mob he had seen Kishan Korani and Manoj Sindhi firing. They were firing on the Muslim mob. Kishan Korani and Manoj Sindhi had snatched the gun from the police. In the firing which was carried out by Kishan and Manoj in this manner, a boy named Abid had died.

The assignee officer has admitted that this witness had not named Suresh Chhara and Bhavani's son in the statement recorded by him. The assignee officer has further admitted that this witness has stated before him that these people were coming towards the masjid when he was standing near the paan galla in the lane next to his house and was watching. The assignee officer has further admitted that the witness has stated before him that upon this people coming near, they had fled from there and at around 11 o'clock they had gone near the compound wall of the S.R.P. camp and were standing there. He has further admitted that this witness has stated that they fled from there and climbed on the terrace of Gangotri Society and at around 12 o'clock upon the police coming, they took them in a police vehicle to the Shah Alam relief camp. The assignee officer has admitted that this witness has not stated the fact regarding Manoj Sindhi being a builder in the statement recorded by him. The assignee officer has further admitted that this witness, in his statement dated 12.5.2002, had stated that the reason for this incident was that on 27.2.2002, kar sevaks who were coming from Ayodhya in the Sabarmati Express Train were burnt alive at the Godhra Railway Station.

168.36 On a perusal of the cross-examination of the assignee officer, it is seen that hardly any part of the examination-in-chief is put to the assignee officer and that what was stated by the witness in his statement recorded by him, has through the process of cross-examination been brought on record, which is contrary to the provisions of section 162 of the Code which mandates that the statement recorded under section 161 of the Code, cannot be used for

any purpose except to contradict a witness. Therefore, unless any part of the police statement is used to contradict a witness, the question of proving the same through the testimony of the Investigating Officer would not arise.

168.37 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has given the names of five accused, viz., Kishan, Manoj, Murli, Suresh and Bhavani's son for the first time before the SIT and even out of them, he has referred to two of them as Manoj Builder and Bhavani's son, which creates a doubt about their identity with their full names being Manoj Videowala and Mukesh alias Vakil Ratilal Rathod. It was submitted that no test identification parade of these two accused has been carried out as to whether they are the same persons to whom the witness has referred.

168.38 It was submitted that as far as Kishan and Manoj are concerned, though they are named for the first time before the SIT, the witness has made an allegation that they had snatched a police rifle and fired from it which hit Abid and he had died. It was submitted that this allegation cannot be believed for three reasons. Firstly, because such allegation was not made before the police and was made only before the SIT; secondly, the allegation is vague, inasmuch as, it is not clear as to out of the two accused, who snatched the gun and fired; and thirdly, the fact regarding snatching of the rifle from the police has not been proved beyond reasonable doubt, nor is it supported by any cogent and convincing evidence of other witnesses, inasmuch as, almost all witnesses speak about Abid having received injury in police firing. Therefore, for the first time before the SIT, this witness has created this story to

implicate the accused by making allegations which are not supported by any credible evidence.

168.39 Insofar as the other accused are concerned, it was submitted that they are alleged to have been seen in the mob in the morning on the road, without any specific weapons being held and without any specific overt act being attributed to them. It was submitted that therefore, the allegations are too general in nature to be believed and relied upon. It was submitted that there are vital and important inconsistencies in the evidence of this witness and other witnesses which renders the evidence of this witness highly doubtful. There are improvements from stage to stage which are vital and important and an inference can be raised from this that he has improved his version from talks with other people, which he has included in his evidence before the court. It was submitted that therefore, this witness is not a credible or convincing witness and no reliance can be placed upon any part of his evidence.

168.40 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has not named five of the accused before the police. However, qua the other named accused, the witness is consistent and believable.

168.41 ANALYSIS: This witness has deposed that on the day of the incident, in the morning, he had seen Kishan Korani (A-20) and Manoj Sindhi (A-41) in the mob on the highway, firing at the Muslims. He has further deposed that he had seen Naresh Chhara (A-1), Haresh Chhara (A-10), Sahejad Chhara (A-26), Murli Sindhi (A-2), Ashok Sindhi Panwala (A-45), Suresh

Chhara (A-22), Bipin Autowala (A-44) and Bhavani's son (A-40) instigating the mob and attacking the Muslims. From the omissions and contradictions brought out in the cross-examination of the witness as to his statement dated 12.5.2002 recorded by PW-278, it emerges that the witness had not mentioned the fact regarding Kishan Korani and Manoj Sindhi having snatched guns from the police and fired from them, nor has he mentioned having seen Kishan Korani and Manoj Sindhi firing on the Muslim mob. Insofar as Kishan Korani (A-20) is concerned, the witness had not named him in his statement dated 12.5.2002. As regards, Manoj Sindhi, in his statement dated 12.5.2002, the witness had referred to him as Manoj Sindhi who is a builder.

168.42 In his statement dated 12.5.2002, the witness had also not mentioned the names of Suresh Chhara and Bhavani's son. Thus, out of the accused named by him before the court, the witness had not named Kishan Korani, Suresh Chhara, Murli Sindhi and Bhavani's son in his statement dated 12.5.2002. Moreover, he had referred to Manoj Sindhi as Manoj Sindhi who was a builder. Out of the accused named by him before the court, the witness has failed to identify Ashok Sindhi Panwala (A-45) in the court, though he was present on that day. Thus, when his statement came to be recorded by the SIT as well as in his deposition before the court, the witness has improved upon his earlier statement dated 12.5.2002 by naming Kishan Korani, Murli Sindhi, Suresh Chhara and Bhavani's son whom he had not named before the police.

168.43 From his cross-examination, it has come out that he

had seen the accused in the open ground in front of the S.T. Workshop and thereafter throughout the day, he had not seen them.

168.44 Having regard to the fact that the witness, in his statement dated 12.5.2002, had not named Kishan Korani, Murli Sindhi, Suresh Chhara and Bhavani's son and has named them for the first time after a period of more than six years before the SIT, it would be hazardous to rely upon the testimony of this witness to prove the charge against the said accused. Insofar as Manoj Sindhi (A-41) is concerned, the witness, in his statement dated 12.5.2002, had referred to him as Manoj Sindhi who is a builder and had not alleged that he had fired at the Muslims. In his deposition before the court, the witness has attributed the overt act of firing at the Muslim mob to Manoj Sindhi. Thus, apart from the fact that he had described the said accused as Manoj Sindhi who is a builder, the witness had attributed a totally new role to the said accused in his deposition, which is contrary to what has been stated by him in his statement dated 12.5.2002 as has been duly proved by the defence through the cross-examination of the witness and the concerned assignee officer. Therefore, the testimony of this witness cannot be relied upon for the purpose of proving the charge against Manoj Sindhi (A-41). Since the witness has failed to identify Ashok Sindhi Panwala (A-45) before the court, the testimony of the witness cannot be relied upon to prove the charge against the said accused. However, insofar as **Naresh Chhara (A-1)**, **Haresh Chhara (A-10)**, **Sahejad Chhara (A-26)** and **Bipin Autowala (A-44)** are concerned, the witness has been consistent regarding their

presence and the role attributed to them right from the beginning.

168.45 While there are certain improvements and minor inconsistencies in the testimony of this witness, by and large, the witness is consistent insofar as the above referred four accused and the role attributed to them. Under the circumstances, there is no reason to disbelieve the witness to the extent he implicates those accused.

168.46 Thus, through the testimony of this witness, the prosecution has proved the presence of Naresh Chhara (A-1), Haresh Chhara (A-10), Sahejad Chhara (A-26) and Bipin Autowala (A-44) in the mob in front of the S.T. Workshop on the day of the incident instigating the mob and attacking the Muslims.

169. **PW-185 Mahammadayub Sofilal Shaikh**, aged 32 years, has been examined at Exhibit-1275. This witness has deposed that his native place is *Gulbarga, Karnataka State*. He was residing in Ahmedabad since the last thirty two years. In the year 2002, he was residing in *Lane No.2, Hussainnagar, Naroda Patiya*.

169.1 In the year 2002, his brother, his brother-in-law and his sister-in-law and their son, were all residing with him.

169.2 At the relevant time, he was doing the casual electric labour work.

169.3 The incident took place on 28th day in the year 2002 and on the previous day, that is, on the 27th day, a train was burnt at Godhra and the incident took place on the next day. He does not remember the month.

169.4 On the 27th, he was doing wiring work in a house, when in the evening at about 6 o'clock, he came to know that a train had been burnt at Godhra. He had also learnt that on the next day, that is, on the 28th, there was a call for Gujarat bandh. Thereafter, on the 27th, he returned home from his work.

169.5 He and his brother were sitting in the mohalla till 12 o'clock at night and thereafter, he woke up at 7 o'clock in the morning on the day of the incident.

169.6 On the day of the incident, a pan cabin was to be inaugurated in their area. He had gone there with little children studying in the madressa. He had taken the children from the madressa to read the Quran Sharif. The pan cabin is situated in Lane No.6, Hussainnagar and the inauguration was at 9:30 in the morning.

169.7 After the inauguration, they were distributing sweets. At that time, a woman came running near them and told them that, *"All of you are concerned with the inauguration, whereas the mobs have come outside"*. Upon hearing this, he gave sweets to the children and thereafter, went on the road.

169.8 Upon coming outside on the road, he saw that there

were mobs near the S.T. Workshop and the S.R.P. Quarters. The people in the mob were pelting stones at the Muslims. The mob was also firing. They had stones and were also releasing tear gas.

169.9 The witness has further deposed that at the time of the incident, at present where the Naroda Police Chowky is situated there was a tree and two policemen were sitting near the tree. These policemen told the Muslims that they would reason with the people in the mob and nothing would happen.

170. A police jeep was standing in front of the mob. From the vehicle, the police started firing and also released tear gas. Their eyes became red due to the tear gas and there was a stampede. They sprinkled water in their eyes. At that time, it must have been around 9:45 in the morning.

170.1 The people in the mob had charged at the Muslim mohallas. They had swords, guns, etc. and also had packets of snacks in their hands. All the people in the mob were wearing saffron clothes. They were also wearing shorts and undershirts and were ransacking and looting. They were assaulting people and were looting the shops.

170.2 He had recognized four persons in the mob, viz., **Jaybhavani, Tiwari, Suresh Langdo** and **Guddu Chhara**. In this mob, Suresh Langda had a sword in his hand, Jaybhavani had a sword in his hand, Tiwari was telling them that arrangement has been made for the safety of Muslims and that they should come on that side. Tiwari was instigating the mob. Tiwari had firstly given support to the Muslims and thereafter,

he had called the mobs. There was a stampede in the incident. The witness himself was on the road.

170.3 Upon all this happening, he had sat for a little while at a temple in Pandit-ni-Chali, where he stayed till about 2:00 to 2:30. At 2:30, he had come out and had fled towards Hussainnagar. At Hussainnagar, there is a house with a high terrace. He had gone on the terrace and had sat there for some time. He was searching for his brother and had gone up to the terrace; however, he could not find his brother so he sat there. After about half an hour, he had felt thirsty. There was a water-tank on the terrace and hence, he drank water from it.

170.4 From the terrace he had seen in the S.T. Workshop compound people whom he did not know as to whether they were employees or from the mob, all of them were making rags and throwing them on the houses of Muslims, due to which their houses were catching fire. Thereafter, he had come down from the terrace.

170.5 Thereafter at about 3 o'clock in the afternoon, he went near his house in Lane No.2.

170.6 He had seen the mob assaulting and looting the Muslims in the lane. Upon seeing all this, he had run towards Gangotri Society. There was a mob near Gangotri Society also, where he had seen two persons, viz., Tiwari and Bhavani. At that time, it was around 4 to 5 o'clock. While he was running towards Gangotri, he did not feel safe, and hence, he returned to Lane No.4, Hussainnagar. When he was returning, **Suresh Langda**, who had a sword in his hand, had chased him. Since

Suresh Langda could not run as fast as he could, he could not catch him and he had escaped. While trying to run in this manner, he was injured with a rod lying on the road.

170.7 There were many Muslims on the fourth floor of Mansuri's house in Lane No.4 of Hussainnagar and he too went and hid there. At that time, it was around 6:45 in the evening. He stayed there with the other Muslims till 12 o'clock at night. At 12 o'clock, the police vehicles came and they took them to the Shah Alam camp.

170.8 Prior to his being injured with the rod, he had been injured with a stone on his head in the incident. He had suffered a terrible headache for approximately six months thereafter. He had taken treatment for the injuries sustained by him with the iron rod at the Shah Alam camp, where he stayed for approximately six months. Three to four days after they had gone to the camp, the police had come and told them that they wanted to carry out a survey of his house. He had gone with the police to his house and a survey was conducted and a panchnama of his house was drawn. In the incident, his house was badly damaged. At the relevant time, he had a water pump, fans as well as ornaments collected by him for his marriage, all of which were looted. The police had recorded his statement at the camp. From the camp, he had gone to reside at Ektanagar.

170.9 In the year 2008, the SIT had called him to Gandhinagar and had also recorded his statement.

170.10 He has learnt that Jaybhavani and Guddu Chhara

are dead and has stated that he can identify Tiwari and Suresh Langdo. The witness has thereafter correctly identified Tiwari (A-25) and Suresh Langdo (A-22).

170.11 CROSS EXAMINATION: This witness in his cross-examination has admitted that he was born at Naroda Patiya and has been residing at Hussainnagar since his birth. He has seen all the Muslim chawls in Hussainnagar as well as at Naroda Patiya. The witness has admitted that in all these chawls, majority of the people were Muslims from Karnataka and there were very few Muslims from Gujarat. All the Muslims from Karnataka used to get together on festivals and occasions. All the Muslims from Karnataka were their acquaintances and relatives.

170.12 In his cross-examination, it has come out that he had made an application regarding the loss suffered by him at the camp. The witness has admitted that one of his statements was recorded on 13.5.2002 while he was at the camp and another statement was recorded by the S.I.T. on 7.6.2008. The witness has been cross-examined regarding the manner in which he had made the application for loss and damage. In paragraph 43 of his deposition, the witness is read over certain parts of his statement recorded by the SIT; however, since this part has not been used for the purpose of contradicting any part of his evidence, it is not admissible in evidence.

170.13 In his cross-examination, it has come out that he had gone for the inauguration of the pan cabin of a person named Asif. He has admitted that Asif had come to his house on the day before the incident. The witness has stated that

after going to the madressa in the morning he had gone for the inauguration. This madressa is situated inside the Noorani Masjid. He had reached the madressa at 7:45 in the morning. About seven children from the madressa had come with him. He has admitted that he had set out from the Noorani Masjid with the seven children at around 8:00 to 8:30. He has admitted that he had crossed the road from the Noorani Masjid and had come to the chawls of Hussainnagar with the children. He had reached the panwala's shop at about 8:45 in the morning. Thereafter, he had carried out the inauguration ceremony and the children had read *kalmas* from the Quran. The children had read the Quran for about ten minutes, after which, sweets were distributed to everyone and the people who had gathered there started going home and at that time, that woman had come.

170.14 The witness has admitted that Hussainnagar Lane No.6 where the inauguration was held, is on the side of the national highway. The witness has admitted that at this time, till that woman had come and had told them, they were not aware what was going on, on the road. The witness has denied that after the inauguration, he had gone home. He has stated that he had straightaway gone on the road. He has admitted that at that time, there were no mobs near the Noorani Masjid and has voluntarily stated that there were mobs near the S.T. Workshop and were pelting stones from there. The witness has denied that at that time, the Muslims had gathered together and had come out and has voluntarily stated that there were about twelve to fifteen Muslims. The witness is confronted with his statement dated 13.5.2002 wherein he had stated that on 27.2.2002, the kar sevaks were burnt alive at Godhra due to

which, and in the morning, the Hindu mobs had come from Naroda Patiya to Krushnanagar on the road and under the impression that the people of the mob would attack the Muslim chawls, the residents of their chawl also gathered together and thereafter, at around 9:15, upon that mob having commenced pelting stones, all of them had also pelted stones in defence and in this manner, there was cross stone pelting in which he was injured on the head with a stone and had gone home; at that time, all the members of the family were present and after that, he had told his family members to go on the rear side towards Jawannagar-ni-Chali and thereafter when he came out again, the mobs had entered the houses in Chetandas-ni-Chali, Hukamsing-ni-Chali etc. and had started damaging them and were taking out the goods and burning them, after which, he had gone towards Hussainnagar-ni-Chali, where the Uday Gas shop is situated and had hidden on the terrace of a house; at that time, he was alone; after some time, when he looked towards the chawls from the terrace, he had seen that the mobs were comprised of people belonging to the Sindhi and Chhara communities and they were looting goods and articles; upon the police coming at night, under police protection, they were brought to the Shah Alam relief camp. The witness has stated that these facts have not occurred as stated in this paragraph. The police have written them down on their own. The witness has admitted that he had stated that all his family members have been found to be safe and sound in the camp and that he had met his brother.

170.15 In his cross-examination, the witness stated that Suresh Chhara lives in Chharanagar. The distance between Hussainnagar and Chharanagar is short. He has no social

relations with Suresh and he has no information about his family. He is not aware as to in which lane Suresh's house is situated. He has admitted that Suresh's wife is a Muslim. He is not aware as to whether Suresh's wife is a Muslim from Karnataka. The witness has denied that he used to work for some Khwajahussain. He has admitted that Khwajahussain has a daughter named Shahenaz who is a Muslim from Karnataka. The witness has stated that he knows that Shahenaz has married someone from Chharanagar. He has admitted that Shahenaz has married a Hindu Chhara. He has denied that since Suresh's wife is a Muslim and Shahenaz had married a Hindu boy, out of animosity, he had falsely given Suresh's name. The witness has admitted that he knows that Suresh is a lame and that he cannot run.

170.16 The witness has denied that after being injured by a stone, he had gone away and thereafter, he had not gone inside any Muslim chawls and that he had not gone on the terrace of Gangotri Society and that he had not gone near the SRP compound wall and he had not seen any accused in the incident and had not recognized them.

170.17 The witness has denied that at the instance of Raiskhan, Nazir Master, Mahammadmaharuf and other people of their community, he had gone to the SIT at Gandhinagar and at their instance, he had got his statement recorded at the SIT and that his actual statement was as stated by him at the camp. The witness has denied that at the instance of the leaders of his community, he was falsely deposing before the court. He has admitted that he does not know as to who had looted the goods from his house.

170.18 The witness has admitted that on the next day in the morning, till the occasion of inauguration of the cabin, the situation was absolutely normal. He had gone to the madressa alone, to fetch the children and had returned with them. He has admitted that after he brought the children from the madressa, the inauguration was done. He has admitted that when he went to fetch the children and returned with them, till then, the situation was normal.

170.19 The witness has stated that he has no idea as to how many Muslims were residing in their chawl. When he came on the road, stone pelting was going on. Thereafter, there was firing. He had stayed on the road for about half an hour after which, firing took place. He has admitted that he felt that if they stood outside, there was a possibility of losing one's life. He has admitted that despite this fact, till the police firing started, he was standing there. The witness has voluntarily stated that he was standing at a distance.

170.20 The witness has admitted that on the day of the incident, it had become dark at 6 o'clock in the evening, by then, he had reached the terrace of Gangotri Society. He has admitted that till he reached the terrace of Gangotri Society, he had not seen any incident and had not seen anyone hacking or killing anyone.

170.21 The contents of paragraphs 8, 9, 10 and 11 as well as the first line of paragraph 12 of his examination-in-chief are read over to the witness, to the effect that he has not stated such facts in his statement dated 13.5.2002. The contents of

the first four lines of paragraph 13; the first line of paragraph 14 and the third to the last line of paragraph 14 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts in his statement dated 13.5.2002, which he has denied.

170.22 The contents of paragraph 15; the first five lines of paragraph 16; the contents of paragraphs 17 and 18 and the contents of the first four lines of paragraph 20 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts in his statement dated 13.5.2002. The contents of first four lines of paragraph 21 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts in his statement dated 13.5.2002. The witness has denied the same.

170.23 The contents of the first three lines of paragraph 10; the contents of paragraph 11; and the contents of the first three lines of paragraph 12 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts before the SIT, the witness has stated that he had stated these facts, but the SIT may not have written them.

170.24 The contents of the first three lines of paragraph 13; the contents of the fourth line to the eighth line of paragraph 14; the contents of the first four lines of paragraph 19 and the contents of the first three lines of paragraph 20 of the examination-in-chief of the witness are read over to the witness, to the effect that he has not stated such facts in his

statement recorded by the SIT. A suggestion is made to the witness that there is no building with four floors in Hussainnagar, in response to which, the witness has stated that whether the building had three floors or four floors, he says that it was a high building.

170.25 In his cross-examination, it has come out that he has not come to know that Tiwari had given shelter to any Muslims in his house. The witness has denied that he has not seen any incident as stated by him in his examination-in-chief and that he has not seen the accused and that he is falsely deposing before the court.

170.26 To prove the omissions and contradictions as to his previous statement, the defence has cross-examined the concerned Investigating Officer who recorded such statement.

170.27 PW-307 S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.5.2002. He has admitted that this witness in his statement has stated that on 27.2.2002, the kar sevaks were burnt alive at Godhra due to which and mobs had gathered on the road from Naroda Patiya to Krushnanagar in the morning and people of these mobs had attacked their Muslims chawls and to protect them, the residents of their chawl had also gathered together and at around 9:15, upon stones being pelted by that mob, they too had retaliated by pelting stones and in this manner, cross stone pelting started, in which he was injured on the head with a stone and had gone home; at that time, all the members of his family were present at home after which, he had told his

family members to go to Jawannagar-ni-Chawl on the rear side and when he returned outside, the people in the mob had entered the houses of Chetandas-ni-Chali, Hukumasing-ni-Chali, etc. and had started damaging, taking out goods and burning them, whereafter, he had gone to a terrace of a house in Hussainnagar-ni-Chali which was towards Uday Gas Agency and had hidden there and at that time, he was alone and after a little while, upon looking towards the chawls from the terrace, the mobs which were comprised of Sindhis and Chharas, were committing loot and upon the police arriving at night, they were brought to Shah Alam under police protection. The Investigating Officer has admitted that this witness had not stated before him regarding any damage caused to his house. He has admitted that this witness in his statement has not named Bhavani.

170.27 The contents of paragraphs 8, 9, 10 and 11 and the first line of paragraph 12 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that all these facts have not been stated by the witness in his statement. He has clarified that the witness had stated that the Hindu mobs had gathered on the road from Naroda Patiya to Krushnanagar and since they were attacking their chawls, to defend themselves, the residents of their chawls had gathered together, have been stated by the witness. However, the other facts have not been stated by him.

170.28 The fourth line of paragraph 13 of the examination-in-chief of the witness is read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. He has admitted

that the witness had not named accused Jaybhavani. Certain extracts of paragraph 14 of the examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The contents of paragraph 15 as well as the contents of the first five lines of paragraph 16 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. He has stated that the witness had stated that he had gone on the terrace of a house in Hussainnagar and had hidden there. However, the rest of the facts have not been stated by him.

170.29 The contents of paragraphs 17 and 18 and the first four lines of paragraph 20 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The contents of the first four lines of paragraph 21 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The witness had stated that on the day of the incident, he was injured on the head in the riots in connection with which he had taken treatment at the camp. However, the rest of the facts have not been stated by him.

170.30 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 7.6.2008. Certain extracts of paragraphs 10, 12, 19 and 20 of the

examination-in-chief of this witness are read over to the Investigating Officer, who has admitted that the witness has not stated such facts in the statement recorded by him. Insofar as the contents of paragraph 12 are concerned, wherein the witness has stated that a police jeep was standing in the area in front of the mob; from the vehicle, the police commenced firing and also lobbed teargas shells; the Investigating Officer has clarified that the witness has only used the words "in front of", however, the rest of the words have not been stated by him in the statement recorded by him. The Investigating Officer has admitted that this witness had stated before him that therefore, there was cross stone pelting.

170.31 The contents of paragraph 11 and certain extracts of paragraph 14 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the facts stated in paragraph 11 have not been stated in the statement recorded by him. He, however, has denied that all the facts stated in the extracts of paragraph 14 have not been stated by the witness. The witness had stated that Tiwari, who was a conductor in the A.M.T.S., was gesturing to the people in the mob and was showing where the people of their community were hiding.

170.32 SUBMISSIONS: Mr. Y.S. Lakhani, learned counsel for the appellants invited attention of the court to various contradictions in the testimony of the witness qua the statements recorded by the police and the SIT. It was submitted that there are omissions of facts in the police statement of this witness and of a few facts even before the SIT. It was submitted that insofar as accused Tiwari, Suresh

and Guddu are concerned they are stated to be there in the mob in the morning and there is further overt act attributed to Suresh about chasing this witness in the evening. However, against Tiwari no overt act worth the name has been mentioned and it is brought on record for the first time before the court in paragraph 14 of his testimony. It was submitted that presence of Tiwari, who resides in that area, is not unnatural. Moreover, the witness has not attributed any specific role to him.

170.33 It was submitted that according to this witness he had run away from Gangotri at about 4:00 to 5:00 in the evening and had then gone to Lane No.4, Hussainnagar on the terrace of Mansuri's house on the 4th floor at about 7.45, which version is not trustworthy as there is no such house with four floors in Lane No.4. It was contended that it was not possible, having regard to the facts of the case that at 6:45 p.m., the witness could have come back from Gangotri to Hussainnagar. It was submitted that as per the version given by the witness in paragraph 73 of his cross examination, until he had gone to the terrace of Gangotri Society, he had not seen any incident of assault.

170.34 Referring to the contents of paragraph 14 of his examination-in-chief, it was submitted that the contents thereof show that the witness is imagining many things. It was submitted that Tiwari has not been seen in the morning mob, except by this witness. It was contended that it is highly improbable that the witness could have moved around Hussainnagar at 2:30. It was submitted that this witness has no respect for the truth, and, therefore, his evidence cannot be

considered to be unimpeachable evidence, which can be relied upon in such a serious case.

170.35 Mr. B.B. Naik, learned counsel for the appellants submitted that there are major omissions of facts in the police statement of this witness and omission of a few important facts even in the statement before the SIT. It was submitted that insofar as accused Tiwari, Suresh and Guddu are concerned, they are stated to be there in the mob in the morning and there is no overt act attributed to Suresh about chasing this witness in the evening. Against accused Tiwari, no overt act worth the name had been mentioned and for the first time before the court in paragraph 14 of his examination-in-chief, overt acts have been attributed to the witness. It was submitted that according to this witness, he had fled to Gangotri Society at about 4:00 to 5:00 p.m. and then to the terrace on the fourth floor of Mansuri's house in lane No.4, Hussainnagar at about 7:45 p.m. It was submitted that the testimony of this witness is not trustworthy as there is no such four storeyed building in lane No.4 of Hussainnagar. It was submitted that having regard to the facts of this case, it is not possible that at 6:45 p.m., the witness could have come back from Gangotri to Hussainnagar. It was pointed out that according to this witness, only he had gone on the terrace of Gangotri, and he had not seen any incident of assault.

170.36 Reference was made to paragraph 14 of the examination-in-chief of the witness, to submit that the witness has imagined many things inasmuch as except for this witness, accused Tiwari has not been seen in the morning mob by any witness. It was submitted that considering the situation that

prevailed on that day, it is highly improbable that he could move around in Hussainnagar at 2:30 in the afternoon. Attention was invited to the contents of 73 of his cross-examination, wherein the witness has admitted that on the day of the incident it had become dark by 6 o'clock in the evening and on that day at around 6 o'clock, he had reached the terrace of Gangotri Society, and has further admitted that till he had gone to the terrace of Gangotri, he had not seen any incident or anyone being assaulted and hacked down, to submit that this witness has not seen anything during the whole day. It was argued that this witness has no respect for the truth and therefore, his evidence cannot be considered to be unimpeachable evidence that can be relied upon in such a serious offence.

170.37 Mr. P. G. Desai, learned Special Public Prosecutor, submitted that all the omissions suggested to this witness are not in the form of contradictions and therefore, the same would not attract the provisions of section 145 of the Evidence Act. It was submitted that before the SIT, this witness has stated about the mob coming from Natraj and the police bursting teargas shells, which is referred to in paragraph 69 of his cross-examination, therefore, there is no material omission in respect thereof. It was submitted that the involvement of the named accused in the afternoon incident has been proved beyond doubt and that minor discrepancies in the statement or evidence would not affect the entire testimony of this witness.

170.38 ANALYSIS: A perusal of the testimony of this witness shows that a major part of what has been stated by him in his examination-in-chief has not been stated by him in

his police statement dated 13.5.2002. Nonetheless, from the testimony of the witness, it comes out that on the day of the incident, he had come out on the road and had seen stones being pelted on the Muslims by the mob. Mobs of Hindus had gathered on the road from Naroda Patiya to Krushnanagar and were attacking the chawls. The people in the mob were damaging properties and looting them and were assaulting people. In the mob, he had seen Tiwari, Suresh Langdo and Guddu Chhara. While in the examination-in-chief, the witness has also named Jaybhavani, in his statement dated 13.5.2002, he had not named him. From his testimony, it further emerges that the witness had seen the mob near Gangotri Society where he had recognised two persons in the mob, namely, Tiwari and Bhavani. At that time, it was around 4 to 5 o'clock, while he was running towards Gangotri, as he did not find it safe, he returned to Lane No.4 Hussainnagar. While returning, Suresh Langda had chased him with a sword in his hand. However, since Suresh Langda could not run as fast as him, he could escape. The witness has identified accused No.25 Tiwari and accused No.22 Suresh Chhara before the court. While several omissions have been brought out in the testimony of this witness, the core of his testimony regarding his having seen the named accused in the mob on the day of the incident, is consistent.

170.39 Insofar as accused Tiwari, Suresh and Guddu are concerned, they are stated to be in the mob in the morning. Accused Suresh is attributed the overt act of chasing him in the evening. Therefore, to the extent the witness has deposed that he had seen Tiwari and Suresh in the morning mob, the witness is consistent. The witness is also consistent as regards

accused No.22 Suresh having chased him in the afternoon. Insofar as the witness has referred to the presence of accused No.25 Tiwari in the evening is concerned, no overt act has been attributed to him and all that has been stated by the witness is that he had seen Tiwari and Bhavani in the mob near Gangotri Society at about 4 to 5 o'clock in the evening. It has come on record that both Bhavani and Tiwari are residents of that area. Therefore, the presence of Tiwari near Gangotri Society cannot be said to be unnatural.

170.40 From the overall evidence of this witness, it can be said that the prosecution has established the presence of accused No.22 Suresh Langdo and accused No.25 Tiwari in the mob on the road in the morning. Considering the improvements made by the witness in his testimony, he does not come across as very credible witness, and hence, the court would look for corroboration while considering the testimony of this witness against the named accused.

171. PW-186 Taherabanu Mahammadkasam Abdulla Shaikh, aged 50 years, has been examined at Exhibit-1277. This witness has deposed that she was residing at *Pandit-ni-Chali* since 1969. At the time of the incident, she was residing with her family in this very house at *Pandit-ni-Chali*. The witness has deposed that there was an Ice Factory opposite her house at a short distance. She has stated that she was never residing at *Kashiram Mama-ni-Chali*.

171.1 The witness has deposed that her native place is *Shahpur, Karnataka*. She however has never been to Karnataka.

171.2 The incident took place on 28.2.2002. At that time, she was doing labour work in a factory and her husband was driving a rickshaw. At the relevant time, she was residing in her house at Pandit-ni-Chali with her husband and six children. Two of her sons were also working with her in the factory.

171.3 It was *jhumme raat* on the day of the incident. On that day, after having breakfast, she and both her sons had gone to their work place. After all the three of them had left for going to their work place, they came to know that there was a call for bandh. Therefore, they had returned. At that time, they had seen mobs were coming from the side of Krushnanagar as well as from the side of Natraj.

171.4 Bipinbhai (A-44) was the leader of one of the mobs and Sahejad was the leader of the other mob. Upon seeing all this, he was very frightened. On the day of the incident, the mob had set their rickshaw and a lot of other things on fire. There was arson near the masjid and they were very frightened, and hence, they went towards their house, however, on account of the riots, they could not go home and she was standing near the S.R.P. Quarters till 7 o'clock in the evening.

171.5 Thereafter, they went and sat on the terrace of a house in Gangotri Society. They stayed on the terrace till 12 o'clock at night, whereafter a vehicle came and took them to the Shah Alam camp.

171.6 She stayed at the Shah Alam camp for five to six

months. While she was at the relief camp, the police had come and recorded her statement.

171.7 The witness has deposed that she knows Bipinbhai, but she does not know Sahejad and that as she was tense, she had wrongly named Sahejad. She has deposed that she knows Bipinbhai because he was standing in front of her in the mob at the time of the incident. The witness has thereafter identified Bipinbhai (A-44) correctly.

171.8 CROSS EXAMINATION: In her cross-examination, the witness has stated that she does not know whether Bipinbhai was standing in the front yard of his garage at the time of the incident. She has stated that in the tension, she has not seen as to where he was standing, but she had seen him standing. The witness has admitted that she does not know as to whether Bipinbhai was at *Kashiram Mama-ni-Chali, Dhanurdhari Matana Mandir* or on the road, at the time of the incident. In her cross-examination, the witness has admitted that in her statement dated 12.5.2002, she has stated that her son and daughters had left their house and crossed the road and walking parallel to the S.R.P. Quarters compound wall, gone to Jawannagar. The witness has admitted that till 7 o'clock in the evening, they were standing at the wall of the S.R.P. Quarters and had left the wall after 7 o'clock and had gone to the terrace of Gangotri Society. The witness has further admitted that over and above her and her family, other Muslims were also there with them at the SRP compound wall and that she was standing at the SRP compound wall as it was safe there. The witness has admitted that during that time, she had not seen any incident taking place at Jawannagar or

Hussainnagar. In her cross-examination, she has stated that she does not know as to how she had named Sahejad in her statement before the police.

171.9 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to paragraph 10 of her examination-in-chief of the witness, to point out that she has stated that she knew Bipinbhai because at the time of the incident he was standing in the mob in front of her. Referring to the contents of paragraph 14 of her cross-examination, it was submitted that the witness has admitted that when she comes out of her house, she can see Bipin's garage, that she is not aware as to whether she had seen Bipin standing in the courtyard of his garage on the day of the incident, because due to anxiety, she had not seen where he was standing, but that she had seen him standing. It was submitted that therefore, it is quite possible that the witness may have seen Bipin in his garage. It was pointed out that in paragraph 7 of her examination-in-chief she had stated that she had seen Bipin and Sahejad leading two different mobs. It was submitted that in paragraph 10 of her deposition the witness has stated that she had given Sahejad's name out of nervousness, and hence, it is quite possible that she may have also named Bipin accordingly. It was submitted that acquaintance of the witness with the accused has not been established. It was urged that considering her entire testimony, her evidence qua Bipin may not be taken as reliable, even if it is only regarding he being part of the mob. It was submitted that this witness in paragraph 18 of her cross-examination has stated that she was standing near the S.R.P. Quarters compound wall till 7.00 in the evening, after which she had gone to Gangotri Society,

which clearly shows that there was no stone pelting or bursting of teargas shells at the S.R.P. Quarters Compound wall and that no S.R.P. personnel had beaten up any one. It was submitted that if paragraph 18 of her cross-examination cannot be reconciled with the other evidence, her testimony may not be accepted even qua Bipin.

171.10 ANALYSIS: This witness's house is situated in Pandit-ni-Chali, somewhat opposite to the ice factory. In her cross-examination it has been elicited that Bipinbhai's garage is adjoining the ice factory and that when she comes out of her house she can see Dhanurdhari Mata's temple and Bipinbhai's garage. In her cross-examination it has further been elicited that in her anxiety, she had not seen exactly where he was standing, but that she had seen him standing. This witness, in her examination-in-chief, has named two accused viz., Sahejad Chhara (A-26) and Bipin Panchal (A-44) as leading different mobs when she was returning from her work place. Thereafter, she has stated that she had given Sahejad's name out of nervousness. The witness has identified A-44 Bipin Panchal in the dock. However, from her cross examination it is apparent that Bipin Panchal's garage is situated near her house on the opposite side and when she comes out of her house she can see his garage. The witness has not been able to say where she had seen this accused; therefore, it is quite possible that she may have seen him in his garage. Considering the quality of evidence of this witness, no reliance can be placed upon her testimony for proving the charge against accused No.44 Bipin Panchal. The testimony of this witness, therefore, does not help the prosecution in proving the charge against either of the accused named by her.

172. **PW-187 Altafhussain Abdulraheman Saiyed**, aged 38 years, has been examined at Exhibit-1279. This witness has deposed that his native place is *Gulbarga, Karnataka* and that he is residing in the Naroda Patiya area since his birth.

172.1 In the year 2002, he was residing at *Lane No.2, Jawannagar* with his family which was comprised of his mother, father, wife and his son and daughter. In the year 2002 also, he was engaged in tailoring work of ready-made dresses and his wife was also doing the same work.

172.2 The incident took place on 28.2.2002. On that day in the morning, he was at home. There was a call for bandh on that day. On that day, in the morning at around 9:00 to 9:30, he came out of his house on the road. The road was very crowded. On both the sides of the road, viz., towards Natraj Hotel and Krushnanagar, there were mobs. Both the mobs got together and went near the Noorani Masjid. The people in the mob started damaging the shops and vehicles near the Noorani Masjid and setting them on fire. Both the mobs gathered near the Noorani Masjid.

172.3 The mobs thereafter went forward towards Hussainnagar. They went on burning the houses of Hussainnagar and advancing forward. He, and the Muslims residing nearby, went towards the rear side of their mohalla due to all this happening.

172.4 In the afternoon, at around 3:00 to 4:00, the mob

reached their house. At this time, they had gone towards the rear side of their house and the people in the mob were setting the house in their lane on fire.

172.5 **Bhavanisingh (deceased)** and **Tiwari (A-25)** were in this mob and he knew them. In the incident, his entire house was burnt.

172.6 He and his family members thereafter went on a terrace of Gangotri Society. Prior to going to Gangotri Society, around 3 o'clock, he had sustained stone injuries on the left side of his face, near his nose and below his eye. He also sustained a stone injury on his left hand. Both the injuries were nominal.

172.7 They had stayed on the terrace of Gangotri Society for one to two hours. Thereafter, upon the police coming near the society at night, they took them to the Shah Alam camp. He had availed of treatment at the Shah Alam camp, where they stayed for three months. While he was in the camp, the police had orally examined him in connection with the incident and had recorded his statement. The witness has stated that he does not know whether Bhavanisingh is dead or alive and that he can recognize both of them. The witness has thereafter identified Tiwari (A-25) correctly.

172.8 **CROSS EXAMINATION:** This witness has been cross-examined as regards the topography of the area. In his cross-examination he has stated that on the day of the incident he came out of his own and reached the road at the corner of the S.T. Workshop. He has stated that he cannot say exactly how

long he has stood there. The witness has admitted that in his statement dated 13.5.2002, he has stated that since he and the people of his chawl were surrounded, they had gone to the open ground on the rear side. The witness has stated that on that day they reached the Shah Alam Relief Camp at 1:30 at night. They had gone in a big police vehicle wherein there were other Muslims too. The witness does not remember as to whether the vehicle has gone straight to the camp or whether it had halted in between.

172.9 The witness has stated that they were on the open ground behind their lane in Jawannagar and were not on the open ground which was at the absolute end. The witness has admitted that they had not returned to their house from the ground on that day. The witness has denied that when he was standing at the corner of the S.T. Workshop, the people in the mob had burnt all the shops on the opposite side. The witness has stated that he has seen the mobs burning the shops.

172.10 The witness has stated that he does not know that any one was injured with the bullet while he was standing there. The contents of paragraph 4 of his examination-in-chief from the 2nd line to the 6th line are read over to the witness to the effect that he has not stated these facts in the statement recorded by the police, which the witness has denied. The contents of paragraph 8 of his examination-in-chief, wherein the witness has stated that he, together with his family, went on the terrace of Gangotri Society, are read over to the witness to the effect that he has not stated these facts in his sole police statement, which the witness has denied. The first three lines of paragraph 9 of the examination-in-chief of the witness

are read over to him, to the effect that he has not stated these facts in the statement recorded by the police, which he has denied.

172.11 The witness has deposed that he has not stated before the police that he and his family had gone towards the S.R.P. Gate. The witness has denied that he has not seen the accused whom he has named in his deposition and whom he has identified before the court on the day of the incident and that he has not seen any incident as narrated by him in his examination-in-chief and that at the instance of the members of his community he is falsely deposing before the court.

172.12 In his cross-examination the witness has stated that he had come to the open ground in the afternoon though he cannot say the exact time. The witness has stated that he had remained there for one and a half to two hours. The witness has denied that while he was on the open ground he has not seen any incident and has voluntarily stated that he has seen the houses in Jawannagar-ni-Chali being set on fire.

172.13 The witness has admitted that he had no social or monetary relations with Tiwari. He has admitted that he has identified Tiwari for the first time before the court. He has denied having seen Tiwari when he went to Gangotri Society. He has denied that he has not seen Tiwari in the entire day, and hence, in his police statement, he has not stated as to where and when he has seen Tiwari. The witness has admitted in his statement that he has not stated as to at what time he has seen Tiwari on the day of the incident. The witness has admitted that during the time when they were hiding on the

terrace of Gangotri Society and till the police came to take them he has not seen anything.

172.14 PW-279 Shri B. J. Sadavrati, the assignee officer has been cross-examined by the defence to prove the omissions and contradictions as to his statement dated 13.5.2002 recorded by him. The assignee officer has admitted that he has recorded the statement of this witness on 13.5.2002. The contents of paragraph 4 of the examination-in-chief of this witness, from the second line to the sixth line are read over to the assignee officer, wherein the witness has stated that on that day in the morning, he was at home; there was a call for bandh on that day; on that day, in the morning at around 9:00 to 9:30, he came out of his house and went on the road; the road was very crowded; on both the sides of the road, that is, on the side of Natraj Hotel as well as Krushnanagar, there were mobs. The assignee officer has admitted that such facts have not been stated by the witness in the statement recorded by him, but the witness had stated that at 10:30 in the morning, the mobs had come from both the sides. The assignee officer has stated that the witness has not stated before him that he and his family members had gone on a terrace of Gangotri Society.

172.15 SUBMISSIONS: The learned counsel for the appellants submitted that in paragraphs 4 to 6 of his examination-in-chief, the witness has given a continuous account of the mob in the morning proceeding further and reaching his house by about 3.00 to 4.00 p.m. and that thereafter they went to the rear side, but he has not

mentioned at what time and when he has seen accused Tiwari. It was pointed out that this witness has no acquaintance with Tiwari and has not stated at what time and place Tiwari was seen as part of the mob. It was submitted that no role has been attributed to Tiwari and that the statement in his deposition is omnibus and a weak one and cannot be accepted. It was submitted that therefore, it would be very hazardous to accept such testimony of the witness and since he names only two persons, who are residents of that very area, he might be aware of their names though there is no acquaintance, and, therefore, he might have given his name. It was submitted that the witness has reached the corner of the S.T. Workshop, but has stated that he has not seen any firing or bullet injuries and that after he reached the ground behind Gangotri Society, he has not seen anything on the road from Uday Gas Agency. It was submitted that even if his claim of being in Gangotri Society is accepted, even then he does not see anything till he was taken by the police at night. It was submitted that if the entire deposition of the witness is taken at its face value, he is not a reliable witness, which would also make his testimony qua accused Tiwari unreliable. The learned counsel submitted that this witness does not refer to any corpse lying on the way while going to the national highway.

172.16 ANALYSIS: From the testimony of this witness, it emerges that no substantive omissions or contradictions have been brought out in his cross-examination. It further emerges that in the morning, on the day of the incident, he had come out on the road and had seen mobs coming from both the directions near the Noorani Masjid. The people in the mob were damaging the Noorani Masjid and were setting the shops and

vehicles nearby on fire. Both the mobs had gathered near the Noorani Masjid. Thereafter, the mob had advanced towards Hussainnagar and was burning the houses and proceeding forward. At around 3 to 4 o'clock, the mob reached near his house at Jawannagar Lane No.2. During this period, they had gone towards the rear side of their house and the mob had started setting houses in their lane on fire. The witness has deposed that he had seen Bhavanisingh (deceased) and Tiwari (A-25) in the mob. Thereafter, the witness has stated that he had taken shelter on the terrace of a house in Gangotri Society. The witness in paragraph 7 of his examination-in-chief, has stated that he saw Tiwari in the mob, but has not stated as to at what time and where he had seen him. In the cross-examination of the witness (paragraph 42), it has come out that he had no social or monetary relations with Tiwari. The witness has admitted that he has identified Tiwari for the first time before the court. The witness has denied that he had seen Tiwari when he went to Gangotri Society. However, he has not specifically stated as to where he had seen him. The witness has admitted that in his statement recorded by the police, he has not stated as to at what time, he had seen Tiwari on the day of the incident.

172.7 Considering the fact that proper acquaintance has not been established insofar as accused No.25 Tiwari is concerned, and the witness has not stated any specific place and time where he had seen him, the court would look for corroboration while considering the testimony of this witness against the said accused.

173. **PW-188 Mahammadbhai Bachubhai Belim,**

aged 51 years, has been examined at Exhibit-1282. This witness has deposed that since the last seven years, he is residing at the S.T. Staff Officers Quarters and that presently, he is discharging duties as a Traffic Controller in the S.T.

173.1 In the year 2002, he was residing at *Pandit-ni-Chali, Naroda Patiya*. He was residing in *Pandit-ni-Chali, Naroda Patiya* since forty two years prior to 2002. In the year 2002, he was serving as a Conductor in the S.T. In the year 2002, his service hours were from 8 o'clock in the morning till 8 o'clock in the evening and his weekly off was on Thursday.

173.2 In the year 2002, he was residing in a joint family with his mother, father, his wife and his four children.

173.3 The incident took place on 28.2.2002. On that day, it was Thursday, his weekly off, and hence, he was at home. On that day in the morning, he had his breakfast and was at home. In the meanwhile, his wife who had gone to the road to fetch water came running from outside and told him that mobs are coming from Krushnanagar and are getting the shops shut down and are also pelting stones. She had told him about this fact at around 10 o'clock.

173.4 Upon coming to know about this fact from his wife, he came near the municipal tap at the corner of the chawl. He saw that a mob was coming from the direction of Krushnanagar and it was armed with swords, trishuls and cans filled with chemicals. The leadership of the mob was taken over by **Bipin Autowala** (A-44).

173.4 In the morning at about the same time, he had also seen another mob coming from the direction of Natraj Hotel. **Manoj Videowala (A-41), Suresh Langda (A-22)** and one Sindhi had taken over the leadership of that mob. The Sindhi leader had pock marks on his face and his complexion was dark and he was around five and a half to six feet tall. The people in the mob were armed with swords, trishuls, cans filled with chemicals.

173.5 The mob coming from the direction of Krushnanagar had parked a kerosene filled tanker near the Noorani Masjid and had brought a crane and parked it near the Noorani Masjid. The mob which was coming towards the Noorani Masjid damaged and attacked it. The mob had also beaten up the Maulana of the Noorani Masjid. Upon seeing this, Yusuf Lightwala requested the S.R.P. people sitting at the S.R.P. point nearby, to reason with the mob. The S.R.P. people, instead of stopping the mob, beat Yusuf with a baton. Since the masjid was burning, the youth started gathering near Pandit-ni-Chali.

173.6 At this time, there was firing from the side of the S.R.P. mob wherein an individual named Abid sustained a bullet injury. Thereafter, another person named Mustaq was also injured by a bullet. The persons in the mob thereafter slowly started entering the chawls next to Noorani Masjid and Pandit-ni-Chali. At this time, it was approximately 11 o'clock.

173.7 The mobs which had come to the chawls started ransacking and resorted to arson in the chawls next to Noorani Masjid, Pandit-ni-Chali, Hukamsing-ni-Chali, Chetandas-ni-Chali and Badarsing-ni-Chali. Upon seeing all this, he was afraid that

his family would be killed and at around 12 o'clock in the afternoon, he took his wife and family to the rear side towards Hussainnagar. There, they beseeched the S.R.P. personnel to let them go inside the S.R.P. Quarters behind Hussainnagar, however, they did not let them to enter the S.R.P. Quarters. In the morning, several people had gone inside the S.R.P. Quarters, however, thereafter, they were not letting anyone go inside.

173.8 After leaving his family at Hussainnagar, at around 1 o'clock in the afternoon, he returned home to collect his valuable ornaments and cash. At that time, the mobs were there and one of the persons in the mob inflicted a blow with a pipe on his right leg and they were shouting "*Kill the Miyas! Cut them*", whereupon he immediately returned to Hussainnagar without taking the ornaments and cash.

173.9 Thereafter, the mobs slowly started growing in the area near the S.T compound wall in Hussainnagar. The people in the mob were hacking down and killing people and setting them ablaze. In this situation, on account of fear, in the evening at around 5:00, he went from Hussainnagar to the terrace of a house in Gangotri Society and hid there. There were many other Muslims there. At this time, his family had got separated from him.

173.10 From the terrace of the house at Gangotri, he saw that **Jaybhavani Chhara** (deceased) and **Tiwari Conductor** (A-25) were gesturing to the people in the mob and showing them the place where they were hiding. The people in the mob had hacked people with swords and had thrown burning rags

on them and burnt them alive. He stayed on the terrace till 12 o'clock at night.

173.11 Thereafter, a police vehicle came to fetch them and took them to the relief camp. While they were taking them at night, he had seen many burning dead bodies near the S.T. wall, which were not identifiable.

173.12 While he and his wife were going from their chawl towards Hussainnagar, his wife had sustained a stone injury on her back.

173.13 In the incident, his entire house was burnt and his household goods were looted by the Chharas.

173.14 He and his wife had availed of treatment at the camp, where he stayed for approximately three months. While he was at the camp, the police had recorded his statement in connection with the incident; however, the police were not recording their statements as stated by them. Thereafter, upon the receipt of a summons from the SIT, he had gone to Gandhinagar. There also, his statement was recorded. The witness has stated that he does not know whether Bhavani is alive at present. He has stated that he can identify Bhavani, Bipinbhai, Manoj Videowala, Suresh Langdo and the person with pock marks as well as Tiwari Conductor.

173.15 Thereafter, the witness has identified Bipinbhai Autowala (A-44), Tiwari (A-25), Suresh Langdo (A-22) and Manoj Sindhi Videowala (A-41) correctly. The witness has, accordingly, correctly identified the above referred accused.

173.16 The witness has stated that amongst the accused who are sitting there he cannot see Bhavani and the person with pock marks on the face.

173.17 CROSS EXAMINATION: In his cross-examination, the witness has admitted that since many years prior to the incident he was residing in the Naroda Patiya area, and hence he is acquainted with Pandit-ni-Chali and the chawls nearby. The witness is cross-examined with regard to the topography of the area and the people residing in the locality. In his cross examination, it has come out that his statement may have been recorded two and a half months after the incident. Before the police recorded his statement, he had made an application to the Police Commissioner, Ahmedabad. The witness has stated that he has received information that his complaint has been included in I-C.R. No.210 of 2002. The witness has admitted that the SIT has recorded his statement on 26.5.2008. Certain parts of the statement of the witness, as recorded by the SIT, are put to the witness; however, since the witness is not confronted with his statement to contradict any part of his evidence, this part of his deposition is not admissible in evidence.

173.18 The application Mark 441/17 has been given Exhibit No.1283. Naroda Police Station I-C.R. No. 210 of 2002 is filed by Shri Ibrahimbhai Dawoodbhai Mansuri on 19.3.2002 and has been given Exhibit No.316.

173.19 The application (Exhibit No.1283) is given to the witness, who after reading it has stated that it has been made

by one Ibrahimbhai Dawoodbhai Mansuri and that the name of this witness is not shown as an eye witness. He has admitted that in this application the incidents seen by him are not mentioned.

173.20 [When the application (Mark No.441/17) has not been made by this witness, it is difficult to comprehend as to why the same has been exhibited in the deposition of this witness. Before a document is exhibited, the contents are required to be proved by the maker thereof. In the present case, the witness is not the author of the application (Exhibit 1283). Under the circumstances, the said document could not have been exhibited while recording the deposition of this witness.]

173.21 The FIR (Exhibit 316) is given to the witness, who after reading it has stated that there is no reference to his complaint in this FIR and that his name has not been shown as a witness in the said FIR.

173.22 A purshis has been presented together with the Loss Damage Analysis Form which is exhibited at Exhibit 1284. The witness is shown his statement dated 12.5.2002 and he has read the same. The witness has denied that in his statement dated 12.5.2002, he has not named any accused and since he could not identify any of the accused he has not mentioned such fact therein and has not mentioned any act or attributed any role to the accused in the statement. The witness has voluntarily stated that in the actual fact the police has not recorded the statement as stated by him. The witness has admitted that in his statement he has not given the names

of the people who had caused damage to his property and injured his wife, for the reason that he did not know such persons. The witness has voluntarily stated that they left their house open and went away; hence he does not know who had caused damage to it. The witness thereafter is cross-examined with regard to compensation he has received. In the cross-examination of this witness it has come out that he was not called for and test identification parade. The witness does not remember that he was called for any Test Identification Parade before any executive magistrate and that he could not identify the accused. The witness is sought to be confronted with his statement dated 12.5.2002 recorded by the police, however, the witness is not sought to be contradicted as to any part of his testimony, but certain facts stated by him in his police statement are sought to be brought on record, which is not permissible in law. Therefore, that part of the deposition of the witness is, not admissible in evidence. The witness, however, has admitted that in his statement he has stated that they had hidden themselves in Hussainnagar and that they tried to go inside the S.R.P. Quarters, but they were not permitted to go inside. The witness has stated that he was injured by a pipe when he was going from Hussainnagar to his house to get his ornaments and cash; at that time he was injured near the S.T. Workshop wall. It may be noted that the witness has already accepted such facts, the contents of his statement dated 12.5.2002 stating similar facts are still put to him. The witness has denied that he was injured by pipe at about 3:00 to 4:00 in the afternoon and has stated that he was injured by pipe at about 2 o'clock. He has admitted that after he was injured by a pipe, and returned to Hussainnagar, he had not met any of the accused named by him in his examination-in-chief.

173.23 The witness has admitted that from there they straightaway went to the terrace of Gangotri and hid there. He has admitted that till 5:00 in the evening they were on the terrace of Gangotri Society. The witness has denied that from the time when he went from Hussainnagar to the terrace till the vehicle took them to the camp, he had not seen any of the accused. The witness has admitted that at this time he had seen only Bhavani and Tiwari and had not seen any other accused. The witness has admitted that Bhavani and Tiwari, both, reside at Gangotri. He has admitted that he has seen both the accused in Gangotri Society. The witness has voluntarily stated that they were gesturing to the mob. He has admitted that he has seen the mob from the terrace.

173.24 The witness has stated that other houses in Gangotri Society were open and the residents were also there. He has denied that all the people of the society were standing in the mob. The witness has stated that they were standing in their houses. They were not standing outside their houses. The witness has voluntarily stated that as far as he knows, the residents of Gangotri Society had fled. He has admitted that when they all went there, the people of Gangotri Society had thought that they were going to attack them, hence they had fled. But actually they (the Muslims) had gone there because they were afraid.

173.25 The witness has denied that Muslims were shouting for help from the terrace of Gangotri Society and has voluntarily stated that if they had shouted, they would have been burnt. He has admitted that some people were sitting on

the terrace and others were lying down and hiding.

173.26 The witness has stated that he has not seen that Muslims had taken refuge in Tiwari's house. When he went there at 5 o'clock, he had not seen Muslims coming out of Tiwari's house. He had also not seen any people going and coming from Bhavani's house. The witness has voluntarily stated that both of them were gesturing to the mob, but he has not seen any one coming in or going out of their houses.

173.27 The witness has admitted that for three months after the incident, no police, public spirited workers or advocates had come to inquire about the incident from them. The witness has denied that for three months nobody has taken their signatures at the camp. The witness has voluntarily stated that his signature was taken on printed papers. The police have taken signatures after three months. The witness has denied that the police has not questioned them about the incident and has voluntarily stated that however, they were not recording their statements as stated by them. He has admitted that the police were not reading over their statements to them. The witness has admitted that he did not know as to what the police had written down in the statement.

173.28 The witness has stated that in his statement recorded by the SIT, he had stated that at that time he had seen that one Bhavani Chhara, who is a driver in the A.M.T.S. as well as Tiwari who had gathered Muslim people and had given them shelter. The witness has denied that in either of his two statements, he has not stated that Tiwari was gesturing towards the mob and showing the place where Muslims were

hiding.

173.29 The witness has denied that at the relevant time there were no electric light poles near the S.T. Workshop wall. The witness has stated that at that time, there were electric poles of the service line. The witness has admitted that at the relevant time there were no bulbs on the poles. The witness has voluntarily stated that inside the S.T. compound wall there were lights. The witness has admitted that inside the S.T. Workshop, there were high security towers where the watchmen could sit. He has admitted that there were very big lights on the security tower. The witness has denied that the lamps on towers were such that light would fall on the road and has voluntarily stated that there was lot of illumination in the S.T. Workshop due to these lights. However, there was very little light on the roadside.

173.30 The witness has denied that the mob which came from the direction of Naroda had entered the Muslim chawls. The witness has stated that the mobs from both the sides had entered. The witness has denied that the mob from the side of Naroda attacked Noorani Masjid and damaged it and set the chawls on fire.

173.31 The witness has admitted that the mob from Natraj may have taken around half an hour to three Quarters of an hour to burn Noorani Masjid and thereafter the mob had turned towards their chawls. The witness has admitted that all the while he was watching the attack on Noorani Masjid. He has admitted that in the meanwhile the Krushnanagar mob had pulled a kerosene tanker and crane. The witness has stated

that he does not know whether the tanker was pushed and brought. He has stated that the tanker was parked next to "Milan Scrap", near the S.R.P. Quarters and that the crane was also lying there. The witness has stated that they had driven the tanker and crane and brought them therein. The witness has admitted that there were countless people in the mob. The witness has denied that the entire road was blocked and it was not possible for anyone to move around. The witness has stated that till he was standing there he has seen traffic passing by, which was in the form of one or two vehicles. The witness has denied that the one or two vehicles were not halting on the road. The witness has voluntarily stated that a white Fronti had stopped there.

173.32 The witness has admitted that an S.R.P. Point had been placed next to the Noorani Masjid. He has admitted that it all started with stone pelting at the Noorani Masjid and thereafter by burning it and subsequently shops were burnt. The witness has voluntarily stated that firstly there was firing, thereafter mobs had entered their chawls and had started setting everything on fire. The witness has stated that the attack on the Noorani Masjid took place first. He has admitted that after the Noorani Masjid was attacked there was firing. The witness has denied that upon the Noorani Masjid being attacked the police had resorted to firing and has stated that the police were not preventing the mob, but were bringing the mob towards the chawls and firing towards them (at the Muslims).

173.33 The witness has admitted that when the Noorani Masjid was burning, Muslims had gathered. The witness has

stated that Muslim mobs had gathered near the chawls in front of the road. He has admitted that prior to the firing, teargas shells were lobbed. The witness has voluntarily stated that teargas shells were also lobbed at them. He has admitted that the S.R.P. people had also fired at them and that in this firing, Abid was injured by a bullet. The witness has stated that he does not know whether Abid has died. He is also not aware as to whether Mustaq Kaladia was injured by an S.R.P. bullet. The witness has stated that he does not know who had done the firing, but the firing took place from the opposite side. The witness has admitted that 'opposite side' means the S.R.P. Point, near Noorani Masjid as well as from the direction where there were mobs.

173.34 The witness has stated that he has never personally met Bipin. He has never gone to Bipin Auto Centre. The witness has stated that he has no social or financial relations with Bipin. The witness has stated that he does not remember as to when for the first time, he came to know that this person's name is Bipin. The witness has stated that he knew him by his face, but he has not asked his name. The witness has stated that he has not seen Bipin's house and he had no occasion to visit the *mohalla* where he was staying.

173.35 In his cross-examination it has come out that he knows Manoj since about ten years prior thereto. He had no occasion to socialize with Manoj. He has not seen Manoj doing construction work. He does not know where Manoj resides. The witness has stated that he does not know how he came to know Manoj's name for the first time, but says he knew it.

173.36 In his cross-examination, it has further come out that he knew Suresh prior to getting a job with the ST. Earlier he used to ply a rickshaw. He had no social relations with Suresh. He does not know where Suresh resides and had no speaking relations with Suresh.

173.37 The witness has denied that till the mob had attacked Noorani Masjid and caused damage, the Krushnanagar mob had not done anything. The witness has stated that the Krushnanagar mob had thrust a kerosene tanker into Noorani Masjid and also brought a crane nearby and parked it near the masjid. The witness has denied that both the mobs had gathered together and had gone to the chawls. He has stated that both the mobs had come together and attacked the masjid and thereafter both the mobs had entered the chawls. The witness is thereafter cross-examined with regard to the application made by him to the SIT. The witness is also cross-examined with regard to Abid and Mustaq who were standing there and were injured, etc.

173.38 In his cross-examination, it has come out that Abid and Mustaq were wounded by successive bullets. As soon as they were injured by bullets, they (the witness and others) had fled from the road. At this time it was approximately 11 o'clock. They had gone quite far towards the rear side, and hence, they could not hear other sounds of firing.

173.39 The witness has denied the suggestion that on that day he had gone to take refuge at Tiwari's house, but Tiwari had refused to give him refuge, and at that time, as Tiwari had given refuge to other people, but had refused to give him

shelter; he was falsely implicating him.

173.40 To bring out the omissions and contradictions in the testimony of the witness, the defence has cross-examined the concerned assignee officer/Investigating Officer.

173.41 PW-278 Shri R.B. Joshi, the assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 12.5.2002 and that he had recorded this statement as stated by the witness. The assignee officer has stated that this witness in the statement recorded by him has not stated either the names of the accused nor has he stated any fact that he knew the accused or regarding any accused having taken part in the incident or having committed any overt act. The assignee officer has admitted that this witness, in his statement recorded by him, has stated that on 28.2.2002 there was a call for Gujarat bandh and since he had a holiday on Thursday, he had not gone for his job and was present at home and had woken up in the morning and had tea and was sitting at home and his wife was filling water. One fails to understand as to why such contents of the statement of the witness are sought to be brought on record inasmuch as the same only relate to the facts prior to the incident and have no relevance insofar as the offence is concerned.

173.42 The assignee officer has also admitted that the witness had not stated that his wife had gone to road to fetch water but has stated that she was filling water. The assignee officer has further admitted that this witness in the statement recorded by him had stated that at that time, in the morning at around 9:00 to 9:30, his wife suddenly came home and started

saying that mobs of people are coming from the direction of Krushnanagar and upon her informing him, he came out of his house to the corner of the chawl and saw that the people in the mob were pelting stones and setting houses on fire and the people in the mob were all shouting and saying "kill" "cut" and hence, he together with his wife and children went and hid on the rear side in Hussainnagar. From the cross-examination of the assignee officer, it is evident that no part of what is stated by the witness in his examination-in-chief is sought to be contradicted and proved through the assignee officer. Through the process of cross-examination, only what is stated by the witness in his statement recorded by the assignee officer is sought to be brought on record in total violation of the provisions of section 162 of the Code.

173.43 The assignee officer has further admitted that this witness had not stated before him that Tiwari was gesturing to the mob and was showing them where the Muslims were hiding.

173.44 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 26.5.2008. He has admitted that this witness had not stated before him that in his earlier statement, the police had not recorded what was stated by him. He has admitted that the witness has not given any explanation with regard to his earlier statement or complaint. He has admitted that this witness in the statement recorded by him, has not stated that Tiwari had gestured to the people in the mob and was showing them where the Muslims were hiding. The Investigating Officer has clarified

that the witness had stated that Bhavani Chharo, who is a driver of a bus in the A.M.T.S., he and Tiwari, who had gathered the Muslims and had given them shelter and out of them, Bhavanisingh from the terrace was gesturing to the people in the mob as to where the Muslims were hiding.

173.45 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has not named any accused in his police statement. The allegations against accused Tiwari are made for the first time before the SIT. It was submitted that even before the SIT insofar as the role attributed to Tiwari in the examination-in-chief is concerned, it is missing. Referring to paragraph 15 of the examination-in-chief of the witness, it was stated that the allegations against Tiwari are coming for the first time before the court, whereas in case of Bipin, Manoj and Suresh, they are sought to be implicated for the first time in the statement recorded by the SIT. It was submitted that no overt act has been alleged against any of the accused and that they are seen only in the morning mob and not thereafter.

173.46 It was submitted that as far as Bipin, Manoj and Suresh are concerned they are alleged to be present and leading the mob in the morning at about 10:00 a.m. Their names have not been mentioned before the police and for the first time before the SIT, their names and the fact regarding them being leaders are mentioned. Even before the SIT, no further overt act or participation is alleged against them. There seems to be no acquaintance with all the three accused having regard to paragraphs 85, 86 and 87 of the deposition qua Bipin and paragraph 85 qua Manoj and paragraphs 89 and

90 qua Suresh. It was submitted that insofar as Tiwari and Bhavani are concerned, an allegation has also been levelled against Bhavani for the first time before the SIT and against Tiwari only before the court. It was submitted that though the witness did not attribute anything to Tiwari either before the police or the SIT, he has made allegations against Tiwari about pointing out the place where Muslims were hiding to the mob, while in fact he made such allegations against Bhavani in the statement recorded by the SIT. It was submitted that Tiwari being a local resident of that very area, his presence at the spot would be quite natural and even as per the evidence of this witness and other witnesses also, Tiwari had given shelter to Muslims which would not make him criminally liable for any offence. Since three of the accused are named without any acquaintance for the first time before the SIT, in absence of any test identification parade, believing his evidence would be hazardous and even otherwise on the facts that he has narrated before the court it appears that he is not a reliable and truthful witness.

173.47 It was submitted that while before the court he makes a grievance that his statement was not being correctly recorded by the police, it has been proved by the Investigating Officer (SIT) that he has not made any such grievance before the SIT on this issue. Referring to paragraph 15 of the examination-in-chief of the witness, it was submitted that the witness has stated that he was on the terrace of Gangotri till 12:00 at night and as per his say in paragraph 16 of his examination-in-chief, when the police took them to the relief camp, he saw burning dead bodies near the S.T. compound wall which were not identified. It was submitted that there are

major and vital inconsistencies between the deposition of this witness and depositions of other witnesses which creates serious doubts about his presence on the road in the morning. As regards the evening incident, it was submitted that he has not stated as to on the terrace of which house in Gangotri Society he was, the spot where the people were burnt, and at what time. It was therefore, submitted that this witness is not a credible or reliable witness and no part of his evidence can be relied upon for the purpose of establishing the charge against the accused.

173.48 Mr. Prashant Desai, learned Special Public Prosecutor submitted that this witness has spotted Tiwari from the terrace of Gangotri, but under section 149 of the Penal Code, specific overt act is not necessary and if he is a member of an unlawful assembly and has knowledge of the same being an unlawful assembly, then in that case, that accused is equally liable and the argument of the defence that no specific overt act is attributed will not hold good in view of various judgments of the Supreme Court.

173.49 It was submitted that insofar as Bipin, Suresh and Manoj are concerned, the witness has attributed specific role in the morning incident to all the three where he has recognized them in the mob as leaders of the mob and other people were following them. Thus, they are proved to be the main perpetrators of the crime and after the morning incident, the assault had increased and the enormity of the crime was also widened. It was submitted that their names do not appear before the police, but before the SIT, he has named them with specific role which should be taken into consideration and the

investigation as a whole should be considered and weighed in respect of further investigation.

173.50 It was submitted that the argument of absence of prior acquaintance with the accused and the fact that no test identification parade is held, deserves to be rejected. It was submitted that the test identification parade is not required in a case where the persons are from surrounding locality and are seen daily. It was submitted that the witness could recognize them by their faces and identify the accused in the open court and such identification is considered to be valid and legal. In that view of the matter, this witness is credible so far as both the incidents are concerned and should be believed.

173.51 ANALYSIS: This witness, in his examination-in-chief, has deposed regarding having seen Bipin Autowala (A-44) taking over the leadership of a mob which had come from the direction of Krushnanagar when he came out on the road at about 10 o'clock in the morning. The witness has further deposed about having seen a mob coming from Natraj Hotel, which was being led by Manoj Videowala (A-41) and Suresh Langdo (Chhara) (A-22) and another Sindhi person. The witness has deposed that there was firing from the S.R.P. mob and a person named Abid came to be wounded by a bullet. Subsequently, another person named Mustaq was also wounded by a bullet. Thereafter, the people in the mob started slowly entering into the chawls. This was at around 11 o'clock. The mobs started damaging the chawls and setting them on fire and also started entering the chawls near the Noorani Masjid and opposite it. Upon seeing all this, at around 12 o'clock, he took his family and went on the rear side of the

chawls towards Hussainnagar. They had beseeched the S.R.P. people to permit them to enter the S.R.P. Quarters; however, they were not allowed to do so. The witness has deposed that he left his family at Hussainnagar and went to get his valuables. Later on, the mobs started gathering at Hussainnagar near the S.T. compound wall and started assaulting people and burning them, due to which, at around 5 o'clock he went from Hussainnagar to the terrace of a house in Gangotri Society and hid there. From the terrace of Gangotri Society, he had seen Jaybhavani Chhara and Tiwari Conductor gesturing at people and showing them where they were hiding. In the cross-examination of the witness, no contradictions have been brought out as regards the sequence of events narrated by the witness; however, the witness has been contradicted as to his statement dated 12.5.2002, to the effect that he had not named any accused in such statement. This contradiction has been proved through the testimony of PW-278 Shri R.B. Joshi, the assignee officer, who, in his cross-examination has admitted that this witness, in his statement recorded by him, had neither stated the names of the accused or that he knew the accused nor had he stated anything regarding any accused having taken part in the incident or having committed any overt act. Thus, while the sequence of events, as narrated by the witness has been established, a material omission has been brought out and proved that he had not named any of the accused in his statement recorded by the police. It appears that subsequently, the witness has named accused Bipin (A-44), Manoj (41) and Suresh (A-22) before the SIT. However, insofar as accused Tiwari (A-25) is concerned, it is only for the first time before the court that the witness has made the allegation regarding Tiwari pointing out the place where the

Muslims were hiding. Therefore, insofar as accused Bipin, Manoj and Suresh are concerned, the witness has named them for the first time before the SIT in the year 2008 and insofar as accused Tiwari is concerned, an allegation has been made against him for the first time in the court. In the opinion of this court, since the accused named by this witness in his statement before the SIT, have been named by other witnesses in their police statements, there is no reason to believe that, at the relevant time, though the witness has named these accused, the police had not written them down, more so, when no such grievance was made before the SIT. Under the circumstances, it would be hazardous to rely upon the testimony of this witness for the purpose of establishing the charge against the accused, namely, Bipin (A-44), Manoj (41) and Suresh (A-22) and Tiwari (A-25). However, to the extent of the narration of the events that unfolded on that day, no contradiction has been brought on record, and hence, the same is required to be accepted.

174. **PW-189 Mahammadimran Imtiyazhussain Momin**, aged 29 years, has been examined at Exhibit-1289. This witness has deposed that right from childhood, he is residing at *Lane No.1, Hussainnagar*. Till he went to reside at Juhapura, he was residing at Hussainnagar. After his marriage, he was residing at *Lane No.7, Hussainnagar*.

174.1 In the year 2002, he was residing at *Lane No.7, Next to S.T. Workshop, Naroda Patiya*. At the relevant time, his wife and his younger brother and sister used to reside with him. He had a pan-galla and tea stall at *Chetandas-ni-Chali, Next to S.T. Workshop*. He used to open his shop from 7

o'clock in the morning till 8 o'clock at night and carry on his business.

174.2 He has failed in the 10th standard. The incident took place on 28.2.2002. On the day of the incident, he had opened his Noorani Pan Centre and Tea Stall at 7 o'clock and was sitting there and was carrying on his business. On that day, there was a call for Gujarat bandh. At around 8:00 to 8:30, his mother came to his cabin and told him to shut the shop as mobs had started gathering towards Natraj Hotel and the atmosphere was bad. Hence, he had closed his shop and had gone to his mother's house in *Lane No.1, Hussainnagar*.

174.3 On 27.2.2002, as his wife was about to give birth to a child, she was admitted in the Motibai Hospital, and hence, she was in the hospital.

174.4 A little while after he went to his mother's house at Lane No.1, Hussainnagar, there was shouting outside. Therefore, he, together with his friends, came out to the entrance of the lane to watch. He came out of his lane and went to the corner of the S.T. Workshop. At that time, it was about 9:00 to 9:30 in the morning.

174.5 Next to the S.T. Workshop, towards Natraj, there were mobs. They were shouting "kill, cut" and were burning carts, cabins and shops near their Noorani Masjid. Thereafter, they started pelting stones at them. Thereafter, the police fired at them when Priya Talkieswala, Pirubhai was hit by a bullet. They lifted Pirubhai and took him to the veranda of his mother's house. Moreover, at that time, Priya Talkieswala

Mahammadbhai, Mustaqbhai and another were also injured by bullets. In all, four persons, were injured. Out of them, Abid was injured on the waist with the bullet. They took Mahammadbhai also to their veranda.

174.6 In the mob near the Noorani Masjid, he had seen Suresh and Manoj Videowala, wherein Suresh had a sword and Manoj Videowala had a trishul and private weapon in his hand. All of them were pelting stones and were shouting "kill, cut". Thereafter, he returned to his mother's house.

174.7 He stayed at his mother's house till 11:30 to 12:00. He, together with his mother and others, went from his mother's house towards the rear side when he saw that they were throwing burning rags from the S.T. Workshop and were pelting stones. His sister Shamimbanu sustained burns on her hand from a burning rag. From there, they went to Lane No.4, Hussainnagar. In Lane No.4, Hussainnagar, they went to the terrace on the third floor of the Pinjara's house.

174.8 From the terrace on the third floor of the house, he saw that the people in the mob were looting household articles from their house and were burning them. They were assaulting and killing. In the mob, there were three brothers, viz., **Guddu Chharo (deceased), Hariyo Chharo (A-10) and Nariyo Chhara (A-1)**. They were assaulting and killing and all three of them were leading the mob and were gesturing to where their people were hiding to the mob. These people were looting from the houses and setting them on fire. All the three brothers, viz., Guddu, Hariyo and Nariyo had swords in their hands. At this time, it must have been approximately 2:30 to 3 o'clock in

the afternoon. They were ransacking their chawls and they (the witness) were watching all this.

174.9 After noon, from the very same terrace, they had looked towards Gangotri Society. There, the Chharas were drumming sticks on *thalis* (metal plates) and were sending the mobs that were coming from behind Gangotri to Hussainnagar. **Dalpat and Bhavani** (both deceased) were amongst the people who were doing this act. They had stayed on the terrace of Lane No.4, Hussainnagar till 12 to 1 o'clock at night.

174.10 The police were shouting from below that they had come to take them to the relief camp. Thereafter, the police took them in a police van. While they were going, they had seen burning dead bodies on the road. The police had taken them to the Shah Alam relief camp.

174.11 His father who used to work as a helper in the S.T. Workshop had gone for work on that day. They had met him at the camp ten days after the incident.

174.12 His sister Shamimbanu who had sustained burns was treated at the Shah Alam camp. They had stayed at the Shah Alam camp for six months. After sometime, the police had come to orally examine them at the Shah Alam camp and had recorded his statement.

174.13 In the incident, everything in his house was looted. However, his house was not set on fire. The SIT had also recorded his statement.

174.14 The witness has stated that he does not know whether Guddu, Bhavani and Dalpat are presently alive.

174.15 He has stated that he knows Suresh, Haresh, Naresh and Manoj and can identify them. The witness has, accordingly, identified Naresh (A-1), Haresh (A-10) and Suresh (A-22) correctly. The witness could not identify Manoj Videowala (A-41) though he was present in the court.

174.16 CROSS EXAMINATION: In the cross examination of this witness it has come out that he has studied up till the tenth standard in a Gujarati medium school. He was running Noorani Pan Centre and Noorani Tea Stall since 1998. Both the stalls were situated on the road at the time of the incident. His tea stall and pan centre were on the service road touching the national highway. His wife-Bilkisbano was expecting at that time and his maternal grandmother and maternal aunt had taken her to the hospital for delivery.

174.17 The witness has stated that he knew Pirubhai and Mohammedbhai who were injured, because they were residing in lane No.1 and he knew the other two persons because they used to come to have tea at his stall. The witness has stated that his house is the first house in lane No.1 of Hussainnagar and is situated in the corner.

174.18 In his cross-examination (paragraph 27) the witness is confronted with his police statement dated 13.5.2002 to the effect that he has stated therein that at that time in the morning at eight thirty the police came and told him to shut down his stall as the situation was volatile. It may be noted

that the witness is merely confronted with his police statement without pointing out as to which part of his testimony he is sought to be contradicted, which is clearly not in consonance with the provisions of section 162 of the Code read with section 145 of the Evidence Act.

174.19 The witness has stated that he had closed his tea stall and brought his cart and parked it at his mother's place. At that time it must have been around 08.00-08.30 in the morning. He has admitted that thereafter, his family members were sitting at his house in lane No.1. The witness has admitted that by the time he took the goods from his tea stall and came to his verandah, the people in the mob had not entered his chawl. In his cross-examination it has come out that the Police firing took place near S.T. Workshop gate. The witness has stated that he had lifted the persons who were injured in the firing. He had taken Pirubhai who was injured by bullet on his leg. They had lifted him by his limbs and had taken him. He does not know other persons, who helped him in lifting him. They had lifted him and placed him on the platform outside his mother's house. Two or three other persons also got injured by bullets and they had also taken them; after leaving Pirubhai they had gone and brought them. The witness does not know as to who are the other persons who helped them in bringing them inside. He has admitted that out of four people who were injured, three were brought to the platform outside his mother's house. The witness has admitted that till they brought the persons who were injured inside and put them on the platform, the people in the mob had not entered their chawls. He does not know how long the injured persons were kept on the platform. Nobody had waited to provide them

treatment. The witness has stated that till he left his house with his family, all the injured were not on the platform. He is not aware as to whether the guardians and successors of these three persons had come and taken them away.

174.20 The witness has stated that he, together with his family, was at his mother's house till 11:30 to 12:00 in the afternoon. He has admitted that in lane No.1 they were at Pinjara's house. They were on the terrace and were sitting down. In his cross-examination it has come out that apart from them there were around two hundred and fifty to three hundred people on Pinjara's terrace. They were on the terrace from the morning till around 12:00. He has admitted that his sister- Shamimbano, who had sustained burn injuries caused by burning rags, was not provided any treatment on the Pinjara's terrace. When he left Pinjara's terrace there were around two hundred and fifty to three hundred people. He has admitted that all of them were together in a big police vehicle.

174.21 The witness has stated that he had not gone to meet his wife-Bilkisbanu from the relief camp. He had not gone to the hospital even after one week and that after seven days his wife had come to the camp. The witness has denied the suggestion that leaders of Jawannagar Vikas Ekta Committee and Nazir Master had come to meet them at the camp. He has also denied that leaders of different chawls time and again used to hold meetings as to names of which accused should be given and used to consult the organizers of the camp and as to what kind of statements should be given. The witness has denied that he did not have any kind of dealings with the accused whom he had named and identified before the court

and has voluntarily stated that they used to come to his tea stall to have tea. The witness has denied that Nazir Master from Jawannagar Vikas Ekta Committee had come to him and told him to give names of these accused. The witness has admitted that till 13.5.2002 when his statement was recorded he had not informed any person about the offence committed by the accused. The witness has voluntarily stated that when the police came he had informed them. The witness has stated that on 28.2.2002 despite bandh call he had opened his tea stall, because he had no idea that such an incident would take place. The witness has stated that his tea stall and paan galla were near to each other. On the day of the incident when his mother came to ask him to close his shop, prior thereto, no one had come to get his shop shut. The witness is cross examined with regard to the topography of the area.

174.22 The witness has stated that when he and his mother came out of their house, many people from their chawl were at the corner. He has stated that they had not pelted stones because they were standing there for their defence. They had not made any preparations for their defence. On the opposite side since the masjid was being damaged and there were instances of arson, they were standing there for their protection. The witness has stated that after he came to the corner he had stood there for around two to two and a half hours and that the persons standing near him and with him were not injured by stones.

174.23 In his cross-examination it has further come out that he has not seen that the mob which was there had rushed and entered inside. He has denied that he has not seen any

one amongst them having fallen down and his leg having been fractured. He has stated that Pirubhai was injured by bullet on his leg. He has admitted that it has not happened that any one from amongst them fell down while running and was injured on leg. He has stated that he has not heard that on that day Muslim mob had fled and that one of the persons had fallen down and others had run over him due to which such person had sustained fracture on his leg.

174.24 The witness has stated that he has not seen any one firing or being injured by bullet, but he knew about such injury, namely, that somebody was injured with bullet, but he has not seen who had fired the bullet. He has further stated that on that day after he returned home he had not stayed there for two hours. They must have stayed at home for around half an hour to three-quarters of an hour. He has admitted that as long as he was at home no one had attacked their house and till he was standing at the corner, the Hindu mob had not entered their chawl. The witness has admitted that when they were going from their mother's house, on the way, they have not met any Hindu mob. They had not seen any Hindu rioting while they were on their way. He has further clarified that he has seen the incident that had taken place at the S.T. Workshop which he had narrated earlier. In cross examination of the witness it has come out that they had gone to the terrace of the Pinjara's house through staircase, but where the staircase starts there was a door which they had closed; when he had gone to the Pinjara's house, at that time the stair case door was open. The witness has admitted that from the Pinjara's terrace one can see Gangotri Society. The witness is cross examined with regard to topography of the

area, around the Pinjara's house and the area which could be seen while standing on the Pinjara's terrace. The witness has denied the suggestion that if there are mobs in the chawls, one cannot identify who is there in the mob. The witness has admitted that he does not know as to who has looted goods from his house on the day of incident.

174.25 The contents of paragraph 10 of his examination-in-chief are read over to the witness and he has admitted that he has stated the facts stated therein. The witness has admitted that he had not seen Guddu Chara, Hariyo Chara and Nariyo Chara assaulting any one and he had not stated so before the police. The witness has admitted that on that day after he climbed inside the Pinjara's house he got down only at night. He had left his house at around 11:30 to 12:00 and had gone straight to the Pinjara's house where he reached within five to seven minutes.

174.26 The witness has admitted that he himself has not seen the accused assaulting or cutting any one from the area. He has admitted that except for the accused he has not seen any one assaulting any one. He has admitted that for this reason, in his statement recorded by SIT and the police he has not clearly stated as to which accused has assaulted whom.

174.27 The witness has admitted that prior to going to the SIT for recording his statement, he had made an application. The witness has denied that till he made the application to the SIT he did not know any of the leaders, arsonists or assailants. He has denied that when he made application to the SIT he did not know the names of any accused and therefore, he has not

stated the names of any of the accused. The witness is thereafter examined with regard to the application made by him. The witness has admitted that prior to making the application to the SIT, the statement recorded by the police at the camp had not been read over to him. The application Mark 644/65 is shown to the witness who has admitted his signature at the end of the document. The contents of the application are read over to the witness, who has admitted the same. The application is numbered as Exhibit No.1291. The witness has stated that he does not know as to who has written the application and in whose handwriting it has been written. The witness is extensively cross-examined with regard to where, when and how application was made. The witness is further cross-examined with regard to the topography of the area, etc.

174.28 The witness has denied that he has not stated the facts regarding Suresh Langda, as stated by him in his examination-in-chief, in his statement recorded by the police. He has denied that he has not stated any facts regarding Dalpat in his police statement. He has also denied that he has not stated the fact regarding Bhavani and Dalpat drumming on plates and gesturing to the people in the mob and sending them to Hussainnagar in his statement recorded by the police. The witness has denied that in his statement dated 13.5.2002 he has not stated any fact about his having gone to the Pinjara's terrace and having seen the incident from there. The witness has denied that after his mother went home he had straightway gone to Gangotri Society. The witness is confronted with his statement dated 13.5.2002 to the effect that he has stated therein that upon the houses in chawls being ransacked and set on fire and people being burnt alive,

to protect his life he went to the terrace of a house in Gangotri Society and hid there. The witness has denied that all the facts stated by him regarding having gone to the Pinjara's terrace are got up and false.

174.29 The witness has denied that in his statement dated 13.5.2002, he has not stated that the accused named by him whom he had identified before the court, had any kind of weapons with them. The witness has admitted that his mother's name is Rashidabano. He has admitted that after his mother met him in the morning at 8:00 to 8:30 at his tea stall, he was together with her for the entire day. The witness has clarified that he and his mother had gone home on the road together, till then, they were together and thereafter she had stayed at home, he had gone on the road. He has admitted that after he and his mother went home from tea stall, his mother thereafter did not return to the road.

174.30 To prove the omissions and contradictions as to his previous statements recorded by the investigating agencies, the defence has cross-examined the concerned, Investigating Officer/assignee officer who had recorded such statement.

174.31 PW-278 Shri R. B. Joshi, the assignee officer, has in his cross-examination admitted that he had recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that this witness had stated before him that then at the morning at around 8:30, the police had come and told him to shut down the stall as the atmosphere was volatile.

174.32 The assignee officer has also admitted that this

witness had stated that therefore he had parked his cart at Jawannagar near the house of his parents and had come out on the road to watch. The assignee officer has admitted that this witness had told him that he had parked his cart at Jawannagar and had not stated that he had parked it at Hussainnagar. It may be noted that this part of the previous statement of the witness is used to contradict what has been stated by the witness in paragraph 98 of his cross-examination and not to contradict any part of his primary statement, therefore, the same is not admissible in evidence.

174.33 The assignee officer has also admitted that this witness in the statement recorded by him has not stated any facts regarding Dalpat and Suresh Langdo. The assignee officer has admitted that this witness had not stated before him that Bhawani and Dalpat were ringing thaalis and were gesturing and sending the mobs towards Hussainnagar. He, however, has stated that the witness has specifically given the name of Bhavani Chhara in his statement. The assignee officer has also admitted that this witness had stated before him that no person in his family had sustained any kind of injury or loss of life in the riots. He has also admitted that the witness has not stated before him that he had a pan cabin near the Noorani Masjid but has stated that he had stated that he had a tea stall. In the opinion of this court, the fact as to whether the witness had a tea stall or a pan cabin can hardly be said to be a material omission or a material contradiction within the meaning of such expression as contemplated under section 162 of the Code. The assignee officer has also admitted that the witness has not stated before him that he had gone to the Pinjara's terrace and had seen the incident from there.

174.34 The assignee officer has admitted that this witness has stated before him that the atmosphere was volatile due to which, he had shut the tea cart and had packed all the goods in the cart and had gone inside near Jawaharnagar and had parked his tea cart and was making tea when.... It may be noted that this part of his previous statement has not been put to the witness to contradict any part of his primary statement before the court, but is put to the witness to contradict an answer elicited in his cross-examination, and is therefore, not admissible in evidence.

174.35 The assignee officer had also admitted that the witness has stated before him that the locks of the houses in the chawls were being broken and houses were damaged and were set on fire and people were being burnt alive and he had saved his life and had gone to a terrace at Gangotri Society and hidden there. The assignee officer has also admitted that this witness in his statement recorded by him has not referred to any weapon in the hands of the accused named Manoj, Suresh, Guddu, Nariyo, Hariyo, Dalpat and Bhavani in the statement recorded by him. The assignee officer, however, has stated that the witness had named Manoj, Guddu, Nariyo, Hariyo, Bhavani and Bipin. It may be noted that the omission sought to be proved through the testimony of the assignee officer is regarding the witness not having mentioned the accused named therein as having weapons in their hands. Therefore, to the extent the assignee officer has clarified the fact regarding the witness having named the accused to bring out the exact nature of the omission, however, while doing so the assignee officer could not have referred to the witness

having named Bipin in the statement recorded by him.

174.36 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 10.6.2008. He has admitted that this witness had stated before him that his statement dated 13.5.2002 recorded by the police had been read over to him and that the same is correct and proper. This part of the testimony of the Investigating Officer is inadmissible in evidence inasmuch as the statement recorded under section 161 of the Code is sought to be used for a purpose other than contradicting the primary statement of the witness.

174.37 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to paragraph 113 of the cross-examination of the witness, wherein he has been confronted with his statement dated 13.5.2002 to the effect that he has not stated that he had gone to the Pinjara's terrace. It was submitted that omission is proved that he had not stated that he had seen the accused from the Pinjara's house and that before the Investigating Officer he had stated that he had gone to Gangotri without reference to the Pinjara's house. It was pointed out that this witness refers to three separate incidents involving different accused. In the first incident he has stated that he has seen Suresh and Manoj as part of the mob near the Noorani Masjid with weapons. It was pointed out that Suresh is not named before police and the witness has given his name for the first time before SIT. The witness has also attributed weapons in the hands of Suresh for the first time before SIT. It was submitted that insofar as

accused No.41 Manoj is concerned, he has not been identified by the witness before the court. The witness had named him before the police as well as before SIT, but without reference to any weapons as attributed in his examination-in-chief.

174.38 It was submitted that in the second incident which he has stated that he saw from the Pinjara's house in Lane No.4 between 2:30 to 3:00 in the afternoon, the witness has involved Guddu, Hariyo (accused No.10) and Nariyo (accused No.1). It was pointed out that the very fact that the witness has gone to the Pinjara's house is absent in the police statement of the witness and on the contrary in his police statement he has stated that he had gone to Gangotri and hidden there. It was submitted that when the very fact that the initial stage of going to the Pinjara's house was not there in the police statement, there is no question of the witness having seen these accused from the Pinjara's house. Therefore, as to from where he has seen these accused is not certain. It was submitted that for the first time before SIT, the witness has stated that all three of them were wielding swords. It was contended that when the witness refers to the accused as Nariyo and Hariyo, it is difficult to establish the identity of such accused in the absence of a test identification parade.

174.39 It was submitted that in third incident, the witness has named Dalpat and Bhavani, both of whom are dead and has stated that they were seen in the mob in the afternoon. It was submitted that Dalpat was named for the first time before the SIT. The attention of the court was invited to the admissions elicited in paragraph 87 of the cross-examination of the witness, wherein he has stated that he has not seen any

person from his area causing any injury to anyone. It was urged that there are inconsistencies which are vital and material between the evidence of this witness and the evidence of his mother PW-192 and other witnesses. Therefore, the testimony of this witness is neither credible nor reliable and cannot be relied upon to establish the charge against the accused.

174.40 ANALYSIS: From the testimony of this witness it can be seen that while cross-examining him, the witness is straight away confronted with his statement dated 13.5.2002 in respect of certain facts stated in his examination-in-chief without referring to the part of his examination-in-chief in respect of which he is sought to be contradicted, which is not strictly in consonance with the provisions of section 162 of the Code read with section 145 of the Evidence Act. Be that as it may, certain omissions/contradictions in his testimony as to the facts stated by him in his statement dated 13.5.2002 have been brought on record and have been proved through the testimony of the assignee officer who had recorded his statement.

174.41 This witness has deposed that he had seen accused No.22 Suresh and accused No.41 Manoj Videowala in the mob near the Noorani Masjid in the morning with weapons in their hands. However, the witness has been contradicted in this regard and an omission has been brought on record and proved that he had not named accused No.22 Suresh, in his statement dated 13.5.2002. Thus, the witness has named him for the first time in his statement recorded by the SIT in the year 2008. Insofar as accused No.41 Manoj Videowala is

concerned, while the witness is consistent in his version regarding his presence in the mob near the Noorani Masjid in the morning in all his statements as well as in his deposition before the court, he has failed to identify him in the dock.

174.42 The witness has also deposed that from the terrace of the Pinjara's house with three floors, in a mob which was looting household goods and committing loot and arson, he had seen Guddu Chhara, and his two brothers Nariyo and Hariyo and that they were assaulting and hacking. These three persons had taken over the leadership of the mob and were gesturing to the mob to show them where their people were hiding. The witness has also deposed that all the three brothers had swords in their hands. In this regard, in paragraph 80 of his cross-examination, the witness has admitted that he has not seen any of the three accused assault anyone. While the witness claims to have seen them from the terrace of the Pinjara's house, a contradiction has been brought out and proved that in his statement recorded by the police he had stated that the locks of the houses in the chawls were being broken and they were being damaged and the houses were being set on fire and people were being burnt alive and to save his life he had gone on the terrace of a house at Gangotri Society and had hidden there. Thus, there is a contradiction as to from where he had seen the three accused. Nonetheless the fact remains that the witness has consistently named these accused in his first statement recorded by the assignee officer and has also named them in his testimony before the court. Therefore, the fact regarding the witness having seen the three accused in a mob that was looting houses and damaging them is consistent, except for the fact as to where he had seen

them. Therefore, while considering the testimony of this witness qua these three accused, the court would have to look for corroboration from the testimonies of other witnesses. Insofar as the absence of a test identification parade to establish the identity of the two accused persons is concerned, while it is true that they have been referred to as Hariyo and Nariyo, at the same time they have been described as Guddu Chhara's brothers. In the opinion of this court, there are hardly any chances of there being three other brothers by the same name in the area. Therefore, it cannot be said that because the witness has referred to the accused as Hariyo and Nariyo their identity is not established.

174.43 As regards the third incident wherein the witness has named Dalpat and Bhavani in the mob in the afternoon, it has been pointed out that Dalpat's name has come up for the first time before the SIT. Since both these accused have died since a long time, the complicity or otherwise of these accused is no longer in issue.

174.44 As regards the discrepancies in the testimony of this witness and the testimony of his mother PW 192, such minor discrepancies which have no direct connection with the core of his testimony would not affect the credibility of the witness. One must remember that the witnesses have been examined about eight years after the incident. Therefore, it is too much to expect the witness in his cross-examination to be able to remember with certainty as to who else was present at a particular site. Hence, when the witness in his cross-examination states that he had not seen any woman who was a local resident on the road in the morning, it does not mean

that there was no woman on the road, but only that the witness has not noticed the presence of women on the road or at least he does not remember it.

174.45 While it is true that the witness has improved upon his previous statement in his subsequent statement and before the court, and there are embellishment and exaggerations in his testimony, to the extent the witness is consistent in his version, the same deserves to be accepted and his entire testimony cannot be discarded. Through the testimony of this witness the prosecution has proved the presence of A-1 Naresh and A-10 Haresh in the mob which was looting household goods and committing loot and arson, and that they were assaulting and hacking. However, the court would look for some corroboration to his testimony qua these accused.

175. **PW-190 Salauddin Abdulkarim Shaikh**, aged 32 years, has been examined at Exhibit-1295. This witness has deposed that he is residing at *Juhapura* since the last six years. Earlier, he used to reside at *Jawannagar, Naroda Patiya* since his birth.

175.1 In the year 2002, he was residing at Jawannagar with his mother, father and his family.

175.2 In February, 2002, upon getting married, he went to live separately from his parents and went to Jawannagar. The house in which he went to stay in Jawannagar was of his ownership. At the relevant time, he used to bring cloths from outside and do tailoring work. In 2002, at the time when he was residing at Jawannagar, his father Abdulkarim and his

mother Sajidabegam and his brother and sister, used to reside in *Pandit-ni-Chali* which is next to the S.T. Workshop compound wall.

175.3 On 27.2.2002, the Godhra incident took place. This incident took place on 28.2.2002. On that day, he woke up at 8 o'clock in the morning and had breakfast. He went outside near the gate of the S.T. Workshop on the road. On that day, people were running around in their area and hence, he had come out to see. When he came out, he saw mobs coming from the direction of Natraj Hotel and the people in the mob were pelting stones.

175.4 The Muslims tried to reason with the people in the mob not to act like this, however, they did not agree. Thereafter, the people of the same mob started pelting stones at the Noorani Masjid. The people in the mob started looting the shops and cabins outside the Noorani Masjid and started setting such shops and cabins on fire and burning them.

175.5 Thereafter, the mobs started increasing. At that time, a mob was also coming from the direction of Krushnanagar. This mob was also pelting stones. At this time, a police vehicle came near the gate of the S.T. Workshop. The police vehicle released tear gas shells on the Muslims and also resorted to firing wherein four persons were injured by bullets. On account of the firing, they went inside.

175.6 The mob of Hindus set a tanker standing near the Noorani Masjid as well as a rickshaw standing there on fire. Upon seeing all this happen, he went towards Jawannagar. He

went home.

175.7 Thereafter, after a little while, he came out of his house where the lane from his house ends near the S.T. Workshop compound wall. At that time, it was around 12 o'clock in the afternoon. At that time, the mob which had come to the S.T. Workshop had started pelting stones at Jawannagar also. They were pelting stones from inside the S.T. Workshop. They had pleaded with the S.T. people inside the S.T. Workshop, however, they did not concur. He, therefore, returned home.

175.8 Thereafter, he took his wife and locked his house and went towards the S.R.P. Quarters. He was trying to go inside the S.R.P. Quarters, however, the people at the S.R.P. point there, did not let them enter. Many Muslims had gathered outside the S.R.P. Quarters. Thereafter, they all sat there for around one hour.

175.9 At around 1:30 in the afternoon, a mob came from the open ground near Jawannagar. This mob pelted stones at them. The policemen were there. They started firing. Thereafter, they took the women and went to a terrace of Gangotri. Thereafter, he took his parents and his wife from beneath the wire fencing of the S.R.P. Quarters wall, and entered the S.R.P. Quarters. After leaving his family nearing the fencing inside the S.R.P. Quarters, he came out. At the time when he came out after leaving his family members inside the S.R.P. Quarters, it was around 3 o'clock in the evening. Thereafter, the Hindu mob started growing. This mob came from Gangotri Society, from the open ground as well as

from the road outside and all the persons in the mob were advancing forward. At this time, he and many people standing outside the S.R.P. Quarters went to a terrace of Gangotri Society. He stayed on the terrace till around 1 o'clock. Thereafter, the mob was advancing. The people in the mob were looting their houses and setting them on fire. Thereafter, at about 5 o'clock, he went inside the S.R.P. Quarters. He stayed at the S.R.P. Quarters throughout the night. In the morning at around 4 o'clock, they were dropped at the Shah Alam relief camp in the S.R.P. vehicles. He found his wife, his mother and his younger sisters at the S.R.P. Quarters.

175.10 In this incident, he himself was injured. In the morning at 12:00, at the time when he was standing near the S.T. Workshop compound wall, he was injured on his forehead by a stone during the course of stone pelting. No other member of his family had sustained any injury.

175.11 The witness has deposed that in the mob, he has seen Manoj Videowala and Guddu Chhara. He has seen Guddu Chhara in the open ground at 3 o'clock. At the time when he was injured, he had seen Manoj Videowala in the mob. Manoj and Guddu had swords in their hands and were pelting stones.

175.12 He has stayed at the camp for around six months. At the camp, he came to know that his house was looted. After about two months, the police took him home when he saw that his safe in his house as well as other things were looted. The police had examined him orally in connection with the incident and recorded his statement. The witness has stated that he has learnt that Guddu Chhara has died during the incident and

that he will perhaps not be in a position to identify Manoj Videowala as he had seen him on the date of the incident and thereafter, he has not seen him. Thereafter, the witness could not identify Manoj Videowala. He has stated that he has availed of treatment in connection with the stone injury at the Shah Alam camp.

175.13 CROSS-EXAMINATION: This witness has been cross-examined with regard to the topography of the area. In his cross-examination, he has admitted that he is conversant with the entire Naroda Patiya area. The witness has admitted that the mob which came from the side of Gangotri came through the open ground and this mob had entered the entire chawl. The witness has voluntarily stated that the mob did not come from only one side; however, there were mobs on all three sides. The witness has denied that it was only the mob which came from the direction of Gangotri Society, that had damaged their chawls, etc. The witness has admitted that on one side of Jawannagar, Gangotri Society is situated and on the other side, there is a big open ground.

175.14 The witness has admitted that between the open ground and Jawannagar, there is a compound wall. He has admitted that the wall is approximately ten feet high. He has admitted that if one is standing inside Jawannagar, he cannot see the open ground and has voluntarily stated that a gap had been made in the wall and a way had been made and from there, one could go to the pit. The witness has admitted that if one wants to come from the highway to Jawannagar, then there was only one road, that is, from the road parallel to the S.T. Workshop and the other way was as stated by him,

through the gap for the purpose of going to the highway. The witness has admitted that the people of Jawannagar use this gap for the purpose of going to the pit in the morning to relieve themselves. The witness has admitted that the mob which came from the open ground came through this gap.

175.15 In his cross-examination, it has further come out that he had come on the road at around 9:00 to 9:30 in the morning and had remained there for about two hours. The witness has denied that the Muslims who went to persuade the Hindu mob went near them to do so. The witness has stated that they were trying to persuade them from far. The witness has voluntarily stated that they were all people whom they know. The witness has admitted that no one had gone near the people in the mob to persuade them. He has admitted that he had seen the mob near Natraj and at that time, they were (the witness) standing near the S.T. Workshop gate and from near the S.T. Workshop gate, they were trying to persuade them. The witness has admitted that from the S.T. Workshop gate, he had gone straight to Jawannagar. He does not remember exactly at what time he had reached his house at Jawannagar. He has stated that when he reached the S.R.P. Quarters, there must have been approximately a hundred Muslims outside the S.R.P. Quarters. The witness has stated that an S.R.P. point was placed there and they were not letting anyone enter or come out, but in fact one could go to Gangotri Society even through the S.R.P. Quarters.

175.16 The witness has been cross-examined with regard to the conditions at the camp and the manner in which the statements of the witnesses were recorded by the police. The

witness has admitted that his statement was recorded in the presence of the organizers and others. He has admitted that prior to his statement being recorded by the police, he had a talk with the organizers. He, however, has denied that he had given his police statement as advised by the organizers and has voluntarily stated that what would the organizers know? The witness has denied that on the day of the incident, he had not seen the accused and that at the instance of the organizers, he was falsely deposing before the court.

175.17 In the cross-examination of the witness, it has been elicited that he had studied till the 5th standard. He puts his signature in Gujarati. On the day of the incident, prior to his going out for the first time, he was at home. He has stated that he had gone alone and that he had seen the stone pelting near the Noorani Masjid at around 10:00 to 10:30 in the morning. The witness has stated that he had seen a tanker near the Noorani Masjid at around 10 o'clock and that he had seen a rickshaw and a tanker together at the Noorani Masjid and both were near to each other.

175.18 The witness has denied that he has not seen Manoj Videowala and Guddu in the incident and that it was only because at the camp the Muslims there had told him that he was falsely giving their names. The witness has admitted that in this incident, the Muslims had become very frightened. The witness denied that on that day in their defence, the Muslims had kept sticks, swords and weapons. The witness has denied that there was no loot at his house and that at the instance of the Islamic Committee; he was falsely stating the facts regarding his house being looted.

175.19 The witness is shown the signature at Serial No.9 of the application Exhibit-670 and he has identified it to be his signature. The witness has stated that he had put this signature in a madressa at Jawannagar where Nazir Master was a teacher. The witness has admitted that he was told to come to the madressa as he was needed there. He does not know as to who asked him to put his signature and has voluntarily stated that he was informed that since Gandhinagar is far, his statement is to be recorded at Naroda, and hence, he was required to put his signature, whereafter he had signed it.

175.20 In the cross-examination of this witness, it has further come out that while he was there, he had seen an armed police point near the Noorani Masjid. He has admitted that he had also seen an armed police point near the S.R.P. Quarters. He has further stated that both the police were firing at them and were releasing tear gas. The witness has stated that when he talks about the road outside his chawl, he means the road which is situated immediately after they come out of their chawl.

175.21 The witness has deposed that he had not seen weapons in the hands of all the people in the mob, but many people had weapons in their hands. The witness has admitted that the number of people in the mob was so huge that it was not possible to specifically say as to which person in the mob was wielding which weapon. The witness has admitted that he had seen the people who had weapons in their hands pelting stones. He has admitted that those persons who had weapons in their hands were bending down and picking up stones and

throwing them. He has admitted that there were heaps of bricks and stones on the road. He has admitted that for this reason, they could find stones from the grounds for pelting them.

175.22 The witness has admitted that they too were picking up the stones from the road for pelting them. He has admitted that just like there were heaps of stones on the opposite side, there were heaps of stones where they were standing and that such heaps of stones were on the road. The witness has denied that at that time, they had also used the broken tube-lights and such other things. The witness has voluntarily stated that there was a scrap shop on the road and that after they went inside, the mob from the opposite side had used them. The witness has denied that they had used the articles from the scrap shop for attacking the opposite side and had caused injuries to the people in the opposite mob.

175.23 The contents of paragraph 5 of his examination-in-chief, from the second line to the end of the paragraph as well as the contents of paragraphs 6 to 13 of the examination-in-chief of the witness, are read over to him, to the effect that he had not stated such facts in the statement recorded by the police, which the witness has denied.

175.24 The witness is read over certain extracts from paragraph 15 of his examination-in-chief, wherein he has stated that he had seen Guddu Chhara in the mob in the open ground at 3 o'clock and at the time when he was injured, he had seen Manoj, to the effect that such facts have not been stated by him in his statement recorded by the police, which

the witness has denied.

175.25 The witness has admitted that he had not stated the facts stated by him in the first line of paragraph 4 of his examination-in-chief, that in February 2002, upon getting married, he had gone to reside separately from his parents at Jawannagar; the facts stated in paragraph 5 of his examination-in-chief wherein he has stated that he woke up in the morning at 8 o'clock and after having breakfast, he went outside on the road near S.T. Workshop gate; the facts stated in the first three lines of paragraph 6 of his examination-in-chief as well as the facts stated in the fourth line to the sixth line of his examination-in-chief, wherein he has stated that the shops outside the Noorani Masjid were looted. The witness has voluntarily stated that he had stated the facts regarding the cabins being looted.

175.26 The witness has admitted that the facts stated by him in paragraph 7 of his examination-in-chief to the effect that a police vehicle had come near the S.T. Workshop gate and four persons were injured by bullets have not been stated by him in his police statement. The witness has further admitted that the contents of paragraphs 8, 9 and 10 of his examination-in-chief which are read over to him, have not been stated by him in his police statement. The contents of paragraph 11 of his examination-in-chief from the second line to the last line are read over to the witness, who has admitted that he has not stated these facts in his statement recorded by the police.

175.27 The witness has further admitted that the contents

of paragraph 12 of his examination-in-chief; the contents of paragraph 13 of his examination-in-chief from the fifth line to the eighth line, which are read over him, have not been stated by him in his statement recorded by the police.

175.28 The witness has partly admitted and partly denied that in his police statement, he had stated that out of fear, he had gone home and upon the riotous mob setting the houses on fire in Pandit-ni-Chali, he was afraid that these people might come towards their house, he locked his house and together with his wife, he went to the S.R.P. Quarters and stayed there. At the S.R.P. Quarters, upon the riots subsiding at night, early in the morning police vehicles had come and they were taken in those police vehicles to the Shah Alam camp at 6:30 in the morning. The witness has voluntarily stated that he has not stated the fact regarding he having gone to the S.R.P. Quarters and having stayed there. The rest of the facts recorded in the statement are correct. Certain other parts of his statement are also put to the witness; however, since the same have not been put to him to contradict any part of his primary statement, the same are not admissible in evidence.

175.29 The witness has admitted that he has no social or monetary relations with Manojbhai and he has no relations with him of visiting each other's house. The witness has denied that he has not seen any incident and has not seen any of the accused and that he is falsely deposing before the court.

175.30 To prove the omissions and contradictions in the previous statement of the witness, the defence has cross examined PW-292 R.C. Pathak, the assignee officer, who, in his

cross-examination, has admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that this witness has not stated the facts regarding the S.T. Workshop gate as stated by him in paragraph 5 of his deposition, but has stated that on the road outside. The contents of paragraphs 6, 7 and 10 and certain parts of paragraphs 8, 9, 11, 12 and 13 of the examination-in-chief of the witness, are read over to the assignee officer, who has admitted that these facts have not been stated by the witness in the statement recorded by him. It may be noted that insofar as the witness is concerned, he has not been sought to be contradicted as to the entire contents of paragraphs 6 and 7 of his examination-in-chief. Therefore, without seeking to contradict the witness, the question of proving the same in the cross-examination of the assignee officer would not arise. Therefore, to that extent the evidence of the assignee officer is not admissible. Moreover, the witness has admitted the omissions in paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this testimony, and therefore, there was no necessity of examining the assignee officer to prove what has already been admitted by the witness. It, however, appears that all these aspects have been thrown to the winds and the testimonies of the witnesses are recorded perfunctorily without adherence to legal principles as well as to facts. It appears that the testimonies of the witnesses have been recorded at leisure as the prosecution did not object to such unnecessary cross-examination.

175.31 The assignee officer has admitted that this witness has not mentioned before him as to at what time and at what place, he had seen Guddu Chhara and Manoj. He, however, has

clarified that the witness has given the names and addresses of both the accused in the statement recorded by him. The assignee officer has admitted that the witness had stated before him that out of fear, he went home and a riotous mob was burning the houses in Pandit-ni-Chali and out of fear that these people may also come towards his house, he locked his house and with his wife, went to the S.R.P. Quarters and stayed there. At the S.R.P. Quarters, upon the riots having subsided, early in the morning, upon the police vehicles arriving, they were taken in the police vehicles to the Shah Alam camp at 6:30 in the morning.

175.32 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the contents of paragraph 59 of the cross-examination of the PW-292 Shri Rajeshkumar Chinubhai Pathak, who has recorded the statement of this witness on 13.05.2002 and pointed out that before the Investigating Officer, the witness has not stated the time and place when he had seen the accused, but had given the addresses. It was submitted that this witness has stated three to four facts which no other witnesses have stated, like, persuading the mob, that the S.R.P. police was firing at 1:30, etc.

175.33 It was submitted that the witness has very vaguely stated that he had seen Guddu and Manoj without stating the time and place where he had seen them. Moreover, insofar as the accused Manoj is concerned, the witness has failed to identify him. Reference was made to the contents of paragraph 80 of the cross-examination of the witness, to point out that he had no acquaintance with Manoj. It was submitted that right

from the morning to evening, at what point of time and at which place he had seen accused No.41 Manoj Videowala, is not coming on record. Moreover, when he had no acquaintance with the said accused and he could not even identify him before the court, naming the accused in the police statement also creates a doubt as to whether he had named him by himself or at the instance of someone.

175.34 The attention of the court was drawn to the contents of paragraph 38 of the cross-examination of the witness, wherein the witness has admitted that his statement was recorded by the police in the presence of the organizers.

175.35 ANALYSIS: This witness has deposed that he had seen **Manoj Videowala (A-41) and Guddu (deceased)** in the mob. He has stated that he had seen Guddu in the open ground at around 3 o'clock, whereas he had seen Manoj in the mob at the time when he was injured. According to the witness, he had been injured on his forehead by a stone in the stone pelting that took place while he was standing near the S.T. Workshop compound wall at around 12 o'clock in the morning (sic.). However, an omission has been brought out in the cross-examination of the witness that he had not mentioned the time and place where he has seen these accused. The witness has stated that he cannot identify Manoj because he had seen him in the riots and thereafter he had never seen him. Thereafter, he has attempted to identify him but failed in his attempt.

175.36 Since the witness has failed to identify the sole living accused named by him, his testimony would not come to

the aid of the prosecution to prove the charge against him.

175.37 However, one fact which has come on record in the testimony of this witness is regarding the source of stones which were pelted by the mob. In his cross-examination, the witness has admitted that he had seen people who had weapons in their hands, pelting stones. He has admitted that those persons who had weapons in their hands were bending down and picking up stones and throwing them. He has admitted that there were heaps of bricks and stones on the road and for this reason; they could find stones from the grounds for pelting them.

175.38 The witness has admitted that they too were picking up the stones from the road for pelting them. He has admitted that just like there were heaps of stones on the opposite side, there were heaps of stones where they were standing and that such heaps of stones were on the road. The witness has denied that at that time, they had also used the broken tube-lights and such other things and has voluntarily stated that there was a scrap shop on the road and that after they went inside, the mob from the opposite side had used them.

176. **PW-191 Mahammadmaharuf Abdulraufkhan Pathan**, aged 49 years, has been examined at Exhibit-1302. This witness has deposed that his native place is *District Farukbad, U. P.* He used to reside at *Mahamadi Tenements*. Prior thereto, he was residing at *Faizalpark, Vatva, Ahmedabad*. In the year 2002, he was residing at *Lane No.2, Jawannagar, Naroda Patiya*.

176.1 When he used to reside in *Jawannagar*, his wife Bilkishbanu, his sons Ahemadraja, Hamidraja and Kamarraja and his daughters Kherunisha and Ayashabanu, all were residing together. At the relevant time, he used to work as spray painter at Santej Estate, Changodar.

176.2 The incident took place on 28.2.2002. On that day, he was sleeping at home at 8 o'clock in the morning. On that day, his son Ahemadraja came and told him that a huge mob had gathered outside and hence, he got up and went outside. He had gone outside on the road where he saw that huge mobs of Hindus Parishad were standing outside near Natraj Hotel, Kubernagar road.

176.3 The people in the mob were armed with swords, pipes, tridents, spears, hockeys, cans of petrol and kerosene as well as the gas cylinders. In a while, the mob started looting and ransacking their religious place the Noorani Masjid as well as nearby shops and houses and setting them on fire. They put kerosene carts and gas cylinders in the Noorani Masjid and set it on fire.

176.4 A police point had been placed opposite the Noorani Masjid in line with Pandit-ni-Chali near the S.T. Workshop compound wall on the night prior to the incident. They all gathered together and told the people at the police point that the mob is coming and that they should stop it. The policemen then told them that they would stop them and if necessary, they would call for them, in which case, they should come there. Thereafter, the policemen got together with the mob

which was coming towards the Noorani Masjid.

176.5 The people in the mob thereafter started pelting stones on them, that is, on the Muslims. At that time, the Muslims came out in their defence whereupon the police resorted to firing against them. In the firing, from amongst them, Piru Allabax was injured with a bullet on his left leg, whereupon the police shouted to them and told them to take their person. Thereafter, he and others from the chawl got together and lifted Pirubhai and took him to a veranda in the chawl.

176.6 At this time, upon hearing shouts from the road, he and others went on the road. Upon going there, they saw that Hamidali's son was injured by a bullet on his private parts. Hence, four or five of them lifted Hamidali's son and took him inside the chawl and put him on a platform.

176.7 On seeing all this, he was frightened and hence, he went home. Upon going home, he was narrating the incident that took place on the road to his family members, at that time, from the direction of Krushnanagar, a mob came from the rear side of Jawannagar through the brick kiln towards their chawl and pushed compound wall with a truck and broke it and thereafter, they set the truck on fire.

176.8 Thereafter, the people in the mob placed gas cylinders in their houses and looted them and burnt the houses in their chawl. Thereafter, as the mob advanced forward, the people started going backwards.

176.9 From there, he, his family members and other persons from their mohalla went to the S.R.P. Quarters. They requested the S.R.P. people to let them go inside the S.R.P. Quarters. However, they did not permit them to enter and told them that, "*We have orders from above, that you should not be allowed to go inside. Today, you have to die!*" The S.R.P. people asked them to sit on the outer side and all of them sat near the S.R.P. Quarters for some time.

176.10 At around 1:30 in the afternoon, they went and stood in the open ground of Jawannagar.

176.11 At that time, at around 2:30 in the afternoon, **Bhavanisingh** came to them. Bhavanisingh told them that they and their children were hungry and thirsty since morning. So, if they have any big cauldron, they should give it to him so that they would cook *kadhi khichdi* for them. The witness has deposed that they told Bhavanisingh that in such a situation, from where could they bring a cauldron? They did not have any such cauldron. Thereafter, Bhavanisingh told them to come with their children on the rear side of Gangotri Society, where they would arrange snacks for them. The witness deposed that they were ready to go there, however, there was a doubt in his mind and hence, they did not go and kept on standing there.

176.12 In the evening at around 4:00 to 4:30, they went to the S.R.P. compound wall which was broken, near the last lane of Jawannagar and told the S.R.P. people that even if they do not let all of them enter inside, there was no objection; however, they should take their innocent children and their mothers and daughters inside. However, the S.R.P. people

refused to take them inside. They folded their hands and beseeched them; however, they refused to do so.

176.13 At this time, a boy named Asif also fervently requested that all of them be permitted to go inside the S.R.P. Quarters, however, they did not accede and the S.R.P. people had jabbed Asif with the butt of the gun and had severely beaten him.

176.14 Thereafter, they came to the last lane of Jawannagar and went to the terrace of a house of one Gauri Bhabhi. All of them went to the terrace, and from there, they went to the terrace of Gangotri Society and climbed down.

176.15 There, Bhavanisingh met them and he opened a huge shuttered hall and told them to sit inside and not to worry about anything. He told them not to make noise and thereafter, Bhavanisingh went away.

176.16 Thereafter, at around 5:00 to 5:30 in the evening, people from the Gangotri Society called four or five persons from the S.R.P. and got them to beat them with sticks and pushed them and told them to go towards Gopinath Society. Hence, they went there.

176.17 At that time, the Gopinath Society people also did not let them enter and they told them that they should go to Naroda from the rear side of the S.T. Workshop, hence, they went there.

176.18 They went to the open ground where they saw that

a mob of ten thousand to fifteen thousand people was standing there. The people in the mob had swords, pipes, hockeys, dharias, trishuls, spears, petrol and kerosene cans and gas cylinders in their hands. Upon seeing this, they were all frightened and were started coming back towards Jawannagar. They reached the passage of a water tank between Gopinath and Gangotri Society, where there were shops on the road and there was a wooden cabin in the passage. At this time, from behind, Guddu Chhara came with a huge mob from Gangotri and on seeing the mob, out of fear they started fleeing from there.

176.19 At this time, while they were fleeing, Bhavanisingh came towards them with a big mob from the direction of Jawannagar. They were terrified because they were encircled by both the mobs. When they were surrounded by both the mobs, those amongst them who were young and who could run, jumped over the wall and ran away, whereas the elders and those who could not jump over the wall and run, such people, as well as the women and small children, were caught between the shops and the water tank. At this time, the people in the mob started throwing substances like kerosene, oil or petrol on the people who were caught there. They threw burning rags on these people and set them on fire. At this time, the mob on the opposite side was assaulting them with weapons and was showing them the newspapers reports of the Godhra incident and was telling that they would erase all signs of their existence. This incident happened in the evening. At that time, it was around 6:30 in the evening and it was very slightly dark.

176.20 At this time, he and his family members were also there. In the incident, he and his son Kamarraja were also burnt. They had hidden in between dead bodies nearby a small platform near the water tank.

176.21 They hid in that place and saw that Guddu Chhara shouted at a girl and told her to come out saying that they would save her and that they would find her mother and father and handover her custody to them. The girl asked them as to whether they would actually save her and Guddu had assured her that they would save her, whereafter this girl came out. Upon the girl coming out, they removed her to thorny bush and took her inside and took her outside Gangotri Society. Together with Guddu Chhara, there were four – five other persons. All these people had tied saffron bands on their faces so that their faces could not be recognized. However, he knew Guddu Chhara by his voice and hence, he had identified him by his voice.

176.22 Thereafter, about fifteen to twenty minutes after they had taken the girl inside, they came out and threw her into fire, where everyone were burning, in a naked condition. The girl fell on him and he could not understand as to what had fallen over him and was frightened. However, upon seeing her in naked condition, he saw that it was that girl whom he had seen.

176.23 He asked the girl her name and she had said that her name was Noorjahan Kabirali. He told her to come where he was and that he would save her, whereupon she told him that her chastity was looted and there was no reason for her to

live any more. He had tried to reason with her that this is an incident that has happened and they have not done anything intentionally and hence, she could come near him and she would be saved. But the girl told him that, "*No uncle, now that my chastity is lost, there is nothing left for me to live!*" Saying this, the girl freed herself and jumped into the fire.

176.24 Thereafter, at that time, he heard a loud scream and in the brightness of the flames of the fire, he saw on the road towards the wall of the S.T. Workshop that Bhavani and four – five other persons were removing the clothes of a girl and were molesting her and had thereafter raped her. Thereafter, Bhavanisingh inserted a gupti like weapon between her legs in her private parts and cut her till her abdomen and at this time, the girl's mother came to save the girl, whereupon Bhavanisingh forcibly pushed the girl's mother and threw her in the fire where the other people were burning and also burnt that girl. Thereafter, all of them ran towards Gangotri Gopinath Society.

176.25 At this time, he got up and went and took out the mother of the girl from burning fire. Upon asking the girl's mother her name, she told that her name was Farzana Ayub Kalekhan Pathan. As she was burnt on the lower part of her body, he had removed her clothes. She had told him that in front of her eyes, her daughter Farhana had been burnt. He told the girl's mother that he had seen all that had happened to her daughter.

176.26 At this time, he had taken out a boy named Naimuddin from the fire from between the corpses. He had

taken out in all twelve persons from between the burning dead bodies.

176.27 At this time, there was a focus light of Gangotri Gopinath Society from which there was light and he told everyone that it appears that the mob is coming back and therefore, all of them should lie down and pretend that they are dead. He too made his son Kamarraza lie down under the wooden cabin and went and lay down at a little distance. Thereafter, after a while, a police vehicle came near the place where they were. What appeared to be a focus light was in fact the light of the vehicle, which he understood later on.

176.28 Thereafter, upon his son being under the wooden cabin, a policeman told an officer that he was alive and took his son out. They asked his son where his parents were, whereupon his son pointed out to him. The policemen checked his pulse and told the officer that he was alive. Thereafter, they took him out and woke him up and asked his name and he had told his full name to them. The policemen asked him as to how many people were alive, where upon he said that those who were lying there are alive. The policemen told him to save as many people as he could and said that they had come to take them to the Civil Hospital.

176.29 They made four to five policemen stand near them and when the policemen had gone to bring a vehicle from the Civil Hospital; they saved fourteen other persons who were alive. The policemen returned and informed that they had not found a vehicle from the Civil Hospital and that they should try to save as many people as they could and that they would

make some arrangement for vehicles.

176.30 After a little while, the policemen came with a Tata 407 vehicle. Upon them shouting and informing them, in all twenty eight persons sat in that vehicle. The rest of them remained lying down, and hence, he and four policemen checked the pulses of the people who were lying there and it appeared that all of them were dead. At that time, there were dead bodies of around fifty eight persons who had died.

176.31 Thereafter, twenty eight of them went to the Civil Hospital in this vehicle. On the way, out of twenty-eight persons, two women die. Thereafter, all the twenty-six persons reached the Civil Hospital. He requested the policemen to make arrangements for bed-sheets or clothes for their mothers and daughters who were in naked condition. Thereafter, the policemen told the staff at the Civil Hospital and made arrangement for bed-sheets.

176.32 At the Civil Hospital, he, his son Kamar, Ayashabanu, Hamidraza and others were admitted in one ward.

176.33 At the place fifty-eight persons were burnt, his wife Bilkishbanu and daughter Kherunisha also died. During the course of treatment at Civil Hospital, by 10.3.2002, out of those persons who had gone to the Civil Hospital in the Tata 407 vehicle, about nine persons had died and his son Hamidraja also died on 11.3.2002, during the course of treatment.

176.34 His brother Gulammahammad, who resides at Zikarhasan-ni-Chali, had gone and identified the dead bodies of his wife Bilkishbanu and daughter Kherunisha amongst the people who had died, and they were buried at the Shahibaug, Dariyakhan Ghummat Kabrastan.

176.35 He, his son Kamar Raza and daughter Ayashabanu had stayed at the Civil Hospital for treatment for about two months.

176.36 From the hospital, they went to the Shahibaug relief camp, where they stayed for around six months.

176.37 In the incident, his house at Jawannagar, Lane No.2, was looted and damaged.

176.38 While he was at the Civil Hospital, the police had orally examined him on two occasions. However, they did not record his statements as stated by him. Thereafter, the police had come once to where he was at the camp when also he was orally examined.

176.39 Thereafter, he had gone to the SIT on two occasions, where his statement in connection with the incident was recorded.

176.40 The witness has stated that as per his information Bhavani and Guddu Chhara named by him are dead. However, he knew both of them.

176.41 (The statements of this witness have been recorded

on 3.3.2002, 11.3.2002, 23.5.2002 as well as on 30.5.2008 and 14.7.2008.)

176.42 This witness has also been examined as a panch witness and in connection therewith he has deposed that on 5.3.2002, in the afternoon at around 12 o'clock, the police had called him to the postmortem room at the Civil Hospital as a panch for drawing a panchnama. The police had called him as the dead body of a boy was to be identified. There were two other people with him. There, the procedure of the panchnama was carried out. There, he had identified the fully burnt dead body to be that of Asif. He had signed on the writing there.

176.43 The witness is shown a document Mark 134/72 and he has stated that he has signed there as a second panch. The panchnama is read over to him and he has stated that the contents thereof are correct and that the panchnama has been drawn in his presence. The panchnama has been exhibited at Exhibit-1303.

176.44 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he has studied up to 5th standard in a Gujarati school which was a Government school. The witness is shown a document Exhibit-842 and he has identified his signature at the end of the document. The witness is shown the end of the police statement dated 11.3.2002 and he has identified his signature thereon. The witness has admitted that his statement was recorded by the SIT at Gandhinagar on 30.5.2008. The witness has admitted that he had received Rs.15 lakh from the Government as compensation for the death of his wife and children. The

witness has admitted that till his statement was recorded by the SIT, he was given police protection and that such police protection continues till date. The witness is shown an application Mark 644/23 and the signature at the end of the document which he has identified to be his signature. The witness has admitted that this is his application made before the SIT and the same is given Exhibit-1306. The witness has stated that he has not written the application and that he had got some boy from the mohalla to write it for him. The witness is thereafter cross-examined with regard to the manner in which the application was made. The witness is also cross-examined with regard to whether he had received any threats from anyone.

176.45 The contents of the application are read over to the witness, who has admitted that the contents thereof are true. The witness has admitted that prior to making the application Exhibit-1306, he had not lodged any complaint with the police regarding any threat received by him. The witness has stated that he does not remember whether at the time when he made the application Exhibit-1306, the police officers were creating any obstacles or interfering with the investigation of their case. The witness has voluntarily stated that he heard such things about certain people, and hence, he had written such facts in his application. The witness has stated that he does not remember that the role of two officers was suspicious.

176.46 The witness has denied that he used to do social work. He has stated that, however, he used to perform tasks regarding postmortem reports for someone and getting the No Objection Certificates. The witness has voluntarily stated that

he had helped some of his acquaintances; however, he was not doing such work for everyone.

176.47 Thereafter, the witness is confronted with certain facts stated by him before the SIT, however, the same have not been put to the witness to contradict any part of his primary statement and the witness is sought to be confronted with the facts which are elicited from his cross-examination, such part of his deposition not being admissible in evidence, it is not necessary to refer to the same.

176.48 In his cross-examination, it has come out that he was residing at Jawannagar since eight years prior to the year 2002. In his cross-examination, it has further come out that he did not know any people in Jawannagar and Gangotri, except Bhavani and Guddu. He has admitted that on 28.2.2002 when he reached the hospital at night, his first statement was recorded on 3.3.2002. The witness has admitted that till 3.3.2002, he was aware that his son and daughter are under treatment in the ward of the hospital and that they were with him when he came to the hospital on 28.2.2002. The witness has admitted that all the facts stated by him before the SIT were known to him on 3.3.2002 and has voluntarily stated that though he had stated these facts to the police, the police were not writing it down. The witness has stated that he knew that the police were not writing down the facts stated by him for the reason that when he was stating the facts, they had told him that they are not required to write down all this, and they only have to write regarding the treatment.

176.49 The witness is confronted with his statement dated

3.3.2002, wherein he has stated that on 28.2.2002 in the evening of *jhumme raat* at 7 o'clock, several mobs of Hindus entered their chawls shouting "kill, cut" due to which out of fear, they were fleeing from there. At this time, this bloodthirsty mob, which had petrol, kerosene cans in their hands, were sprinkling petrol and kerosene and throwing burning rags and were burning them. He does not know who the people in the Hindu mob were. At this time, there were shouting and screaming in the entire chawls and at that time, upon the sound of police sirens coming and the policemen coming, the riotous mob had fled. He saw that his wife and his daughter Kherunisha and son Ahemadraja and his father Raufvalikhan as well as his brothers Gulammahammad and Mashruf, and his elder brother's daughter Mariyam and his second daughter Shabbo, and his younger brother's son, all of them had got separated, wherein his daughter Kherunisha and wife Bilkishbanu had sustained burns. Due to which, his wife had died and he does not know anything about his other brothers and sisters. He does not know the names and addresses of this riotous Hindu mob, which the witness has denied. The witness has admitted that in his statement, he has stated that from his family, it appears that, he, his elder son Hamidraza and Ayeshabanu and Kamarraza, are under treatment at the hospital and they do not know anything else.

176.50 The witness has denied that in his statement dated 3.3.2002, he had not named Guddu or Bhavani. The witness has denied that he has not stated as to where the incident of his wife and children had taken place and that he had not stated the incidents involving Guddu and Bhavani in the statement recorded by the police.

176.51 The witness is cross-examined with regard to his stay at the Civil Hospital. He has stated that he cannot say as to exactly how many patients from Jawannagar were admitted at the Civil Hospital. He has stated that when the police was recording his statement, no lady had come to ask the questions to him. He has admitted that on that day, some Executive Magistrate lady had come to record his statement and has voluntarily stated that she was not writing as stated by them. The witness is shown Exhibit-842 which is a dying declaration of the witness and he has admitted that his name, father's name, age, address etc. are as stated by him. The witness has admitted having stated certain answers to the questions as recorded therein and has denied certain answers recorded therein.

176.52 The witness is sought to be contradicted by his statement dated 11.3.2002, wherein he has stated that on 28.2.2002, the mobs of people had indulged in riots in the Naroda Patiya area and had sprinkled kerosene, petrol, etc. in the Jawannagar hutments and had set the houses on fire due to which, there was a stampede amongst the people. During this, he also started fleeing with his family. In the meanwhile, they reached near the water tank between Gangotri and Gopinath Society and he and his wife were there in the passage, at this time at around 7 o'clock in the evening, the mobs of people poured some substance like kerosene, oil, petrol on the body of his wife Bilkishbanu, aged 34 years, daughter Kherunisha, aged 16 years, son Hamidraza, aged 10 years and set them on fire, wherein his wife Bilkishbanu and daughter Kherunisha were burnt. The police brought them to

the Civil Hospital, where Hamidraza was under treatment and during the treatment, his son Hamidraza, aged 10 years, had died on 11.3.2002 at 12:50 hours, and his dead body was handed over to him for the funeral rites and that he does not know the names of the people in the mob.

176.53 In the cross-examination of the witness, it has come out that for the first time he had seen Guddu when the incident of the girl near the tank took place when he had heard Guddu's voice. He has admitted that he had recognized Guddu by his voice and at that time, he had tied a mask over his face. The witness has admitted that at that time, there were people in the mob with him, who had also tied masks. He is not aware as to whether they were also wearing shorts and undershirts.

176.54 The witness has stated that he knows where Guddu resides and has admitted that he used to reside in Jawannagar. He has stated that Guddu had never come to his house and he had never gone to his house and he never had any relations of talking with him. He has admitted that this incident of Guddu had taken place at around 6:30 in the evening.

176.55 The witness has stated that he had seen Bhavani for the first time on that day when he came to take the vessels from him. At that time, it was around 2:00 to 2:30 in the afternoon. The witness has admitted that at that time, he was in Jawannagar and they were in the open ground. He has stated that Bhavani's house is at the corner of the last lane of Jawannagar and that he has no relations of visiting Bhavani's house. He had no social relations with him and nobody had introduced him to him. The witness has admitted that Bhavani

had asked for vessels for the purpose of cooking meals for them and for no other purpose. The witness has admitted that they had refused to give vessels for cooking. He has admitted that Bhavani had thereafter told them that if they come to Gangotri, they can have tea and snacks. The witness has admitted that having faith in what Bhavani had told them, they had gone to Gangotri.

176.56 The witness has admitted that except for Bhavani, he had not recognized anyone else in the mob. The witness has denied that for the first time, he had mentioned the names of Bhavani and Guddu in his statement dated 25.3.2002 and not prior thereto.

176.57 In his cross-examination, it has come out that the shuttered building where they were kept was in the middle of Gangotri Society. He has admitted that there were approximately a hundred other Muslims with them in the shuttered building. He has admitted that they were all sitting in the shuttered building to protect their lives. The witness has denied that they had kept the shutter closed so that the attackers do not see them. The witness has voluntarily stated that the shutter was open. The witness has admitted that till they were in the open shutter, no mob had seen them and they had not seen any mob.

176.58 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

176.59 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002 at the Civil Hospital, but does not remember in which ward he had taken the statement. The assignee officer has denied that he had told the witness that he was not required to write such things and that at present, he has to write only about the treatment. The assignee officer has admitted that before him, the witness had given the statement regarding the incident having taken place at 7 o'clock in the evening and prior thereto, he had not given any statement with regard to any prior incident. The assignee officer has admitted that the witness has stated before him that on 28.2.2002, in the evening of Jhumme raat at 7 o'clock, a mob of several Hindus entered their chawl shouting "kill" "cut" and out of fear, they had started running helter skelter. At this time, the violent mob which had cans of petrol and kerosene in their hands, from which they sprinkled kerosene and petrol and threw burning rags, due to which they all were burnt. He does not know who these Hindu communal mobs were. At this time, there was commotion and screaming in the whole chawl and at that time, upon the sound of police siren being heard and the police arriving there, the people in the riotous mob had fled. He saw that his wife and his daughter Kherunnisha and son Ahmedraza and his father Raufvalikhan and his brother Gulammohammed and Mashroof and elder brother's daughter Mariyam and second daughter Shabbo and younger brother's son all of them had got separated, out of whom, his daughter Kherunnisha and wife Bilkisbanu were burnt. His wife had died and he does not know anything about his other brothers and sisters. He does not know the names and addresses of the Hindus in the riotous mob. That at

present, in his family, he and his elder son Hamidraza and Ayeshabanu and Kamarrazak are under treatment at the hospital and he does not know about the others. The assignee officer has admitted that the witness in his statement has given only formal facts and has not stated anything else. The assignee officer has admitted that this witness has not named Guddu and Bhavanisingh in his statement recorded by him. The assignee officer has admitted that the witness had not stated the spot at which the incident of his wife and children took place; however, the witness has stated that the mobs entered their chawls and at that time, the people in the frenzied mob had sprinkled petrol and kerosene and thrown burning rags and all of them were burning. The assignee officer has admitted that this witness has not stated before him that he was injured with stones as well as sticks.

176.60 Certain parts of paragraph 4 of the examination-in-chief of the witness as well as the contents of paragraphs 5 to 25 and 27 to 30 are read over to the assignee officer, who has admitted that the facts stated in paragraphs 4, 5 to 17, 18, 22 to 25 and 27, 28 and 29 have not been stated by the witness in the statement recorded by him. He, however, has denied that the witness has not stated the facts stated by him in paragraphs 19, 20, 21 and 30 of his examination-in-chief. Insofar as the contents of paragraph 19 of the examination-in-chief are concerned, the assignee officer has stated that the witness had stated before him that the people in the mob had kerosene and petrol cans in their hands and that out of fear, there was stampede in their chawl and that they were afraid and were returning towards Jawannagar has been stated by the witness. The assignee officer has stated the facts stated in

paragraphs 20, 21 and 30 have been stated by the witness in the statement recorded by him.

176.61 PW-291 M. B. Raj, the assignee officer has, in his cross-examination, admitted that he had recorded the statement of this witness on 23.5.2002. The assignee officer has admitted that this witness had not mentioned that he had been injured with a stone or with a stick in the statement recorded by him.

176.62 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statements of this witness on 30.5.2008 and 14.7.2008. He has admitted that this witness in his statement dated 30.5.2008 had stated that his earlier statements dated 3.3.2002, 11.3.2002 and 23.5.2002 recorded by the police were read over to him and the facts stated therein are correct and proper. The Investigating Officer has admitted that in his statement dated 14.7.2008, the witness had admitted that at present, he is unemployed and is only doing social work. That he does social work as well as does the task of obtaining the P.M. Notes, N.O.Cs., Treatment Certificates, compensation from the Collector's office for the relatives of those who have died in the Naroda Patiya incidents. The Investigating Officer has admitted that this witness has not stated before him that the Executive Magistrate has not recorded his statement as stated by him.

176.63 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the contents of paragraph 9 of the examination-in-chief of the witness, to

submit that the witness has stated while narrating the incident on the road to his family that the mob from Krushnanagar broke the wall with a truck. It was submitted that from his house, it is not possible for him to see the mob in the Jawannagar pit doing anything. Reference was made to paragraph 143 of the cross-examination of the witness, to point out that he has stated that he had not seen the Krushnanagar mob from the Jawannagar pit. Referring to the contents of paragraph 10 of the examination-in-chief of the witness, it was pointed out that most of the witnesses have stated that nothing happened in Jawannagar before 5 o'clock. Referring to the contents of paragraph 17 of the examination-in-chief of the witness, wherein the witness has stated that in the afternoon at around 5:00 to 5:30, the residents of Gangotri Society called four S.R.P. persons and beat them with sticks and pushed them and told them to go away towards Gopinath Society, and hence, they had gone. It was submitted that different witnesses are giving different versions regarding how they came out of the shuttered hall. It was pointed out that the incident regarding a girl Noorjahan narrated by this witness in paragraph 23 of his examination-in-chief, is not narrated by any other witness. The attention of the court was invited to the deposition of PW-106 Farzana Ayubkhan Pathan, to submit that Farzana does not refer to this witness at all and that both of them have named different persons. It was pointed out that this witness has admitted that he could recognize Guddu by his voice, to submit that, in all the commotion, it was not possible for him to have heard his voice. It was submitted that this witness does not implicate any accused except Guddu and Bhavani and though he claims that he had seen the incident at the passage, the facts about Farzana stated by him are

contrary to what PW-106 Farzana Ayubkhan Pathan herself has stated. It was submitted that even the facts of Farzana's daughter, Farhana are contrary to what is stated by Farzana herself. It was submitted that the witness also does not refer to any other person at the passage like Abdulmajid Mahammadusman Shaikh (PW-156), Shabana Bundubhai Qureshi (PW-209), Rahemanbhai Shakurbhai Saiyed (PW-114) and Jannatbibi Kallubhai Shaikh (PW-142). It was submitted that in the statements dated 3.3.2002 and 11.3.2002 which are recorded first in point of time by the police, the witness has stated that he did not know any person in the riotous mob. [It, however, appears that while there are certain omissions in the statements dated 3.3.2002 and 11.3.2002, there are no omissions qua the third statement of the witness recorded on 23.5.2002.]

176.64 The learned counsel has further submitted that the names of the accused and various facts stated by the witness and various facts from paragraphs 9 to 30, including the time and place of the incident, are either omitted in the first and second statements or stated in differently in the statements recorded on 3.3.2002 and 11.3.2002, and for the first time in his statement dated 23.5.2002, he has come up with various facts narrating the incident and has named two accused after he reached the camp, which indicates that the facts as well as the names stated, is the result of either tutoring or at the instance of others. In other words, it is engineered. It was submitted that even in his examination-in-chief, he has stated in paragraph 22 that all the persons of the mob whom he had seen at the place of the incident near the water tank had covered their faces in a manner which they could not be

identified. It was submitted that if this is taken at face value, then the other witnesses who have stated before the SIT for the first time that they could see and recognize the accused, creates a serious doubt regarding the implication of such accused and their criminal complicity.

176.65 It was submitted that in paragraph 50 of his deposition, the witness has specifically stated that prior to his admission in the Civil Hospital and even after he was admitted in the hospital, he had not informed about the incident or the accused to the doctor, nurse or police personnel, which also indicates that narrating the facts with the names of the accused on 23.5.2002 for the first time, are not facts which he had witnessed.

176.66 ANALYSIS: This witness is an injured witness, who has sustained minor burn injuries on his back and legs. He, his sons, Kamar (injury certificate Exhibit-338) and Hamid Raza (died later on) and daughter Ayeshabanu (injury certificate Exhibit-340) have sustained burn injuries in the incident at the passage of the water tank and were admitted in the Civil Hospital on the night of 28th of February. His wife Bilkisbanu and his daughter Kherunisha have died in the incident. His statement was recorded twice at the Civil Hospital on 3.3.2002 and 11.3.2002 and once at the camp on 23.5.2002 and twice by the SIT on 3.5.2008 and 14.7.2008. The witness has implicated only Bhavani and Guddu, both of whom are dead.

176.67 This witness has been cross-examined at length and is sought to be contradicted by his previous statements. In paragraph 135 of his cross-examination, the witness is

confronted with the statements dated 3.3.2002 and 11.3.2002 and his dying declaration Exhibit-842 to the effect that he has not stated all the facts stated in paragraphs 4 to 31 of his examination-in-chief, except the date of the incident and the fact regarding the death of his family members, in those statements. It may be noted that insofar as the statement dated 23.5.2002 recorded at the camp is concerned, no omission or contradiction has been brought out as to such statement.

176.68 Insofar as the statement dated 3.3.2002 is concerned, the contents thereof have been brought on record in the cross-examination of the witness, a perusal whereof shows that on the face of it, the statement has not been recorded in terms of what was stated by the witness. In the statement, it is recorded that the frenzied mob had sprinkled kerosene and petrol on them and had thrown burning rags and set them ablaze and, at that time, there was screaming and shouting and at that time, upon the sounds of police sirens coming and the police arriving, the riotous mob had fled, which evidently is a figment of imagination of the Police Officer, who recorded such statement, which appears to have been inserted in the statement to show that the police had come to the rescue of the victims, which is far from the truth. However, the officer has taken care to note down the names of the family members who are injured or have died in the incident to give a semblance of truth to the statement. Since the statement does not appear to have been properly recorded by the concerned assignee officer, no reliance can be placed upon such statement for the purpose of contradicting the witness.

176.69 The witness has also been confronted with the contents of his statement dated 11.3.2002. In paragraph 104 of his cross-examination, which the witness has admitted to the extent it is reproduced in paragraph 104, however, the witness has denied a part of the statement, as reflected in paragraph 105 of his cross-examination. The witness has also denied the suggestion put to him in paragraph 103 that he has not given the names of any accused in his statement dated 11.3.2002 and has denied that he has not stated the facts stated by him in his examination-in-chief regarding the evening incident at Gangotri Society in his police statement. However, the concerned Investigating Officer/assignee officer has not been cross-examined to prove the omissions/contradictions in the statement of this witness. Moreover, upon perusal of the entire record, it is not found as to who has recorded the statement of this witness on 11.3.2002. Therefore, any omission or contradiction qua the statement dated 11.3.2002 has not been proved by the defence.

176.70 Since the witness has not been cross-examined qua the contents of his statement dated 23.5.2002, the averments made in the examination-in-chief of this witness go unchallenged insofar such statement is concerned. Insofar as the statement dated 11.3.2002, except to the extent the witness has admitted the contents thereof, the rest of the portions which the witness has denied, have not been proved through the testimony of the concerned Investigating Officers and, therefore, contradictions have been unproved. In these circumstances, the contents of the examination-in-chief of the witness go more or less unchallenged.

176.71 Since the witness has named only two accused, both of whom have died, his testimony would not be useful for the purpose of establishing the charge against any of the accused.

176.72 In his examination-in-chief, the witness has deposed that he had seen mobs on the road; pelting stones and committing arson and damaging the Noorani Masjid as well as the shops and other establishments nearby. The witness has deposed that they had requested the police to restrain the mob and that the police had assured them that they would stop them, if necessary but had subsequently gone and joined the mob. The witness has also deposed that the mob thereafter started pelting stones at the Muslims and, at that time, the Muslims came out to defend themselves, whereupon the police had fired at them and in the firing Piru Allahbaksh was injured by a bullet on his left leg and the police shouted at them and told them to take him. Thereafter, he and other people from the chawl lifted Pirubhai and took him to a platform in the chawl. He had heard shouts from the road, whereupon he went to see what happened and found that Hamidali's son was injured on his private parts. The witness has deposed that upon seeing all this, he was afraid and went home and narrated the incident to his family. At that time, a mob from the direction of Krushnanagar came from the rear side of Jawannagar through the brick kiln towards their chawl and rammed a truck into the compound wall and broke it and thereafter, set the truck ablaze. Thereafter, the mobs started looting and setting the houses in the chawls ablaze and as the mob advanced forward, they started moving backwards. From

there, they went to the S.R.P. Quarters but were not permitted to go inside and they were made to sit outside. They sat near the S.R.P. Quarters and at around 1:30 in the afternoon, they went and stood in an open ground in Jawannagar. At around 2:30 in the afternoon, Bhavanisingh came there and asked them to provide some vessels so that he would make kadhi khichadi for them. At 4:00 to 4:30, they went to the spot where the S.R.P. compound wall was broken near the last lane of Jawannagar and requested them to at least let the women and children go inside. However, the S.R.P. people refused to let them enter. Thereafter, they went to the terrace of Gauri Apa's house in the last lane of Jawannagar and climbed down into the Gangotri Society. Bhavanisingh met them there and opened a huge shuttered hall for them and asked them to sit inside and not to worry. At around 5:00 to 5:30, the people of Gangotri Society called four S.R.P. persons who pushed them and beat them with batons and told them to go towards Gangotri Society, and hence, they went there. The Gopinath Society people also did not let them enter and told them to go to Naroda through the rear side of the S.T. Workshop, and hence, they went there. When they went to the open ground, there was a huge mob standing there armed with weapons and kerosene and petrol cans and gas cylinders. Upon seeing them, they were afraid and started returning back to Jawannagar and they reached near the passage of the water tank, when Guddu came with a huge mob from Gangotri Gopinath Society and Bhavanisingh came with a mob from Jawannagar. They were caught in between the mobs and those amongst them who were younger jumped over the wall and fled, and the elders and those who could not jump over the wall like women and children were caught between the shops and the water tank

and the people in the mob from the top of their shops and the tank, threw substances like kerosene, oil and petrol on the people who were caught in the passage and threw burning rags on them and set them ablaze. The mob was also assaulting them. It was around 6:30 in the evening and it was slightly dark.

176.73 The witness has also deposed that he and his son Kamar Raza had sustained burn injuries and they hid between the corpses under a very small platform near the water tank. The witness has thereafter, narrated the incident where Guddu Chhara cajoled a girl to come out assuring to save her and thereafter, took her on the side and later on, after fifteen to twenty minutes they brought the girl back and threw her into the burning flames in a naked condition. The girl fell near him and he asked her name and she stated that her name was Noorjahan Kabirali, etc. The witness has stated that thereafter, he heard a scream and found that Bhavani and four to five persons had stripped the clothes of a girl and were molesting her and had raped her, etc. The girl's mother tried to save her but Bhavanisingh pushed her and threw her in the burning fire and the girl was also set ablaze there. That upon asking the mother her name, she said that her name was Farzana Ayub Kalekhan. The witness has stated that he has taken Naimuddin out from the burning fire from under the corpses and that, in all, he had taken out twelve people alive from amidst the corpses. The witness has stated that thereafter the police came and told them that they were going to bring a vehicle from Civil and that he should try to save as many people as he could. That four to five persons were standing there and the other police went to fetch a vehicle from Civil and, in the

meanwhile, they had rescued fourteen more people. Thereafter, the police came with a Tata-407 vehicle and twenty-eight persons had boarded the vehicle. Out of the twenty-eight persons, two women died on the way and in this manner, twenty-six of them reached the Civil Hospital. When they reached the Civil Hospital, he requested the policemen to ask the hospital people to provide some clothes for the women who were naked, whereupon the policemen requested the staff, who arranged for bed-sheets for them.

176.74 Insofar as the description of the main incident is concerned, the court is of the view that the same appears to be credible. However, the narration of the facts regarding Noorjahan Kabirali, Farzana, Naimuddin and taking out people alive from the fire and extricating them from the corpses appears to be in the nature of improvement and exaggeration, inasmuch as, none of the concerned witnesses have deposed any such thing. Besides, it is not possible to believe that one person would have seen all these incidents, which had taken place at the passage.

176.75 Considering the overall testimony of this witness, he appears to be a tutored witness, who has attempted to corroborate many witnesses of the incidents that took place at the passage of the water tank. However, insofar as the witness has deposed regarding the manner in which he and his family members had sustained injuries, etc., the witness is credible and his testimony to that extent should be accepted. In any case, since the witness does not implicate any living accused, his testimony does not in any manner come to the aid of the prosecution to establish the charge against the accused.

177. **PW-192 Rasidabanu Imtiazhussain Momin**, aged 45 years, has been examined at Exhibit-1314. This witness has deposed that she has not studied much, but has studied in school for around two to three years and does not know how to read or write in any language, but can write her name in Gujarati and accordingly, she puts her signature in Gujarati also.

177.1 Since the last twenty two years, she is residing at *Lane No.2, Hussainnagar* in house No.1 and 2. Thus, they have two houses, out of which she has a shop in one house and the other is her residential house.

177.2 In the year 2002, she was residing at Hussainnagar in Naroda Patiya. The chawl in front of her chawl was called *Kumbhaji-ni-Chali*. Her house has two doors, one which opens towards *Kumbhaji-ni-Chali* and the other opens towards *Hussainnagar*. Her house also has a third door which opens towards the S.T. Workshop road.

177.3 In the year 2002, she was residing there with her husband and children. She had four sons and two daughters. Her husband works in the S.T. Workshop and after working hours, in the evening, he plies a rickshaw of their ownership. She herself used to run a provision store by the name of Noorani Kirana Stores in Hussainnagar Lane No.1. Her elder son Imran is married and resides separately in Lane No.7. At the relevant time, he was married. However, on the day of the incident, all her six children were with her at her house in Lane No.1, Hussainnagar.

177.4 The incident took place on 28.2.2002. On that day, in the morning at 6 o'clock, she had opened her provision store. Her elder son had opened his tea stall and paan-cabin on the road and was doing his business there. As per her routine, on the day of the incident, she entrusted the provision store to her younger son Kadir and went to relieve Imran at his tea stall and pan-cabin so that he could have his breakfast. At this time, it was around 7:30 to 8:00 in the morning.

177.5 Immediately after she went to her son Imran's tea stall and paan-cabin, the police came there and told her that there was a call for bandh on account of the Godhra incident and there are disturbances, and hence, they should shut their shop. At that time, her son was also standing there. Thereafter, Imran closed his tea stall and paan-cabin and put all the goods in a cart and took the cart and went to her house in Lane No.1, Hussainnagar. While her son was loading the goods, she went to the corner of the S.T. Workshop, where presently there is a police chowky and stood there. She saw that from the direction of Natraj, there was a crowd near the S.T. Workshop and there was a mob in the direction of Krushnanagar. The mobs were coming from both the directions, namely from Natraj Hotel as well as Krushnanagar. At this time, it was around 9:00 to 9:30 in the morning.

177.6 The people in the mob who had come from the direction of Krushnanagar were pelting stones at the masjid as well as at them and were also throwing bottles. The mob which had come from the direction of Natraj was also pelting stones and bottles at them. **Mayaben Kodnani** was in this mob.

Manoj was also in this mob. As per her knowledge, his name is **Manoj Videowala**. **Bipin Autowala** was present in the mob which came from the direction of Natraj. Moreover, **Santosh Dudhwala** was also present there. Santosh Dudhwala has a shop next to Kamla Welding on the way to Kubernagar. In the mob coming from the direction of Natraj, she has also seen **Guddu Chhara, Naresh Chhara, Suresh Langdo** and Suresh Langda's younger brother. Mayaben was in this mob and was instigating the public by saying "*come forward*" and "*kill*". At this time, the police had also come there. The police had resorted to firing and lobbed tear gas shells at the Muslims standing at their corner due to which, four or five Muslim boys were injured by bullets.

177.7 From the persons standing there, Abid, Khalid, Piru, Mahammad and Mustaq Kaladiya were injured by bullets. Piru and other Muslim boys who were injured by bullets were lifted by youths like her son Imran and taken to the platform of her shop and made him to lie down there. At this time, it was around 12:00 to 12:30 in the afternoon.

177.8 Upon the mob slowly coming inside their chawl, she came from the road to her house and went to the terrace to fetch her children. From the upper part of her house, the road can be seen, and from there, she saw that the mob was killing and hacking down people. Therefore, she took her children and came down. Thereafter, the people started fleeing and she took her children and went to Ramzani Pinjara's terrace.

177.9 Her husband had gone for his job on that day.

While she was going to Ramzanibhai's house, in the stampede, somebody had inflicted a blow with a hockey stick on her leg, due to which, her leg was injured. At this time, they were throwing burning rags from the S.T. Workshop. On account of such burning rags being thrown, she sustained burn injuries on her right hand and right leg and her daughter Shamimbanu also sustained burn injuries on her hands and legs.

177.10 From Ramzanibhai's terrace, she saw that the people in the mob had set on fire the first house in that lane. The people in the mob were making all kinds of utterances and were shouting "kill, cut". She had seen all this from behind the permanent curtains in Ramzanibhai's house. Thereafter, she took her children and went to the terrace of Ramzanibhai's house. From the terrace, she looked towards the public toilets at Jawannagar and she saw that the mob was burning everything. The people in the mob were assaulting them and burning them. The people in the mob were hacking down and killing the Muslims. She does not know what the time then was.

177.11 They stayed at Ramzani's terrace till about 12:00 to 12:30 at night. Thereafter, a police vehicle came. Upon the police asking them as to where they wanted to go, they said that they wanted to go to Shah Alam. Thereafter, they were taken to Shah Alam in a vehicle. They stayed at the Shah Alam camp for around six months. At the relevant time, she and her daughter took treatment for the injuries they had sustained.

177.12 While she was at the camp, the police had recorded her statement twice. Thereafter, the SIT had also recorded her statement at Gandhinagar. Her statement had been recorded

by the SIT on two occasions.

177.13 The witness has stated that she can recognize the persons whom she has named. The witness has thereafter identified Manoj Videowala (A-41), Santosh Dudhwalo (A-58), Naresh (A-1), Mayaben (A-37) and Bipin (A-44) correctly. Suresh Langda (A-22) had given an exemption application, and hence, he is deemed to be identified.

177.14 CROSS EXAMINATION: This witness has initially been cross-examined with regard to her Kirana Stores and the purchase of the goods made by her and her son for their business. The witness is also cross-examined with regard to certain incidents that took place on 27.2.2002.

177.15 In her cross-examination, the witness has admitted that on the day of the incident, when she went to Imran's shop to relieve him, the situation was okay. The witness has stated that therefore, they had opened their shop. She has admitted that when she relieves Imran, she looks after the work of the stall. She has admitted that she knows how to make paan-masala as per the requirements of the customers. The witness has denied that the police had not come to the shop and that she had gone to the shop and told Imran that the situation was bad and he should close his business. She has stated that in Hussainnagar Lane No.1, her house is in the front and the shop is in the next house adjoining it and that there are rooms on the upper floor for her residence. The witness is extensively cross-examined with regard to the topography of the area.

177.16 The witness has admitted that her son Imran's

wife's name is Bilkisbanu. She has stated that she does not know that the due date for Bilkisbanu's delivery was 26.2.2002. The witness has voluntarily stated that in their community, the first delivery is at the mother's place and therefore, Bilkisbanu had gone to her mother's place for the delivery. She has stated that in the year 2002, Bilkisbanu's mother was residing in Hussainnagar, Lane No.2. Bilkisbanu's mother's name is Saidabanu and has admitted that Bilkisbanu's mother-in-law is her own younger sister. The witness is cross-examined with regard to how many houses are there in Hussainnagar, etc. as well as about the people residing in the neighbourhood.

177.17 The witness has denied that Imran had taken his goods and gone to Lane No.7. She has denied that Imran had closed his shop and gone to Lane No.7 and has voluntarily stated that as far as she remembers, he had closed his shop and came to her house. The witness has stated that she does not know as to whether prior to the time when she went to the shop, her son Imran was standing at the corner of the S.T. Workshop. She is not aware as to whether Imran was standing with his friends at the corner of the S.T. Workshop when she went there. She has stated that on that day, she had gone there alone. She has admitted that at that time she had gone near the S.T. Workshop, where at present there is a police chowky, other people who had come to watch were also standing there. She has stated that she must have stood there for around half an hour to forty-five minutes. While she was standing there, she had not seen Imran. However, she does not know if he had returned after he went and kept his goods.

177.18 The witness has denied that she does not know where Abid, Khalid, Piru, Mahammad and Mustaq were standing. She has stated that they were standing near each other separately and that they were standing at the end of the S.T. Workshop, opposite the Noorani Masjid. She has stated that she was standing at a distance from where if they throw a stone, it would not reach her, but at a distance from which she could recognize them. She has stated that she does not know at what time Abid, Khalid, Piru etc. were injured by bullets. The witness has admitted that at the place where she was standing on that day, at present there is a police chowky and from there, she had gone to her house in Hussainnagar Lane No.1. The witness has denied that when Imran and the other youths had brought those who were injured by bullets to the platform outside her shop, on that day she was on the upper part of her house. The witness has voluntarily stated that at that time, she had come down. The witness has stated that she is not aware as to whether those who were injured by the bullets were kept on the platform for half an hour and has voluntarily stated that thereafter, she had taken her children and fled. She has admitted that she left with her entire family, that is, all her six children, including Imran. The witness has stated that after leaving her house, first of all, she went to the Pinjara's house at Hussainnagar Lane No.4. This house has two floors and the terrace is on the third floor. She has stated that before she went there, the people from Hussainnagar and Jawannagar were hiding there. There was an iron door for climbing on the staircase. She has admitted that when they climbed up, no lock had been put on the door. She has stated that when she went up in the Pinjara's house, there must have been around two hundred to three hundred people. The witness has

admitted that on the terrace, all of them were hiding out of fear. She has denied that at that time, they were all sitting, but has stated that after a little while, they used to get up and watch. The witness has stated that it was possible to get up there and look. She has admitted that neither of the two mobs had come to attack the Pinjara's terrace. She has admitted that they were on the Pinjara's terrace till the police came to take them. The witness has denied that at the time when they went to the Pinjara's house, all her six children were safe and sound with her. The witness has voluntarily stated that she herself was in a burnt condition and her daughter Shamimbanu had also sustained burn injuries. The witness has admitted that she and her daughter Shamimbanu sustained burns on the S.T. Workshop compound wall road.

177.18 The witness has stated that she cannot say as to how far the mob was from her when the hockey stick was flung at her. The witness has admitted that when the hockey stick was flung at her, the people in the mob had not caught her and had not stopped her. The witness has voluntarily stated that the mob was at a distance from her.

177.19 The witness has admitted that it has not happened that when she was on Ramzanibhai's terrace, at that time in between, Imran had gone down to Jawannagar and had returned from Jawannagar. She has stated that she cannot say as to how many people were there in the mob in the lane at that time. The witness has admitted that when she went to the relief camp, Imran was with her.

177.20 In her cross-examination, it has come out that the

doctors at the camp were only providing treatment and were not putting any questions to them; therefore, she had not informed the doctors as to how and where they had got burnt.

177.21 In her cross-examination, it has come out that her husband Imtiaz had come to the relief camp after nine to ten days. The witness has stated that after her husband came to the camp, she had not told him that burning rags were thrown from the S.T. Workshop on her and Shamim. The witness has voluntarily stated that upon seeing the situation on the day of the incident, her husband's mind was very disturbed, hence thereafter, for one to two months, he was required to be treated, and today also, he is on medication. His mental balance is impeded even today. She has admitted that even today, her husband is not able to sleep and is required to take medicines. She has stated that her husband had become unstable and that she was required to send him to her mother-in-law at Dholka for two months.

177.22 The witness has denied that the accused whom she had named before the court, have not been named by her prior to naming them before the SIT and has voluntarily stated that she had given their names everywhere.

177.23 The witness is shown an application Mark 644/66 and she has identified her signature thereon. Upon the contents being read over to her, she has admitted the same. The application is given Exhibit-1315. The witness has stated that because she had gone to Gandhinagar, she came to know that the Crime Branch people have not recorded her statement as stated by her because at Gandhinagar, her statement was

read over to her. The witness is cross-examined with regard to the application as to who wrote it down and when, etc.

177.24 In her cross-examination, she has stated that her statements dated 12.5.2002 and 11.6.2002 may have been recorded at the camp. She has stated that as far as she remembers, two of her statements were recorded at the camp and two statements were recorded by the SIT. She has admitted that the SIT had recorded her statement firstly at Gandhinagar, and thereafter, at Naroda Patiya. She has admitted that the SIT had recorded her statement as stated by her and she has no complaint against them. The witness has admitted that her second statement dated 24.9.2008 had been recorded by the SIT at Naroda Patiya. The said statement was read over to her and that she has no complaint against the statement which was recorded as stated by her. Certain contents of the statement recorded by the SIT are put to the witness; however, since the statements are not put to the witness to contradict any part of her evidence, the same are not admissible in evidence.

177.25 The witness has denied that in her statement dated 12.5.2002 recorded at the camp as well as in the statement dated 24.9.2008 recorded by the SIT, she has not named any accused. She has denied that she has not named any accused in her statement dated 12.5.2002 and has voluntarily stated that she had given such names, but the police had not written them down. The witness is confronted with her statement dated 12.5.2002 to the effect that she has stated therein that the people in the mob had ransacked and committed arson; there were many people in the mob, out of whom she could

not recognize anyone; when the disturbances took place, at that time she has not seen any person assaulting or setting the houses on fire, which the witness has denied.

177.26 The witness is confronted with her statement dated 12.5.2002 to the effect that she has stated therein that on 28.2.2002, in the morning at around 8 o'clock, she had opened her shop by the name of Noorani Kirana Store; her husband Imtiaz at that time had taken his rickshaw and gone for his business; at 9 o'clock, the situation as not good and upon the mobs having gathered on the road, she closed her shop and went inside the chawl; she and Imran were both at home; at that time at around 9:30 to 10:00, the people came shouting and entered their chawl, and started damaging and setting them to fire, and therefore, she took her children and fled from the chawl and came to the road and went and hid on the terrace of a house nearby. The witness has stated that the door of her house and shop fall in Lane No.1 of Hussainnagar which is on the road of S.T. Workshop. The witness is cross-examined with regard to the topography of the area.

177.27 The witness is confronted with her statement dated 11.6.2002 to the effect that she had stated therein that she does not know the names or addresses of any of the persons in the mob.

177.28 The contents of paragraph 6, paragraph 8, paragraph 9 from first line to the thirteenth line, paragraph 11, the first four lines of paragraph 12, the first three lines of paragraph 13, the third line to the ninth line of paragraph 13 of the examination-in-chief of the witness, are read over to her to

the effect that she had not stated such facts in either of the statements recorded at the camp. The witness is read over the eighth and the ninth line of paragraph 13 of her examination-in-chief, wherein she has stated that when she looked towards the public toilet, the mob was burning everything, to the effect that she has not stated such facts in the statement recorded by the SIT, which the witness has denied.

177.29 Upon being asked as to from where she had seen the mob on that day, the witness has stated that she had seen them from her own terrace as well as from Ramzanibhai's terrace. However, she has firstly seen the mob when she went out. She first saw the mob at around 9:30 in the morning when she had seen two mobs from Krushnanagar and Natraj. The second time she had seen the mob from the terrace of her house and thereafter, she had seen the mob from Ramzanibhai's terrace, but does not know the time.

177.30 The witness is cross-examined with regard to her acquaintance with Santosh Dudhwala and has admitted that on the day of the incident, she did not know his name. The witness has stated that her paternal home was at Saijpur Tower and prior to her marriage, she was residing there. The witness has denied that there was a milkman's shop in their Saijpur Bogha area. She has denied that when she was residing with her parents, till then she used to go to fetch milk from accused Santosh Dudhwala's shop. She has denied that she used to purchase milk for her son's tea stall from Santosh Dudhwala's shop. The witness has stated that she has not seen Santosh Dudhwala's milk shop and she has never purchased milk from his shop and has voluntarily stated that she used to

buy Amul Gold milk pouches. She has stated that she never had any occasion to personally talk with Santosh Dudhwala. She has admitted that no test identification parade of Santosh Dudhwala was carried out by the police through her. The witness has denied that she used to go to Santosh Dudhwala's shop and certain payments were outstanding. She has stated that even as on date, she does not know his full name. It may be noted that while the witness is all the while denying her acquaintance with this accused, the defence is persistently making suggestions to suggest that in fact there was an acquaintance.

177.31 The witness has stated that she does not know that Mayaben is a doctor and as to whether her hospital is situated at Saijpur Bogha road. In her cross-examination, it has come out that on the day of the incident, for the first time when she saw Mayaben, she was standing in front of her, but diagonally. She has admitted that she was in the line of the Noorani Masjid. She has admitted that all the accused whom she has identified before the court were in the Hindu mob on the side of the Noorani Masjid.

177.32 The witness has stated that Bipin Auto cannot be seen from her house. She has stated that she has never seen Bipin Auto and she never had any occasion to talk with Bipin Autowala and to meet each other. She has stated that she had limited relations of talking with Manoj Videowala. She has stated that people from their chawl used to bring video cassettes from Manoj Videowala for watching movies and at that time, she had seen Manoj Videowala's shop which is on the road where one enters Kubernagar.

177.33 The witness has stated that she does not know where Suresh Langda is residing and she had no occasion to talk with him. At times, he used to come to the tea stall and they had no social relations with each other.

177.34 The witness has admitted that no test identification parade of Manu has been carried out by the police through her. She has admitted that no test identification parade of any of the accused named by her has been carried out through her by the police.

177.35 The witness has stated that she cannot give the colour of the clothes which the accused were wearing on that day. She has denied that on that day, all the accused were standing together in the mob. She has admitted that they were standing separately. She has admitted that there were people between them and has voluntarily stated that she does not know the other people. The witness has stated that she cannot say as to whether there were fifty or sixty other persons. The witness has denied that there were people standing in front of and behind the accused and has voluntarily stated that they were in front and the people in the mob were behind them.

177.36 The witness has admitted that she has received Rs.1,25,000/- from the Government as compensation for the injury sustained by her daughter. The witness has stated that she has a certificate of her injury. She does not know what it means when zero is written in her certificate. She has admitted that she has not received any aid from the Government in connection with her injury. She has admitted that she has

received Rs.3,025/- from the Government towards compensation for the loss sustained by her. She has admitted that she had sustained a loss of Rs.9 lakh.

177.37 The witness has denied that none of the accused whom she has identified was present at the scene of incident and that she has not seen them in the mob. She has stated that she does not know where Imran was when the police resorted to firing. She has stated that she knew the five people who were injured by bullets. The witness has stated that Ramjanibhai Pinjara's house is situated behind her house in Lane No.4. She had gone from the gate near the provision store when the burning rags were thrown from the S.T. Workshop, at that time they were running towards Ramzanibhai's house. The witness has denied the suggestion that the accused persons whom she had identified were at the relief camp, and hence, she could recognize them.

177.38 To prove the omissions and contradictions as to her previous statements, the defence has cross-examined the concerned Investigating Officer/assignee officer who had recorded such statement.

177.39 PW-280 B.C. Joshi, the assignee officer has admitted that he has recorded the statement of this witness. He has denied that he had recorded the statement of this witness at the camp, but has stated that he had recorded her statement in the Naroda Patiya area. The assignee officer has admitted that this witness had not made any grievance regarding her earlier statement dated 12.5.2002 when he recorded her statement. The assignee officer has admitted that the witness

had stated before him that the riots had commenced in the morning and upon incidents of the mob of fifteen thousand to twenty thousand people damaging their houses, looting articles and burning them in Hussainnagar, Jawannagar and Chetandas-ni-Chali, etc. taking place, they and their family members out of fear, left their houses and went towards the society and sat there and thereafter, late at night, the police vehicles came and took them to the Shah Alam relief camp and till date, they were residing at the Shah Alam camp. She does not know the names or addresses of any of the persons who were in the riotous mob.

177.40 Part of the contents of paragraph 6 of the examination-in-chief of this witness, wherein she has stated that as per her routine, on the day of the incident also, she had made her younger son Kadir sit at the kirana store and had gone to relieve Imran at the tea stall and paan-galla so that he could go and have snacks, have been read over to the assignee officer, who has admitted that the witness had not stated such facts before him.

177.41 The contents of paragraph 8 and the first thirteen lines of paragraph 9 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that such facts were not stated by the witness in the statement recorded by him. The contents of paragraph 11 and the first four lines of paragraph 12 of the examination-in-chief of the witness are read over to the assignee officer, who has denied that all such facts were not stated by the witness in her statement recorded by him. The assignee officer has stated that the witness had stated before him that the incidents of the

mob of fifteen thousand to twenty thousand people damaging the houses, looting them and setting them on fire in Hussainnagar, Jawannagar, Chetandas-ni-Chali and other places, started taking place. However, the rest of the facts have not been stated by her in her statement.

177.42 The contents of paragraph 8 as well as the contents of first thirteen lines of paragraph 9 of this witness are read over to the assignee officer, wherein she has stated that from the terrace of Ramzani's house, she had seen that the first house in the lane where Ramzani lives had been set on fire by the people in the mob. The assignee officer has admitted that the witness has not stated such facts before him, but has stated that incidents of arson had taken place. The contents of paragraph 13 of the examination-in-chief of this witness, from the third line to the ninth line thereof, are read over to the assignee officer who has admitted that the witness has not stated these facts verbatim, but has stated that the incidents of arson were taking place. The assignee officer has admitted that this witness has not stated before him that she had seen the people in the mob from a distance of fifty metres. The assignee officer has also admitted that the witness has not stated that her passport was burnt in the incident. (It may be noted that the fact regarding her passport being burnt, can hardly be so material that it can be said to be an omission amounting to a contradiction.). The assignee officer has also admitted that the witness had not stated before him that she had closed her kirana store and come on the road, but she had stated that she has a kirana store.

177.43 The contents of paragraph 157 of the deposition of

the witness are put to the assignee officer. In the opinion of this court, the contents of paragraph 157 of the deposition of the witness are facts brought out in the cross-examination, and hence, the question of any omission or contradiction would not arise. The assignee officer has also admitted that this witness has not stated before him regarding her having seen the mob from the terrace of her house.

177.44 PW-307 S. S. Chudasama, the Investigating Officer, has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 12.5.2002. He has admitted that this witness has not named any accused in such statement. He has admitted that this witness had stated that people in the mob had broken, damaged and set on fire. There were many people in the mob, out of whom she does not know anyone by name. When the riots occurred, at that time, she had not seen anyone killing anyone or setting any house on fire. The Investigating Officer has admitted that this witness, in her statement, had stated that on 28.2.2002, in the morning at around 8 o'clock, they had opened their shop by the name of Noorani Kirana Stores. At that time, her husband Imtiaz had gone for his business in his own rickshaw. At around 9 o'clock, since the situation was not good, upon the mobs gathering on the road, she closed her shop and went to the chawl. She and Imran were both at home. At that time, at about 9:30, people came shouting into their chawls and started destroying and setting ablaze, therefore, she took her children and fled from the chawl to the road and climbed on the terrace of a house nearby and hid there. It is clarified that this witness had not stated that her husband had gone for his job on that day, but she had stated that her husband had taken his rickshaw and

gone for his business.

177.45 The contents of paragraph 6, from the first line to the eighth line, paragraph 8, and the contents of the first line to the thirteenth line of paragraph 9 of the examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

177.46 The contents of paragraphs 11 and 12 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that all such facts have not been stated by the witness in her statement recorded by him. He has stated that the witness had stated that she was assaulted with a hockey stick and had sustained injuries and that the witness has also stated the facts stated in paragraphs 264 and 265 in her statement. The other facts have not been stated by the witness. It may be noted that the witness has been contradicted only qua certain parts of paragraphs 11 and 12 of her examination-in-chief and not the entire paragraphs, and hence, the contradiction could have been proved only to that extent.

177.47 The contents of paragraph 13 from the first line to the ninth line of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The Investigating Officer has admitted that the witness had not stated that after she had closed her kirana store, she had gone on the road. But the witness had stated that at about 9 o'clock, since the

atmosphere was not good and the mobs were gathering, and hence, she closed her shop and went inside the chawl and took her children and fled from the chawl, have been stated by the witness. The Investigating Officer has denied that therefore, what he wants to say is the fact that she had come on the road, has been stated by her in her statement.

177.48 The contents of the last six lines of paragraph 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that all these facts have not been stated by the witness in the statement recorded by him. He has stated that the witness had stated that she had come on the road and that the S.T. Workshop is also on the road. The other facts have not been stated by her. The Investigating Officer has admitted that this witness has not stated that her house had a terrace. The witness has not been contradicted as to the contents paragraph 7 of her examination-in-chief, and therefore, there was no question of seeking to prove such contradiction through the testimony of the Investigating Officer. Consequently, this part of the deposition of the Investigating Officer is inadmissible in evidence.

177.49 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statements of this witness on 10.6.2008 and 24.9.2008. He has admitted that in her statement dated 10.6.2008, this witness had stated that her statement dated 12.5.2008 recorded in the presence of the P.I., Crime Branch has been read over to her and the same is as dictated by her and is correct and proper; except for these two names, the

other facts stated in the earlier statement are correct.

177.50 Certain extracts of paragraph 6 of her examination-in-chief are read over to the Investigating Officer, wherein the witness has stated that as per routine, on the day of the incident also, she had made her younger son Kadir sit at her kirana store and had gone to Imran's tea stall and paan-galla to relieve him so that he could go for snacks, have not been stated by her in the statement recorded on 10.6.2008. In the opinion of this court, not mentioning the facts regarding what the witness had done prior to the incident, cannot be said to be a material omission so as to amount to a contradiction, and hence, ought not to have been permitted to be put to the witness and to be proved through the cross-examination of the Investigating Officer.

177.51 Two extracts of paragraph 13 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that she had seen from Ramzanibhai's terrace that the first house in the lane where Ramzanibhai was staying, was set on fire by the mob. The people in this mob were indiscriminately speaking and were shouting. They were shouting "kill, cut". She had seen all this from behind the permanent curtains in Ramzanibhai's house. Thereafter, she had taken her children and gone to Ramzanibhai's terrace. From the terrace, she had seen towards the public toilet of Jawannagar, when she saw that the people in the mob were burning everything. The Investigating Officer has admitted that this witness had not stated such facts in the statement recorded by him. The Investigating Officer has admitted that this witness in her statement dated

10.06.2008 had stated that *".... and thereafter people had come from the Shah Alam and told them that they would take them to the Shah Alam Camp, all of them who were hiding...."*. *"..... I have not received any police protection from the Government and I have also not asked for police protection...."* *"...and thereafter, my son Imran had opened a tea stall and paan galla next to our shop and we were carrying on our trade and business...."*

177.52 The Investigating Officer has admitted that this witness in her statement dated 24.9.2008, had stated (in the context of Mayaben and Santosh Dudhwala) that he had seen these two in the riotous mob of from a distance of fifty metres and such fact had been stated by her before the police in her earlier statement, but the police had not written it down; they used to go to buy milk from the shop of Santosh Dudhwala and in the year 2002, since she was running a tea stall, time and again she used to go to his shop to purchase milk; she had learnt that Santosh Dushwala's name was Santoshkumar Kodumal Sindhi.

177.53 Certain extracts of paragraph 157 of the testimony of the witness are put to the Investigating Officer who has admitted that such facts have not been stated by the witness before him. It may be noted that paragraph 157 forms part of the cross-examination of the witness and the facts stated therein are such facts as have been elicited by the defence during the course of cross-examination. Therefore, the same would not amount to an omission, and hence, the question of proving such omission through the testimony of the Investigating Officer would not arise.

177.54 The Investigating Officer, however, has clarified that this witness in the statement recorded by him had stated that her son Imran had shut down his paan-galla and tea stall and that the people belonging to the community of the witness had fled towards the entrance of the chawl, where presently there is a police chowky; the people in the mob were pelting stones at them. The Investigating Officer has stated that the meaning thereof is that the witness was also standing where at present there is a police chowky, though she had not stated so in clear terms.

177.55 The Investigating Officer has admitted that this witness has not made any allegation that though her statement was recorded prior to 10.6.2008, the police had not recorded the same as stated by her. The Investigating Officer has denied that even in her statement dated 24.9.2008, this witness had not made any allegation against the statement recorded earlier. He has stated that in her statement dated 24.9.2008, the witness has clearly stated that despite her having named Santosh Dudhwala and Mayaben Kodnani, their names were not written down and she does not know the reason why.

177.56 The Investigating Officer has admitted that this witness in her statement dated 10.6.2008 had stated that the people in the mob were pelting stones at them and the people of their community in defence were also pelting stones. The Investigating Officer has denied that this witness has not stated before him that she had shut her kirana stores and had thereafter gone on the road. He has stated that she has clearly

stated in her statement that she had shut her kirana store and had gone on the road. Her entire statement has been given in a manner that the meaning can be clearly understood wherein she has stated that there was something like unrest near Natraj Hotel, on the road on the side of Krushnanagar mobs had gathered *“at this time approximately people of our community had gathered at the corner of the chawl where at present there is a police chowky....”*

177.57 SUBMISSIONS: The learned counsel for the appellant submitted that this witness, in her statement recorded by the police, has not named any of the accused named and identified by her. Referring to the deposition of the Investigating Officer PW-307 Shri S.S. Chudasama, it was pointed out that a specific omission is proved that she has not named any accused. It was submitted that for the first time, these names have come up with allegations before the SIT in the year 2008.

177.58 It was submitted that in both her police statements, neither do the names of the accused who have been named in the examination-in-chief find place, nor is their complicity in the incident stated, and on the contrary, through the Investigating Officer, a contradiction has been proved that in both the statements she had stated that she did not know the people in the mob. Referring to the cross-examination of the witness, it was pointed out that the acquaintance of the witness with the accused is not established; moreover, in the absence of a test identification parade and more particularly, when the names of the accused have been given for the first time after more than six years, the reliability of her version

would be in the dock of doubt. It was submitted that whether the witness has, in fact, gone to the terrace of the Pinjara's house and has, in fact, seen the incident therefrom, is very doubtful in view of the fact that a contrary version about her having gone to the society with her family and having stayed there until the police came, is proved through the testimony of the Investigating Officer. It was submitted that even if the story stated before the SIT is taken at face value, even then nothing beyond the presence of the accused in the morning mob is established.

177.59 It was submitted that it is proved through the Investigating Officer of the SIT that no grievance had been made against the police that the statements of the witness had not been recorded in terms of the version given by her.

177.60 It was pointed out that, in all, three witnesses have implicated accused No.58 – Santosh Dudhwala, viz., PW-104 Mahammad Salimhussain Shaikh, PW-135 Hussainabanu Agarkhan Pathan and this witness. It was submitted that insofar as PW-104 Mahammad Salimhussain shaikh is concerned, he has not named him anywhere, either in his police statement or in the court, but he has only identified him in the court. It was submitted that insofar as PW-135 Hussainabanu Agarkhan Pathan is concerned, she has wrongly identified this accused instead of Ashok Sindhi. It was submitted that insofar as this witness is concerned, she has not named him in either of her police statements and has named him for the first time before the SIT and that on the basis of such slender evidence, accused No.58 Santosh Dudhwala has been convicted for the offence in question.

177.61 Certain discrepancies in the depositions of this witness and her son Imran (PW-189) were pointed out by the learned counsel. It was submitted that Imran has said that after both of them went home, he alone came on the road, while his mother stayed at home and that she did not come near the S.T. Workshop corner. It was pointed out that Imran has stated that there were no women at the corner of the S.T. Workshop, whereas this witness says that she had gone to the corner of the S.T. Workshop. It was submitted that in view of the inconsistencies between the testimony of this witness and the testimony of her son, Imran, the testimony of this witness is rendered doubtful. It was submitted that the witness was on the road till around 9:30, when the mobs came. It was submitted that in such a huge mob, it would be highly improbable that she could identify such persons. It was submitted that therefore, this witness is not a credible witness and that no part of her evidence can be relied upon for the purpose of proving the charge against the accused in such a serious offence.

177.62 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the witness had spotted the accused named by her in the mob in the morning. She has not seen them together but separately. She has also stated that there was firing where Abid, Mushtaq, Piru and Kaladiya were injured and were made to lie down on her *ota*. It was submitted that this facts have not been controverted by the defence.

177.63 It was submitted that the witness has received injury with a hockey stick on her leg, which has also been

stated by her in the earlier statement as well as the later statement. In her cross-examination also, nothing adverse to what she has stated in her examination-in-chief could be elicited. It was submitted that an omission is sought to be brought out to the effect that, she has not stated the names in Exhibit-1315; however, the explanation was already sought for during the course of further investigation conducted by the SIT about not having named the accused in her statement dated 11.6.2002.

177.64 It was submitted that during the cross-examination of the witness, the defence has attempted to contradict the witness on the basis of the statement given before the police and the SIT. However, the witness has already stated that she gave the names to the police but the police had not written them down. It was submitted that that the said omission is only with regard to the statement dated 12.5.2002 but in her statement before the SIT, all the names are mentioned. Thus, it cannot be said to be a material omission on the part of the witness. It was submitted that it is also further admitted by the witness that the facts mentioned in paragraph 6 of the examination-in-chief do not find place in the statement before the police and the SIT but such facts are trivial and not significant and have no bearing on the prosecution case.

177.65 As regards the omission brought out in paragraph 98 of her deposition with respect to paragraphs 11 and 12 of her examination-in-chief, it was submitted that they are also not significant and do not in any way have any bearing upon the prosecution case. It was submitted that similar is the case in respect of paragraphs 99 and 100 of the cross-examination

of the witness in respect of paragraph 13 of her examination-in-chief.

177.66 As regards the explanation regarding the fact that of witness having spotted accused No.58 and accused No.37 in a mob from the distance of 50 metres having been stated before the police, however, the same was not recorded by the police, it was argued that the witness has not stated in her statement dated 24.9.2008 any kind of clarification in this regard, but it is clarified that the contradiction is only in respect of the distance, which is not a material contradiction.

177.67 It was submitted that the witness in paragraph 41 of her cross-examination has stated that she went alone near the S.T. Workshop and sat there for about thirty to forty-five minutes. She did not see Imran. She did not know at what time Abid, Piru, Khalid received injury. Therefore, she has not concocted any story and she has truthfully stated before the court what she has seen. It was submitted that the witness has also filed an application Exhibit-1315 wherein it is mentioned that the F.I.R. and panchnama drawn by the Crime Branch are not according to her version and she has requested to lodge a new complaint. Therefore, she is of the opinion that the investigation was not carried out properly by the Crime Branch and the local police, and hence, the question of not naming the accused and describing the facts in detail, cannot be considered to be an omission. It was submitted that in paragraph 78 of her cross-examination, there is a reference to statements dated 24.8.2008 and 10.6.2008 before the SIT and she has given her explanation about not naming the accused in her police statement. It was submitted that in view of the

explanation, there cannot be said to be any omission which was brought on the record by the defence and in view of the explanation given, such omission is not a material omission, which may amount to a contradiction.

177.68 It was submitted that in paragraphs 79 and 80 of her cross-examination she has stated that she has no personal animosity for the accused persons and she has given the names of the persons whom she saw. In Exhibit-1315 there is a specific statement that there was improper investigation by the police and the Crime Branch and, therefore, further statement should be recorded, which shows the truthfulness of the witness. It was submitted that the witness has stated about acquaintance with the accused in paragraphs 109, 110, 112 and 123. As regards Manoj, Suresh, Bipin and Santosh, it was submitted that she has categorically stated that she knew them. It was submitted that since accused No.37 was an M.L.A., she could be easily recognised. Therefore, looking to the entire evidence as a whole, she is a truthful, consistent, believable and credible witness.

177.69 ANALYSIS: This witness is a resident of Lane No.1 Hussainnagar. Her house is the first house in the lane and has three doors, one which opens towards Kumbhaji-ni-Chali, the other which opens into Hussainnagar and the third one opens towards the S.T. Workshop. This witness is the mother of PW-189 Imran.

177.70 This witness in her deposition has referred a mob from the side of Natraj and has stated that Mayaben Kodnani was in the mob. She has also stated that Manoj Videowala (A-

41), Bipin Autowala (A-44), Santosh Dudhwala (A-58), Guddu Chhara (deceased), Naresh Chhara (A-1), Suresh Langda (A-22) and Suresh Langda's younger brother (not an accused) were present in the mob. She has alleged that Mayaben was instigating the mob and that the police came and fired at the Muslims on the corner. In the firing, Abid, Khalid, Pirubhai and Mustaq, etc. were injured. Her son Imran and others lifted them and brought them to the platform of the shops. That was at about 12:00 to 12:30 in the afternoon. The mob started advancing towards their chawl and she went home, took her children and went to the terrace of Ramzani Pinjara's house. Burning rags were being thrown from the S.T. Workshop and she and her daughter Shamimbanu had sustained burn injuries. The witness has identified all the named accused. Accused Suresh Langda had filed an exemption application, and, therefore, there was deemed identification.

177.71 The witness has been sought to be contradicted as regards the discrepancy between her deposition and that of Imran regarding whether the police had come to get the shops closed or whether she had asked Imran to close his shop as the situation was not good. In the opinion of this court, this discrepancy as regards exactly what had transpired when she asked Imran to shut down the shops can hardly be said to be a material omission amounting to a contradiction.

177.72 In her cross-examination, the witness has stated that she was not aware as to whether Imran was standing at the corner of the S.T. Workshop before she went to the shop. She has stated that she stood near the S.T. Workshop where, at present, there is a police chowky for about half an hour to

about a quarter to an hour and does not know whether Imran had come on the road after leaving his goods. The learned counsel for the appellants has sought to emphasize on this discrepancy by submitting that both Imran and this witness claim to be on the road but they have not seen each other. In the opinion of this court, when there were a large number of people on the side of the road near the S.T. Workshop and the main focus of attention of the people standing there would be on the mob, it is quite possible that this witness or Imran may have not noticed each other's presence at that place. Therefore, the mere fact that Imran and this witness have not seen each other at the S.T. Workshop corner would not dent the credibility of either of the witnesses. The witness has been contradicted with her statement dated 12.5.2002 to the effect that she has not named any accused in her statement and has voluntarily stated that she has stated such names but the police have not written it down. The attention of the witness is drawn to the part of her statement dated 12.5.2002 wherein she has stated that the people in the mob had damaged and destroyed and set ablaze; there were many people in the mob, out of whom, she could not recognize anyone. The witness has also been confronted with regard to various facts deposed by her in her examination-in-chief and such omissions have been proved through the testimony of the concerned Investigating Officer.

177.73 Considering the overall testimony of the witness, it emerges that the witness had given the names of the accused referred to in paragraph 9 of her examination-in-chief for the first time before the SIT, that is, after a period of more than six years from the date of the incident. At the relevant time, when

her statement came to be recorded on 12.5.2002 or even on 11.6.2002, the witness had stated that she did not know the names or addresses of any of the people in the mob. It may be noted that out of the persons named by this witness, except for accused No.37 Mayaben Kodnani, the names of the other accused have also been mentioned by other witnesses and the same have been recorded by the concerned Investigating Officer/assignee officer. Therefore, there was no reason for the Investigating Officer not to record the names of the accused, as stated by the witness in her testimony.

177.74 Shorn of all the omissions and contradictions brought out in her cross-examination, it emerges that on the day of the incident in the morning, she had gone to her son Imran's tea-stall and paan-cabin and, at that time, the police had come there and told her that they should shut down the shops in view of the call for bandh on account of the incident that took place at Godhra as there was some unrest. Thereafter, her son had taken his cart and gone inside the lanes and at that point of time, she went and stood at the corner of the S.T. Workshop where, at present, there is a police chowky. There was a mob on the main road which was indulging in stone pelting. At that time, the police had come and had started firing at the Muslims, who were standing at the corner and had lobbed teargas shells. In the firing, four to five Muslim youths were wounded by bullets. From the people standing there, Abid, Khalid, Piru, Mohammad, Mustaq, Kaladiya were hit by bullets. The youths who were injured by bullets were lifted by her son Imran and other youths and taken to a platform outside her shop at around 12:00 to 12:30 in the afternoon. While she was going from the road towards

the rear side, from the S.T. Workshop burning rags were thrown, due to which, she had sustained burn injuries on her right hand and right leg and her daughter Shamimbanu had also sustained burn injuries on her hands and legs. The people in the mob were indulging in assault and arson. They had stayed at Ramzani's terrace till 12 o'clock at night, whereafter the police came and took them to the Shah Alam camp. The fact regarding her daughter having sustained injuries is supported by facts elicited in the cross-examination of the witness wherein she has admitted that her daughter had received compensation of Rs.1,25,000/- from the Government for the injuries sustained by her.

177.75 In paragraphs 109 to 112, the witness has been cross-examined as regards acquaintance with accused No.58 Santoshkumar Kodumal. It appears that while the witness has denied acquaintance with the said accused, the defence has been making strenuous efforts to establish such acquaintance. The witness has been cross-examined with regard to her acquaintance with Mayaben, as brought out in paragraph 113 of her cross-examination, wherein she has stated that she had seen her photographs during the time of elections and in the banners and hoardings put up. In paragraph 121, the witness is cross-examined with regard to acquaintance with Bipin Autowala, wherein she has stated that she has not seen Bipin Autowala. She has never talked with Bipin Autowala and they had never any occasion to meet each other. As regards acquaintance with Manoj Videowala, the witness has stated that she had limited relations of talking with him. What she means is that at times, the people from the chawl used to bring videos from Manoj Videowala's shop and, at that time,

she had seen his shop. As regards her acquaintance with Suresh Langdo, the witness has stated that she does not know where he stays; has no relations of talking with him, however, sometimes he would come to her tea-stall to have tea.

177.76 Thus, from the testimony of this witness, it emerges that she has named the accused for the first time after a period of six years and despite the fact that two of her statements have been recorded at the relevant time, that too, after a period of more than two months from the date of the incident, the witness had not named any accused. Under the circumstances, it would be hazardous to rely upon the testimony of this witness to prove the charge against the accused. However, the testimony of the witness deserves to be accepted to the extent she is consistent. From the testimony of this witness, it is proved that burning rags were being thrown from the side of the S.T. Workshop, which has also been stated by the other witness.

178. **PW-193 Ibrahimbhai Hasanbhai Shaikh**, aged 52 years, has been examined at Exhibit-1325. This witness has deposed that in the year 2002, he was residing at *Pandit-ni-Chali, Naroda Patiya*, which is situated next to the S.T. Workshop. He was residing at *Pandit-ni-Chali* since thirty five years prior to the incident. The house was a rented one and at the relevant time, he used to ply a rickshaw on hire.

178.1 At the relevant time, he was residing with his family which was comprised of his wife Maheboobbibi, his sons Ismail and Faruk and daughters Farzana and Nargis and son Sharif.

178.2 The incident took place on 27.2.2002. On 27th evening, he was at home. In the evening, he had gone out and was running his rickshaw on hire, when he came to know that a train had been burnt at Godhra and that on the next day, there was a call for bandh. Upon coming to know of this, he stayed at home because he felt that there would be a lot of unrest. Somebody told him that cabins had been burnt at Krushnanagar, and hence, he should not go any further. For this reason, they sat throughout the night, that is, till 2 to 3 o'clock.

178.3 On 28th February, he was at home in the morning. He was asleep, when his family members woke him up and told him that the public had come to pelt stones. Upon his coming to know of this, he woke up and went outside to the Naroda Highway road. He had come out of his house and was standing and he saw that outside the S.R.P. headquarters gate, the public was pelting stones at them. At this time, he remained standing there. The mobs were on all four sides. He had seen that there was public outside the Noorani Masjid, opposite the S.T. Workshop. They saw that from the front of the S.R.P., the people in the mob were pelting stones at the Muslims. They were thinking as to what they should do and what they should not do and were very worried. At this time, the police lobbed shells at them. One shell fell on his leg. Thereafter, they sat there for a while.

178.4 At this time, it was around 11:00 to 11:30 and he saw that public had started coming from the direction of Krushnanagar. At that time, he had seen **Bipin Autowala** go from his garage towards Krushnanagar side. Thereafter, the

mob from the side of Krushnanagar increased. Subsequently, a police jeep also came. The mob which came from the direction of Krushnanagar was firing at them and bursting shells. Thereafter, from the police jeep also, they were firing and lobbing shells. The witness has deposed that Bipin Autowala must have told them, and therefore, the public had come from Krushnanagar and the police jeep came behind them.

178.5 Thereafter, the public which came from the side of Krushnanagar, took gas cylinders from Uday Gas Agency and threw them on the internal roads of the Muslim chawls.

178.6 At this time, the people of the chawl as well as he himself started fleeing towards the chawls on the rear side towards Hussainnagar. At this time, it was around 1:30 in the afternoon. From Hussainnagar, he once again came towards his house.

178.7 He had come to fetch the remaining members of his family. At that time, he saw that his rickshaw had been burnt. At this time, the public climbed on an adjoining hall. At present, there is a hospital where the hall was. At this time, the people standing on the hall were pelting stones at them and in the stone pelting, his son Ismail who was with him, was injured on his head by a stone. Thereafter, they had gone to Hussainnagar.

178.8 The people who were residing in Hussainnagar had also fled from there. Thereafter, they went near Jawannagar. They stood outside near Jawannagar, because they were not permitted to go inside the S.R.P. Quarters.

178.9 **Bhavanisingh** driver came where they were standing at Jawannagar and told them to come and hide. However, they did not trust him and out of fear, they had not gone there. Thereafter, they stood at Jawannagar. At that time, **Guddu** came from behind and told them not to be worried and that they were there. He said this and went away and out of fear, they kept on standing there.

178.10 At this time, the people residing in the S.R.P. Quarters were gesturing to the public towards their mob. Thereafter, they stood there at the corner of Jawannagar. After about half an hour to an hour, they saw people coming there. At this time, they saw the public coming from Jawannagar. They saw people wearing saffron coloured bands, whereafter they came on the opposite side in Jawannagar. They saw that the people from the S.T. Workshop were climbing on the walls and gesturing to the public and were throwing stones at them from the S.T. Workshop.

178.11 Thereafter, they sat there for a little while and then went from one terrace to another terrace. Thereafter, they went to another terrace, where they sat till the evening. They sat on that terrace till around 1:30 at night.

178.12 After 1:30 at night, the police came to their terrace and took them in their vehicles to the Shah Alam camp. They had stayed at the camp for about one year.

178.13 While he was at the camp, the police had recorded his statement regarding the incident. The SIT had also

recorded his statement at Gandhinagar.

178.14 All the household goods in his house were looted and burnt. His house was also burnt down.

178.15 The witness has stated that he knows Bipin Autowala, Bhavani and Guddu, all three of them. He has learnt that Bhavani and Guddu have passed away and that he can identify Bipinbhai if he is present in the court. The witness has thereafter stated that Bipinbhai is not present in the court though Bipinbhai (A-45) was present there. Thus, the witness has not been able to identify the sole living accused named by him.

178.16 CROSS EXAMINATION: In the cross-examination of this witness, he has denied that the first mob that he saw had come in the afternoon and has voluntarily stated that the first mob that he had seen was approximately at 10 o'clock in the morning. He has admitted that the first mob which he saw came from the direction of Krushnanagar and was comprised of four thousand to five thousand people. He saw the mob at the Noorani Masjid after about half an hour and that the mob at the Noorani Masjid was also comprised of approximately five thousand people. The witness has admitted that from where he was standing, he could not see Krushnanagar and has further admitted that the facts stated by him that Bipinbhai must have told the mob, was his personal opinion.

178.17 SUBMISSIONS: The learned counsel for the appellants submitted that this witness though has implicated Bipin Autowala (A-44), he has failed to identify him. Moreover,

as is apparent from paragraph 5 of his examination-in-chief, he has implicated Bipinbhai Autowala on an assumption that the public must have come from Krushnanagar at his instance.

178.18 ANALYSIS: This witness in his examination-in-chief has named accused No.44 Bipin Panchal. As per the version given by this witness at around 11:00 to 11:30 he had seen Bipin Autowala go from his garage towards Krushnanagar. Thereafter, the mob from the side of Krushnanagar grew larger. Subsequently, a police jeep also came. The mob which came from the direction of Krushnanagar was firing at them and bursting shells. Thereafter, from the police jeep also, they were firing and lobbing shells. The witness has deposed that Bipin Autowala must have told them, and therefore, the public had come from Krushnanagar and the police jeep came behind them. Thus, merely because he had seen Bipin Autowala go towards Krushnanagar, the witness has presumed that he must have told the public to come there. On the basis of such presumption, the complicity of the accused cannot be established. Moreover, the witness has stated that the facts stated by him that Bipinbhai must have told the mob, was his personal opinion and has failed to identify him in the dock. The testimony of this witness, therefore, does not in any manner support the prosecution for proving the charge against the said accused.

179. **PW-197 Kherunisha Riyazbhai Shaikh**, aged 45 years, has been examined at Exhibit-1354. This witness has deposed that after the riots, she has come to stay at *Citizennagar, Dani Limda*. At the time when the incident took place, she used to reside in *Jawannagar, Naroda Patiya*. At

that time, she was residing with her husband and four children. Her eldest son was Sirazuddin, younger than him was Nizamuddin, and then her daughters Reshmabanu and Yasmibanu. At that time, her husband used to work at Thakkarnagar in an elastic factory and she used to work in Surajbhai's factory in the bungalow area. Both her sons also used to work in Mukeshbhai's factory, opposite the excise chowky.

179.1 The incident took place on 28th date in the year 2002 and the month was the very month which was running at the time of her deposition. At the time of the incident, she was at home. Her elder son Sirazuddin had gone for his job. They had come to know on the previous night that there was a call for bandh on the next day on account of the Godhra incident.

179.2 On the day of the incident, she set off to go to work in the morning when she was told that since there was a call for bandh, they were not working, and hence, she set out to call her sons.

179.3 At 9:00 to 9:30 in the morning, she had gone to Sirazuddin's factory to call him when his employer told her that nothing would happen and also told her that when his work is over, he (the employer) would come and leave him. While coming back, when she reached near the Noorani Masjid, the mobs were standing there. The people in the mob had tied saffron bands on their heads and were pelting stones at the Noorani Masjid. Thereafter, she came home. Upon coming home, other people were locking their houses and were going and her children were standing there. At that time, the mobs

had started coming in, and hence, they had gone towards the S.R.P. compound wall and upon it becoming dark, they went to a terrace of Gangotri Society.

179.4 In the mob, she had seen **Ganpat Chhara (A-4), Guddu Chhara, Sahejad Chhara (A-26)** and **Jaybhavani Chhara**.

179.5 Late at night, a police vehicle came and took them to the Shah Alam relief camp. She had stayed at the relief camp for six months. Her family members were also at the camp. While she was at the relief camp, the police recorded her statement. Thereafter, the police came there from Gandhinagar with papers and she had gone to Gandhinagar to record her statement.

179.6 Out of the four names she had given, Guddu Chhara and Jaybhavani have passed away. The witness has stated that she can identify Ganpat Chhara and Sahejad Chhara. The witness, however, could not identify either of the two living accused named by her.

179.7 CROSS EXAMINATION: The witness has been cross-examined as regards the topography of the area. In her cross-examination, it has come out that she has gone to Mukeshbhai's factory through the S.T. Workshop road in the morning at around 9:00 to 9:30 to call her son. She had stayed at Mukeshbhai's factory for about half an hour. The witness has admitted that when she went to Mukeshbhai's factory and returned home, during that time, she had not seen any disturbances, riots or any disputes on the road. At that time,

no one had beaten her or harassed her. The witness has voluntarily stated that she had seen people standing on the road. She had seen people on the road while she was going, but she had not seen any riots. The witness has stated that while returning, she had seen stones being pelted at the masjid. The witness has stated that she had seen stones being pelted at the masjid, but did not see any stone throwing in retaliation.

179.8 The witness has been cross-examined with regard to her acquaintance with the four named accused and she had stated that she did not have any relations with any of the accused and that she had no occasion to ever talk to any of them. In her cross-examination, she has stated that she had seen the mob from Krushnanagar for the first time between 12:00 to 12:15 on the national highway. In her cross-examination, it has further come out that she cannot say as to how many people were there in the mob from Krushnanagar. The witness has stated that she has not seen the people in the mob having tied saffron bands round their waists and has voluntarily stated that some of them had tied saffron bands on their heads. The witness has stated that some of them had tied black cloths around their faces. In her cross-examination, it has further come out that out of the people who had tied saffron bands on their heads and black cloths, except for the four people whom she had identified, she could not identify anyone. The witness has admitted that these four named accused had not tied black cloths on their faces or saffron bands. The witness has stated that she has not seen any weapons in the hands of the four accused. The witness has stated that she has not seen these four persons looting, cutting or setting anything

on fire. The witness has admitted that no person in her family has been injured in the incident, but has stated that her house was damaged and she has sustained loss in connection therewith.

179.9 SUBMISSIONS: The learned counsel for the appellants submitted that as is evident from the contents of paragraph 14 of her deposition, this witness does not have any acquaintance with any of the named accused. Moreover, she has not attributed any weapons to the accused. It was pointed out that this witness has admitted that she has not seen any accused setting anything on fire, committing loot or causing any injury. It was submitted that it transpires from her evidence that she had not seen any incident and any accused persons.

179.10 ANALYSIS: From the testimony of this witness, all that emerges is that the mob was present on the road when she returned to the factory and there was no rioting, but she had seen people pelting stones at the masjid. At 12:00 to 12:30, the mob from Krushnanagar was pelting stones at their houses. When the mobs started coming, they went towards the S.R.P. compound wall, but were not permitted to go inside. Upon it becoming dark, they had gone to a terrace of Gangotri Society. The witness has named four accused, out of whom, two, viz., Guddu and Jaybhavani Chhara Chhara are dead. Insofar as the other two accused viz. Ganpat Chhara (A-4) and Sahejad Chhara (A-26) are concerned, she could not identify them in the dock. The witness having failed to identify the accused in the dock, her testimony would not assist the prosecution in establishing the case against the named

accused.

180. **PW-198 Harun Mahammadbhai Shaikh**, aged 35 years, has been examined at Exhibit-1363. This witness has deposed that he was residing in *Lane No.1, Hukamsing-ni-Chali* since childhood. At present, he is residing with his second wife Noorjahan and sons Mustufa and Maheboob.

180.1 In the year 2002, his mother Mumtazbanu, his then wife Gosiyabanu and his son Akram and his father Mahammadbhai, all four were residing together. His mother Mumtazbanu, his then wife Gosiyabanu and his son Akram, died in the riots that took place in the year 2002.

180.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh on account of Kar Sevaks being burnt in a train at Godhra on 27.2.2002.

180.3 On the date of the incident, that is, 28.2.2002, he was at home in the morning. As per his routine, he had woken up at 8:00 to 8:30 in the morning. He was following his routine when sounds started coming from the chawl. Voices were heard from the chawls saying "*mobs have come, mobs have come*", whereupon he came out and went to the place where at present there is a police chowky. The police chowky at present is at the corner of the S.T. Workshop. When he came out, around fifteen to twenty persons of their chawl standing were there and the cabins and stalls nearby were open. Thereafter, a police jeep came and got the stalls and cabins shut down. Thereafter, there were mobs near the gate of the S.T. Workshop as well as near the gate of the S.R.P. Quarters

where earlier Bipin Auto Centre was situated.

180.4 The mobs on both the sides had tied saffron bands on their foreheads. He knew some of the people in the mob. Certain people in the mob had swords, pipes, trishuls etc. in their hands.

180.5 In this mob, he saw **Mayaben (A-37), Babu Bajrangi (A-18), Sachin Modi (A-52), Ashok Paan-gallavalo (A-45), Manoj Videovala (A-41), Suresh Langdo (A-22), Haresh (A-10), Guddu (deceased) and Bipin Autowala (A-44)**. He had seen all of them at around 9:30 in the morning on the date of the incident. They were leading the mob in front of the mob opposite the S.T. Workshop as well as the mob near the S.R.P. gate. Of course, both the mobs had thereafter become one.

180.6 The people in the mob had set the carts, cabins and houses etc. nearby on fire and they had attacked the Noorani Masjid. From the Muslims, some people went to reason with the nine persons named above, however, they did not listen to them and shouted "kill, cut" and started pelting stones at the people belonging to their community. In this manner, they had gone near the Noorani Masjid to reason with the nine persons, however, they would not listen to them and pelted stones due to which, they were frightened and came back where the police chowky is presently situated.

180.7 Upon coming back to the police chowky spot, tear gas shells came to be lobbed and firing was resorted to from the police jeep which was standing near the S.T. Workshop

gate. In this police firing, four persons were injured by bullets. In the firing, Abidbhai, Piru, Mahammad and Khalid were injured by bullets. Abid died on the spot. Other three persons other than Abid had sustained bullet injuries. All of them were taken inside by the Muslims standing there. There, the Muslims were running towards the chawls and the persons in the mob were after them.

180.8 The people in the mob entered their chawls and ransacked their houses and set them on fire. All the Muslims went to the Gopinath Gangotri Society on the rear side of their chawls and hid there.

180.9 Till 4 o'clock in the evening, they sat at Gopinath and Gangotri Society. While they were sitting there, **Tiwari (A-25), Sahejad (A-26), Jaybhavani** and **Guddu** came to where they fifteen to twenty Muslims were sitting and told them that they should go from the road on the rear side to the S.R.P. Quarters. At this time, men, women and children were there together.

180.10 Since Tiwari, Sahejad, Jaybhavani and Guddu were residing in their area, they heeded to what they had said and started going with them. While they were going, the people in the mob were sitting and hiding near the Gopinath gate and upon their coming out, all the people in the mob encircled them. Sachin and Suresh Langdo were in the mob which was hiding. At the time of the incident, they were returning from Gopinath Society to save themselves and had gone into a passage near the Gopinath Society water tank. While in the passage, they thought that the mob would go away from the

front, however, the mob started killing and cutting them in the passage itself. The people in the mob assaulted them and set people from amongst them on fire.

180.11 In the assault which took place in this manner, there were three persons from his family, namely, his mother Mumtazbanu, his wife Gosiyabanu and his son Akram, all three of whom died in the incident. Over and above them, other people from their community also became victims of the assault, amongst whom were his maternal aunt Rabiya, his niece Farhana and the persons residing nearby, Reshma etc..

180.12 When the incident took place, it must have been around 4:30 to 5:00 in the evening. However, he does not know the exact time, but it was evening time.

180.13 In the mob which was carrying on the assault, he had recognized five people out of whom Tiwari (A-25) and Jaybhavani had swords in their hands. The witness has thereafter recalled that Jaybhavani had a stick in his hand. Guddu had a sword in his hand, Suresh Langdo (A-22) had a dharia in his hand, and Sachin alias Modi had a pipe in his hand.

180.14 While the assault was taking place, he had intervened to save his son Akram, whereupon he was injured by a dharia (scythe) on his right hand and sustained a burn injury below his eye. He escaped from all this and went and hid in Gangotri Society. He sat there for some time when he noticed that other people from their Muslim community were also sitting there. It was the time for *Maghrib*, viz., it was

evening time.

180.15 From this place, women and men of their community had seen that the mob had dispersed and hence, the people from their community thought of slowly going towards the S.R.P. Quarters from the road, and hence, all of them slowly started going in that direction.

180.16 While they were going in this manner, they saw Babu Bajrangi standing with a mob in the open ground near Teesra Kuva. Out of fear, they stood there and at that time, the people in the mob started assaulting them. At this place itself, in front of him, the people in the mob killed four persons belonging to his community. In all this, out of fright, he went back to Gopi Society and hid there.

180.17 Late at night, police vehicles came, in which they were taken to Shah Alam camp. He took treatment for the injuries sustained by him at the Shah Alam camp, where he stayed for six months.

180.18 When he was at the camp, the police had not orally examined him in connection with the incident. After six months at the camp, he went back to *Lane No.1, Hukumsing-ni-Chali* to his residence. About six months after returning to Patiya, he came to know that there was hearing of the case at Naroda Police Station and hence, he went there. He did not find anything proper at the Naroda Police Station and there was no hearing taking place there and hence, he returned home. Thereafter, he learnt about the SIT. He came to know that the SIT had been constituted where they can have their

statements recorded. He too, sent his application to the SIT. He had sent the application through post. He had made the application to the SIT in connection with the death of his family members.

180.19 The application Mark 644/10 is shown to the witness, which is a handwritten application and he has identified his signature thereon. The contents of the application were read over to the witness and he has admitted the contents thereof. The application has been exhibited as Exhibit-1364.

180.20 The witness has deposed that after making the application, Exhibit-1364, the SIT had recorded his statement. In all, two statements of his were recorded. The witness has then remembered that in all three statements were recorded.

180.21 The witness has stated that he can identify all the people whom he has stated that he had seen in the morning as well as in the evening incidents. The witness has further stated that he has learnt that out of the persons named by him, Guddu Chhara and Jaybhavani are dead and has stated that he can identify rest of the accused. The witness has thereafter correctly identified Mayaben (A-37), Babu Bajrangi (A-19), Tiwari (A-25), Ashok Paanwala (A-45), Suresh Langdo (A-22), Sachin Modi (A-52), Sahejad (A-26), Bipin (A-44) and Manoj Videowala (A-41). The witness has not been able to identify Haresh Chhara (A-10) though he was present before the court.

180.22 CROSS EXAMINATION: This witness has been examined with regard to the names of his family members and

where they reside as well as the topography of the area. In his cross examination he has admitted that from the day of the incident till 2008, he had not stated the facts regarding the incident to anyone. He has admitted that he had not given the names the accused whom he has identified before the court to any one till 2008. The witness has admitted that at the time of the incident he, his father and his brothers were all residing together. The witness has admitted that from the time he had started his business of plying rickshaw, till 2008 he had no fear. He has admitted that he has seen the Naroda Police Station in Naroda and he had an occasion to go there. He has admitted that from 2002 to 2008 he has not lodged any complaint with Naroda Police Station. The witness has admitted that prior to making the application-Exhibit 1364 to the SIT he had not gone to any police station to disclose the incident. The witness has voluntarily stated that as stated by him in his examination-in-chief, he had once gone to the Naroda Police Station, but was not satisfied with the hearing and had returned. The witness has stated that at present he does not remember whether any statement of his was recorded prior to his making the application to the SIT. As far as he remembers, the SIT has recorded his statement thereafter. The witness has stated that while making the application Exhibit 1364, he did not know that he would be required to go for recording of his statement again. The witness has admitted that in his application Exhibit 1364 he has stated that in view of the order of the Supreme Court, he had remained present for the purpose of recording his statement again. He has admitted that prior to making the application, his statement was not recorded anywhere. He does not remember as to who had written the application

Exhibit 1364. The witness has admitted that in his application Exhibit 1364, he has stated that while going on the road he was stopped and threatened. The witness has denied that the facts stated in his application are incorrect.

180.23 In his cross-examination it has come out that he does not know the officers at the Naroda Police Station. He has heard the names of Shri K.K. Mysorewala as well as Chudasama, but has never seen them. The witness has stated that he has not heard that both of them have investigated their case or have recorded any statement. The witness has stated that he had heard that Mysorewala and Chudasama were investigating their case, but he had never seen them in connection with the investigation. The witness has stated that till he made his application Exhibit 1364 he had not made inquiry as to with whom investigation case was and what was the stage of investigation.

180.224 In his cross-examination it has come out that when he came out of his house in the morning at 8 o'clock, at that time the police were getting the stalls and carts shut down. The witness has admitted that he does not know as to which weapon was in the hands of which accused and has voluntarily stated that they had weapons in their hands, but he does not remember which accused had which weapon in his hand. The witness has stated that he had seen the accused identified by him in the court. Near the Noorani Masjid he had seen them while standing at the corner of the S.T. Workshop. He has admitted that at that time they were in the mob near the Noorani Masjid. He has denied that at that time there were at least five thousand to ten thousand people in the mob. He has

stated that after he came out of his house and went near the S.T. Workshop, he must have stayed there for about half an hour to an hour. He has denied that at that time there were at least two thousand to five thousand people at the Noorani Masjid Chowk. He has stated that the mob must have been comprised of around fifty people. He has admitted that the accused named by him were there in that mob of fifty people.

180.25 The witness has stated that he has not seen any firing from the Noorani Masjid towards the S.T. Workshop or towards their chawl. He has stated that after staying at the S.T. Workshop corner, he had taken three Muslims who were injured in firing and gone inside. He had not gone home, but had gone to Gangotri Society. He does not know to whose house he had gone and that after leaving the injured persons at Jawannagar he had gone to Gangotrinagar. The witness has stated that he cannot say as to till what time in the evening he had stayed at Gangotrinagar, but has stated that it was evening time. The witness has admitted that at about 5 o'clock, till the four persons (Tiwari, Sahejad, Jai Bhavani and Guddu) came to call him, he was at Gangotri Society. The witness has denied that in his statement dated 28.5.2008 he has not named these four accused.

180.26 In the cross-examination of the witness it has come out that he must have reached Teesra Kuva ground prior to 6 o'clock in the evening. He has admitted that he must have reached near the water tank at around 4:00 to 4:30. He has stated that he knows Jadikhala and that he had not seen the Jadikhala incident at 4:30 in the evening near water tank. He has denied that he has seen only his mother's incident. He has

stated that he has seen Jadikhala's incident near the open ground, near Teesra Kuva. He has denied that the Jadikhala incident took place at Jawannagar. He has admitted that Jadikhala was assaulted near Teesra Kuva. He has denied that she was set ablaze and has clarified that she was killed and hacked on the open ground and set ablaze and thereafter she was thrown in the well. He has admitted that he has seen this incident himself. The witness has denied that Jadikhala's murder did not take place at the Teesra Kuva ground and that she was not burnt and he has not seen anything. The witness has asserted that he has seen Jadikhala being killed and hacked as well as burnt and he had seen her being thrown in the well in a burning condition. He has admitted that on that ground he had seen three others also being killed and hacked. The witness has admitted that other three persons were also burnt there.

180.27 The witness has stated that he does not know that the incident in the passage near the Gopinathnagar water tank, wherein three members of his family died, took place at around 4:00 to 4:30 in the evening, but it was the evening. The witness had denied that he was not injured when he tried to save his son Akram. The witness has admitted that he has received Rs.5,00,000/- by way of compensation for the death of each member of his family and that in all, he had received Rs.15,00,000/-. The witness has denied that at the instance of the members of his community and with the intention of obtaining compensation, though his family members have not died in the incident, with a view to take money in their name, after six years, he had given a false statement stating false facts and presenting a false case before SIT and was falsely

deposing before the court. The witness has admitted that his statement was also recorded on 12.9.2008. The witness has denied that it had so happened he had not seen Ashok Pan Gallawala, Mayaben and Manoj Videowala in the morning incident and had seen them only in the evening. The witness has stated that he had seen Mayaben, Manoj Videowala and Ashok Pan Gallawala, near the S.T. Workshop. He had denied that he was standing near the Uday Gas Agency lane and he had seen these three people. He has denied that in the evening time he has seen these three persons and other accused from near Uday Gas Agency. The witness has stated that he has not seen any incident from the Uday Gas Agency road in the evening and he had not seen any of the accused from there. The witness is confronted with his statement dated 16.1.2009 wherein he has stated that in the evening at around 5:30 to 6:00 he was standing at the corner of the Uday Gas Agency lane, at that time, opposite Bipin Auto Shop, on the highway he had seen (i) Mayaben Kodnani and (ii) Bipin Autowala, who were gesturing to the people in the mob and were instigating them to go towards their chawl. From where he was standing, on the opposite side, at a distance of about 50 feet, he had seen them in the mob. The witness has admitted that in his statement dated 12.9.2008 he had stated that he had seen (i) Mayaben Kodnani, (ii) Ashok Pan Gallawala, and (iii) Manoj Videowala, all three of them, opposite the S.T. Workshop in the evening mob. At that time he was standing where at present the Naroda Patiya Police Chowky is situated. They were standing at a distance of 50 feet from him. The witness has stated that he does not remember at present whether in his statement dated 28.5.2008 he has stated that he has seen Mayaben Kodnani,

Manoj and Ashok Paan Gallawala in the evening mob.

180.28 [It appears that in this statement there is no such fact regarding evening mob].

180.29 In the cross examination of the witness it has further come out that two and a half months after going to the camp he was taken for drawing a panchnama of his house. The police had accompanied him. He has stated that at this time, on the way, while going as well coming, he had not stated any fact regarding the incident and the accused persons whom he had identified to the police. The witness has admitted that Farzana is his sister and that when he met Farzana for the first time after riots she was in the hospital. The witness has admitted that his sister Farzana told him about his wife Gosiya, Akram and his mother.

180.30 The attention of the witness is drawn to the third line to the fifth line and the last three lines of paragraph 5 of his examination-in-chief to the effect that he has not stated such facts in his statement recorded by the SIT. The contents of the last four lines of paragraph 7 of the examination-in-chief are brought to the notice of the witness to the effect that he has not stated such facts in the statement recorded by the SIT. The attention of the witness is drawn to the words, 'these persons' in the first line of paragraph 8 of his examination in chief to the effect that he has not mentioned these words in the statement recorded by the SIT. Similarly, the witness is confronted with the words 'these nine persons' in the 4th line of that paragraph to the effect that he has not stated so in the statement recorded by SIT. The attention of this witness is

drawn to the first line of paragraph 9 of the examination-in-chief to the effect that he has not stated before the SIT that there was a police jeep at the S.T. Workshop gate. The attention of the witness is also drawn to the sixth line to the ninth line of paragraph 9 of his examination-in-chief to the effect that he has not stated before the SIT that he had taken three persons who were injured by bullets towards Muslim chawls. The witness is also confronted with paragraph 11 of his cross-examination to the effect that in the statement recorded by the SIT, he had not stated that they had stayed at Gopinath and Gangotri Society till 4 o'clock. The contents of first line of paragraph 12 of his examination-in-chief to the effect that they had started going with Tiwari, Sahejad, Jaybhavani and Guddu, is not stated by him in the statement recorded by SIT. The witness is further confronted with the third line to the fifth line of paragraph 12 of his examination-in-chief to the effect that before the SIT he had not stated that the people in the mob were sitting and hiding near the Gopinath Nagar gate and they had surrounded them. The witness has admitted that during the course of investigation, no test identification parade of the nine accused identified by him had been carried out.

180.31 To prove the omissions and contradictions as to the previous statements of the witness, the defence has cross-examined PW-327, Shri V. V. Chaudhari, the Investigating Officer (SIT), who, in his cross examination, has admitted that he has recorded the statements of this witness on 28.5.2008, 12.9.2008 and 16.1.2009. He has admitted that this witness in his statement dated 28.5.2008 had stated that in the meanwhile, they were hiding in Gopinath – Gangotri Society. The Investigating Officer has admitted that in his statement

dated 28.5.2008 this witness has not mentioned Teesra Kuva and nor has he mentioned that he had gone to Teesra Kuva. The Investigating Officer has admitted that the witness in his statement dated 28.5.2008 has not stated that when he had gone to rescue Akram, he had sustained injury. The Investigating Officer has clarified that the witness has stated before him that both, the witness and Akram, were in the passage in middle of Gopinath and Gangotri Society and in the incident that took place, Akram was burnt and the witness had sustained injuries.

180.32 The Investigating Officer has admitted that in his statement dated 16.01.2009, the witness had stated that in the evening at around 5:30 to 6:00, he was standing at the entrance of the nearby Uday Gas Agency lane, at that time on the highway, opposite Bipin Autowala shop, he had seen (1) Mayaben Kodnani and (2) Bipin Autowala in the mob and they were gesturing to the people in the mob to go towards their chawl and were instigating them. From where he was standing, he had seen the mob from a distance of about fifty feet from the opposite side.

180.33 The Investigating Officer has admitted that in his statement dated 28.5.2008; this witness has not stated any fact regarding having seen Mayaben, Bipinbhai, Manojbhai and Ashok Paangallawala in the mob in the evening. The Investigating Officer has further clarified that this witness had stated all the facts regarding the presence of these four persons in the morning mob and in the statement dated 16.1.2009, he has stated that in the evening at around 5:30 to 6:00, he was standing at the entrance of the lane of Uday Gas

Agency, when he had seen Mayaben and Bipinbhai in the mob and they were gesturing to the mob and instigating them to go towards their chawl.

180.34 The Investigating Officer has admitted that the witness in his statement dated 28.5.2008 has not stated that “the spot where at present there is a police chowky and at present the police chowky is situated at the corner of the S.T. Workshop”. However, he has clarified that in his statement dated 12.5.2008, the witness has stated that at that time, he was standing where presently Naroda Police Chowky is situated. The Investigating Officer has admitted that in his statement dated 28.5.2008, the witness had not stated that the mob was at both the places, namely, at the corner of the S.T. Workshop as well as near the S.R.P. Quarters’ gate. He, however, has clarified that the witness had stated that there was a mob of people from the direction of Krushnanagar as well as opposite the S.T. Workshop and near Natraj Hotel, there was a mob of people. Moreover, in his statement dated 16.1.2009, the witness had stated that he had also seen a mob opposite the S.T. Workshop.

180.35 The contents of paragraph 7 of the examination-in-chief of the witness are read over to the Investigating Officer who has denied that the witness has not stated what is stated in the last four lines of the paragraph. He has clarified that the witness had stated before him that he had come out near the highway road when he saw that a mob had gathered near Krushnanagar; mobs of people had also gathered towards Natraj Hotel and opposite the S.T. Workshop and they had weapons in their hands and had tied saffron bands on their

heads and that the witness had seen all the accused named in paragraph 7 in the mob and that since he was residing in the same area, he knew them very well. The Investigating Officer has stated that the witness has clearly stated that he had seen these accused in both the mobs. He, however, has admitted that the witness has not stated that the accused were in front of the mob. He has stated that additionally, in his statement dated 16.1.2009, the witness has stated that at 9:30, he had also seen the accused in the mob opposite the S.T. Workshop.

180.36 The Investigating Officer has admitted that this witness had not stated before him that the mobs had gathered at the S.R.P. Quarters and the S.T. Workshop. He, however, has clarified that the meaning of what is stated by the witness in his statement dated 28.5.2008 is more or less the same.

180.37 The Investigating Officer has denied that the words “these nine people” and “these people” are not stated in the statement dated 28.5.2008. According to the Investigating Officer, the witness had given the names of nine persons and hence, reference to the nine persons stand included in the statement though he has not stated so in specific words. Moreover, he has clearly referred to the presence of these nine persons in the mob. The Investigating Officer has stated that the witness had not stated that some of the Muslims had gone to reason with these nine persons; however, in his statement he has stated that the people from their community had gone to reason with the people in the mob. The Investigating Officer has stated that the witness in his statement has stated that people of the community had gone to reason with the people in the mob and these nine persons were in the mob, and hence

it is clear that these nine persons had also gone to reason with the mob. The Investigating Officer has admitted that in the statement recorded by him, it is not clear as to with which people from the mob and at which place they had talked.

180.38 The Investigating Officer has admitted that the sentence regarding the police jeep being parked in front of the S.T. Workshop is not there in the statement of the witness. He, however, has stated that the witness had stated that the police vehicle was getting the shops shut down, which indicates that the police vehicle was there. That the police was standing where at present there is a police chowky and at that time, the police had fired upon them and had started releasing tear gas shells. The Investigating Officer has admitted that in none of his statements, the witness has stated that three persons who were injured by bullets were taken towards the chawls.

180.39 The Investigating Officer has denied that this witness had stated before him that till 4 o'clock, they had stayed at Gopinath – Gangotri Society. He has stated that the witness had not stated the words “4 o'clock”, but had stated that till 5:30, they had hidden in Gopinath – Gangotri Society.

180.40 The Investigating Officer has denied that this witness had not stated before him that Tiwari, Sahejad, Jaybhavani and Guddu started going together. The Investigating Officer has stated that the witness had stated before him that Tiwari, Sahejad, Jaybhavani had come to where they were hiding and had told them to go from there to the road from the S.R.P. Quarters on the rear side and hence, they had gone towards the S.R.P. Quarters. He has admitted that

the word “together” has not been used in the statement.

180.41 A sentence from paragraph 12 of the examination-in-chief of the witness is read over to the Investigating Officer, wherein he has stated that the people in the mob were hiding near the gate of Gopinathnagar Society and they had surrounded them. The Investigating Officer has admitted that this sentence is not there in the statement, but the witness has stated that in the open ground, Babu Bajrangi was standing with the people in the mob and that the mob had surrounded them.

180.42 In the opinion of this court, when the contradiction is only with regard to where the people in the mob who were sitting and hiding near the gate of Gopinathnagar had surrounded the victims, the Investigating Officer could not have brought on record the statement of the witness stating that Babu Bajrangi was standing with the mob in the open ground and they had surrounded them. The Investigating Officer is only required to prove or deny the contradiction which is put to him and at best, to explain such contradiction, if possible. However, no additional facts can be brought on record by him, as has been done in the present case.

180.43 The Investigating Officer has admitted that in his statement dated 12.9.2008, the witness had not stated that he was not orally examined at the camp. He, however, has stated that the witness in his statement dated 12.9.2008 had stated that when he returned from Karnataka after four months, at that time no one had come to record the statement and the witness had also not gone to give his statement and that the

police had not made any inquiries.

180.44 Certain extracts of the paragraph 20 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein he has stated that around six months after returning to Naroda Patiya, he came to know that their case was being heard at Naroda Police Station and hence, he had gone there. He felt that something was not all right at the Naroda Police Station and no hearing was going on, hence, he returned home. The Investigating Officer has admitted that such facts have not been stated by the witness in any of the statements recorded by him.

180.45 SUBMISSIONS: The learned counsel for the appellants submitted that no statement of this witness has been recorded at the relevant time and his statement came to be recorded for the first time on 28.5.2008 by the SIT. Subsequently, two other statements came to be recorded by the SIT on 12.9.2008 and 16.1.2009. It was submitted that this witness has named nine accused in paragraph 7 of his examination-in-chief and three accused in paragraph 11. He has identified all the accused, except accused No.10 Haresh Chhara. It was submitted that the witness has tried to give an explanation as to why he has given the statement late, but no such explanation was stated by him in his statement before the SIT. It was submitted that the explanation put forth for giving the statement late is neither acceptable nor digestible. It was submitted that the explanation which is sought to be given before the court, is also found to be missing in his primary statement before the SIT. It was submitted that after the main incident which he claims he had seen wherein his

mother, wife and son have died, the version of the witness that thereafter he went to Teesra Kuva where he found a mob, is also not acceptable at face value. It was submitted that the witness has gone to a terrace at Gangotri and had stayed there until the police came, which indicates that he had created this story just to implicate Babu Bajrangi (A-18). It was submitted that there is a variance in the version given by this witness in his examination-in-chief vis-à-vis his statement before the SIT as regards the time and place from where he had seen accused No.37, accused No.41 and accused No.44 and the variance is such, both as regards the time as well as the place, which is not reconcilable.

180.46 Reference was made to his application Exhibit-1364 to submit that the witness has admitted the contents thereof, which include those two allegations about threat from the accused and allegations against two police officers.

180.47 It was submitted that looking to his SIT statement and his evidence, it transpires that he was not present and no such incident had happened as stated by him. It was submitted that this witness has not seen any incident and he was not there at all and subsequently after he came to know from other persons, he has created this story which he has stated before the court. Various discrepancies in the statement of this witness qua other witnesses have been pointed out. It was submitted that there is no evidence on record to show that the witness was injured and had taken treatment.

180.48 Referring to the contents of paragraphs 94 to 96 of the testimony of this witness, it was pointed out that the

witness has stated that in his statement recorded by the SIT, the witness had stated that in the evening at around 5:00 to 5:30, he was standing at the corner of Uday Gas Agency when he had seen Mayaben Kodnani and Bipin Autowala in the mob. It was submitted that the testimony of this witness as contained in paragraph 13 read with paragraphs 73 and 96 are clearly inconsistent with each other. It was submitted that in the light of the inconsistencies in the statement of this witness, he is not a reliable witness and no reliance can be placed upon any part of his testimony, more so, considering the fact that his version has come on record for the first time only in the year 2008 before the SIT.

180.49 The learned Special Public Prosecutor submitted that this witness has lost three of his family members in the incident. It was submitted that as regards the morning incident the witness has stated that he had seen some of the accused. In the afternoon incident he has stated regarding the incident which took place at around 4.30 to 5.00 in the evening when his family members were killed and another simultaneous incident about Jadikhala and three more persons. It was submitted that therefore, of the three incidents, the first and second incidents cannot be disbelieved in view of the fact that so far as the first incident is concerned, there was other evidence to show that some of the accused named by him were spotted in the morning and that so far as the afternoon incident is concerned he has lost three of his family members and there is no other contradictory evidence on record as regards killing of these three persons. It was submitted that so far as two incidents are concerned the witness is believable and credible and that such part of his evidence should be

accepted.

180.50 ANALYSIS: This witness is the brother of PW-85 Yunusbhai Mohammedbhai Shaikh. Three members of his family have died in the incident, namely, his mother Mumtazbanu, his then wife Gosiyabanu and his son Akram. In his examination-in-chief the witness has stated that when he had come out of his chawl in the morning at around 8:00 to 8:30 and was standing at the corner of the S.T. Workshop, he saw mobs coming from both the sides wherein he had seen Mayaben Kodnani (A-37), Babu Bajrangi (A-18), Sachin Modi (A-52), Ashok Paan Gallawala (A-45), Manoj Videowala (A-41), Suresh Langdo (A-22), Haresh Rathod (A-10), Guddu (deceased) and Bipin Autowala (A-44). The witness has stated that he has seen all of them at around 9:30 in the morning on the day of the incident. They were in the mob opposite the S.T. Workshop gate. The witness has alleged that the people in the mob were setting the cabins, stalls and houses on fire and had attacked the Noorani Masjid. In the cross-examination of this witness it has come out that prior to 2008, he has not narrated any fact relating to the incident to anyone. Prior to 2008, he had not given the names of the accused named and identified by him before the court, before any authority. Therefore, the version given before the court has come for the first time in the year 2008. The witness has further deposed regarding firing by the police wherein Abidbhai, Piru, Mohammed and Khalid were injured. The witness has stated that the people in the mob entered their chawls, started looting them, and setting them ablaze and all the Muslims went to Gopinath-Gangotri Society on the rear side of their chawl and hid there. In the evening at around 4 o'clock, Tiwari, Sahejad, Jai Bhavani

and Guddu came to where they were sitting and told them to go to the S.R.P. Quarters. Since these four persons were residents of that area they started going with them. When they reached the gate of Gopinathnagar, mobs of people were hiding there and they came out and surrounded them. In this mob he had seen Sachin and Suresh Langdo. To save themselves, they had returned from Gopinathnagar Society. The mob assaulted them and set them ablaze and in the incident his mother Mumtazbanu, his wife Gosiyabanu and his son Akram died. According to this witness the incident must have taken place at around 4:30 to 5:00. The witness has stated that in the mob which indulged in violence, he had seen Tiwari and Jaybhavani as well as Guddu, Suresh Langdo and Sachin Modi. In the assault he had tried to save his son Akram and in the process he was injured on his right hand with a dharia and sustained a burn injury below his right eye. Thereafter, he had gone to Gangotri Society and hidden himself. Thereafter, in the evening, at the time of *Maghrib*, they got down and were slowly going towards the S.R.P. Quarters and near Teesra Kuva, in the open ground he had seen Babu Bajrangi standing with a mob. The mob started assaulting and killed four people in front of his eyes.

180.51 In his cross-examination, it has come out that he was at Gangotri Society till 5 o'clock, when the four persons, namely, Tiwari, Sahejad, Guddu and Bhavani came to call him. The witness has stated that he had seen the incident relating to Jadikhala on the open ground near Teesra Kuva. According to the witness he had seen Jadikhala being assaulted, hacked, set ablaze and thereafter thrown in a burning condition into the well.

180.52 In paragraph 95 of his cross-examination the witness is confronted with his statement dated 16.1.2009 to the effect that he has stated therein that at around 5:30 to 6:00 in the evening, while he was standing at the corner of the Uday Gas Agency lane, he had seen Mayaben Kodnani and Bipin Autowala in a mob on the highway opposite Bipin Auto. The witness has admitted that in his statement dated 12.9.2008 he had stated that he had seen Mayaben Kodnani, Ashok Paan-na Gallawala and Manoj Videowala in the mob opposite the S.T. Workshop in the evening time.

180.53 Considering the overall testimony of this witness, it appears that due to lapse of six years, the witness could not correctly recall the incidents and part of his testimony could also be the result of tutoring. Despite the fact that three members of his family have died in the incident, the witness has not given statement before the police at the relevant time. It appears that after a short stay at the camp, the witness has gone back to his native place.

180.54 From the testimony of this witness there are various self contradictions, namely, in his examination-in-chief the witness has stated that the incident in which his mother, wife and son were killed, took place at about 4.30 to 5.00 and thereafter another incident took place in the open ground near Teesra Kuva, before the S.I.T. in his statement dated 16.1.2009 he has stated that he was standing at the corner of the lane of Uday Gas Agency in the evening at 5:30 to 6:00, at which point of time he had seen Mayaben Kodnani and Bipin Autowala in the mob on the highway. Moreover, in his cross-examination,

the witness has stated that he had seen Jadikhala being hacked to death and set ablaze and thrown into the well, which is contradictory to the version given by most of the witnesses, who have stated that Jadikhala was killed in the incident that took place near the passage of the water tank.

180.55 The witness has named several accused in his deposition, namely, Mayaben Kodnani (A-37), Babu Bajrangi (A-18), Sachin Modi (A-52), Ashok Panna Gallawala (A-45), Manoj Videowala (A-41), Suresh Langdo (A-22), Haresh Rathod (A-10), Guddu (deceased) and Bipin Autowala (A-44). However, considering the nature of contradictions in the testimony of this witness as well as the fact that his version has come on record for the first time only in the year 2008, when his statement came to be recorded by the S.I.T. as well as considering the contradictions in his testimony before the court and his statement recorded by the S.I.T., the witness does not come across as a credible and truthful witness. Under the circumstances, it would be hazardous to rely upon the testimony of this witness to prove the charge against the accused in such a serious offence.

181. **PW-199 Noormahammad Nazirmahammad Mev (Pathan)**, aged 65 years, has been examined at Exhibit-1375. This witness has deposed that he was serving as a driver with the A.M.T.S. and presently, he has retired. He is residing at *Chetandas-ni-Chali* since the last 30 to 35 years. His native place is *Village Filakana, District Aligarh, Uttar Pradesh*.

181.1 The incident took place on 28.2.2002. During that period, he was residing with his wife, his two sons and two

daughters. He has studied up till the 8th standard.

181.2 On 28.2.2002, the day of the incident, the Hindu Parishad people had given a call for Gujarat bandh. The call was on account of the Godhra incident. On that day, he had not gone for his job. The timings of his service were from 2 o'clock in the afternoon till 10 o'clock at night.

181.3 On the date of the incident, in the morning at around 9:00 to 9:30, the mobs started gathering outside his house in front of the Noorani Masjid. There was shouting going on that day on the road and he came out to the corner of the S.T. Workshop. On that day, mobs of Hindus were coming from the direction of Natraj Hotel and Krushnanagar.

181.4 The people in the mob had weapons like pipes, dharias, etc. in their hands. The mob which came from the direction of Natraj Hotel went towards the Noorani Masjid. This mob started setting the stalls, cabins and shops on fire. The mob coming from the direction of Krushnanagar started setting stalls, carts etc. behind their houses on fire. The people in the mob were shouting "*cut, kill and burn the Muslims*".

181.5 He was standing near the electric pole near the S.T. Workshop compound wall. The policemen told him and the other Muslims standing there to go inside.

181.6 In the mob which came from the direction of Krushnanagar, certain people had saffron bands round their foreheads and their waists. Out of them, four persons were leading the mob and were instigating the people in the mob.

These four persons were **Suresh Langdo (A-22), Guddu, Bhavani** and **Tiwari (A-25)**. They were showing the people in the mob the houses and shops belonging to Muslims and the places where the Muslims were hiding. Thereafter, the mob entered the houses of the Muslims whereafter he went home.

181.7 Before he went home, the police had resorted to firing. At that time, he was standing there. In this firing, one boy was injured whose name was Khalid. He was injured on the waist by a bullet. Other boys lifted Khalid and took him inside. After this incident, he went home.

181.8 After going home, he took his wife and children and went towards the S.R.P. Quarters. There, they were prevented by the S.R.P. people from entering the quarters. His son, as well as the son of Kureshi Saheb who used to reside in the S.R.P. Quarters, were studying in the same school, and hence, upon his son mentioning the name of Kureshi Saheb, they were permitted to enter the S.R.P. Quarters.

181.9 At around 12 o'clock at night, on account of Kureshi Saheb, the S.R.P. people dropped them at the Shah Alam camp. They stayed at the Shah Alam camp for about eight months.

181.10 The police came to the camp after about four or five months of the incident to record his statement. Thereafter, the SIT people also recorded his statement at Gandhinagar.

181.11 As per his information, Guddu Chhara and Bhavani are dead and he can identify Suresh Langdo and Tiwari. The

witness has thereafter correctly, identified Tiwari (A-25) and Suresh Langdo (A-22).

181.12 The witness has stated that the Hindu mob had set his house on fire and had looted all his household articles.

181.13 CROSS-EXAMINATION: This witness in his cross-examination has admitted that the electric pole where he was standing is on the side of the road which goes from S.T. Workshop towards their chawl. He has stated that before he went home, he had stood near the electric pole for around thirty to forty-five minutes. In his cross-examination, the witness is confronted with his statement dated 12.5.2002 to the effect that he had stated therein that at that time Muslims from their chawl as well as other chawls situated behind their chawl, like Kumbhaji-ni-Chali, Hukamsing-ni-Chali, Pandit-ni-Chali, Hussainnagar, Jawannagar, etc. and residents of those chawls had also come out to the corner of their chawl on the road. It may be noted that the witness is confronted with his police statement, not with a view to contradict any part of his primary statement, but to bring on record certain facts stated by him in his police statement. In view of the prohibition contained in section 162 of the Code, it was not permissible to bring this part of the statement of the witness on record. The witness has admitted that the mob of fifteen thousand to twenty thousand people was causing commotion. The witness has voluntarily stated that they were saying, 'kill, cut and burn Muslims'. The witness has denied that upon fifteen to thousand people gathering there, such a situation was created whereby one could not hear what anyone was speaking. The witness has admitted that in the entire incident no member of his

family had been injured.

181.14 The witness has stated that he had made an application to the SIT. He has admitted that thereafter he had received summons from the SIT. He has stated that the idea of making an application to the SIT occurred upon reading the newspaper. He has stated that he had got someone to write the application made by him to the SIT. The witness is cross-examined at length as regards who wrote the application and how.

181.15 The witness in his cross-examination has stated that the police had not read over his statement recorded at the camp to him. Till he made the application to the SIT, he did not know as to what was written and what was not written in his statement recorded at the camp. He has admitted that he did not know as to whether or not names of the accused given by him had been written down in the application. The witness has voluntarily stated that despite his request to the police, they had not read over his statement to him and had told him to go saying that they have written down everything, which he found doubtful. Therefore, he made the application to the SIT. The witness has stated that at Gandhinagar, the SIT officers had read over his camp statement to him. The witness has denied that while recording the statement dated 2.6.2008 by the SIT, he has stated that his submission dated 12.5.2002 is correct and proper. In his cross-examination, the witness has admitted that Muslims nearby had resorted to pelting stones in their defence. He has stated that the stone pelting continued for around thirty minutes. He has denied that after the stone pelting continued for thirty minutes, he had seen the police

releasing teargas. He has stated that in the entire day he has not seen the police releasing teargas shells and that he was not at that place for the entire day. The witness has stated that the police were there at the S.T. Workshop corner and has voluntarily stated that the police were driving the Muslims inside. He has admitted that the police were armed. He has stated that armed police were standing where at present there is a police chowky. He has admitted that it was the policemen who were standing there, who had resorted to firing. The witness has admitted that the four persons whom he has named did not have weapons in their hands. He has admitted that except for the persons whom he has identified, other people in the mob were strangers. The witness has denied that all the persons whom he has identified and whose names he has given were not present there on the date of the incident and that at the instance of Muslim leaders and advocates, he had wrongly given their names at the camp and that today also, at the instance of the people of his community, he was falsely deposing before the court.

181.16 Since Shri A.A. Chauhan the police officer who had recorded the statement of this witness, to prove the omissions and contradictions in the previous statement of this witness, the defence has cross-examined PW-307, S. S. Chudasama, the Investigating Officer, who has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 12.5.2002. He has admitted that this witness had stated that in the morning at around 9:00 to 9:15, there was cross stone pelting; that the Muslims who were residing in their chawl as well as in the other chawls behind their chawl, namely, Kumbhaji-ni-Chali, Hukamsing-ni-Chali,

Pandit-ni-Chali, Hussainnagar and Jawannagar, etc. had all come on the road at the entrance of their chawl.

181.17 SUBMISSIONS: The learned counsel for the appellants submitted that though this witness has named the accused in his police statement and their presence is shown between 9:00 to 9:30, in the morning hours in the mob which came from Krushnanagar, no specific further overt act has been attributed to them. It was pointed out that the witness, in paragraph 37 of his cross-examination, has admitted that the accused did not have any weapons in their hands. It was submitted that from the names referred to in the examination-in-chief, the identity of the accused is not fully established, and, therefore, a test identification parade would have given more strength to the version of the witness, if the accused could be identified. It was submitted that none of the family members of this witness, including he himself, had sustained any injury, and hence, he could have disclosed about the facts of the case and the presence of the accused well within reasonable time, instead, the witness has disclosed these facts seventy two days after the incident. It was submitted that as regards the application made by the witness before the SIT, according to him he had got it written by an unknown person on the road which creates serious doubts about his sincerity to go to the SIT. It was pointed out that the witness has stated that he has seen Suresh, Guddu, Bhavani and Tiwari in the mob from Krushnanagar, which is contrary to what other witnesses have stated. It was submitted that PW-192 and others have stated that accused No.22 and accused No.26 were in the mob from Natraj. It was submitted that looking to the deposition of the witness, and more particularly, the

contents of paragraphs 33, 35 and 36 thereof, it is highly doubtful that he was at the place which he has stated in his evidence and that he could not have seen the mob on the road.

181.18 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is a witness of the morning incident. It was submitted that the witness has admitted that the mob had come which was comprised of fifteen to twenty thousand Hindu persons which was shouting "kill, hack the Muslims". It was submitted that this was the object behind the mob gathering there.

181.19 It was submitted that this witness is a natural witness and his presence at the spot is established. During the cross-examination, his presence has not been doubted. It was submitted that this witness has stated about the presence of two mobs which were setting the shops and cabins ablaze and that there was stone pelting near the Noorani Masjid and chanting of slogans. It was submitted that this witness has specifically stated about pelting of stones from both the sides. It was submitted that the witness has named Suresh (A-22) and Tiwari (A-25) and has identified both of them. Referring to the contents of paragraph 31 of his cross-examination, it was pointed out that an admission has been elicited that the Muslims around him were pelting stones in defence, to submit that such admission establishes the presence of the witness at the spot. Referring to the contents of paragraph 37 of his cross-examination, it was submitted that the suggestion put forth by the defence is that the four accused were present but they did not have weapons, which proves the presence of all

four accused, two of whom have passed away and two of whom have been identified. It was submitted that the credibility of this witness is unimpeachable and therefore, he is a credible witness.

181.20 ANALYSIS: This witness has deposed that he had seen a huge mob on the road in the morning and in the mob from the side of Krushnanagar he had identified four persons namely Suresh Langdo (A-22), Guddu, Bhavani and Tiwari (A-25) leading and instigating the mob. The witness has named the accused in his initial statement recorded by the police on 12.5.2002 as well as in the statement recorded by the SIT on 2.6.2008. This part of the testimony of the witness has not been contradicted in his cross-examination. Thus the witness is consistent in his version as regards the presence of these accused in the mob in the morning. The witness has also identified both the living accused viz. Suresh Langdo and Tiwari. From the testimony of the witness it further emerges that the police had resorted to firing, wherein Khalid was injured. In his cross-examination, it further emerges that the armed policemen, standing at the spot where at present there is a police chowky, had resorted to firing and that the police were driving the Muslims into the chawls.

181.21 Thus, from the testimony of this witness, the prosecution has established the presence of accused No.22 Suresh Langdo and accused No.25 Tiwari leading and instigating the mob on the road in the morning.

182. **PW-200 Shaukat Nabibhai Mansuri**, aged 37 years, has been examined at Exhibit-1381. This witness has

deposed that he is residing in Ahmedabad city since his birth, viz., since the last thirty five to forty years.

182.1 He is residing at *Lane No.1, Hussainnagar*, since the last thirty years. In the year 2002, his family, comprised of his father Nabibhai, his mother Hasnubibi, his wife Taslimbanu, his sister-in-law Nazmabanu, his children, viz., two sons and two daughters as well as his sister-in-law Nazmabanu's three children were all residing together.

182.2 At the relevant time, he had a Maruti car garage in front of the S.T. Workshop. His garage was situated on the road.

182.3 The incident took place on 28.2.2002. On that day, the Vishwa Hindu Parishad had given a call for bandh.

182.4 On the day of the incident, at around 8:00 to 8:30 in the morning, he was present at his garage where one of his customers, by the name of Gopalbhai, had come to take delivery of his car. Gopalbhai took his car in the morning and went away.

182.5 After Gopalbhai took his car and went from his garage, stone pelting started at the Noorani Masjid. The mobs belonging to Vishwa Hindu Parishad and Bajrang Dal were pelting stones. The people in the mob were shouting "kill, cut". The people in the mob attacked the Noorani Masjid and set it on fire. Bipin Panchal (A-44) and Babu Vanzara (A-33) were amongst the people in the mob. Bipin Panchal had a revolver at that time and Babu Vanzara had a sword. At this time, he

had seen the mobs coming from the direction of Krushnanagar. The Krushnanagar mob had come to the cross roads in front of the masjid. This mob was pelting stones at the masjid and was breaking the cars parked there and setting them on fire.

182.6 At this time, the police had lobbed tear gas shells and there was a stampede. The police also resorted to firing. The police had lobbed tear gas shells at the Muslims mobs. At this time, the Muslim boys standing near the masjid started running away. At this time, he and some other Muslim boys took a Tata 407 vehicle lying near the Noorani Masjid and fled. They had pushed the vehicle and started it. He jumped and sat in the vehicle and hid inside. They took the vehicle near Naroda ITI. At this time, the boys sitting in the vehicle jumped and ran away. However, he was sitting and hiding in the vehicle. The police apprehended him from this vehicle. Since he had taken the vehicle, the police had apprehended him.

182.7 The police apprehended him and took him to the Naroda Police Station, whereafter they sent him to the Shah Alam camp.

182.8 He stayed at the Shah Alam camp for around three and half months. On the date of the incident, a mob had beaten him up in the Naroda ITI area. On account of such beating, his left hand was fractured. The doctors at the camp had given him treatment.

182.9 The police had orally examined him at the camp and he was called to the Gheekanta court. While he was at the camp, the Crime Branch had called him and his statement was

recorded there. He was called to the Gheekanta court in the year 2007.

182.10 He was called to the Gheekanta court for the purpose of conducting a test identification parade. He had gone between 3:30 to 4:00 in the evening. A peon of the court had asked him his name, etc. and he was taken before the magistrate. The magistrate made him to sit in a room. Thereafter, from the room, he was called to the court. He had gone to the court where there were about six persons. The magistrate asked him whether he can identify the persons whom he had named. Upon being told to identify the persons whose names he had given, he had shown Babu Vanjara (A-33) who was standing there. He was standing at the second or third place. Thereafter, he was sent back home.

182.11 The witness has stated that he does not remember as to whether the SIT had recorded his statement.

182.12 The witness has stated that he can identify the accused persons whom he has named before the court. The witness has thereafter correctly identified Bipinbhai Panchal (A-44). He, however, has not identified accused No.33, Babubhai Vanzara, though he was present in the dock.

182.13 CROSS EXAMINATION: This witness has been cross-examined with regard to his parents and as regards the place where he was residing. The witness has been cross-examined as regards with whom he was residing at the time of the incident. The witness has denied that on the date of the incident, his mother was present at his house and has

voluntarily stated that his mother had gone to his younger sister Parveenbanu's house on that day. The witness has stated that he only knows that the police has arrested him and does not know as to whether the person who apprehended him was P.S.I. Shri S. K. Katara. He has stated that he only knows that he was in the vehicle to protect his life and for that reason, he has been apprehended. He has stated that the police had caught him on the day of the incident, but does not know what time it was. The witness is cross-examined with regard to the first information report lodged against him for driving a vehicle recklessly and carelessly.

182.14 In his cross-examination, he has stated that he knows one Bipinbhai Patel, but has thereafter said that he knows Bipin Panchal. He has stated that he does not know any Bipinbhai Patel who is engaged in selling and purchasing cars. He has stated that he knows Gopalbhai who used to come to his garage for getting his car repaired. The witness is cross-examined with regard to his garage and the situation thereof and also as to whether he had gone to the masjid for namaz on the day of the incident. The witness is cross-examined with regard to the topography of the masjid as well as the area. In his cross-examination, it has come out that he had seen Bipin Panchal when he came to have tea at the tea stall and that he did not have much acquaintance with him. He has stated that the incident of having gone to have tea at the tea stall took place at around ten to twelve years ago. He has stated that on the date of the incident, he did not have any talk with Bipinbhai. He has stated that he has no relations for going to Bipin's Auto Centre, nor has he any relations for visiting his house. That he has never visited his house. He has stated that

he knows Bipinbhai only as Bipin Panchal and not in any other manner. The witness has admitted that his statement was recorded on 13.5.2002. The witness is sought to be contradicted as to his statement dated 13.5.2002 to the effect that he had stated therein that in the meanwhile, Bipinbhai Patel, who carries on business of purchasing and selling cars opposite Patiya Natraj had fired with a small pistol at the Muslims. The witness has denied that Bipinbhai Patel resides in Naroda area and he knows him very well and has voluntarily stated that he does not know any Bipinbhai Patel.

182.15 The witness has admitted that his statement was recorded at Gaekwad Haveli and has voluntarily stated that the statement so recorded was for clarification as in his earlier statement, he had given the name of Babu Vanzara, instead of which, they had written down Babu Bajrangi. The witness has admitted that the name of Babu Bajrangi was wrongly written in the earlier statement and has voluntarily stated that he had not stated so, but those people had written it down.

182.16 The witness has admitted that those people had read over the statement which was written down at the Haveli and has admitted that he had not stated that he has not given the name of Bipinbhai Patel and that they should write down Bipin Panchal. The witness has voluntarily stated that they had only asked him if he knew Bipin and not as to whether it was Bipinbhai Patel or Bipin Panchal. The witness is cross-examined with regard to the time when he came to his garage, how long he was there and from which side the mobs had come. The witness has admitted that he had not seen the police firing from Noorani Masjid and has voluntarily stated that he had

seen them firing from Patiya.

182.17 The witness has stated that when his statements were recorded on 13.5.2002 and 7.6.2002, he was not in police custody and was free. The witness has stated that he does not know the exact time, but approximately, it must have been around 10:30 in the morning when he sat in the Tata 407 vehicle. He has stated that he was on the rear side of the vehicle and nobody was there with him on the rear side. He has admitted that certain people were sitting in the driver's cabin also. He does not know as to whether five to seven people were sitting in the driver's portion. Various questions have been put to him as to how the vehicle was started and how he got inside. The witness has admitted that the vehicle was parked on the opposite side of Noorani Masjid and was facing Himmatnagar side. He has admitted that when the vehicle was started, there were mobs on the road. He has denied that the vehicle was not in a position to come out of the mob. He has stated that he does not know as to on which road, Tata 407 vehicle had gone from Noorani Masjid and has admitted that the vehicle stopped at the railway crossing. The witness has admitted that the gate of the Kubernagar ITI railway crossing was closed and therefore, the vehicle had halted. The witness has stated that he does not know that while going till the ITI, the vehicle had dashed against a scooter. He has admitted that he was hiding under a board in the car so that no one could see him going. He has stated that he has not seen that the driver of the scooter was killed and the pillion rider was injured and that two other people in the mob were also injured. The witness has admitted that at ITI, the people had caught hold of him and that since he was

hiding on the rear side, he could not get down, whereas those sitting on the driving seat, had fled. He has admitted that he was badly beaten with sticks by the people there and caused to bleed profusely and had also sustained fractures. He has admitted that thereafter, the police came and lifted him. He has stated that he does not know what the police did with the Tata 407 vehicle and that they had taken him.

182.18 The witness has admitted that when he was taken to the police station by the policemen, there were policemen there. He was taken to the police station and stayed there till night. Upon it becoming dark, they had sent him. The witness is cross-examined with regard to the topography of the chawls. In his cross-examination, it has come out that in his statement recorded by the police, he has not stated any fact regard his having seen the accused in the mob near the S.T. Workshop, but has denied that he has mentioned the names of the accused named by him in his examination-in-chief in the mob near Noorani Masjid. The witness has denied that he has not mentioned having seen the accused during the entire day of the incident, nor has he given their names or their role in the incident. Various omissions in the police statement of the witness recorded on 13.5.2002 are sought to be brought on record. He has admitted that till date, no test identification parade of Bipinbhai Patel or Bipin Panchal has been carried out. The witness has been cross-examined at length by the learned counsel for the accused; however, for the reasons stated hereinafter, it is not necessary to refer to the same in detail.

182.19 To prove the omissions and contradictions as to the

previous statement of this witness, the defence has cross-examined the concerned Investigating Officer/assignee officer who recorded such statement.

182.20 PW-279, Shri B. J. Sadavrati, the assignee officer has admitted that he has recorded the statement of this witness on 13.5.2002. He has admitted that the witness has not named Bipin Panchal in the statement recorded by him and had not attributed any act to him. The assignee officer also admitted that this witness had stated before him that in the meanwhile, Bipinbhai Patel, who carries on the business of buying and selling any kind of vehicles in front of Patiya Natraj, had fired at Muslims with a small pistol. The assignee officer has further admitted that he had called this witness for recording his statement together with other witnesses. The assignee officer has admitted that the witness had stated before him that the facts stated by him have been correctly written down. The assignee officer has also admitted that it is only after reading over the statement that such line was written down and has voluntarily stated that such line is always there in a statement. The assignee officer has also admitted that the witness had stated before him that his father had performed *nikah* with some other woman at Juhapura and since the last one year, he was residing separately and was not residing with them. (In the opinion of this court, the fact as to where the witness's father was residing, though may have been stated by the witness in his police statement, the same should not have been brought out on record in the cross-examination of the witness, inasmuch as if something is stated in the deposition and not stated in the police statement, it may amount to an omission, however, stating something in the

police statement and not stating it in the deposition, would not amount to an omission.)

182.21 The assignee officer has admitted that this witness had stated before him that on 28.2.2002, there was a call for Gujarat as well as Ahmedabad bandh, due to which, he has not opened his garage and was at home. He has further admitted that the witness had stated before him that thereafter, the mob of people had entered the chawl and at that time, the people of the chawl had gone towards Zakirhussain-ni-Chali, behind the Noorani Masjid. At that time, he had left his house open and had gone away. His mother, his wife and children had also gone with him and they all sat down where the Muslims had gathered. The assignee officer has also admitted that this witness had stated before him that their chawl as well as other chawls also had been damaged, looted and burnt by the riotous mob. Late at night at around 2 o'clock, upon getting the help from police, they had come in a car to the Shah Alam Roza.

182.22 The contents of paragraphs 5 and 6 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that such facts were not stated by the witness in the statement recorded by him. The assignee officer has admitted that Bipin Panchal's name is not there in the statement and that it is also not stated at that time he had a revolver with him. The assignee officer has stated that the witness had clearly stated that Bipinbhai Patel who carries on a business of buying and selling any kind of vehicles opposite Naroda Patiya had fired with a small pistol at the Muslims. The assignee officer has stated that according to

him, it appears that there is a mistake on the part of the writer in writing Patel or Panchal. The assignee officer has admitted that he is stating regarding this possibility of the writer having committed a mistake upon realizing this, because of the question being asked today. He has further stated that he had not read the statement prior thereto and that at present, he does not remember who his writer was.

182.23 The assignee officer has admitted that when the statement is recorded, it would be recorded as stated by the witness. He has stated that he cannot say that when the statement was read over, whether it was in his as well as witness's presence, because at that time, there were many other witnesses.

182.24 The assignee officer has denied that the statement of this witness was not read over to him in his presence.

182.25 The assignee officer has admitted that the witness had not stated before him that Vanzara had a sword with him. He has stated that in his statement, the witness had stated that Babu Bajrangi who has a garage next to the cemetery had a sword in his hand. The assignee officer has denied that despite the fact that the witness in his statement dated 13.5.2002, had not given the name of Babu Bajrangi, he had written down the name himself.

182.26 PW-307 Shri S. S. Chudasama, the Investigating Officer has admitted that he has recorded the further statement of this witness on 7.6.2002. The contents of paragraphs 5 and 6 of the examination-in-chief of the witness

are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. He, however, has clarified that this witness had stated that Babu Vanzara (A-33) had a sword. The Investigating Officer has admitted that this witness had not mentioned the name of Bipin Panchal and his having any weapon nor had he attributed any role to him in the statement recorded by him. He, however, has clarified that the statement was recorded only for the purpose of clarifying regarding the names of Babu Vanzara and Babu Bajrangi. The Investigating Officer has admitted that this witness had stated before him that in a loud voice he had asked that he (Babu Vanzara) was his friend, then why has he come with a sword? Whereupon he had told him that he had a Hindu mob with him, what should he do? That the accused had told him he should go away or the mob would also kill him.

182.27 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT), has, in his cross examination, admitted that he has recorded the statement of this witness on 12.7.2008. He has admitted that this witness had stated before him that he fled and left his garage open and come near Noorani Masjid where the Tata 407 vehicle, the RTO number of which he does not know, and four to five Muslim boys pushed it and started it and to save their lives, they were fleeing from Naroda Patiya towards Naroda, at that time, they dashed against a scooter opposite Natraj Hotel and both the persons sitting on the scooter fell down and while fleeing, a pedestrian going on the road came under their vehicle and died. This incident must have taken place after around 10:30 to 11:00 in the morning. There were two Maruti vans, one was his and one belonged to

a customer. The station diary Exhibit-1427 is shown to the Investigating Officer, wherein the complaint of this witness is stated to have been recorded. The Investigating Officer has admitted that there is an entry of non-cognizable complaint.

182.28 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the omissions and contradictions in the testimony of this witness, to submit that this witness has not named Bipin Panchal or attributed any role to him in his police statement dated 13.5.2002, which has been duly proved through testimony of PW-279. Referring to the contents of paragraph 74 of his cross-examination it was submitted that before the police, the witness had referred to Bipinbhai Patel and in his statement before the SIT he has given the name of Bipin Panchal. The attention of the court was further invited to paragraph 86 of his cross-examination to point out that in the police statement there was no reference to a weapon like sword. Moreover, the name of Babu Vanzara was also not stated. It was submitted that reference to sword and the name of Babu Vanzara comes for the first time in his second statement recorded on 7.6.2002. It was submitted that when in his first statement dated 13.5.2002, the witness has referred to Bipin Patel, to establish the identity of the accused, it was necessary to hold test identification parade.

182.29 It was submitted that the two accused named by the witness in his deposition have not been named in his first available police statement dated 13.5.2002. Bipin's name was mentioned as Bipin Patel with car broker business, opposite Natraj. It was submitted that even if his business or vocation is taken, it is in no way referable to Bipin Panchal's Auto Centre

which is situated near Dhanurdhari temple towards Krushnanagar.

182.30 It was urged that at the time when his second statement came to be recorded, his first statement was read over to him, but even at that time he did not clarify that the name of Bipin Patel was wrongly mentioned and that it should be Bipin Panchal. In this view of the matter, when the witness has named Bipin Panchal for the first time before the SIT, to establish his identity, a test identification parade ought to have been held in absence of which, it is doubtful as to whether the Bipin Panchal whom he has identified in the court is the same person whom he is referring to.

182.31 It was submitted that insofar as accused No.33 - Babu Vanzara is concerned, the witness has neither named him nor attributed any weapon to him in his first statement dated 13.5.2002, though on 7.6.2002, he has clarified about the name, viz., that it was Babu Vanzara and not Babu Bajrangi and he has accordingly named him before the SIT. It was pointed out that in the test identification parade, he had identified Babu Vanzara; however, he has failed to identify him before the court. Therefore, the identity of accused No.33 is not established beyond reasonable doubt.

182.32 Mr. P. G. Desai, learned Special Public Prosecutor, submitted that there are contradictions in the testimony of this witness about the incident and death of persons so far as Tata 407 is concerned, but the fact that he and some other persons ran away in the Tata 407 and that he was not a driver, is coming in the statement and that he has also filed an N.C.

Complaint for being beaten up by the mob.

182.33 It was further submitted that insofar as naming the accused Bipin Panchal as Bipin Patel is concerned, the fact is that he saw one Bipin, whom he has recognized in open court. Thus, he identified accused No.44 Bipin Panchal. According to the learned Special Public Prosecutor, an error might have been committed by the police in recording the name of the accused. It was contended that accused No.44 is identified by his business, so there is no confusion whether it was Bipin Patel or Bipin Panchal. It was submitted that the fact that the witness was not driving vehicle is not controverted by any statement or any evidence by the defence and the witness has stated that after he was brought to the Naroda Police Station, he was shifted to the relief camp. Thus, all facts have been stated by the witness, therefore, it cannot be stated that this witness is not truthful witness and insofar as the incident of Tata 407 is concerned, his evidence is credible. As regards Bipin Panchal, it was submitted that in view of the fact that he was duly identified in the dock, the confusion about 'Bipin Panchal' and 'Bipin Patel' no longer exists. It was submitted that insofar as accused Babu Vanzara is concerned though it may be a weak piece of evidence, it is the fact that the accused was identified in the test identification parade, which therefore requires to be given due weightage.

182.34 ANALYSIS: This witness was involved in the incident relating to the Tata 407 vehicle as admittedly he was apprehended together with the vehicle. Since the witness had fled in the Tata 407 from the road near the Noorani Masjid, his presence at the scene of offence prior thereto, cannot be

doubted. The witness has deposed regarding mobs belonging to the Vishwa Hindu Parishad and the Bajrang Dal pelting stones and shouting "kill, cut" and that the people in the mob attacked the Noorani Masjid and set it on fire. The witness has named Bipin Panchal (A-44) and Babu Vanzara (A-33) as being amongst the people in the mob. He has also attributed specific weapons to them viz., Bipin Panchal had a revolver at that time and Babu Vanzara had a sword. In the cross-examination of the witness, a contradiction has been brought out that in his statement dated 13.5.2002, he had stated that Bipinbhai Patel who sells and purchases cars opposite Natraj had a small pistol and he had fired at the Muslims. Such contradiction has been duly proved through the testimony of PW-279 Shri B.J. Sadavrati. It is an admitted position that there is no accused by the name of Bipinbhai Patel. Subsequently, on 7.6.2002, his statement came to be recorded once again for the purpose of clarification as to whether the other accused named by him was Babu Bajrangi or Babu Vanzara. At that point of time, his previous statement dated 13.5.2002 was read over to him, but he did not point out that there was a mistake in recording the name of the accused, namely that it was Bipin Panchal and not Bipin Patel. The Investigating Officer, who sought clarification regarding the name of the other accused, did not deem it fit to seek a clarification as to whether the accused named by him was Bipin Patel or Bipin Panchal. It is only much later, when his statement came to be recorded by the SIT in the year 2008, that the witness has corrected his statement to the effect that he had named Bipin Panchal. Thus, the name of accused No.44 Bipin Panchal was not given till his statement came to be recorded by the SIT. Moreover, even the description of the accused as given by him, does not match with the description

of accused No.44, inasmuch as this accused does not sell and purchase cars opposite Natraj. Not only that, despite there being such a discrepancy in the statement of the witness, no test identification parade had been conducted by the investigating agency, to ascertain the identity of the accused. Under the circumstances, it would be hazardous to place reliance upon the testimony of this witness to prove the charge against this accused.

182.35 Insofar as accused No.33 Babu Vanzara is concerned, it appears that thought the witness had named this accused, the police had written down the name of Babu Bajrangi. However, this aspect was promptly clarified in the statement dated 7.6.2002 of the witness. Therefore, insofar as naming this accused is concerned, the witness has named him at the earliest. At the relevant time a test identification parade also came to be conducted in which the accused was identified by the witness. Unfortunately, the witness has failed to identify the accused in the dock. In the absence of the accused being identified by the witness, his evidence would be of no avail to the prosecution.

182.36 Through the testimony of this witness, the prosecution has proved that an incident regarding a Tata 407 vehicle having been taken from the road in the morning hours and driven through the mob had in fact taken place. However, the evidence of this witness does not help the prosecution in establishing the charge against either accused No.44 Bipin Panchal or accused No.33 Babu Vanzara.

183. **PW-201 Sattarbhai Mahammadhussain Shaikh,**

aged 50 years, has been examined at Exhibit-1388. This witness has deposed that in the year 2002, he was residing at *Lane No.7, Hussainnagar, Naroda Patiya*. He was residing at this place a long time before 2002. His native place is *Village Shahpur, District Gulbarga, Karnataka*. In the year 2002 also, he was serving in a thread factory.

183.1 At the relevant time, that is, in the year 2002, he had a two storeyed house at Hussainnagar, where his younger brother used to reside on the lower floor, whereas he used to reside with his family on the first floor. His family was comprised of his wife and three children.

183.2 The incident took place on 28.2.2002. On that day, in the morning at 9 o'clock, he was at home and was preparing for breakfast. At that time, the people coming from outside were saying that many mobs have gathered from Natraj Hotel till the front of the S.T. Workshop and that stone pelting is going on. Upon hearing this, he came out of his house and went to the corner near the S.T. Workshop. Upon going there, he saw that many people were pelting stones. The people in the mob were standing near the S.T. Workshop as well as on the opposite side. The people in the mob were pelting stones at Muslims and were advancing forward.

183.3 The people in the mob were advancing forward in this manner, when the police started firing from the gate of the S.T. Workshop. They were firing at the Muslims. In the firing, a boy named Hasan was injured by a bullet and he died in the firing. The people lifted Hasan and put him in a handcart. At that time, he (the witness) moved from there and went

towards his home. Upon coming home, he told his wife that there were riots outside and there were no possibilities of being saved and that they should go towards the S.R.P. Quarters. He told his wife that they would go to the house of Tiniyo Marathi who resides in the S.R.P. Quarters. While he was saying this to his wife, his younger brother Salim came from outside. Salim told to him to go to the S.R.P. Quarters with the family and he would come there afterwards. Thereafter, he, his children, his wife, his brother's wife and his brother's children, all went to Jawannagar outside the S.R.P. Quarters compound wall. Salim had not come with them. They made an attempt to enter the S.R.P. Quarters, however, they told them that they had no orders to permit them to come inside and refused to let them enter and told them that if any merciful officer comes there and agrees, then they would take them inside. The witness has deposed that they had reached this place at around 10 o'clock in the morning. They were sitting there till around 4 'o clock in the afternoon.

183.4 At 4 o'clock, at the time when they were sitting outside the S.R.P. Quarters compound wall, a mob came from the direction of Uday Gas Agency. The people in this mob had swords, dharias, etc. in their hands. The mob came and started pelting stones and assaulting. Upon stones being pelted, the Muslims dispersed. At this time, his wife and his children got separated from him and Salim's children and wife remained with him.

183.5 When the stone pelting took place, his niece Saliyabibi was sitting there. She was injured with a stone on her head and started bleeding. In the mob which had come in

this manner, he had recognized Tiniyo Marathi and Guddu Chhara. Both of them had swords in their hands and they were showing the mobs the houses of the Muslims and were assaulting them. At this time, he and Salim's wife and children fled from there and went to a butcher's terrace from which if one climbs down, one can go to the S.R.P. Quarters through Gangotri Society. He had gone through that way. He had gone through this way under the belief that from there he could go to the S.R.P. Quarters. From this way one could go to the S.R.P. Quarters where there was a police point. The police at the point did not permit him to go inside. They told him that there was no permission to let them go inside.

183.6 He requested the policemen that they may not let him go inside, but at least they may let his younger brother's wife and children. However, they did not accede to his request and started beating him with the butt of the rifle, and told him to run away, or they would beat him, and hence, he fled from there.

183.7 When he had fled in this manner, he had lifted Salim's children. He wanted to return to the place from where he had come. He came till the place where he had got down from the terrace of Gangotri Society, when an S.R.P. personnel in plain clothes was standing near the terrace. He pointed a pistol at his chest and asked him where he was going. He (the witness) told him that he had come down from the terrace and that he wanted to go on the terrace, whereupon the S.R.P. personnel told him to go and fight to the open ground and if he survives, he would shoot that bullet in his body. At this time, Salim's wife told him that they should go and sit on the terrace

from which they had come. At this time, he managed to escape and went to the terrace, when he had seen one Manubhai pushing Muslim women with a hockey stick to the fields. He was driving away the Muslim women with a hockey stick to the lane near the temple near Gangotri Society. He, thereafter, went and sat on the butcher's terrace and took Salim's wife and children with him.

183.8 He reached the terrace at 6 o'clock and sat there till 11 o'clock at night. On the terrace, he heard sounds of "kill, hack" and saw people being assaulted and set on fire.

183.9 At 11 o'clock at night, the police came and took them to the Shah Alam camp. On the next day, at around 10 o'clock in the morning, he met his wife and children at the Shah Alam camp.

183.10 In the incident, his house was looted. All his household articles and cash kept in his vault were ransacked and vandalized. Salim also came to the Shah Alam relief camp subsequently.

183.11 All of them stayed in the relief camp for about six months. The police came to inquire about the incident at the camp. Thereafter, the SIT had also orally examined him. The SIT had recorded his statement twice.

183.12 He had seen that the stone with which his niece Saliyabibi was injured was pelted by Tiniyo Marathi. He does not know whether thereafter his niece had gone with her relatives or not. However later on, he came to know that she

had died in the incident. Her three children with his niece at that time and he had later on come to know that the three children too had died in the incident. He had seen his niece being injured with a stone. However, as regards his niece and her three children having died in the incident is concerned, he had heard about it.

183.13 The witness has stated that he has learnt that Guddu Chhara is dead and that he can identify Tiniyo Marathi and Manu. The witness has thereafter identified Tiniyo Marathi (A-30) and Manu (A-28) correctly.

183.14 CROSS-EXAMINATION: This witness in his cross examination has admitted that PW-104 Mohammed Salimhussain Shaikh is his younger brother. He has admitted that both of his statements recorded by the SIT were recorded in a school at Naroda Patiya. This school is situated in Jawannagar. He has admitted that this school is known as a '*madressa*' and is administered by Nazir Master. He has admitted that he knows Nazir Master since the beginning. He has denied that after coming out from the camp, he had talked with Nazir Master about the riots that took place on the day of the incident. The witness has stated that he had not talked with Nazir Master regarding the incident and has voluntarily stated that there was no necessity for him to inform Nazir Master about these facts.

183.15 The witness has admitted that while he was at the camp he was moving around as he pleased. He has admitted that while he was at the camp, he had seen the entire camp. The witness has been cross-examined with regard to the

conditions at the camp, how statements were recorded, and regarding the VIPs who came to visit the camp.

183.16 The witness has admitted that the police were sitting there with blank papers and had written something and had taken his signature thereon. He does not know what was written down. He has admitted that many people were standing in queue for getting their statements recorded. He has admitted that the police were doing the recording.

183.17 At this stage, the learned advocate for the defence referred to the FIR registered vide Naroda Police Station C.R. No.I-176 of 2002 to point out that the complaint of this witness was included in this FIR (Exhibit 304).

183.18 The complaint application and Loss Damage Analysis Form of the witness were produced along with a purshis-Exhibit 1389. Together with the purshis, a four-page handwritten document was produced. The witness was shown the signature at the bottom of the complaint application and Loss Damage Analysis Form and he had identified the signatures to be of his. The four-page document was exhibited as Exhibit 1390. The witness has stated that he is not aware as to whether he has made the application-Exhibit 1390, but the signatures are his. The witness had stated that the people in the mob had *guptis* in their hands. The witness has deposed that he has stated that the people had swords in their hands as well as *trishuls* and private guns. The witness has denied that in paragraph 2 of the application he had not named any accused nor had he attributed any role to them. The witness has admitted that it was the police who had obtained his

signature on Exhibit 1390 and no one else had obtained his signature. He has admitted that he had no complaint against the investigation carried out by the SIT.

183.19 The witness was confronted with his statement dated 13.5.2002, to the effect that he had not stated any fact regarding accused-Manubhai therein. The witness has voluntarily stated that he had informed the police. The witness has denied that in his statement dated 13.5.2002, he had not stated any fact regarding Guddu and Tiniya and they having any weapons in their hands. He has denied that in his statement he had not stated that the stone with which his niece Saliyabanu was injured was thrown by Tiniya and that he has seen it. The witness has denied that in both of his SIT statements, he has not stated that the stone with which his niece Saliyabanu was injured was thrown by Tiniya.

183.20 In his cross examination, it has come out that he does not know where Guddu stays, but he knows where Tiniya used to stay. He has stated that he knew Guddu since around four years prior to the incident. He had neither social relations nor any kind of dealings with him. He had no occasion to meet Guddu prior to the incident, but has voluntarily stated that he has seen him coming and going from that side. Various parts of police statement of this witness were put to him in his cross-examination. However, since the witness is not sought to be contradicted with any part of his primary statement, such part of his deposition is not admissible in evidence, and hence, it is not necessary to refer to the same.

183.21 The witness has denied that when he went to the

butcher's terrace and was hiding there, there was intense stone pelting. The witness has voluntarily stated that while they were going on the terrace, there was stone pelting below, but there was no stone pelting on the terrace. He has admitted that the police had released teargas shells below and that he has stated that such facts in his statement dated 13.5.2002. The witness has denied that he has not stated the facts regarding the police releasing teargas and regarding the stone pelting in his statement recorded by the police. The witness has denied that he has not stated any fact regarding Guddu Chhara and Tiniya Marathi assaulting Muslims and burning them, in his complaint as well as statement dated 13.5.2002.

183.22 The witness was confronted with his statement dated 13.5.2002 wherein he has stated that thereafter they hid on the terrace and from there, out of fear, they went on the side of Gopinath Society and there also mobs of Hindus were standing, who were assaulting their people and were beating them with pipes and hockey sticks. Hence he took his family members and went towards Jawannagar; when upon seeing a huge mob on the road he was frightened and once again went and climbed on the terrace of a provision store and hid there and sat there for the entire day.

183.23 The witness was thereafter cross-examined with regard to the topography of the area as well as damage sustained by him in riots.

183.24 The witness has admitted that the Islamic Relief Committee has given him a house at Ektanagar. He has denied that he has not received any threats. He has stated that he has

lodged a complaint with the police regarding these threats. He has admitted that he had received police protection some time after coming back from the camp. The witness has denied that he has not sustained any loss and that at the instance of people of his *Jamaat* he was falsely deposing before the court and that he had not seen any incident and has not seen the accused persons whom he has identified before the court.

183.25 The witness has stated that Tiniya has a shop and a house in Jawannagar. He has admitted that he was residing in Tiniya's house on rent for about four years prior to the incident. The witness has stated that he does not know as to whether Tiniya's sister's name is Gita, but he has admitted that he has sister. The witness has stated that he does not know whether any case of teasing of Tiniya's sister has been registered against his brother Salim. The witness has denied that in connection with teasing Tiniya's sister, he and Tiniya had a dispute, and hence he has to vacate Tiniya's house and for that reason he had not given the rent due to Tiniya, and for this reason, time and again, there were disputes between him and Tiniya, due to which, though he has not seen Tiniya on that day he was falsely deposing to implicate him.

183.26 The witness has denied that he had a dispute with Manubhai, because he used to address him as 'Manu Bhangi' and he used to tell him not to address him as Manu Bhangi. The witness has voluntarily stated that there was no occasion or necessity for him to address him in that manner. The witness has denied that since he used to call him Manu Bhangi he did not perform tasks as per his instructions. The witness has voluntarily stated that he had no occasion to instruct him

to do any work and that everybody knows him by this name. He has denied that on that day he has not seen Manubhai, despite which for this reason he has falsely named him by stating that he has seen him on that day. The witness has stated that he does not know that Manu's house is at the end of Gangotri Society and has stated that he has not seen his house. The witness has denied that the place where Manu was driving away Muslim women with a hockey stick is the last house of Gangotri Society.

183.27 The witness has denied that Salim has gone with his own family and has voluntarily stated that his family was with him till the end. The witness has stated that he does not know whether after meeting him, Salim had again gone on the road, because thereafter he had not met Salim on the day of the incident.

183.28 The contents of paragraph 6 of his examination-in-chief from the third line to the fifth line are read over to the witness, to the effect that he has not stated these facts in his statement recorded by the police as well as by the SIT. The witness has denied that Salim and he were together on the day of the incident.

183.29 The contents of the sixth line of paragraph 8 of his examination-in-chief were read over to the witness, wherein it is stated that they were showing the houses of Muslims to the mob. The witness has denied that the mob, to which they were showing the houses, was comprised of five thousand to seven thousand people. The witness has admitted that except for the people whom he has named in the mob, all the other people

were strangers. The witness has denied that he has not seen the incident and that he was falsely deposing before the court.

183.30 Since Shri A.A. Chauhan the officer who recorded the witness's statement dated 13.5.2002, to prove the omissions and contradictions in such statement, the defence has cross-examined PW-307, S. S. Chudasama, the Investigating Officer, who has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.5.2002. He has admitted that this witness had stated that out of fear, he had come home and taken his wife and children and gone near S.R.P. Quarters and hidden there. When they had gone near the quarters and hidden there, at 5:30 in the evening, once again there stones were pelted at them. The Investigating Officer has admitted that this witness has not stated anything regarding his talk with Salim. He has admitted that the witness in his statement that he has not used the word "them" while saying that they had gone on the terrace and that the witness had stated that they had hidden on the terrace of a shop and there also, there was a stone pelting and the police had released tear gas.

183.31 The Investigating Officer has admitted that this witness had not stated that he had seen Guddu Chhara and Tiniyo Marathi killing and hacking the Muslims and burning them. He has clarified that the witness had mentioned that there was a mob which was severely beating the Muslims and in the mob, Guddu Chhara and Tiniyo Marathi were present. He has admitted that this witness had stated that thereafter, they went and hid on a terrace and from there, out of fear, they had gone towards Gopinath Society, but there also, a Hindu mob

was standing which was assaulting their people and were beating them with pipes and hockey sticks and hence, he took his family members and was going towards Jawannagar, when upon seeing a big mob on the way, he was frightened and once again climbed on the terrace of the provision shop and hid there and sat there for the entire day.

183.32 The contents of paragraph 6 of the examination-in-chief of the witness from the third line to the fifth line, wherein the witness had stated that Salim told him to take the family to the S.R.P. Quarters and that he would come afterwards, are read over to the Investigating Officer, who has admitted that this facts have not been stated verbatim in his statement, but he has stated that he had taken Salim's family and gone.

183.33 PW-327 Shri V. V. Chaudhary, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statements of this witness on 23.6.2008 and 18.10.2008. He has admitted that this witness had stated before him that he is being shown an application addressed to the Police Commissioner, Shahibaug, Ahmedabad and the complaint application dated 6.3.2002 together with the Loss Damage Analysis Form are read over to him and he has admitted that he has made the complaint application which bears his signature and on the basis of this complaint application, Naroda Police Station I-C.R. No.176/02 has been registered which fact is correct. It may be noted that this part of the witness's statement recorded by the witness is not sought to be used to contradict any part of his primary statement, but a question is put to him in his cross-examination and an answer is elicited and such answer is

sought to be contradicted by his statement recorded under section 161 of the Code, which is not permissible in law as held by the Supreme Court in the case of Tahsildar Singh (supra). This part of the deposition of the Investigating Officer is therefore, not admissible in evidence.

183.34 The Investigating Officer has further admitted that the witness had stated before him that after a little while, upon his brother Salim coming, the police had released tear gas shells and he sustained a minor injury by a shell on his neck; and he had told him that he was going with the children to the S.R.P. Quarters, he too should come with him with his family and after saying so, he had gone with his family and he had told his wife to take the children and go and sit at Tiniya Marathi's house, who resides at the S.R.P. Quarters and after saying so, he had sent his wife and children and thereafter, he took his brother's family and went to the S.R.P. Quarters.

183.35 The contents of paragraph 38 of the deposition of the witness are read over to the Investigating Officer wherein the witness had stated that Tiniya had thrown a stone at his niece Saliyabanu which had injured her and which the witness had seen. The Investigating Officer has admitted that the fact regarding Tiniya having injured Saliyabanu with a stone has not been stated by the witness in the statement recorded by him.

183.36 That part of paragraph 60 of the examination-in-chief of the witness, wherein he had stated that Salim had told him to take the family and go to the S.R.P. Quarters and that he would come thereafter, are read over to the Investigating

Officer, who has admitted that the witness has not stated any such thing having been told to him by Salim.

183.37 SUBMISSIONS: The learned counsel for the appellants invited attention of the court to the contents of paragraph 7 of the examination-in-chief of the witness to point out that the witness has stated that at that time immediately after 4 o'clock, Tiniyo Marathi and Guddu were seen in the mob, which came from Uday Gas Agency and they were pointing out the houses of Muslims to the mob. It was submitted that firstly, the mob having come from Uday Gas Agency, is a fact which is stated by different witnesses at different points of time. Therefore, as to whether the mob had come at 4:00 p.m. is a correct fact or not, itself is a question. Secondly, even if the witness refers to Tiniya as being part of the mob, he has tried to improve his story about hacking and killing before the SIT and before the court, but such an allegation was not there in his police statement, except that, as per the Investigating Officer he was seen in the mob assaulting people. It was submitted that no overt act has been attributed to Tiniya by this witness. Thirdly, when according to this witness he had seen him, he had run away to the butcher's terrace along with Salim's wife and children, whereas, as proved by the Investigating Officer he had gone on the terrace of a grocery shop and sat there for the whole day. This also creates a doubt about him being an eye witness to any such incident as well as regarding his having seen any accused.

183.38 It was submitted that insofar as accused Manu is concerned, the witness has deposed that he was driving Muslim women towards the field with a hockey stick in his

hand. It was submitted that in this regard no witness including the witnesses who have said that they were hiding at Gangotri have deposed such facts making such allegations. It was submitted that this witness says that after he went to the butcher's terrace, he had gone on the road going towards the S.R.P. Quarters, where he was not permitted to enter and was beaten by the S.R.P. and then again came back to the same terrace after he was threatened with a pistol by an S.R.P. personnel and at this point of time he saw Manu driving away those women towards the field with a hockey stick. It was submitted that these facts would run contrary to and in contradiction to what is stated in his first available statement dated 13.5.2002 as referred to in paragraph 49 and proved by PW 307 (page 281). Therefore, his version qua both the accused is not consistent. Even otherwise, the alleged role attributed to both of them being inconsistent with the testimony of other witnesses, may not be relied upon.

183.39 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that it has been established that this witness had seen the offence and that his presence does not appear to have been doubted. Even in his cross-examination, it was pointed out that the witness has attributed overt acts to accused No.28, accused No.30 and Guddu. In his cross-examination an attempt has been made to prove the omissions and contradictions in respect of the conversation that took place between the two brothers, which is insignificant and cannot be said to be a major contradiction. It was submitted that there is no further major contradiction sought to be brought out in respect of the statement dated 13.5.2002, except to the extent of the weapons in the hands of the

accused and as regards Manubhai, that his name was not properly mentioned, and therefore, he is wrongly involved. It was submitted that therefore, as regards the whole incident, the involvement of accused No.30 and 28 has been proved beyond reasonable doubt by this witness, who is credible and believable.

183.40 ANALYSIS: From the testimony of this witness it emerges that he had gone to the corner of the S.T. Workshop in the morning and has seen a lot of people pelting stones at Muslims and advancing forward. When the mob was advancing, the police have started firing from near the S.T. Workshop gate. He went home and took his wife and children and his brother Salim's wife and children and went to the S.R.P. Quarters and tried to enter inside but they were not permitted to do so. They had reached there at around 10:00 in the morning and sat there till around 4 o'clock in the evening. At 4 o'clock a mob came from the side of Uday Gas Agency, the members whereof were armed with weapons. They started pelting stones and assaulting and the Muslims were driven apart. At this time, his wife and son also got separated from him. His brother's wife and children were with him.

183.41 In this mob, he had seen Tiniyo Marathi and Guddu Chhara, both had swords in their hands, and were showing the mobs the houses of Muslims and assaulting. He went to a butcher's terrace and climbed down into Gangotri and went to a road which went towards the S.R.P. Quarters. There were police at the entry point and did not let him enter. While he was going on the terrace he saw Manu driving women away with a hockey stick. He returned and went to the butcher's

terrace taking Salim's wife and children along with him.

183.42 His statement was recorded at the camp on 13.5.2002. A printed complaint stated to have been given by his is exhibited as Exhibit 1390. Despite the fact that the witness has only admitted his signature thereon and has not admitted the contents thereof, the entire document has been exhibited.

183.43 In his cross-examination, the only omissions brought out are that in his previous statement dated 13.5.2002, he had not stated that his brother Salim told him to go with the family and that he would come afterwards and he had not stated that Guddu and Tiniya were assaulting and hacking, but had stated that they were severely beating.

183.44 The witness is confronted with his statement dated 13.5.2002 to the effect that he had not stated any facts regarding Manubhai as stated by him in his examination-in-chief, which the witness has denied. It may be noted that in the cross-examination of the Investigating Officer, such omission or contradiction has not been put to him, and therefore, is not proved.

183.45 The witness is also confronted with his police statement dated 13.5.2002, to the effect that he had not stated facts regarding Guddu and Tiniya or attributed any weapons to them. In the cross-examination of the Investigating Officer it has been proved that while the witness had not stated that they were assaulting and that they were in a mob which was killing and hacking and burning, he had said that

they were in the mob which was belabouring the Muslims. Thus, insofar as the presence of both the accused in the mob which was assaulting the Muslims is concerned, the witness is consistent.

183.46 Insofar as acquaintance with the named accused is concerned, the defence has clearly brought out the acquaintance in paragraphs 39, 55 and 56 of his deposition.

183.47 Therefore, the testimony of this witness by and large goes unchallenged, except to the extent noted hereinabove. Insofar as the role attributed to accused Manu is concerned, it is difficult to believe that one person with a hockey stick could drive away so many Muslim women towards the fields. Therefore, the role attributed to his accused does not inspire confidence. However, through the testimony of this witness, the prosecution has duly proved the presence of Guddu Chhara (deceased) and Tiniya in the mob which was assaulting the Muslims.

184. **PW-202 Samsuddin Shahbuddin Rathod**, aged 58 years, has been examined at Exhibit-1394. This witness has deposed that his native is *Village Nonera, District Bharatpur, Rajasthan*. The witness has deposed that since the last fifteen years, he is residing at *Hussainnagar* and that he was residing in the *Naroda Patiya* area since the last forty eight years.

184.1 The witness has stated that in the year 2002, he was residing at the same place where he is presently residing, with his wife Hamidabanu and his children, viz., two daughters and a son. After the incident, his elder daughter Rehanabanu

has got married and she is residing at her matrimonial home in this area. His son is married and is residing with him.

184.2 In the year 2002, he was engaged in the business of selling cutlery items and bangles. His place of business was *Krushnanagar, Naroda and Bapunagar*.

184.3 The incident took place on 28.2.2002. At that time, at about 9 o'clock in the morning, he had gone to the tea stall near the Noorani Masjid to have tea. On that day, there was a police point near the Noorani Masjid. He saw a mob coming from the direction of Natraj Hotel towards the Noorani Masjid. The people in the mob were armed with weapons and they were pelting stones and were advancing forward towards the Noorani Masjid. This mob set the shops, houses in their area on fire, which he had seen. At that time, the police were there on the side of the Noorani Masjid.

184.4 In the mob, he saw **Kishan Korani (A-20), Manojbhai (A-41), Bipin Auto (A-44), Guddu Chhara (deceased), Naresh Chhara (A-1), Suresh Chhara (A-22)** and **Mungda Chhara (A-39)**. Thereafter, a mob came from the direction of Krushnanagar.

184.5 Another mob came after about half an hour, the leadership whereof was taken over by Bipin Autowala. Both these mobs got together and started ransacking their entire area. His house was also looted. At this time, at about 9:00 to 9:15 in the morning, the police had resorted to firing at the Muslim mob, wherein Abid Hussain was injured by a bullet. Therefore, he had gone towards his home. When he reached

home, he handed over the custody of his two daughters to Miraben who was residing next to his house. Between his house and Miraben's house, there are two houses and there is a compound wall after her house.

184.6 He told Miraben that if the riots escalate, he and his wife would come back to take back their son. On that day, in the afternoon at around 1:30, he was near his house. At that time, Miraben's son and husband were also with him. At that time, a mob came from the direction of Krushnanagar to the Jawannagar khada. The khada is situated at a distance of around 30 to 35 feet from his house and in between, there is a compound wall. Bipin Autowala has taken the leadership of this mob and at this time, as the mob coming nearer to them, Miraben's husband told him that since he had a heavy physique, he should go away. Hence, he took his wife and his son and went towards Gangotri Society. At Gangotri Society, he had gone to the house of his friend's brother-in-law who was serving in the S.T. Workshop. He stayed there till around 6:30 in the evening.

184.7 Where they were, the S.R.P. police came and said, "*Take out the Muslims*", and hence, they were all driven out of their houses and the houses were locked and the Hindus were called to the S.R.P. Headquarters. Therefore, they had gone on the terrace of the very same house. There also, the police and the S.R.P. were driving them away. They were driving them behind the S.T. Workshop and were telling them to go to the Naroda Police Station, and hence, they came out of Gangotri Society.

184.8 They went out towards the society after Gangotri Society, which is the last society. They heard the screams of women coming from there. Upon hearing the screams, they fled and went back to Hussainnagar. At that time, it was about 7 o'clock in the evening. There was a mob of around two hundred to two hundred and fifty people armed with weapons in the Jawannagar pit. There were around five hundred other Muslims with him. Upon the mob seeing them and coming towards them, half of the people from amongst them ran to Hussainnagar and the other half went towards Gangotri Society. He found both his daughters at Gangotri Society in the evening at about 4 o'clock. In this manner, when the Muslims got divided into two sections, viz., Hussainnagar and Gangotri, his elder daughter and elder son got separated from them and they went towards Gangotri Society, whereas he, his wife and his younger daughter went towards Hussainnagar.

184.9 They stayed at Hussainnagar till 11 o'clock at night at Samsuddin Gadlawala's house. At around 11 o'clock at night, the policemen including the officers had come and they shouted that if Muslims were hiding there, they should come out. Upon hearing this, he came down from the terrace.

184.10 He informed the policemen the facts about the incident and specially told them that several Muslims were trapped in the society behind Gangotri. They informed the police that if they bring out the Muslims who are trapped in this manner, then he would present the other people and then, the other Muslims would trust them. In this manner, the police had given him four gunmen and told him that he should take the gunmen and bring the Muslims from where they were

trapped or hiding.

184.11 Accordingly, while he was going at the corner of the society, he met **Bhavani** and **Tiwari Bhaiyaji**. He asked them as to where the Muslims who were left there were hiding, and they told him that they did not know. Thereafter, he took the gunmen and went into every lane of Gangotri, and Bhavani and Tiwari Bhaiyaji followed them. Upon hearing his voice, his daughter replied from a terrace of Gangotri Society and told him that she was hiding on the terrace. Upon his asking her, she informed him that many Muslims were hiding on all the terraces. Therefore, upon asking everyone to come down from the terraces, there were approximately seven hundred to eight hundred Muslims. They did not trust the police. However, he tried to convince them. At this time, Bhavani and Tiwari Conductor said something in the ear of one of the gunmen who was with him, but he does not know what he said. However, after such a talk, all the four gunmen immediately started going from there and said that whoever wants to come, should immediately follow them. The Muslims who were on the terrace, upon hearing all these things came down and joined them. They all went on foot to the main road opposite the Noorani Masjid. There were big police vehicles there. There were six big vehicles and one big truck as well as a tanker from their area. Out of them, several persons were accommodated in the vehicles and the police officers told the remaining people that they would take them subsequently.

184.12 In this manner, in the first round, he with his family went in a police vehicle to the Shah Alam camp, where they stayed for five and a half to six months.

184.13 In the incident, all the household goods from his house were looted and nothing was left in his house.

184.14 When he was at the camp, a panchnama of his house was drawn and the police also orally examined him in connection with the incident. He was orally examined after seventy-two days.

184.15 The witness has stated that he can identify all the accused whom he has named and out of the named persons, Guddu and Bhavani have passed away. The witness has thereafter identified Mungdo (A-39), Manoj (A-41), Suresh (A-22), Bipin (A-44), Naresh (A-1), and Tiwari (A-25). However, the witness has identified accused No.38 Ashok Sindhi as Kishan Korani and has therefore, failed to identify Kishan Korani (A-20) correctly.

184.16 CROSS EXAMINATION: This witness in his cross-examination has stated that he has studied up to the fourth standard. In the cross-examination of the witness, he has stated that at that time, there were mobs on the Highway. He has admitted that, at that time, there was stone pelting but he was not injured in the stone pelting. Upon the commencement of stone pelting, in two to five minutes, he had left the tea stall. He has stated that he left the tea stall after the firing. The firing took place from the S.T. Workshop road. He has admitted that after the firing, he had fled towards his chawl. The witness has voluntarily stated that when the mob came from Krushnanagar, at that time, also, he was standing outside Chetandas-ni-Chali. He does not know the time; however, it

was morning time. After this mob came within fifteen minutes another mob had come from Krushnanagar. Upon both the mobs coming together, the road was blocked.

184.17 The witness has denied that while he was standing at the corner of Chetandas-ni-Chali, till then, the people from the Natraj Hotel mob had not come. He has stated that the people in the mob had come to the corner of the S.T. Workshop and had attacked the Noorani Masjid. The corner of Chetandas-ni-Chali and the S.T. Workshop corner are opposite each other. The witness has denied that he had stood at the corner of Chetandas-ni-Chali for fifteen minutes and has voluntarily stated that he had stood there for half an hour. He has admitted that after the mobs came, he had stood there for half an hour.

184.18 The witness has denied that he and Pirubhai had gone home together. He has stated that after returning to Hussainnagar, he has stayed at home till around 1:30 in the afternoon. He has denied that while he was at home in the last lane of Hussainnagar till 1:30 p.m., no person from both the mobs had come to their chawl. The witness has admitted that he was there till 1:30 in the afternoon and till then, no persons from both the mobs had come to his chawl.

184.19 In the cross-examination of this witness, it has come out that there were two houses of Hindus in his chawl, viz., Miraben and Kuttanbhai, who were residing there with their families. The witness has admitted that they did not fear Miraben, and hence, he had entrusted the care of his daughters to her. The witness has voluntarily stated that there

was no question of having any fear from Hindus who were residing with them. The witness has admitted that when he entrusted his daughters to Miraben, the mob had not come to their lane. The witness has voluntarily stated that the mob had come in the pit nearby. Between the pit and their lane, there was an approximately six feet high wall.

184.20 The witness has stated that he had also entrusted his son to Miraben. After leaving his children with Miraben, he had gone to Gangotri Society through the Hussainnagar road. He has admitted that while he and his wife were going towards Gangotri Society, at that time, many other people were with them and the people from the direction of Jawannagar pit were also coming and all of them, had gone to Gangotri Society. The witness has stated that in the morning, some people had also gone to the S.R.P. Quarters. The witness has denied that the people who were coming from the direction of Jawannagar pit were all Muslims and has voluntarily stated that amongst the women, men and children, some were also Hindus.

184.21 The witness has admitted that his friend Ratilalbhai's brother-in-law's house was in Gangotri Society and since he knew him, he had gone to his house. The witness has stated that he had stayed in Gangotri Society from 6:30 to 7 o'clock and his children and other people had stayed on the terrace of Gangotri Society till 11:30 to 12:00 at night. After he had entrusted his children to Miraben, they had locked their house and gone away and he had found his children with other Muslims in the open ground. The witness has admitted that from around 1:30 in the afternoon till around 6:30 in the evening, he had stayed at Gangotri Society. The witness has

stated that from the two mobs which had merged, no one had come to Gangotri Society but they were in the mob which had come to the Jawannagar pit. The witness has denied that the people in the mob who were burning shops and houses in the morning had not come to their chawls, and has voluntarily stated that they had come up to Lane No.3 of Hussainnagar. The witness has stated that he does not know whether on that day, Ratilalbai's brother-in-law was present at home; however, his wife was present and she was serving water to everyone and in this manner they had stayed there for one and a half hour. On that day, they were in the room for one and a half hour and except for that time, they were on the terrace and were going up and down. The witness has voluntarily stated that their condition had become like a mad dog, the police were beating them and out of fear, they were being tossed here and there. The witness has admitted that the mob had not come inside Gangotri Society but had come to Gopinath Society which touches Gangotri Society and was assaulting there. The police were beating them and driving them away. Out of them, several people went out of the society who died in the incident whereas some of them fled from the police and had remained inside the society.

184.22 The witness has stated that Samsuddin Gadlawala probably resides in Lane No.4 or 5 of Hussainnagar. He has stated that other than him, many other people had also taken shelter in that house. He has admitted that there must be around two hundred people who had taken shelter.

184.23 The witness has admitted that Pirubhai Painter, Babubhai Qureshi, Rafiqbhai who had a tea stall, Samshadbhai

Bhangarwala and the Maulana of the Noorani Masjid had met him at the camp. The witness has stated that he has not stated the facts regarding what had happened to him to the organizers of the camp. The witness has voluntarily stated that he had informed the police. The witness has stated that from 28.2.2002, that is, the day of the incident till 12.5.2002, he had discussions with regard to the incident with different people. The witness has voluntarily stated that while they were residing at the camp, these types of discussions were going on.

184.24 The witness is cross-examined with regard to the conditions in the camp, etc. and the VIPs who visited the camp. The witness has admitted that he has not stated before the police that he had left his children with Miraben. The witness has admitted that at the time of recording his police statement, he had not shown them the places where they had hidden, for the reason that the statement was recorded at the camp, whereas they had hidden in the Naroda Patiya area.

184.25 The contents of paragraph 5 of the examination-in-chief of the witness, wherein he has stated that the people in the mob had weapons in their hands, are read over to the witness, who has denied that he has not stated such facts in the statement recorded by the police. The witness is further confronted with the contents of paragraph 7 of his examination-in-chief from the fifth line to the sixth line to the effect that he has not stated these facts in the statement recorded by the police. The word, "therefore" in the last line of paragraph 7 of his examination-in-chief is brought to the notice of the witness who has denied that he has not stated that because the firing took place, he had gone, in his police

statement. The witness has denied that he has not stated anything regarding his talk with Miraben and her husband or any fact in the context of Miraben, as stated by him in his examination-in-chief in his statement recorded by the police.

184.26 The contents of paragraph 9 of his examination-in-chief wherein the witness has stated that there also the police and S.R.P. were driving them away, to the effect that he has not stated such facts in the statement recorded by the police. The witness is confronted with the contents of paragraph 12 of the examination-in-chief of the witness wherein he has stated that they were at Samsuddin Gadlawala's house, to the effect that he has not stated such facts in the statement recorded by the police, which the witness has denied. The contents of paragraphs 13 and 15 of his examination-in-chief are read over to the witness to the effect that he has not stated all these facts in the statement recorded by the police.

184.27 In his cross-examination, the witness has stated that the last lane of Hussainnagar is not adjoining Gangotri Society. He has admitted that the last lane is adjacent to the Jawannagar pit. The witness has admitted that between the last lane of Hussainnagar and the pit, there is a wall, which is approximately six feet high. He has admitted that touching this wall, there is a pit of the timber mart and if one goes further in that direction, the timber mart is situated. The witness has admitted that the timber mart road is adjoining the pit. The said road is the road which goes from Uday Agency and touches the National Highway. He has admitted that the Jawannagar pit is situated next to it and that his house is situated near the Jawannagar pit. He has admitted that

between these two pits, there is a road. He has denied that there is no road going directly from the pit to Gangotri Society.

184.28 The witness has admitted that if he is in his house in the last lane of Hussainnagar, he cannot see the Noorani Masjid as well as the S.T. Workshop gate. The witness has admitted that his sole statement came to be recorded on 13.5.2002 and except for that, he has not made any statement before the police. The witness has stated that he is not aware as to whether when his statement was recorded by the police, other people were present. He had gone for recording his statement in a room. His statements were being recorded in a small office situated near the Darwaza, behind Shah Alam Roza, where the police was calling everyone and recording their statements. While recording their statements, the police were sitting on chairs and they were sitting on the floor. The witness has admitted that they were asking about the incident and were writing as stated by them. He has denied that thereafter the police had read over their statements to them. He has admitted that his thumb impression or signature was taken. They had taken his signature on a paper. Something was written on the paper and they had taken his signature below such writing.

184.29 The witness has admitted that he had stated all the facts including the names of the accused, as stated by him in his examination-in-chief before the police.

184.30 The witness has admitted that he had not stated that he was standing at the corner of Chetandas-ni-Chali in his statement. The witness has voluntarily stated that this fact

was asked to him for the first time in his cross-examination and, therefore, he had stated so, and prior thereto, the police had not asked him, and, therefore, he had not informed them.

184.31 The witness has admitted that this mob was attacking their chawl. He has admitted that at that time, the mob was only coming to attack the Muslim chawl. The witness has voluntarily stated that he had seen the people who were leading the mob and from there they had gone to the Noorani Masjid. When he saw the people in the mob, he was standing near the tea stall near a tree.

184.32 The witness has stated that out of the accused named by him, some had attacked the Noorani Masjid and some of them were rioting near the S.T. Workshop. He had recognized Mungdo (A-39) and Suresh (A-22) in the mob which was attacking the Noorani Masjid. Out of the rest of the accused whom he had identified, Bipin and Guddu were on the Krushnanagar side and the rest of them were near the S.T. Workshop. The witness has admitted that when he saw Mungdo and Suresh, he was not near the tea stall tree but was at the corner of Chetandas-ni-Chali. The witness has admitted that everything he saw during the period while he was standing at the tea stall at the corner of Chetandas-ni Chali had been stated by him in his statement dated 13.05.2002 recorded by the police.

184.33 The witness has admitted that the Krushnanagar mob came to the pit through the Uday Gas Agency road near his house. The witness has admitted that on that day from 1:30 in the afternoon till 6 o'clock in the evening he had stayed

at Gangotri Society and had not come out. He has admitted that between 1:30 to 6:30, he had not seen the incidents that took place in the Jawannagar pit and other places himself. The witness has denied that at around 6:30 higher police officers as well as policemen had met him. He has admitted that the police personnel met him after 11 o'clock at night.

184.34 In his cross-examination, it has come out that after 11 o'clock Ratilal who was in the A.M.T.S. and is now dead, had met him. The witness has stated that Ratilal in whose brother-in-law's house he had gone, was serving in the S.T. Workshop. He has admitted that Ratilal Bhavani and Tiwari both of them reside at Gangotri Society. He has admitted that Tiwari resides in Gangotri Society while Ratilal Bhavani resides at the end of Jawannagar. The witness has admitted that the end of Jawannagar and the end of Gangotri meet at the same place.

184.35 The witness has admitted that at 11 o'clock at night, they had gathered near Ratilal Bhavani's house. This place is in the first lane of Gangotri Society. Bhavani and Tiwari were standing at the corner of the lane. He has admitted that the corner of their house is at the same place. The witness has admitted that since they were standing there, he had called them and asked them.

184.36 In his cross-examination, the witness has stated that he does not remember the colour of the clothes worn by the accused on that day. They were wearing pants and shirts. The witness has stated that he has not noticed as to whether they had tied black bands on their faces or had tied saffron bands. The witness has stated that he has not recorded the

physical features to identify the accused and has voluntarily stated that he knows that Suresh is lame. The witness has admitted that he has not identified the other accused by their physical features. The witness has stated that all these accused are from their area and he knows them very well. The witness has admitted that the police have not conducted any test identification of the accused through him. The witness has denied that he has not received compensation for the loss sustained by him and has admitted that he has received Rs.50,000/- for the house and Rs.1,25,000/- towards the injuries sustained by his son.

184.37 The witness has admitted that he had seen Hindus and Muslims pelting stones against each other but has thereafter stated that the stone pelting was only from the side of the Hindus. The witness has admitted that he had seen cross stone pelting towards the Noorani Masjid. He has voluntarily stated that first the Hindus had pelted stones and thereafter upon their being an attack on the Noorani Masjid, there was cross stone pelting. The witness has denied that he had given a false statement at the camp so that he would get false publicity in the TV and press and that he has given a wrong statement falsely implicating the accused and is falsely deposing before the court.

184.38 To prove the omissions and contradictions in the testimony of this witness as to his previous statements recorded by the police, the defence has cross examined PW-279 Shri B. J. Sadavrati the assignee officer, who in his cross-examination has admitted that he has recorded the statement of this witness on 13.5.2002. He has admitted that this witness

has not stated before him that the people in the mob had weapons in their hands. He, however, has stated that the witness has stated that the people in the mob were pelting stones and were burning things.

184.39 The contents of the last two lines of paragraph 7 at page 3 of the deposition of this witness are read over to the assignee officer, wherein the witness has stated that at this time, at around 9:00 to 9:15 in the morning, the police had fired at their Muslims mob, wherein Abidhussain was injured by a bullet. The assignee officer has admitted that the witness has not stated such facts before him. The assignee officer has admitted that the witness has not stated before him that he had gone home because of the firing. The witness has not mentioned any talk with Miraben and her husband before him. He has also admitted that the witness had not stated before him that there, the police as well as the S.R.P. personnel were driving them away. The assignee officer has admitted that the witness has not stated before him that they were in the house of Samsuddin Gadlawala. He, however, has clarified that the witness has stated that they had come to their area.

184.40 The contents of paragraphs 13 and 15 of the examination-in-chief of the witness are read over to the assignee officer, who has denied that all the contents of paragraph 13 have not been stated by the witness in the statement recorded by him. He has stated that the witness had stated the fact that the senior police officers had come. The witness had also stated that he had made a representation and talked with the officers regarding taking the persons who were trapped there to safe places. The assignee officer has admitted

that the witness has not stated any of the facts stated by him in paragraph 15 of his examination-in-chief in the statement recorded by him.

184.41 The assignee officer has stated that he had not gone with the witness for drawing the panchnama of his house. He has stated that he had recorded the statement of this witness outside Shah Alam Dargah in a police vehicle. He has denied that he had recorded the statement of this witness in an office behind Shah Alam Roza and that he had taken the thumb impression or signature of the witness in the statement. Various portions of the statement of the witness are put to the assignee officer; however, since the same have not been put to bring out any contradiction in the primary evidence of the witness, the same could not have been proved through the testimony of the assignee officer and is, therefore, inadmissible in evidence. The assignee officer has denied that this witness had not named any accused before him and that he had recorded the names of such accused on his own and fabricated a false statement. He has denied that he had obtained a signed statement of this witness. Pursuant to a query by the court, the assignee officer has stated that he has recorded only one statement of this witness on 13.5.2002.

184.42 SUBMISSIONS: The learned counsel for the appellants submitted that the witness though he has name Kishan Korani has not been able to identify him and in his place he was wrongly identified accused No.38 Ashok Sindhi. It was submitted that insofar as accused No.25 Tiwari is concerned, his name is not there in the morning mob and in paragraph 14 of his examination-in-chief, reference has been

made to Bhavani and Tiwari but without any criminal complicity. Besides, what he has stated about him in paragraph 15 is a proved omission and, therefore, the entire part of paragraph 15 has been stated by the witness for the first time before the court. It was submitted that even if those averments made in paragraph 15 are taken at face value, then also the same do not indicate any criminal complicity on the part of accused No.25. It was submitted that Tiwari is a local resident of that area and therefore, even if he is seen there without any role, his presence is natural.

184.43 It was submitted that as regards accused No.44 Bipin Panchal, in paragraphs 6 and 7 of the examination-in-chief, he is shown in the mob which came from Natraj and after half an hour he is also shown in the second mob which came from Krushnanagar and thereafter, he refers to the merger of three mobs. So the presence of accused No.44 cannot be there in both the mobs together. Since Bipin has an auto centre in that area, even if his presence is found nearby, it cannot be attributable to any criminal intention.

184.44 It was submitted that no overt act is attributed to Bipin specifically and as far as the other accused are concerned, namely, accused No.41, accused No.2, accused No.22 and accused No.39, against them also, no allegations or overt act is attributed except that they are seen in the mob. It was submitted that though not stated before the police, the witness has made a material improvement before the court, attributing weapons in the hands of all the persons in the mob generally. At 1:30 in the noon, while he was near his house, he refers to a mob which came from Krushnanagar and the

Jawannagar pit, but thereafter no allegations are made as to what the mob did. Even this version would be found to be inconsistent with the version given by the other witnesses, as regards time and the direction from which the mob came to Jawannagar. It was submitted that this witness has referred to another mob of two hundred to two hundred and fifty people with weapons coming to the Jawannagar pit at about 7:00 p.m., but again, he does not say as to what the mob did. Thus, at different points of time, the witness refers to five different mobs, but when he does not attribute any role being played by any person in the mob, including the accused, it is very doubtful as to whether he, in fact, has witnessed the incident or seen any accused, as alleged. It was submitted that in paragraph 73 of his deposition, the witness has admitted that the people were coming on the *ota* (platform outside the house) of the shops out of curiosity, which indicates the possibility of the presence of those persons who are the local residents or the persons who have local business to be there in the vicinity. It was submitted that this witness was at Gangotri at Dalpat's home at 6:30. The witness has come out at 6:30 and, therefore, if the incident had taken place at 6:30 or before that, the witness would have seen the incident. Therefore, the incident at the passage has not taken place before 6:30 in the evening. Referring to paragraph 10 of his examination-in-chief, it was submitted that the witness has heard screams at 7 o'clock in the evening; therefore, the incident at the passage of the water tank took place between 6:30 to 7:00. It was submitted that this witness is the only witness who refers to the house where they took shelter as being Samsuddin Gadlawala's house.

184.45 It was submitted that this witness, though states that he went to take tea on the day of the incident in the morning and saw the mob and the named accused, it is highly doubtful that he was present on either side of the road because he first says he went to the tea stall adjoining the Noorani Masjid and thereafter, he says that he went to the tea stall at Chetandas-ni-Chali, which is on the opposite side. It was submitted that he has also stated that he had crossed the road before taking tea, which fact is borne out from paragraph 99 of his deposition. It was submitted that there are vital and important contradictions in the deposition of this witness and between his deposition and his statement before the police. There are vital and important inconsistencies in his evidence and the evidence of the other witnesses, particularly regarding the time of the evening incident near Gangotri. It was submitted that this witness has also not shown any weapons with any named accused and he has not alleged any overt act against any accused in his examination-in-chief. Only in his cross-examination, he has alleged that Suresh, that is, accused No.22 and Mungdo accused No.39, were pelting stones at the Noorani Masjid.

184.46 The learned counsel further pointed out the witness has wrongly identified accused No.38 Ashok Sindhi as accused No.20 Kishan Korani, and that this fact has been treated as a circumstance against accused No.38 by the trial court.

184.47 ANALYSIS: From the testimony of this witness it appears that there are hardly any omissions and contradictions as to the previous statement recorded by the police. From the testimony of this witness it emerges that at around 9:00 in the

morning he came to a tea stall near the Noorani Masjid. He saw a mob coming from the side of Natraj Hotel. The people in the mob were armed and were pelting stones. The mob was advancing towards the Noorani Masjid. The mob was setting shops and houses in their locality on fire. In the mob he saw Kishan Korani (A-20), Manojbhai (A-41), Bipin Auto (A-44), Guddu Chhara (deceased), Naresh Chhara (A-1), Suresh Chhara (A-22) and Mungda Chhara (A-39). Thereafter a mob came from the direction of Krushnanagar. The second mob came after half an hour and Bipin Autowala took over the leadership of the mob. This mob indulged in looting in the entire area. Thereafter he returned home. After he returned to Hussainnagar he had stayed home till around 1:30 in the afternoon. At 1:30 he was near his house when a mob came from the direction of Krushnanagar to the Jawannagar Khada. Bipin Autowala had taken over the leadership of the mob. Thereafter he went to Gangotri Society where he stayed with a friend who was serving with him in the S.T. till around 6:30 in the evening. While they were there, the S.R.P. police came and said take out the Muslims, and hence, they were taken out and the houses were locked and the Hindus were called to the S.R.P. Head Quarters. Therefore they went back to the terrace of same house. They were being driven away from there and were being told to go to Naroda Police Station, and hence, they had come out of Gangotri Society. They were going towards the society beyond Gangotri which was the last society, when they heard women screaming. Upon hearing the screams they fled and returned to Hussainnagar. At this time a huge mob came from the side of Jawannagar Khada and some Muslims went towards Hussainnagar and other went towards Gangotri. They stayed at Hussainnagar till 11:00 p.m. whereafter the

police came. The witness is also consistent with regard to the fact regarding Bhavani and Tiwari having met him while he was going to call the Muslims who were hiding in Gangotri. Though the witness has been cross-examined at length, nothing substantial has been elicited to dent the core of his testimony.

184.48 This witness has named the accused named by him in his examination-in-chief, in the previous statement recorded by the police. However, he has not identified accused No.20 Kishan Korani before the court; therefore, his testimony cannot be taken into consideration to prove the charge against him. Insofar as accused No.25 Tiwari is concerned, apart from the fact that an omission has been proved regarding the facts stated in paragraph 15 of his examination-in-chief, in any case, the witness has merely referred to his presence when the witness went to call the Muslims from Gangotri after the arrival of the police. Therefore, nothing connecting this accused with the offence in question has been stated by the witness. Consequently, the testimony of this witness does not support the prosecution in proving the charge against accused No.25 Tiwari. Insofar as the contention with regard to the allegations against accused No.44 Bipin Panchal is concerned, on behalf of the appellants it has been submitted that the witness has shown him in different mobs which is not possible. In this regard, on a close reading of the testimony of this witness, it can be seen that the witness has nowhere stated that Bipin Autowala had come in different mobs at different times. The witness has stated that he had seen Bipin in the mob which had come from the side of Natraj; another mob came after about half an hour from the side of Krushnanagar and Bipin

took over the leadership of that mob. Therefore there is nothing contradictory in the evidence of the witness. Thereafter the witness has referred to having seen the Krushnanagar mob in the Jawannagar Khada which was led by Bipin. Therefore, it is not as if he has referred to a third mob getting merged. As regards reference to the mob in the Jawannagar Khada, the witness has merely referred to the presence of the mob, and has stated that there was a wall between the mob and their chawl. Evidently therefore, the witness has seen the mob before the Jawannagar wall was broken. Insofar as not having seen what the mob which came from the side of Jawannagar in the evening at 7:00 p.m. did, is concerned, it is the specific case of the witness that they had gone away towards Hussainnagar, therefore, there was no question of the witness having seen what this mob did.

184.49 This witness has deposed that he had seen Kishan Korani (A-20), Manojbhai (A-41), Bipin Auto (A-44), Guddu Chhara (deceased), Naresh Chhara (A-1), Suresh Chhara (A-22) and Mungda Chhara (A-39) in the morning mob which was setting shops and houses in their locality on fire. He has also deposed that he had seen Bipin Autowala leading the mob at 1:30 in the afternoon. Considering the overall testimony of the witness, the court is of the view that he comes across as a credible and trustworthy witness, and despite lengthy cross-examination, the defence has failed to impeach his credibility. Therefore, except for A-20 Kishan Korani and A-25 Tiwari, the testimony of this witness can be used to prove the charge against the rest of the accused named by him.

185. **PW-203 Sharifabibi Iqbalbhai Shaikh**, aged 42

years, has been examined at Exhibit-1404. This witness has deposed that she is residing at *Lane No.1, Jawannagar* since the last fifteen years with her husband and children. Her husband is engaged in driving a rickshaw.

185.1 The incident took place on 28.2.2002 when there was a call for bandh. Till the date of the incident, she was residing with her family comprised of her husband, her four sons and a daughter. However, her elder son Sharif died in the incident.

185.2 Amongst other sons are Aspak, Nasir and Ilyas and her daughter who is the youngest is named Sunera.

185.3 On the day of the incident, at around 9 o'clock in the morning, she was at home. They were having breakfast. At that time, all her family members, including her four sons and a daughter and her husband were at home. When they were at home, at 9 o'clock in the morning, the people in their chawls were running around and were saying that the mob has come, the mob has come. Hence, they had come to know that something had happened and all of them came out. After coming out, all of them went to Master's (PW-208) terrace which was opposite their house and climbed on the terrace. From the terrace, they saw the Noorani Masjid was being set on fire. They saw that rickshaws, cabins etc. were being burnt. All this was being done by the people in the mob. At this time, it must have been around 9:30 in the morning.

185.4 Upon seeing all this, they got down from the terrace. Upon coming down, they saw that the mob was

coming towards Hussainnagar shouting “kill, cut”. The people in the mob were armed with swords, hockey sticks, etc. and they had cans of petrol and kerosene in their hands. Some of the people in the mob were wearing undershirts and had tied saffron bands round their foreheads.

185.5 Since at this time, the mob was coming near them, they had fled towards the S.R.P. Quarters. Upon reaching the S.R.P. Quarters, they requested the S.R.P. people to save them as otherwise they would be killed. The S.R.P. people told them that today, they were to die and that they should go home and die there. The people from their chawl who were with them, folded their hands and requested the S.R.P. people that at least, their children and women may be taken inside the S.R.P. Quarters, however, they did not do so and beat them with sticks and drove them away. Her husband had also requested the S.R.P. people; however, they had beaten him with stick.

185.6 At this time, the mob was coming behind them. To escape from the mob, they had run to Gangotri and Gopinath Society. While running, her husband got separated from her, whereas her children were with her and she ran with her children.

185.7 While running, they reached Bhavani’s house, where her elder son Sharif got separated from her.

185.8 She saw a terrace on Gangotri Society and she took the rest of her children and climbed there. Upon going to the terrace, she pressed her children’s mouths as they were crying. On the terrace, she took her children in a corner.

185.9 While they were hiding on the terrace, they could hear sounds of “kill, cut”. At that time, from the latticed parapet of the terrace, she saw that her son Sharif was being assaulted with swords, hockey, sticks and he was beaten and felled down. Thereafter, kerosene and petrol was poured on Sharif and he was set ablaze.

185.10 In the mob which had assaulted and burnt her son Sharif, she had seen **Bhavani, Guddu Chhara, Suresh Langdo (A-22), Dalpat, Sahejad Chhara (A-26), Tiniyo Marathi (A-55), Raju Marathi (not an accused), Kishan Marathi (A-48)** and others. The witness has stated that she will give other names if she remembers the same. Thereafter, the witness states that she remembers that **Bhavani’s son (accused No.40)** was also present in the mob.

185.11 These people killed her son in front of her eyes and set him ablaze. These people were throwing small children in the blazing fire which she had seen. She had also seen these people raping young girls.

185.12 She saw that the people in this very mob had stripped Naeem’s wife naked and were raping her. It was around 5:00 to 6:00 in the evening. She was at the terrace with the rest of her children till 12 o’clock at night.

185.13 At 12 o’clock at night, a vehicle came, however, they were afraid. They wondered whether they had again come to kill them. Thereafter, the policemen asked them to get down. The police people told them that they were the

policemen and that they had come to take them to Shah Alam. She went in the vehicle with her children to Shah Alam relief camp. There were many other people with them in the vehicle, which was full of people.

185.14 The witness has further deposed that after the riots she met her husband in the camp. He and her children were also injured. They stayed at the relief camp for around five months. The police had recorded her statement at the relief camp.

185.15 From the camp, they went straight to the house which was allotted to them at Vatva.

185.16 A survey of their house was carried out while they were at the camp and at that time her husband had attended. She had sustained loss of rupees two lakh including cash, ornaments etc., in her house. They had stayed at the Vatva house for fifteen days. However, her children could not get any employment and her children desired to reside at Patiya and hence, they returned to their rented house at Patiya. They started residing in the very same house in which they were residing on rent prior to the incident.

185.17 After one month, at Naroda Patiya, she came to know that it has come in the newspaper that a high ranking officer has come to Gandhinagar and hence, she made an application. She received a summons from Gandhinagar after a few days and she gave her statement at Gandhinagar. The witness has stated that her statement was recorded at Gandhinagar and about a month prior thereto she had given

her application, after which, she had received a summons and thereafter, her statement was recorded.

185.18 The witness has stated that at present, Bhavani, Guddu and Dalpat are dead and that she can identify the other three accused, who had killed her son Sharif. The witness has identified Sahejad Chhara (A-26) and Tiniyo Marathi (A-55) correctly.

185.19 The witness has stated that she could not see Bhavani's son, Suresh Langda and Kishan Marathi amongst the accused who were sitting there. It appears that all the above three accused, namely, accused No.22, 48 and 40 were present before the court. However, the witness has failed to identify them. The witness has stated that Raju Marathi is not sitting in the court. (Raju Marathi is not an accused).

185.20 CROSS EXAMINATION: In her cross-examination, this witness has admitted that the SIT had read over her statement to her. The witness is sought to be contradicted as to her statement recorded by the SIT to the effect that in her statement before the SIT, she had stated that regarding Naroda Patiya incident she had given her statement before the Police Inspector, DCB, Ahmedabad at the Shah Alam camp, which has been read over to her and is in terms of what she has stated and is proper and correct. In the opinion of this court, the above referred part of the cross-examination is not admissible in evidence, inasmuch as a question had been put to the witness in the cross-examination and an answer has been elicited and the witness was sought to be contradicted in connection with such answer and not in connection with what

the witness has stated in her examination-in-chief, which is not permissible in law, as held by the Supreme Court in the case of **Tahsildar Singh** (supra).

185.21 The witness has admitted that she had sustained damages in the incident and her son had died, in connection with which, she had received money by way of compensation. The witness has admitted that she had received, in all, rupees five lakh as compensation for the death of her son. Out of this amount, she had received rupees ninety thousand while they were at the Shah Alam camp and the remaining amount was received thereafter. The witness has admitted that her husband had managed the entire amount which was received and that the amount had been received in his name.

185.22 The witness is thereafter cross-examined with regard to the topography of the area. In her cross-examination, she has stated that she does not know as to whether there is any house with two floors at Hussainnagar. She has stated that there is a terrace house in front of her house and has admitted that the house which she refers to as Master's house is Nazir Master's. She has admitted that at the time of the incident Nazir Master's house only had a terrace and it did not have two floors.

185.23 The witness has admitted that her statement was recorded at the camp, but does not know whether it was on 13.5.2002. The witness has denied that on the date of the incident, she was at home till 10 o'clock in the morning. She has denied that her husband and her children were at home till 10 o'clock. The witness has stated that on that day, there were

riots and at 10 o'clock there was pandemonium. The witness has stated that it has not happened that at 10 o'clock she had heard sounds on the road and had seen the mob on the road at 10 o'clock and that she had learnt that riots have started at 10 o'clock in the morning. The witness is sought to be contradicted as to her statement dated 13.5.2002 recorded at the camp, to the effect that she had stated that at around 10 o'clock there were shouts and they had learnt that a lot of people had gathered on the highway and disturbances were going on.

185.24 The witness has admitted that on that day on all four sides there were huge mobs with open swords, shouting "cut" "kill" and hence, out of fear she had left their house together with her children and husband and fled to protect their lives. The witness has voluntarily stated that they had gone to S.R.P. Quarters. She has denied that in her statement dated 13.5.2002 she had not stated that they had gone to S.R.P. Quarters. The witness has denied that while they were hiding, her son Sharif was caught by the mob. She has clarified that after Sharif was separated from her, she had gone on the terrace after which the mob had caught him. The witness has admitted that the mob had hit her son Sharif with pipes and felled him, after which, they had poured kerosene over him and burnt him. The witness has stated that she wants to say that moreover they had also assaulted him with swords, hockey and had felled him and thereafter poured kerosene and petrol and burnt him in front of her eyes. The witness has denied that in her statement recorded by the police, she has not stated that Sharif was assaulted with sticks, hockey and swords.

185.25 Upon being asked as to in which society out of the two societies namely, Gopinath and Gangotri, she had gone, the witness has stated that she cannot say as to which is Gopinath and Gangotri and that the place where they had gone is known as Gopinath Gangotri. She has further stated that Harijans, Marathis and others reside in these societies. The witness has admitted that she had never gone to Gopinath, Gangotri Societies or to the S.R.P. Quarters prior to the day of the incident. The witness has denied that she does not know the people residing at these three places and has stated that since they used to pass by near her house, she knew them.

185.26 In her cross-examination, it has further come out that she had gone to a terrace of Gangotri Society on that day. She has stated that she does not know as to the terrace of whose house they had gone. She had stated that the house was shut and hence, she had gone on its terrace. The witness has stated that she does not know whether there is any way for going to Gangotri Society from near the S.T. compound wall and that she does not know whether she had gone to Gangotri from this road. She has stated that she only knows that she had gone near Bhavani's house and by hiding in the lanes, they had reached there. The witness has admitted that other Muslims were also hiding on the terrace where she had gone. She has admitted that no person was standing on the terrace and all of them were crouching and had shut the mouths of their children and were sitting on the terrace. The witness has admitted that she had seen the incident of Sharif from this terrace. She has stated that she had seen it from the lattice of the parapet of the terrace. The witness has denied that in her

statement dated 13.5.2002, she had not stated that she had seen Sharif's incident from the lattice of the parapet of the terrace.

185.27 The witness is sought to be contradicted as to her statement dated 13.5.2002 to the effect that she had stated therein that at that time they were all on the terrace of a house nearby and from there they had seen her son being killed. The witness has voluntarily stated that she had not mentioned only terrace but had stated that she had seen it from the lattice of the terrace.

185.28 The witness is sought to be contradicted as to her statement dated 13.5.2002 to the effect that they were hiding here and there, in the meanwhile the people in the mob caught her son Sharif and assaulted him with pipes and felled him . Further they had poured petrol over him and set him ablaze and that at this time they were on the terrace of a house nearby and from there she had seen her son being killed with her own eyes. It may be noted that in the examination-in-chief of this witness, she had stated that while they were running, her son Sharif got separated from her and while they were hiding on the terrace, they could hear sounds of kill, cut and at that time she had looked from the lattice of the parapet of the terrace and had seen her son Sharif being assaulted with sword, hockey, sticks and he fell there and thereafter, kerosene and petrol were poured over him and thereafter, he was burnt. In the opinion of this court, the contradiction sought to be brought out qua the police statement dated 13.5.2002 cannot be said to be material contradiction and is merely a narration of the very same incident in slightly different words.

185.29 In her further cross-examination, the witness has stated that she does not know as at what time her son Sharif got separated from her near Bhavani's house. She has admitted that Sharif's incident must have taken place between 5:00 to 6:00 in the evening. The witness has stated that Sharif's incident took place below the terrace on which they were hiding. This place was a place which was slightly further from Bhavani's house. The terrace was in Gangotri Society. The witness has denied that Sharif's incident took place below the staircase of a house in which they were hiding. She has stated that they were assaulting him at a slight distance from the house. She had stated that she had seen the incident taking place at a spot where they could see clearly if they slightly bent forward from the parapet of the terrace.

185.30 The witness has stated that she cannot say as to exactly whether there were five hundred to one thousand people in the mob. She has admitted that when the incident took place people had gathered there. She has admitted that some people in the mob were wearing khakhi pants and undershirts and some people had also tied saffron bands on their foreheads. The witness has stated that on that day, in the mob, she had not seen people who had tied black bands. The witness has stated that as far as she is aware, from the persons whom she has named as having been seen by her in the mob, Tiniya had a sword in his hand, Raju had a hockey in his hand and Guddu had petrol and kerosene cans in his hands. She has stated that all the persons whom she has named were carrying one or the other weapon. At that time, three or four blows were inflicted with a sword on Sharif. She

had seen that they were all assaulting Sharif. She has admitted that she had also seen Sharif being inflicted with three or four blows with a pipe. The witness has denied that Sharif was also inflicted four or five blows with a gupti. The witness has stated that she does not know whether Sharif's hands or legs were cut on account of being inflicted blows with the sword. The witness has voluntarily stated that she had seen him being killed and burnt and thereafter she could not see anything.

185.31 The witness has admitted that a blow was inflicted on Sharif's head with a pipe and that a sword had been inserted in his abdomen. She has stated that she does not know whether at that time Sharif was bleeding because immediately after killing him, he was burnt. The witness has admitted that Sharif was burnt at the same place where he was killed. The witness has admitted that she had not shown as to where Sharif was killed and burnt to the police who recorded her statement or to the SIT. The witness has stated that it has not happened that she and her husband had together gone near the water tank next to Gopinath. She had denied that the place where her son was felled and killed was at Gopinathnagar and not Gangotri. The witness has voluntarily stated that the place where Sharif was killed is known as Gopinath Gangotri. She has denied that on that day, she had not gone with Sharif and that the incident of Sharif which she has stated had taken place at Gangotri had not taken place at all and that the incident had taken place near Gopinath and that from the terrace where she was, Gopinath or any other place could not be seen and that from the terrace where she was, the place where Sharif's incident took place could not be seen.

185.32 The witness has stated that she did not use to visit Bhawani, Guddu and Dalpat's houses and that she had no occasion to socialise with them and that she had never had any occasion to talk to or meet the persons whom she has identified in the court. She has admitted that on the day of the incident, she had not identified the accused from as close a distance as she had identified them in the court.

185.33 The witness is cross-examined with regard to the application made by her and she has stated that the boy who had written down the application was a resident of their chawl. She has admitted that she does not know him. The witness has admitted that on the date when her application was written she did not know the number of her complaint. She has stated that the mobile phone number written in the application was her mobile number at the relevant time. The witness is shown the application Mark 644/2 and she has identified her thumb impression at the bottom of the application. The contents of the application are read over to her and the application is exhibited at Exhibit-1405.

185.34 In her cross-examination, she has stated that she does not know whether her husband had seen Sharif's incident taking place. She has denied that she has not seen any incident of her son Sharif and that she was not with Sharif on the day of the incident. The witness has denied that she was falsely deposing at the instance of the people of her community. The witness has denied the suggestion that on the day of the incident from 9:00 in the morning till the evening she was at the house of Hussainabanu, who resides at the

S.R.P. Quarters.

185.35 The witness has stated that at the time when her statement was being recorded, her husband had not told her that she was stating anything incorrectly. She has stated that prior to her statement being recorded, there was no talk between her and her husband with regard to Sharif's incident. The witness has denied that during the time when they stayed at the camp she had no occasion to talk with her husband with regard to Sharif's incident. She has voluntarily stated that she had seen her son die, so it was natural that her husband would ask her about it.

185.36 The witness has stated that she does not know as to whether the terrace on which she was sitting on that day was in the first line of the first society after their chawl. She has stated that she cannot say as to how many lines behind their lane, the terrace was. She has stated that all that she knows is that the terrace was at a short distance from Bhavani's house. The terrace was situated after leaving about three houses from Bhavani's house. She has admitted that the house was in the line of Bhavani's house. She has stated that Bhavani's house is on the road whereas this house is at a corner in the interior side. The witness has denied that she has not seen the incident and that she has not seen the accused and that she was falsely deposing before the court.

185.37 The defence has cross-examined the Investigating Officer/assignee officer who had recorded the statement of this witness to prove the omissions and contradictions in the testimony of the witness.

185.38 PW-295 Shri B.C. Gadhavi, the assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that the witness had stated before him that her landlord's name was Bhurabhai. The assignee officer has admitted that the witness had stated before him that at around 10 o'clock there was a commotion and she had come to know that on the road outside, many people had gathered and riots were going on. The assignee officer has admitted that this witness had also stated that at this time, they were all on the terrace of a nearby house and from there they had seen her son dying. The assignee officer has further admitted that the witness had stated before him that they had continued to hide here and there. In the meanwhile, the people in the mob had come and caught hold of her son Sharif and assaulted him with a pipe and felled him down, after which they had poured petrol over him and burnt him. At this time all of them were on the terrace of a nearby house and they had seen her son being killed with their own eyes. The assignee officer has admitted that this witness had not stated before him that they had gone to the S.R.P. Quarters, but has stated that the witness had stated the facts stated in paragraph 48 of her deposition. The assignee officer has admitted that this witness had not stated before him that Sharif was assaulted with sticks, hockey and swords. He, however, has stated that the witness had stated before him that he was assaulted with a pipe and after pouring petrol on him, he was set on fire. The assignee officer has further admitted that this witness had not stated before him that she had seen the incident from the lattice of the parapet. He, however, has clarified that the witness had stated before

him that she had seen the incident from the terrace. The assignee officer has further admitted that the witness had not stated before him that her husband had got separated from her.

185.39 The contents of paragraphs 9 and 15 and the last line of paragraph 12 and first two lines of paragraph 13 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness had stated that at that time a mob was coming behind them; to escape from the mob they started running towards Gangotri and Gopinathnagar. While running like this, her husband got separated from her, whereas her children were with her. She had fled with her children. While fleeing in this manner, they had reached near Bhavani's house when her eldest son Sharif got separated from her. Her husband had met her at the camp after the riots. He was also injured. Her children were also injured. She had seen the mob throwing small children in the blazing fire. These very same people, whom she had seen, were raping young girls. She had seen that the people in this mob had disrobed Naeem's wife and were raping her. The assignee officer has admitted that this witness has not stated any of the above facts in the statement recorded by him

185.40 PW-327, Shri V. V. Chaudhari, the Investigating Officer (SIT) has, in his cross examination, admitted that he has recorded the statement of this witness on 27.5.2008. He has stated that the witness has stated before him that in connection with the incident that took place at Naroda Patiya, the Police Inspector, DCB, Ahmedabad city had recorded her statement on 13.5.2002 at Shah Alam camp, which was read

over to her and which was correct and proper. That she knows Gujarati very well.

185.41 The attention of the witness is drawn to the facts stated by the witness in her examination-in-chief to the effect that she had seen Sharif's incident from the lattice of the terrace. The Investigating Officer has admitted that the witness has not used the word "lattice", but has stated that she had seen the incident from the terrace.

185.42 SUBMISSIONS : The learned counsel for the appellants referred to the contents of paragraph 6 of the deposition of the witness to submit that from the terrace of a house having only one floor, the witness could not have seen rickshaws, gallas, etc. being set on fire. It was submitted that, moreover, the witness has not stated as to from which house and where she had seen the incident taking place, which shows that at a later date, after coming to know about it, she has narrated such facts. Referring to the contents of paragraph 12 of her examination-in-chief, wherein she has deposed that these people had killed her son in front of her eyes and set him ablaze, that she had seen the people in the mob were throwing small children in the blazing fire; she had seen that these people were raping young girls; it was submitted that these are general, vague statements of the witness, which indicates that she has not seen the incident at all. [It may be noted that PW-162 Rafik Kalubhai Shaikh in paragraph 13 of his deposition has stated that they had heard voices of the people who got separated from them saying "protect the modesty of women". At this place women and children were being beaten, hacked and burnt alive.] It was submitted that very cleverly none of

the witnesses have stated as to on the terrace of which house of Gangotri they were, because it is not possible to see the passage where the incident took place from the terrace of Gangotri. It was submitted that witness Samsuddin does not refer to the incident of the passage, though he came out of Gangotri. So in either case, if the incident has taken place either at Gangotri or at the passage, it is not before 7:00 p.m. and she could not have seen it. It was pointed out that in paragraph 49 of her cross-examination, she has stated that they could see the incident if one slightly bends forward from the terrace, to submit that the fact that she has to bend forward to see the incident would show that the incident took place below that house. It was submitted that reading paragraphs 44 to 49 of the cross-examination of this witness together with paragraph 79, it transpires that it is highly improbable that this witness could have seen any incident including any incident of her son. According to the learned counsel, as per the version given by this witness, the incident of her son happened in Gangotri and the witnesses examined who were on the terraces of Gangotri have not stated a word about such incident in Gangotri Society. It was submitted that the evidence of this witness is inconsistent with the evidence of PW-209 Shabana Bundubhai, who categorically stated that Sharif died in the incident at the passage and this witness could not have seen anything at the passage looking to the place where she was hiding and she has admitted that she could not see what is happening at Gopinath. It is, therefore, highly improbable that the witness has seen any incident on that day as well as the named accused involved in such incident.

185.43 It was submitted that this witness has referred to her son Sharif being killed, but till 13.5.2002, she has not stated these facts to anyone which is highly unnatural. It was submitted that this witness is a resident of Lane No.1 of Jawannagar, and hence, they could not have seen anything from their terrace.

185.44 Referring to the contents of paragraphs 12 and 13 of her deposition, it was submitted that before the SIT, the witness has improved the facts to lend assurance to the fact that she is an eyewitness, which in fact, she is not. It was pointed out that in paragraph 10 of her examination-in-chief, the witness has stated that she took her children and hid in a corner, which renders what she has stated in paragraph 11 about having seen the incident from the lattice of the parapet highly improbable.

185.45 Reference was made to the contents of paragraph 62 of her deposition to point out that in the cross-examination of the witness, it has come out that she never used to visit Bhavani, Guddu or Dalpat's residences and she had no social relations with them and that prior to identifying them in the court, she had no occasion to talk to them or meet them. It was submitted that if the witness has not met them or talked to them, there was no question of identifying them in the mob. It was pointed out that the witness has not identified Kishan Marathi, Bhavani's son and Suresh Langdo and insofar as Tiniya Marathi is concerned, in the absence of any test identification parade having been carried out, his identity cannot be said to be established that he is the same person. It was submitted that as regards accused No.26 Sahejad, no

acquaintance has been established nor has she ever met him and she has named him only as Sahejad and, therefore, in the absence of a test identification parade, his identity is not established.

185.46 It was submitted that the witness is, therefore, not a credible witness and her testimony cannot be used to prove the charge against any of the accused persons named by her.

185.47 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the fact that Sharif was killed and that the witness had seen it is established, whether she saw it from the parapet or the terrace is not relevant. It was submitted that the witness has given all details about the incident of her son Sharif, the manner in which he was killed and specific roles have been attributed to the accused persons and that as far as this is concerned, nothing adverse has been elicited during the course of the cross-examination of the witness, so far as the incident is concerned. It was submitted that certain omissions and contradictions were attempted to be brought, which are not so significant as regards the incident in question and do not have any bearing upon the prosecution case. It was submitted that certain omissions with regard to the time and situation of the terrace would not nullify the version of the eyewitness as this witness has categorically stated about the role played by each accused and hence, the offences punishable under sections 141, 143, 148, 149 and 302 of the Indian Penal Code are established beyond reasonable doubt. It was submitted that it is also required to be noted that her presence at the site of the incident was not doubted at any point of time. It was submitted that this witness

is a mother, who is deposing about the death of her son, and on the face of it, it cannot be treated to be a false statement as there is no need for her to tell lies so far as the death of her son is concerned. It was submitted that if other witnesses have not stated about the incident, it would not nullify the evidence of the witness, who is an eyewitness and would not dent the credibility of the witness.

185.48 ANALYSIS: This witness has deposed regarding mobs having come on the road in the morning at around 9 o'clock. The witness has stated that at around 9:30, she had gone on her neighbour's terrace, which was on the opposite side, and from there, she had seen that the Noorani Masjid was being set on fire and had seen rickshaws, cabins, etc. burning. The witness has further deposed that a mob was coming towards Hussainnagar and the people in the mob were armed with weapons and were carrying cans of petrol and kerosene. Upon the mob coming near, they had fled towards the S.R.P. Quarters and had requested the S.R.P. people to let them go inside. However, they did not let them go inside and drove them away. The witness has deposed that thereafter, they had fled from there and she saw a terrace at Gangotri Society and climbed on it and while she was on the terrace, she had seen her son Sharif being assaulted and felled down. Kerosene and petrol was poured over him and he was set ablaze. The witness has referred to the presence of several accused in the mob that had assaulted and set Sharif ablaze. The time stated by the witness about the occurrence of incident is about 5 to 6 o'clock. While the witness has named several accused in her examination-in-chief, she could only identify two of the accused, namely, Sahejad Chhara (A-26) and Tiniya Marathi (A-

55) before the court. The witness has been cross-examined to bring out the omissions and contradictions in her police statement, however, such omissions and contradictions are very minor in nature and do not affect the core of her testimony. One of the omissions is to the effect that the witness had stated that she had seen the mob from the terrace in her police statement, whereas in her examination-in-chief, she has stated that she had seen the incident from the lattice of the parapet of the terrace.

185.49 In the cross-examination of the witness, it has been elicited that the house in Gangotri, on the terrace of which she had taken shelter, was in line with Bhavani's house at a little distance from his house and was the third house in the corner inside. Insofar as naming the accused in her first available statement recorded by the police is concerned, there are no contradictions. However, as noted hereinabove, out of all the accused named by her, she has identified only Sahejad Chhara (A-26) and Tiniya Marathi (A-55). The witness is consistent in her version that she had seen the incident from the terrace whereas in her deposition she is more specific and says that she saw the incident from the lattice of the parapet wall of the terrace, which is merely an elaboration of the facts stated in the police statement and cannot be termed to be an improvement.

185.50 The omissions brought out as to her police statement with regard to the witness having seen small children being thrown into the fire by the people in the mob and raping young girls and stripping Naeem's wife and raping her, are material omissions amounting to contradictions.

Therefore, to that extent, the testimony of the witness cannot be believed. However, though the witness has made certain improvements in her original statement, she is consistent insofar as the core of her testimony as regards the incident relating to her son Sharif is concerned, and hence, the credibility of the witness is not impeachable. The witness otherwise appears to be a credible and truthful witness and to the extent she has named and identified the accused alleged to be involved in the incident relating to the murder of her son Sharif, namely Sahejad Chhara (A-26) and Tiniya Marathi (A-55), the same can be relied upon for the purpose of proving the charge against those accused.

186. **PW-204 Abdulrazak Abdulraheman Saiyed**, aged 42 years, has been examined at Exhibit-1410. This witness has deposed that he was residing at *Hukamsing-ni Chali, Naroda Patiya* since more than thirty to thirty five years prior to the incident.

186.1 The incident took place on 28.2.2002. During the period of the incident, he was residing at *Hukamsing-ni-Chali* with his wife and three children. At the relevant time, he had an electric shop which he was running from a wooden cabin where he was carrying on his trade and as and when he got such work, he also used to work as an electrician.

186.2 On 28.2.2002, there was a call for Gujarat Bandh. On that day, he was at home till 9 o'clock in the morning. On that day in the morning at around 9:00 to 9:30, when he was at home, the Muslims of their chawl were coming running and were saying that mobs have come out side, and hence, he

came out of his house. He went near the neem tree on the road next to the compound wall of the S.T. Workshop and saw that the mobs were coming from the direction of Natraj Hotel. The people in the mob came near the gate of the S.T. Workshop from the direction of Natraj Hotel and they were pelting stones. They were also pelting stones on the people standing in their lanes.

186.3 There was a police point at the neem tree near the gate of the S.T. Workshop. The police had gone to the S.T. Workshop gate on the opposite side from where the police started firing. Thereafter, **Manojbhai (A-41)** also took a revolver and fired. **Kishan Korani (A-22)** fired with a pistol. In this firing, Abidbhai and Maheboob Kureshi's son-in-law were injured by bullets. The witness has stated that he does not know as to whose bullets injured them.

186.4 The persons who were injured by the bullets were taken towards their house in the lane. Thereafter, the mob near the S.T. Workshop which was pelting stones, started coming towards their chawls on the S.T. Workshop road. The people in the mob were burning the houses in the chawls on the road. At this time, he alone went towards Hussainnagar to save himself. Later on at night, he came to know that his wife and children had also fled to save themselves.

186.5 He had gone to the terrace of the Pinjara's house at Hussainnagar and stayed there till around 12 o'clock at night. Thereafter, a police vehicle came and took them to the Shah Alam camp. They stayed at the Shah Alam camp for around four months.

186.6 While they were at the camp, after around two and a half months after the incident, the police took him to his house for drawing a panchnama. His wooden electric cabin was outside his house. The police had also orally examined him while he was at the camp. They had asked him about the damage sustained by him.

186.7 The SIT people had also called him and his statement was recorded there.

186.8 The witness has stated that he can identify Manoj Sindhi and Kishan Korani whom he had seen in the mob. The witness has thereafter correctly identified Kishan Korani (A-22), but has identified Murli Sindhi (A-2) as Manoj. Thus, the witness has failed to identify Manoj Sindhi (A-41).

186.9 CROSS-EXAMINATION: In his cross-examination this witness has admitted that no test identification parade of the accused was carried out either through the police or the Magistrate. The witness has voluntarily stated that he knew the accused since prior to the incident; that he knew Manojbhai about ten years prior to the incident; and that he knew Kishanbhai since two years prior to the incident.

186.10 The witness has stated that he does not know what business Kishanbhai carries on. He does not know how many people bear the name 'Kishanbhai' in that area. He has stated that as far as he knows, Kishanbhai resides opposite Kubernagar. He has never visited Kishanbhai's house, nor did Kishanbhai visit his house. He had no occasion to visit

Kishanbhai for any business purpose. There are no social or monetary relations between them.

186.11 In his cross-examination, it has come out that SIT had recorded his statement in a school at Naroda Patia. He was called for recording his statement before SIT. The witness has admitted that leaders of his community had come to call him, and hence, he had gone for recording his statement. He has stated that people who had come to call him were not residing in the chawl. The witness is cross-examined with regard to certain residents of the area as well as conditions at the camp and the manner in which the complaint was recorded.

186.12 In his cross-examination, it has come out that he had signed certain papers which he has not read. The witness has stated that he has hardly studied up to the second standard and does not know either Hindi or Gujarati properly and that if he finds any person trustworthy and such person asks him to sign, he would put his signature. At this stage, the learned counsel for the defence has requested that the printed form complaint which is mentioned in the statement dated 22.6.2002 which has been included in the FIR being Naroda Police Station C.R. No.127 of 2002 be produced before the court. The prosecution has produced the printed form complaint together with the Loss Damage Analysis Form with a Purshis- Exhibit 1411. The printed form complaint and the Loss Damage Analysis Form are shown to the witness, who has identified his signature at the bottom of each of the documents. The contents of the complaint are read over to the witness, who has stated that the facts stated therein are not

stated by him. The witness has stated that he never says that he is engaged in business, but says that he is involved in electric business, whereas in the complaint form only 'business' is written, moreover he has not given any names as recorded in the complaint. The witness says that it appears that some persons had simply taken his signature. The printed complaint application and the Loss Damage Analysis Form are given Exhibit No.1412.

186.13 [It may be noted that despite the fact that the witness has not admitted the contents of the above referred documents, the trial court has exhibited the same.]

186.14 The witness has admitted that in printed complaint application Exhibit-1412, he does not know as to apart from the printed contents who has written the handwritten part. He has admitted that handwritten names of the six accused have not been given by him. The witness has admitted that at the time of giving the complaint application he had not given the name of Kishan Korani and has clarified that what he wants to say is that he has not given any of the names in the printed form application, and hence, he does not know who has written it and why was it written, but he has not given such names. The witness is thereafter cross-examined with regard to where and how his statement was recorded.

186.15 In his cross-examination, it has come out that the printed form complaint Exhibit 1412 was initially not read over to him by SIT. He has admitted that the SIT had read over the printed application Exhibit 1412, but that was after his statement was recorded. The witness has denied that the

police had recorded his statement on two occasions at the camp. The witness has admitted that the SIT has read over his statement after recording it. The witness has admitted that he had informed the SIT people that he had not dictated the application Exhibit 1412. The witness is cross-examined with regard to the topography of the area. Certain parts of his police statement are put to the witness, which are not admissible in evidence, because the witness has not been confronted with such statement to contradict any part of his evidence.

186.16 The attention of the witness is drawn to the contents of paragraph 4 of his examination-in-chief from the second line to the last line, to the effect that he had not stated such facts in his statements recorded by the police as well as the SIT, which the witness has denied.

186.17 The witness has stated that in the interior side of his chawl there is a temple, but one cannot go anywhere from the interior part of the chawl. The witness has stated that rear side of the chawl means the houses situated behind, which are houses in another chawl. The witness has stated that he does not know as to where his wife and children were hiding on that day in the morning. Upon asking his wife she had informed him that they were sitting in the lower level of the Pinjara's three storeyed house. He has stated that the Pinjara's house is situated in Hussainnagar.

186.18 The witness has admitted that on the day of survey, the police had orally examined him with regard to the incident. The witness has voluntarily stated that on that day he had

given the names of two accused persons whom he had identified before the court. The witness has stated that the police had not read over his statement which was recorded on the day when the survey of his house and shop was conducted. The witness is once again confronted with the extracts of his statement recorded by the police on 11.6.2002, without seeking to contradict any part of his evidence.

186.19 The contents of paragraph 5 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in any of his statements including the statement recorded by the SIT. The witness has admitted that he had not stated these facts in any of his statements except the statement recorded by the SIT. The contents of paragraph 6 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in his statement recorded by the police as well as by the SIT, which the witness has admitted. The witness is cross-examined with regard to the position of the police point on the day of the incident as well as the general topography of the area.

186.20 In his cross-examination the witness has stated that the police had carried out the firing from near the S.T. Workshop gate. The witness has stated that he does not know as to how many policemen were firing at a time. He has stated that when Abid was injured by a bullet he was at the corner of the S.T. Workshop at that time. There were many people with Abid. He has stated that whoever was injured by a bullet would be taken inside and that he knows the names of two persons who were injured by bullet, but does not know how many were injured by bullets in the police firing.

186.21 The witness has denied that on the day of the incident he had not seen any incident after coming out of his house, and hence, in none of his statements he stated that he had come out of his house and gone on the road and seen the incident. He has denied that at the instance of Nazir Master and Safibhai, he had given the printed complaint and his statement and that he is deposing before the court as tutored by them.

186.22 To prove the omissions and contradictions as to the previous statement of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

186.23 PW-280 B.C. Joshi, the assignee officer has admitted that he has recorded the statement of this witness. He has admitted that the witness has not stated before him that when he came out of his house, he saw the mob.

186.24 The contents of paragraph 4 of the examination-in-chief of this witness, from the second line to the last line thereof, are read over to the assignee officer, who has admitted that the witness had not stated such facts in the statement recorded by him.

186.25 The assignee officer has admitted that this witness had stated before him that on 28.2.2002, the Bajrang Dal and the Vishwa Hindu Parishad had, in the context of the Godhra incident, given a call for Gujarat Bandh due to which, communal riots had erupted. Therefore, out of fear, he had

gone to the terrace of a house at Jawannagar and hidden there. The riots had continued from morning till the afternoon. It may be noted that in the cross-examination of the witness he is confronted with certain parts of his police statement without seeking to contradict any part of his evidence, which is not admissible in evidence, and such part of his police statement is thereafter sought to be proved through the testimony of the assignee officer, which again is not admissible in evidence, as the same has not been put to him to contradict any part of the evidence of this witness, but in this manner of cross-examination, the contents of his police statement are sought to be brought on record.

186.26 PW-307 S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.05.2002. He has admitted that this witness in such statement had stated that *".....the people in this mob had attacked their chawls and pelted stones.... committed arson..... at 3:00 to 4:00 o'clock, when I came out I saw that the mob of people had gone away. Our houses in the chawls had been burnt. My house had also been burnt..... thereafter, I went to the rear side of the chawl...."*.

".....the people in this mob had..... burst gas cylindersout of fear, I had gone to the interior side of the chawl. And my wife had taken my son and gone towards the rear side of the chawl..... my house had also been burnt which I had seen....". The Investigating Officer has admitted that this witness in his statement has not stated that when he came out of his house, he had seen the mob.

186.26 The contents of paragraph 4 from the second line to the last line of the examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that all these facts have not been stated by the witness in his statement. The contents of paragraph 6 from the second line to the last line of the examination-in-chief of the witness, are read over to the Investigating Officer, who has admitted that all these facts have not been stated by the witness in his statement. He has stated that the witness had stated is that the people in the mob had attacked their chawl, pelted stones, burst gas cylinders and committed arson. The other facts are not stated by him.

186.27 SUBMISSIONS: The learned counsel for the appellants has submitted that this witness in paragraph 5 of his examination-in-chief has not referred to any mob from Krishnanagar, nor does he speak about any attack on the Noorani Masjid, and destruction and burning of the Noorani Masjid as well as near the Noorani Masjid. It was submitted that PW-104 Mohammed Salim Hussain Shaikh had stated that Manoj had a revolver, whereas this witness says that Manoj had taken a revolver and fired. It was submitted that PW-104 has not referred to any fire arm in the hands of Kishan Korani, whereas this witness speaks of Kishan Korani firing with a pistol. It was submitted that the witness has failed to identify Manoj correctly and has identified Murli Sindhi as Manoj. A reference was made to the printed complaint Exhibit 1412 to submit that the witness has not named the persons identified by him in the court, in the printed complaint. It was submitted that this witness is residing in the area since twenty five years,

but has not identified or implicated any local accused. It was submitted that this witness was inside the house of Umrudin in Lane No.4, Hussainnagar and has not stated that any of the accused had come and knocked the door and talked to them during the whole day as has been stated by some other witnesses. It was submitted that this witness has also not talked about having witnessed the incident from the house. It was submitted that therefore, there are vital and important inconsistencies in the evidence of this witness and other witnesses, who had taken shelter in the house of Umrudin. It was urged that this witness has failed to identify Manoj before the court and he has not given the names of the accused in his complaint and in his two police statements and for the first time he has given the names of the two accused before the SIT and the court. It was submitted that in light of these infirmities the evidence of this witness does not inspire confidence and cannot be relied upon. It was pointed out that in paragraph 13 of his cross-examination, the witness has stated that he had no acquaintance or relation of any kind with accused No.20 Kishan Korani. He has not named Kishan Korani in his police statement which indicates that he has named him for the first time before the SIT at the instance of somebody. It was submitted that even before the SIT the witness has stated that the accused had a small revolver in his hand, whereas before court he had improved the story and has stated that Kishan Korani had fired from the revolver. It was submitted that in his printed complaint, the name of Kishanbhai is absent which further supports the submission that Kishan's name is given for the first time before the SIT at somebody's instance. It was submitted that moreover no recovery of any such so called fire arm has been made from or at the instance of accused No.20.

It was submitted that the allegation that Manoj snatched away a police revolver and fired from it, is also not supported by any other independent evidence and further the evidence of the witnesses does indicate that the people have been injured only in police firing and not in private firing.

186.28 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that whatever be the omissions which were brought out in respect of the statements dated 13.5.2002 and 11.6.2002, no omission could be brought out by the defence in respect of the statement made before the SIT. It was submitted that, therefore, this witness is a credible witness and most of the contradictions are of a trivial nature in respect of the 2002 statements, but in respect of the 2008 statement, no contradiction has been pointed out and, therefore, if the evidence as a whole is appreciated, there is no contradiction vis-a-vis his deposition in the court.

186.29 ANALYSIS: From the testimony of this witness it emerges that he had given a printed complaint form soon after the incident. However, the witness has not admitted the contents of the printed complaint form and has stated that even the names of the accused written therein have not been given by him. In these circumstances, when the witness has not admitted the contents of the complaint and the person who has written the complaint has not been examined, the contents of the complaint cannot be read in evidence.

186.30 The core of the testimony of this witness is contained in paragraphs 5 and 6 of his examination-in-chief wherein he has stated that Manojbhai (A-41) took a revolver

and fired and Kishan Korani (A-22) fired with a pistol. During the course of his cross-examination, the witness has admitted that the facts stated by him in paragraphs 5 and 6 of his examination-in-chief have not been stated in any of his police statements except before the SIT. Therefore, it is an admitted position that for the first time the witness has named the accused and attributed specific roles to them only in his statement recorded by the SIT after a period of more than six years from the date of the incident. From the testimony of the witness, it is not even the case of the witness that he had given such names and the police had not written them down. Under the circumstances, when the statement of the witness had been recorded at the relevant time in the year 2002 and the witness had not disclosed the names of the two accused and the role played by them, it would be too hazardous to rely upon his testimony for proving the charge against accused No.41 Manoj Sindhi and accused No.20 Kishan Korani, more so, when no explanation worth the name has come forth as to why the witness had not named these accused at the relevant time.

186.31 Considering the manner in which the deaths and injuries in the firing that took place on the road are sought to be attributed to private parties at the stage of recording of statements by the SIT, there appears to be a concerted effort to attribute the deaths and injuries to private parties to exonerate the police.

186.32 This witness is not a credible and truthful witness and no part of his evidence can be relied upon.

187. **PW-205 Zarinabanu Naeemuddin Shaikh**, aged

30 years, has been examined at Exhibit-1434. This witness has deposed that since the last two years, she is residing at *Kalyanwad*. In the year 2002, she was residing at *Lane No.3, Hussainnagar, Naroda Patiya*. She got married two years prior to 2002. Since the time of her marriage, she was residing at the above address. At the relevant time, her mother-in-law, her father-in-law, her husband, her daughter, her sister-in-law, sister-in-law's daughter, brother-in-law, brother-in-law's wife and their daughter, all were residing with them.

187.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh. On the day of the incident, she was at home in the morning. Her husband had gone for selling his bakery items at 6 o'clock in the morning. He returned at about 8:00 to 8:30 in the morning after making his rounds. On that day, after her husband returned home, she made tea and after having tea, her husband went out of the house and she was doing household chores.

187.2 Her husband returned home in just half an hour in a very anxious condition and informed her that there was a very huge mob outside. Upon his saying so, her mother-in-law said that they should all get together and read the Quran Sharif to save themselves. Whereupon, they all sat down to read the Quran Sharif. At that time, there was commotion outside and they heard shouts that huge mobs were coming inside their chawls. All of them were very frightened and the entire family shut their house, locked it and ran towards the khada (pit). They ran towards the khada and they took shelter in a house at the khada.

187.3 Thereafter, they could hear a lot of voices at the khada, and hence, they went out from there to a house with a concrete terrace and sat inside. There were many people sitting in that house and their family also went and sat there.

187.4 At this time, a lot of commotion like bursting of cylinders, etc., could be heard in that house. Since there was a lot of commotion and sounds of disturbances, they went from the terrace into a Hindu society. All their family members went there. At this place, there was a huge closed godown and many people were already sitting there. They also went and quietly sat there till the evening.

187.5 In the evening, somebody told them that a police vehicle had come outside to take them and that they are now safe, and hence, they may go. All those who were sitting inside, went towards the open ground. There was no police vehicle there and hence, all of them were very frightened. There was a very huge mob of Hindus which was armed with weapons like hockey sticks and swords. All of them were extremely frightened. The mob was running towards them. At this time, her husband told all of them that they should all go towards the S.R.P. and that since he does his business there, they would let them go inside. Upon his saying so, all of them went towards the S.R.P. Quarters.

187.6 They were not permitted to enter the S.R.P. Quarters, and hence, they were all very frightened and her mother-in-law said *"There is death here also and death there also, so, let us go to our houses and die there"* From the S.R.P. Quarters, they were coming towards the main entrance road.

There was a mob behind them which was burning everything. In the front also, there was a mob with weapons and behind them was a mob which was burning everything and both the mobs became one. Both the mobs surrounded them. Where they were surrounded, there was a passage of a water tank, where the members of the mob were sprinkling kerosene on them and burning them and assaulting them.

187.7 The people in the mob were pouring kerosene and burning all the people. They were pelting stones and were beating with sticks. Even the persons who were burnt were beaten with sticks.

187.8 At this time, several Muslim youths jumped over the wall and fled. She herself jumped over the wall and fled. Since her daughter was only one year old, she was worried about her, and hence, she handed over her daughter to one of the boys who were fleeing. She herself was very scared because she had seen people being burnt.

187.9 When she jumped over the wall, the persons who had jumped the wall earlier were not there. She did not know the area of the chawls, and hence, she came back to the place where the mob was burning everyone. At this time, four persons from the mob came and caught her. She was trying to flee, however, they had caught her. When she was separated from her family members, they were behind the wall which she had jumped over.

187.10 The four persons who had caught hold of her had hockey sticks, swords and pipe etc. in their hands. These four

people caught her and inflicted a blow with sword on her left hand. Thereafter, they also inflicted a blow with a sword on her right hand. They struck a sword near her arm on her shoulder due to which, her left hand was dangling. These people also struck her with the sword on her right hand on the side of her back. Thereafter, they also inflicted a blow with a sword on her head. They also hit her on her head with a hockey stick and pipe. Thereafter, they tore off her garments and threw her on the ground.

187.11 Upon her falling down, the person who had a sword in his hand, tried to break the string of her pajama with the sword. He cut the string with the sword. She tried to protect herself from the attack whereupon the second and third fingers of her right hand were injured where she has received three stitches. They had stripped her naked. At this time, the person with the sword took off his pant and physically forced himself upon her. He had lain on her. They had beaten her severely, and hence, she was not in a position to protect herself.

187.12 Thereafter, another person out of the four also did the same and had physical relations with her forcibly. Thereafter, she became unconscious and does not know what happened thereafter. Later on, she regained consciousness at the hospital. When she regained consciousness, she was at the Vadilal Hospital.

187.13 The witness has stated that she does not know as to for how many days she stayed at the V. S. Hospital. From the V. S. Hospital, she had gone to the Shah Alam camp. Her

husband was also at the Shah Alam camp. He also had sustained burn injuries on the backside of his body.

187.14 She does not remember whether the police had recorded her statement.

187.15 The witness has deposed that she can identify all the four persons by their faces, but she does not know their names. The witness has thereafter tried to identify the accused, but did not succeed. Therefore, the witness has not been able to identify any of the accused persons.

187.16 The witness has further deposed that in this incident, her mother-in-law Abedabibi, her sister-in-law Saidabanu, her sister-in-law's daughter Gulnazbanu, her sister-in-law's husband Mahammadyunus and her brother-in-law's two sons, viz., Wasim and Salim, all died in the incident. On the day of the incident, all of them were with her till she got separated from them.

187.17 CROSS EXAMINATION: In her cross-examination the witness has stated that she does not remember whether her statements are recorded by the police on 1.3.2002 and 7.3.2002.

187.18 The witness has denied that in her statement dated 1.3.2002, she has stated that on 28.2.2002 communal riots had erupted in Ahmedabad city due to which, in the evening at 7 o'clock mobs of people charged inside and set the houses in Jawannagar and hutments on fire, due to which pandemonium prevailed amongst the people; in the meanwhile the mob of

people got incited and set their houses on fire and upon her house catching fire, he had started running away; in the meanwhile some unknown persons from the mob inflicted a blow on his head with a sharp-edged weapon and he started bleeding from the head and all the people in Jawannagar hutments were running helter skelter and to protect himself he had gone away from there and upon finding his relatives, he had gone to Shah Alam; thereafter, as his head was aching and he was injured, he was given treatment and was admitted in Ward No.6 and at present he was under treatment and he does not know as to who had injured him with a sharp-edged weapon.

187.19 [It may be noted that though the witness is a woman, the statement recorded appears to relate to a male person. It may also be noted that this statement dated 01.03.2002 was recorded by Shri Katara (deceased) and is, therefore, sought to be proved through the evidence of PW-274 Shri Kerman Khurshid Mysorewala. Since the entire statement appears to have been given by a male person, it evidently cannot be the statement of this witness. The witness is, therefore, wholly justified in stating that her statement was not recorded on 1.3.2002.]

187.20 In her further cross-examination, the witness has stated that she does not remember that in her statement dated 7.3.2002 she has stated that she has a daughter, named, Faujia, who is one year old. She has stated that in her statement dated 7.3.2002, she has not stated that in the context of the incident that took place at Godhra there was a call for Gujarat Bandh, and hence, she, her husband and her

family members were present at home. At that time, at around 11:00 to 11:30 a huge mob of numerous people came to Saijpur Patiya and the people in the mob started shouting and pelting stones, due to which, the police had lobbed teargas shells and resorted to firing, despite which the mob had not dispersed and had pelted stones and damaged houses and set them on fire, due to which they were afraid and started fleeing. At this time the mob surrounded them from all four sides and upon assaulting her with weapons, she had sustained injuries on her head and on both of her shoulders and some people from the mob had sprinkled kerosene and ignited a fire and she had saved her life and hidden herself and upon the police vehicles coming at night they were taken to the Shah Alam Camp and there, her brother-in-law Mehboob Sultan Ibrahimhai brought her for treatment to the V.S. Hospital and she was admitted in Ward No.5. Her husband had also sustained burns and he was admitted in the Civil Hospital and she had come to know that her mother-in-law Abeda, aged 50 years, her sister-in-law Sayeeda, aged 27 years, her brother-in-law Mohammed Yunus, aged 28 years as well as her brother-in-law's sons Wasim, aged 8 years and Salim, aged 4 years had died and her sister-in-law Sayeeda's daughter, named, Nagma had also died and the mob had set her house on fire and damaged it and she did not know, who the people in the mob were and where they reside.

187.21 [Insofar as the statement dated 7.3.2002 is concerned, the same is recorded by PW-276 Shri P.U. Solanki at the V.S. Hospital, wherein he has recorded the statement as referred to hereinabove. It is a matter of deep concern and is required to be taken serious note that this officer has recorded

statements of PW-145 Shahnawazkhan Abbaskhan Pathan, PW-152 Parveenbanu Salambhai Qureshi, PW-154 Ahemadbadshah Mehboobhussain, PW-156 Abdul Majid Mohammed Usman Shaikh, PW-167 Mohammed Hussain Kayumbhai Shaikh and this witness PW-205 Zarinabanu Naeemuddin Shaikh. During the cross-examination of the officer, the police statement of each of the above witnesses, as recorded by him, has been brought on record. On a conjoint reading of the statements of all the above witnesses, it is found that the statements are identically worded, except the names, addresses and particulars of family members as well as names of family members, who are injured or who have died in the incident and injuries sustained by the witnesses. The main part of statements of each witness is absolutely identically worded. Evidently, therefore, this officer appears to have written down the statements as per his own whims and has not written down what is stated by the witnesses. Such statements, therefore, cannot be said to be statements of the concerned witnesses and no part of such statements can therefore, be used to contradict the witnesses.]

187.22 [It may also be noted that in the statement dated 1.3.2002, the address of the witness is shown to be Jawannagar, whereas in her statement dated 7.3.2002 she is shown to be residing at Hussainnagar, which further gives reason to believe that the statement dated 1.3.2002 is not the statement of this witness, who at the relevant time, was residing at Hussainnagar.

187.23 The contents of paragraph 3 of the examination-in-chief of the witness from the third line to the last line are read

over to the witness to the effect that she has not stated such facts in either of her police statements. The witness has stated that it is true that she has not stated such facts in her police statements because the police have never recorded her statements.

187.24 The witness is read over the contents of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 18 of her examination-in-chief. The witness has admitted that these facts are not stated in her police statement for the reason that the police have not recorded any statement of hers. The contents of paragraph 13 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in both of her police statements. It appears that in her statement dated 7.3.2002, the witness has stated that she has sustained injuries by weapons on both of her hands and on her head.

187.25 In the cross-examination of this witness it has come out that when she was taken to the hospital she was unconscious. She does not know as to when she regained her consciousness after coming to the hospital. She does not remember whether she had any talk with the doctor at the hospital. The witness has stated that she does not remember that she had told the doctor that she was injured with sharp-edged weapons in communal riots and was injured and that she had not informed the doctor regarding the fact that she was sexually assaulted. The witness has admitted that she has not stated the fact regarding being sexually assaulted to the doctor and has voluntarily stated that after the incident took place, she was so terrified that even at the camp she had told her husband only after a few days and except for that she had

not stated this fact to anyone.

187.26 The witness has stated that she does not know as to how many people were with her when she jumped over the wall and fled. The witness has denied that when she jumped over the wall, no one was with her. She has admitted that the people who were with her jumped over the wall and fled. The witness has admitted that on that day when the incident took place near the water tank, she did not know the persons who were there at the time of the incident. The witness has clarified that she knew her family members, who were there. The witness has admitted that her husband and sister-in-law were also on the side where the mob was burning every one. The witness has stated that she does not know as to in which society the house on terrace of which they took shelter, is situated. The witness has stated that she does not know how many people were there in the house and has voluntarily stated that there were a large number of people, but she cannot give the exact number.

187.27 The witness has admitted that house with the terrace and godown were both different buildings. The godown was in a Hindu society. Her husband was told about this fact. The witness has stated that she cannot say how many rooms were there in the godown as well as how many doors and windows it had. The witness has stated that all that she can say is that she was so terrified that she had not observed such facts.

187.28 In her cross-examination, it has come out that the godown did not have a door, but had a shutter. The shutter

was half open and half close. The witness has stated that she cannot say that the shutter was in such a position that people from outside could not see them, whereas they could see the people who were outside. The witness has stated that she was sitting inside at the absolute rear end.

187.29 The witness has denied that only those facts stated by her in her police statement dated 1.3.2002 and 7.3.2002 are correct and all other facts are not true. The witness has denied that she was falsely deposing before the court at the instance of leaders of their community and that no incidents have taken place as deposed by her in her examination-in-chief.

187.30 To prove the omissions and contradictions in her previous statements recorded by the police, the defence has cross-examined the concerned Investigating Officer/the assignee officer of the concerned Investigating Officer.

187.31 In the cross-examination of PW-274 Shri K. K. Mysorewala, the contents of paragraphs 4 to 12 as well as 14 and 15 of the examination-in-chief of this witness are read over to him and he has admitted that such facts have not been stated by the witness in her statement dated 1.3.2002 recorded by Shri Katara.

187.32 Insofar as the statement dated 7.3.2002 is concerned, PW-276 has stated that he had recorded a statement of this witness on 7.3.2002 at the V.S. Hospital. However, as discussed hereinabove, the statements of six witnesses recorded by him are identically worded except for

the names of the witnesses, the names of their family members and details about the injuries sustained by them. The statement of this witness recorded by the assignee officer, which has been brought on record in the cross-examination of the assignee officer, reads thus:

“.....upon asking me in person, I am stating that I am residing at the above referred address with my family and am doing household work. I have a daughter Foziya, who is one year old who is presently with me.....” “..... on 28.02.2002, in the context of the incident that had taken place at Godhra, there was a call for Gujarat Bandh, I, my husband as well as members of my family were present at home. At that time, at around 11:00 to 11:30 in the morning, a huge mob of numerous people had come to Saijpur Patiya and the people in the mob started shouting and pelting stones, due to which, the police had released tear gas shells and had resorted to firing, despite which the mob had not dispersed and had started pelting stones and damaging the houses and setting them on fire due to which, we were frightened and started running away and at this time, the mob had surrounded us from all four sides and were assaulting us with weapons and I have sustained injury on my head as well as on both my shoulders and certain people in the mob were sprinkling kerosene on certain persons and burning them and I had saved my life and hid myself and at night, upon the police vehicle coming, we were taken to the Shah Alam camp, and there, my brother-in-law Maheboobsultan Ibrahimbhai had brought me for treatment at the V.S. Hospital and admitted me in Ward No.5 and my husband is also burnt and is admitted in the burns ward in

the Civil Hospital and I have come to know that my mother-in-law Abeda, age 50 years, sister-in-law Saida, age 27 years, as well as my brother-in-law Mahammadyunus, age 28 and my brother-in-law's sons Wasim, age 8 years and Salim, age 4 years, have died and my sister-in-law's daughter Nagma, age 7 years has also died and the people in the mob have set our house on fire and damaged it and that I do not know who the people in the mob were, I could not recognize them and I do not know where they are residing."

187.33 For easy reference, the statement recorded by the assignee officer in the case of PW 156 Abdulmajid Mahammadusman Shaikh, which has been brought on record in his cross examination is reproduced herein below:

"... on 28.02.2002, in connection with the incident that had taken place at Godhra city, there was a call for Gujarat Bandh and I was present at home and my family members were also at home. At that time, a very huge mob of numerous people had come from Saijpur Patiya and the people in the mob started shouting and pelting stones. To disperse this mob the police had released tear gas shells and resorted to firing, but the mob had not dispersed and had pelted stones and damaged the houses and had started setting them on fire and upon seeing the mob, we started fleeing, however, people having come from all four sides, we were surrounded and the people in the mob pelted stones and sprinkled petrol and started setting on fire, wherein my son Yasin, aged 8 years had sustained burn injuries in varying degrees on both his hands and legs, and I too was

injured on my head with a stone and the people from the chawl were also burnt and in the stampede by the people, my family members got separated somewhere and to protect my life, I hid in the chawl and upon the policemen coming at night, I and my son and other people were taken in a police vehicle to Shah Alam."

187.34 Evidently, therefore, this officer appears to have written down the statements as per his own whims and has not written down what is stated by the witnesses, which lends credence to the stand of the witnesses that the police had not recorded their statements as stated by them, but had written them down on their own, because it is not possible for each of the witnesses whose statements were recorded separately, to have given statements which were more or less identical to each other. Such statements therefore, cannot be said to be statements of the concerned witnesses and no part of such statement can therefore, be used to contradict the witness.

187.35 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the omissions in the deposition of the witness to point out that the facts stated by the witness in paragraphs 4 to 12, 14 and 15 have not been stated by the witness in either of her police statements dated 1.3.2002 and 7.3.2002. The attention of the court was invited to the cross-examination of PW-274 and PW-276 to submit that the contradictions brought out in the cross-examination of the witness have been duly proved through the testimonies of the concerned investigating officers. It was submitted that while this witness has stated that she was raped by the accused, the medical record speaks otherwise. Reference was made to the

medical certificate of this witness at Exhibit 544, to submit that though injuries are noted, when the witness was treated for these injuries, there is no history or injury found with respect to the allegation of commission of rape, and in view of the omissions about such allegations in both of her police statements, particularly when no statement has been recorded by the SIT, such allegations find place in the deposition for the first time, which leads to two conclusions; firstly, that the witness has improved her version before the court for the first time on very vital and material facts and come out with an added story of alleged rape; and secondly, that such a story stated by PW-106 Farzana Ayubkhan Pathan about Zarinabanu having been stripped and raped appears to be a pre-concerted story, tutored by somebody, otherwise it would have not found place in the deposition of both the witnesses on the same facts. Reference was made to the testimony of PW-84 Dr. Ajay Krishnan to point out that part of the story containing serious allegations does not find support from the statements recorded by the Investigating Officers, by the history recorded by the doctor as well as the deposition of the doctor inasmuch as no corresponding injuries were found. It was submitted that this part of the story is a tutored one, stated before the court to give colour of seriousness and to state facts which have not taken place. It was submitted that it was not possible to commit such an offence. There were large number of people and they could not see anyone's hands, whether in such a crowd, such an incident is possible. Therefore, insofar as the charge of gang-rape is concerned, on the face of it, it is not possible to happen and is not stated either in the history before the doctor or before the Executive Magistrate while recording her dying declaration, and while stating the facts, no

names of the culprits are given in such history or before the Executive Magistrate. It was submitted that when in either of the police statements of PW-106 or this witness, such facts have not been stated and there is no statement of this witness recorded by the SIT, whether the allegations made for the first time before the court should be taken as true to bring home the charge against the named or unnamed persons.

187.36 ANALYSIS: From the testimony of this witness, it emerges that she had been married just two years prior to the incident and had a one year old daughter. Two statements of this witness are stated to have been recorded by the police, one on 1.3.2002 and the other on 7.3.2002. It is the case of the witness that she does not remember any statement of hers having been recorded by the police. As discussed hereinabove, insofar as the statement dated 1.3.2002 is concerned, the contents whereof have been brought on record in the cross-examination of this witness as well as in the cross-examination of Shri K.K. Mysorewala, the same relates to a male person. Therefore, such statement certainly cannot be attributed to the witness. The question of contradicting the testimony of the witness as to the statement dated 1.3.2002, therefore, would not arise. Insofar as the second statement dated 7.3.2002, is concerned, as noted hereinabove, the assignee officer has recorded identical statements of all the witnesses whose statements he has recorded at the V.S. Hospital, which means that the exact version given by the witnesses has not been recorded by him. In the case of this witness she does not remember that any statement of her's was recorded by the police.

187.37 It may be noted that this witness is an injured witness who has sustained serious injuries. The medical case papers reveal that she is twenty five years old and has given history of assault injury by sharp instruments in communal riots. In the entries made in the progress and treatment sheet on 28.2.2002, it has been inter alia recorded thus: "*R/W/O to HS Reg on (E) duty to examine this patient with head-injury with loss of consciousness*".

187.38 The injury certificate dated 2.4.2002 issued by the Sheth Vadilal Sarabhai General Hospital shows history of "*beaten in communal riots, injury over both shoulders and head*".

187.39 PW-84 Dr. Ajay Krishnanan has deposed that on 1.3.2002 he had occasion to treat the witness. He has stated that the witness was admitted in the hospital and was discharged on 18.3.2002. The Medical Officer has deposed that the witness had transverse contused lacerated wound upto bone deep on the left shoulder measuring 15 x 10 cms. On the right shoulder, there was a CLW skin deep superficial upto muscle depth on the posterior aspect of supraclavicular fossa measuring 8 x 3 x 2 cms. There was a 1 cm entry wound, 7 cms above left nipple. All four injuries had been referred to the concerned Departments of Cardio Thorasic Surgery, Neuro Surgery, Plastic Surgery and Radiology Department. The X-ray reports reveal that there was a fracture of lateral end of left clavical and fracture of upper end of left humerus. The Medical Officer has proved the injury certificate Exhibit-544. The Medical Officer has also proved the medical case papers Exhibit-546. In his cross-examination, he has admitted that the

kind of injuries sustained by Zarinabanu on both the shoulders, are possible if the blunt side of the sword is used with force. Considering the testimony of the Medical Officer together with the injury certificate issued by him, it is found that the injuries sustained by the witness match with the deposition given by her.

187.40 Thus, the witness has sustained serious head injuries and the medical case papers indicate loss of consciousness. In her cross-examination (paragraph 28), the witness has stated that when she was taken to the hospital she was unconscious and she is not aware as to when she regained consciousness. Having regard to the injuries sustained by the witness, it is difficult to believe that she would have been in a position to give her statement on next day of the incident, viz. 1st March, 2002.

187.41 The witness has not implicated any accused but has merely narrated the incidents that had taken place. Insofar as the allegation of gang rape is concerned, it has been contended that the medical case papers do not disclose the witness having been raped. The witness in her cross-examination has admitted that she has not disclosed this fact to the doctors and has stated that she was so terrified because of the incident that it was only a few days after going to the camp that she had told her husband about it and except for him she had not disclosed this fact to anyone. In this regard it may be pertinent to note that the witness was twenty years old at that time and had been married just two years prior to the incident. Considering the fact that in our society by and large greater stigma is attached to the victim rather than to the

rapist, it is not surprising that the witness, having regard to her age and marital status, has not disclosed such fact to the doctors who had treated her at the V.S. Hospital. Consequently, she has not been medically examined to verify the aspect of rape, and hence, the medical case papers do not disclose that she was raped. It appears that it was only a few days after returning to the camp that the witness was able to muster sufficient courage to disclose such fact to her husband. In these circumstances, non disclosure of the fact that she was raped to the doctors, is no reason to disbelieve the witness when she has come forward to say that she was in fact raped, more so, when she does not implicate anyone in the offence. The witness has stated that she could identify the culprits by their faces, but has not been able to identify them due to lapse of time. Therefore, the witness cannot be attributed any intention of wanting to falsely implicate any accused. The contention that it was not possible to rape anyone having regard to the fact that there were a large number of people there deserves to be stated only to be rejected, inasmuch as there is ample evidence on record to establish that victims were stripped and raped. A perusal of the inquest panchnamas of the deceased reveal that even in case of some of the female victims who have sustained injuries with weapons and have not sustained burn injuries, they are found to be naked, which supports the prosecution case that the women and girls were in fact stripped by the mob.

187.42 On a perusal of the testimony of the witness, she comes across as a credible and trustworthy witness and no part of her testimony is required to be discarded. Though the witness has not named or identified any accused, her version

of the manner in which the incident took place can be taken into account.

188. **PW-206 Jetunbibi Aslam Shaikh**, aged 30 years, has been examined at Exhibit-1440. This witness has deposed that she is residing at *Jawannagar* since the last fifteen years with her husband and her two children. In the year 2002, she used to work in a thread factory in the bungalow area next to Noorani Masjid. Her husband also used to work in the thread factory.

188.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh.

188.2 On the day of the incident, her son had gone to the madressa at Hussainnagar at 8 o'clock in the morning. She had gone to pick him up. On that day in the morning, her husband was at home. When she went to take her son, at that time, stone throwing and setting the houses on fire had started on the road. All this was happening on the road opposite the Noorani Masjid. Hindu people were throwing and breaking and they were burning everything.

188.3 At this time, the police had released tear gas. Thereafter, she took her son and was frightened and hence, went home. She went home and told her husband that there was stone pelting outside. Thereafter, her husband told her that people have gathered at Lane No.4, Jawannagar, and that they should go and sit there. They and their two children went from their house leaving it as it was and went towards the S.R.P. Quarters.

188.4 They requested the S.R.P. people to let them go inside, however, they did not permit them to go in. They returned to Gangotri Society. Her husband felt that they might get some help at Gangotri and would be saved and hence, they had all gone to Gangotri Society. In this manner, it was 6 o'clock in the evening.

188.5 At around 6 o'clock in the evening, they were surrounded in Gangotri Society. There was pushing and pulling there. The Muslims were there around them. They wanted to move but they could not move. At this time, somebody struck her on her back on the left side and somebody also beat her on the head due to which she was injured on the head and her back, as a result whereof, she fell on the ground and became unconscious.

188.6 She was beaten with something like an iron pipe. When she was unconscious, somebody must have taken her to the hospital. Somebody had admitted her to the Civil Hospital. She regained consciousness at the Civil Hospital. It was then that she came to know that somebody had brought her to the Civil Hospital.

188.7 When they were surrounded, then on that day in the evening, she had got separated from her husband and children. She was treated at the Civil Hospital for four to five days.

188.8 From the hospital, she went to the Shah Alam camp, where she met her husband and children.

188.9 Her elder brother-in-law Samadbhai took her from the camp to Solapur. He took all of them to Solapur as her matrimonial home was at Solapur, Maharashtra. They stayed at Solapur for four to five months after which, she came back to her house at Jawannagar.

188.10 All the household goods from her house had gone in the incident. She had sustained loss of sixty to seventy thousand rupees. All her household goods were scattered her and there and some of the goods were missing. Except for her, no one in her family was injured.

188.11 She does not know any one who was there in the mob at the time of the incident. Four or five years after she returned home from Solapur, the police had recorded her statement. In all, two statements of hers were recorded.

188.12 CROSS EXAMINATION: In her cross-examination, the witness has denied that the facts stated by her regarding having gone to fetch her son from madressa at 8:00 in the morning and the incidents that took place at that time as stated by her in paragraphs 5 and 6 of the examination-in-chief have not been stated by her in her police statement. The witness has stated that she has stated these facts before police, but she does not know whether they had recorded the same or not as she does not know how to read and she is illiterate. The contents of paragraphs 7 and 8 of her examination-in-chief are read over to the witness to the effect that she has not stated such facts in her statement recorded by the police. The witness has denied that before the police

she has not stated that she was injured in Gangotri Society, but has stated that she was injured in Jawannagar.

188.13 The witness is confronted with her statement recorded by police on 3.11.2006 to the effect that before the police were releasing teargas and firing and has stated that what she wants to say is that the police was actually releasing teargas and firing at them. The witness has admitted that in her police statement she has stated that the mob was very huge and did not disperse and had started damaging, looting and setting the houses on fire and upon seeing the huge mob they took their children and started fleeing. The witness has further admitted that she has stated that however, the mob came from all the four sides and they were surrounded and from the people in the mob some one injured her on the head with stick or pipe or chain and she started bleeding and felt dizzy. The witness has stated that she had narrated all these facts in connection with the incident that took place in the evening at 6:00 at Gangotri Society. The witness has denied that she has stated that while she was going in front of her house she had fallen down. The witness has admitted that in her statement she has stated that she was injured on her back with something and her husband had taken her children and has gone away, due to which they got separated. She was taken to the Civil Hospital for treatment where she was given treatment for four days and upon being discharged from hospital she was taken to the Shah Alam Relief Camp in a police vehicle, where she found her husband and children, who were not injured. The witness has denied that in her statement dated 7.1.2007, the facts relating to her statement dated 3.11.2006 as stated by her, were read over to her, and has

stated that whatever she has stated in her examination-in-chief and cross examination as having been stated by her were stated by her before the police.

188.14 In her cross-examination, certain contradictions are sought to be brought out as to her police statements dated 3.11.2006 and 7.1.2007, which the witness has denied. The contradictions are thereafter proved through the testimonies of the concerned police officer. The witness has stated that she had stated those facts to the police, but she does not know whether they had written them down or not as she is an illiterate and does not know how to read. She has denied that in her police statement, she has not stated that she was injured at Gangotri Society, but she was injured at Jawannagar. In the cross-examination of this witness, almost her entire police statement has been brought on record.

188.15 To prove the omissions and contradictions as to the previous statement of this witness, the defence has cross-examined PW-313 Shri H.R. Muliya, the Investigating Officer who had recorded such statement. The Investigating Officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 7.1.2007. The contents of paragraphs 5, 6 and 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has denied that the contents of paragraph 5 of the examination-in-chief have not been stated by the witness. The Investigating Officer has stated that the witness has stated all the facts stated by her in paragraph 5 of her examination-in-chief, except that she had gone to the madressa at Hussainnagar. He has denied that the witness has not stated the facts stated by

her in paragraph 5 of her examination in chief. He has admitted that the witness has not stated the facts stated in paragraph 7 of her examination-in-chief. The contents of para 8 of the examination-in-chief are read over to the Investigating Officer, who has admitted that the witness has not stated any fact regarding being surrounded at Gangotri Society and having been injured. The Investigating Officer has stated that he does not remember as to whether the prior statement of the witness was read over to her. He has admitted that the witness in her statement dated 7.1.2007 had stated that on 28.2.2002 as there was a call for Gujarat Bandh in the context of the incident that had taken place at Godhra, she and her husband had not gone for their jobs and she was present at home with her family. At that time at around 11:00 to 11.30, a huge mob of people had come and the people in the mob started shouting and pelting stones and throwing burning rags, due to which, the police lobbed teargas shells at the people in the mob and also resorted to firing. However, the mob being very huge did not disperse and started damaging houses and started burning them. Upon seeing the huge mob, their family members, children, her husband all started fleeing. However, they were surrounded on all four sides by the mob. Out of the people in the mob, some one injured her on the head with a stick or pipe and blood started oozing and she felt dizzy and had fallen down in front of her house in Jawannagar and she was also injured on her back. Her husband had taken her children and gone. Thereafter, they all got separated. Thereafter, upon the police coming, she was taken for treatment to the Civil Hospital where she was given treatment for four days. After she was discharged from the hospital, she had gone to the Shah Alam relief camp where she found her

husband and children. She had taken treatment at the camp also. Thereafter, her elder brother-in-law Samadbhai who resides at Solapur in Maharashtra had come to the camp and had taken her, her husband and children to Solapur. They had stayed there for about four to five months and upon the situation becoming peaceful, they had returned to Ahmedabad and upon going to her house in Jawannagar, she found that people had already looted all the household goods and ornaments etc. and she had suffered loss of around Rs.60,000/-. Her husband and children were not injured. She does not know as to who the people in the mob were and where they were staying. Since she was injured on the head and had felt dizzy and fallen down, she could not recognise anyone. The Investigating Officer has admitted that this witness has not named any accused in the statement recorded by him.

188.16 The contents of paragraphs 5, 6 and 7 of the examination-in-chief of this witness are read over to the Investigating Officer, who has denied that the witness has not stated the facts stated by her in paragraph 5 of her examination-in-chief. The Investigating Officer has stated that the witness has not stated that she had gone to madressa at Hussainnagar to pick up her son. However, the rest of the facts have been stated by the witness. The Investigating Officer has also denied that the witness has not stated all the facts stated by her in paragraph 6 of her examination-in-chief and has stated that the witness had stated before him that the police had lobbed teargas shells and resorted to firing but the mob being huge did not disperse and had started setting houses on fire and that her husband took their children and they all

started running away. However, the other facts have not been stated by her. The Investigating Officer has admitted that the contents of paragraph 7 of her examination-in-chief have not been stated by this witness in the statement recorded by him.

188.17 The Investigating Officer has admitted that this witness in the statement recorded by him has not stated that at around 6 o'clock in the evening they were surrounded in Gangotri Society and that the witness was injured on the head and back at Gangotri Society. However, the witness has stated that she was injured on the head with a stick or pipe or chain and blood was oozing out .. and that she had sustained injury on her back by something. That she had only not stated that the place where she was injured was Gangotri Society. The Investigating Officer has admitted that this witness had stated before him that, therefore, the police had lobbed teargas shells at the people in the mob and had resorted to firing; while going further from her house at Jawannagar she had fallen down.

188.18 SUBMISSIONS : The learned counsel for the appellants submitted that this witness has not named any accused including the local residents in the mob, particularly, the accused persons, who are named by other accused which indicates that the local accused were not involved in the incident of the evening.

188.19 ANALYSIS: On a perusal of the testimony of this witness, it appears that certain part of her examination-in-chief is sought to be contradicted as to her previous statement recorded by the police. However, none of the omissions which

are sought to be brought on record, can be said to be omissions in the nature of contradictions, and hence, the trial court ought not to have permitted the witness to be contradicted in this manner.

188.20 Another fact which needs to be taken note of is that almost the entire police statement of the witness is sought to be brought on record in her cross-examination without reference to any specific contradiction qua her police statement. This practice of permitting the extracts of police statement of a witness to be brought on record though the same are not in the nature of contradictions, is not legally permissible, but has been allowed by the trial court in case of many witnesses. In the opinion of this court, the trial court ought to have restrained the learned counsel for the defence from bringing on record such inadmissible evidence.

188.21 This witness is an injured witness. However, she has not been able to identify her assailants and has not named any accused. Her testimony, therefore, does not assist the prosecution in proving the charge against any of the accused.

189. **PW-207 Basirahemad Mahammadyusuf Shaikh**, aged 55 years, has been examined at Exhibit-1449. This witness has deposed that he was residing at *Kumbhaji-ni-Chali* since about thirty to forty years prior thereto. The witness has deposed that at the time of the communal riots in the year 2002 also, he was residing in this house. At the relevant time, he was residing with his family. At that time, he used to serve in a moulding factory which was situated at Memco in the Naroda area. His service hours were from 8

o'clock in the morning till 4:30 in the evening.

189.1 The incident took place on 28.2.2002. On that day, there was a call for Gujarat bandh, and hence, he had not gone for his job. On the day of the incident, in the morning at 9 o'clock, a mob of twenty thousand to twenty-five thousand came from somewhere and entered their chawl. The mob started assaulting and pelting stones. He did not know as to where his wife and children had gone in this incident. He alone, with a view to save his life, he had gone towards the gate of the S.R.P. Quarters but was not permitted to go inside. At 10:00 to 11:00 in the morning, he came towards Gangotri Society. After he came back to Gangotri Society, the people in the mob had beaten him on the back with sticks and he became unconscious and fell down there.

189.2 Thereafter, the police vehicle came at 11 o'clock at night and took them to the Civil Hospital. At the Civil Hospital, since he was not given proper treatment, in his anxiety, he had left the hospital and gone away. He went from the Civil Hospital to the Shah Alam camp, where he found his wife and children. After staying at the Shah Alam camp for eight to ten days, he had gone to Dariyakhan Ghummat camp. He stayed at Dariyakhan Ghummat camp for two to three months and thereafter, returned home at Naroda. At the time when he returned home, all his household goods and articles as well as his house had been burnt in the incident. His statement had been recorded twice in connection with the incident. The injury certificate of this witness has been brought on record at Exhibit-334. The witness has deposed that he is also known as Gogishekh or Gogi because he is a native of Karnataka and his

village's name is Gogi.

189.3 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that he does not know as to who inflicted blows on his back with sticks and as to who looted his house and as to who were the people in the mob and that he has not stated any such thing in his statements dated 27.3.2007 and 10.3.2002.

189.4 Various parts of his previous statements recorded by the police are sought to be brought on record through the cross-examination of this witness despite the fact that none of them are in the nature of contradictions and hence, are not admissible in evidence. The trial court, therefore, ought not to have permitted such parts of the police statement of the witness which are not in the nature of contradictions to be put to the witness.

189.5 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

189.6 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 10.3.2002. The assignee officer has admitted that the witness has not named any accused in the statement recorded by him. The contents of para 4 of the examination-in-chief of the witness, except for the first line, are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the

statement recorded by him. The assignee officer has admitted that the witness had not stated before him that he was injured at Gangotri Society and that the witness had stated that he was injured in the Jawannagar area.

189.7 PW-313 Shri H.R. Muliya, the Investigating Officer has in his cross-examination admitted that he has recorded the statement of this witness on 27.3.2007. He has admitted that this witness had stated before him that, therefore, he, his wife and his children left their house and started running towards the S.R.P. camp. He took his wife and children and hide near Gangotri Society. In case where in the communal riots, there was a death in any Muslim family, they came to be allotted a house at Faizalpark, Vatva as well as behind Bombay Hotel at Narol by the Muslim community and went to stay there. All the rest of the Muslim families had come back to Naroda Patiya.

189.8 The contents of paragraph 4 from the third line to the last line are read over to the Investigating Officer, wherein the witness has stated that in the morning on the day of the incident he was in his chawl. On that day in the morning at around 9 o'clock, a mob of around twenty to twenty five thousand people came from somewhere. This mob entered their chawl. The mob started assaulting, they were pelting stones. He did not know as where his wife and children had gone to in this incident. He alone to save his life, went towards the gate of the S.R.P. Quarters. He was not permitted to enter S.R.P. Quarters. The Investigating Officer has admitted that this witness has not stated such facts in the statement recorded by him.

189.9 SUBMISSIONS: The learned counsel for the appellants have submitted that though this witness is residing in the area since more than twenty five years, he has not implicated any accused including the local residents of Gangotri and Jawannagar.

189.10 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that though two statements of this witness have been recorded, one by the police on 10.3.2002 and the other on 22.3.2007, the witness has not named any accused, and hence, nothing much turns upon the testimony of this witness, except to the extent that he had witnessed the incident with regard to a mob having gathered at the scene of the offence.

189.11 ANALYSIS : The testimony of this witness is absolutely vague and except for the fact that he was injured in an incident near Gangotri Society, there is nothing in the testimony of this witness, which would help the prosecution to prove the charge against the accused, inasmuch as, the witness has not named any of the accused involved in the incident.

190. **PW-208 Nazirkhan Rahimkhan Pathan**, aged 58 years, has been examined at Exhibit-1453. This witness has deposed that on 5.3.2002, in the morning at about 11 to 12 o'clock, he was called by the police to the postmortem department of the Civil Hospital, at Ahmedabad. The police had called him for drawing a panchnama of the dead body of the deceased person. The police had also called another person as a panch together with him, but he does not know his

name.

190.1 A dead body of a woman was lying on a stretcher in the postmortem room. Her hair was black and her eyes were closed. One hand and one leg of the dead body were bandaged as they were burnt. The dead body was of Kudratbibi Khurshidahemad. This Kudratbibi was residing in the same area as he does, and hence, he knows her.

190.2 A detailed panchnama of the dead body had been drawn in his presence in accordance with law. Hence, after the panchnama was written, he had put on his signature. He had acted as panch No.1 in the panchnama and the other person had also signed as a panch in his presence.

190.3 The witness has deposed that he knows how to read Gujarati and that he has been handed over the inquest panchnama for reading it over, and that after reading it, he has stated that the contents thereof are correct. He has also identified his signature as well as the signature of the other panch. The witness has deposed that the second panch and the police have signed on the panchnama in his presence. The panchnama is exhibited as Exhibit-1454.

190.4 The witness has deposed that on 7.6.2002, in the morning at around 11:00 to 11:30, the police had called him for acting as a panch in another panchnama. This panchnama was of a house. The police had also called another person as a panch along with him. This house was in *Chetandas-ni-Chali*. The house belonged to one Kamrunisha Muradali Baksumiya Shaikh. For going to this house, there was a chawl and there

was a narrow road in the chawl. Upon entering the house, there was a small iron gate. Upon going inside, there was an open space on one side, and a bathroom and a latrine on the other side. Corncobs and other miscellaneous articles were lying scattered in the house.

190.5 The house had a tin sheet roof inside which, there was a black and white T.V., radio, cycle, brass vessels and household articles which were lying scattered in the room. A detailed panchnama was drawn in this regard and he and the other panch had signed on the same. The witness has admitted the contents of the panchnama and has identified his signature as well as the signature of the other panch and the policemen thereon and has stated that they had signed in his presence. The witness has further stated that Kamrunisha who was present at the time when the panchnama was drawn, had stated that a T.V. and other articles were looted from her house, whereas articles recorded in the panchnama were at site.

190.6 The witness has further deposed that he has studied up till M. Com. and that, prior to the year 2003, he used to give private tuitions; whereas since the year 2003, he is working as a teacher in IQRA Primary School. He is working as a Teacher-cum-Manager in this school. At present also, he is working as a teacher in IQRA Primary School.

190.7 Though this witness is only a panch witness and has been examined in connection with two panchnamas which were drawn in his presence, the learned advocates appearing for the accused have cross-examined him in detail in

connection with the incident as well as the applications that were made on behalf of various witnesses. Therefore, despite the fact that the examination-in-chief of this witness runs into eight small paragraphs, his cross-examination runs into seventy-two paragraphs.

190.8 CROSS EXAMINATION: In the cross-examination of this witness it has come out that he has done his M.Com. in Gujarati Medium. He has admitted that he can write and speak English. The witness has admitted that he used to help people at the camp and has voluntarily stated that as part of his duty as a human being he used to help them in whatever manner he could. The witness has denied that on 5.3.2002, he had gone to Civil Hospital because as per news received by him, his wife and daughter had died and he had come to the Civil Hospital to see the dead bodies. The witness has voluntarily stated that thereafter he found his wife and daughter alive at the Shah Alam Camp. It may be noted that the prosecution has examined this witness as a panch witness to prove the inquest panchnama Exhibit 1454 and panchnama Exhibit 1455, which is the panchnama of the house of Kamrunnisa. Despite the fact that this witness is examined only as a panch witness, the defence has extensively cross examined him on various aspects other than panchnamas drawn in his presence. The application made by this witness to the SIT, Mark 644/54 is shown to the witness and he has admitted his signature as well as the contents thereof and the same is exhibited as Exhibit 1456. The witness is also cross-examined with regard to the common application Exhibit 670, wherein he has put his signature at serial No.3. In his cross examination, the witness has admitted that at the camp he used to help the people to

obtain compensation from the Collector as well as to make applications for obtaining loans. The witness is also extensively cross examined with regard to the topography of the area. In his cross examination it has come out that on the day of incident he has not seen Abid or Mushtaq near the Noorani Masjid. The witness has voluntarily stated that he was injured by bullet on his neck and he had seen him near Rashida Momin's house. He has denied that the police had released teargas shells and thereafter resorted to firing to disperse the mobs which had gathered at the Noorani Masjid and the S.T. Workshop. The witness has stated that the police were releasing teargas shells and firing at the Muslim mob. The witness has admitted that he had seen Abid being injured by bullet under a neem tree. He has admitted that he had seen Abid who was injured by bullet under a neem tree and that he had died on the spot. The witness has admitted that he had seen Mustaq Kaladia in a condition where he was injured by a bullet in the neck. He has admitted that he has seen Abid on the next day in the morning. Except for that, he has not seen him for the whole day. The witness has admitted that on the next day in the morning when he was leaving his house, he had seen Abid and his wife in his house. He has admitted that on that day he had a talk with Abid's wife in the morning. She has informed him that Abid was injured by bullet and had died. The witness has admitted that at that time also he had seen Abid in an injured condition. The witness has admitted that when he had left his house, he had not seen Abid in a burnt condition. The witness is shown Exhibit 644, which is list of applications and the witness has identified seven applications which he had written.

190.9 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

190.10 PW-280 B.C. Joshi, the assignee officer has admitted that he has recorded the statement of Shri Nazirkhan Rahimkhan Pathan. The assignee officer has admitted that this witness had stated before him that the communal riots had erupted from the morning itself and majority of the incidents of damaging the houses and shops, looting them and burning by the mob of fifteen to twenty thousand people, were taking place at Naroda Patiya, Hussainnagar, Jawannagar and other areas and out of fear, they had run towards Gangotri Society. The riots continued till afternoon. (This part of the statement is identical to the statement of PW-192 Rashidabanu recorded by this Investigating Officer).

190.11 At the cost of repetition, it may be stated that this witness is only a witness of a panchnama and has not stated any such facts in his examination-in-chief. Therefore, the question of proving what this witness has stated in his statement before the police would not arise. The trial court ought not to have permitted such questions to be put to this witness. However, one thing that emerges on a perusal of this part of the evidence of the assignee officer is that identical statements have been recorded by him in case of different witnesses.

190.12 PW-307 S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this

witness on 6.5.2002. He has admitted that this witness had stated before him that the statement recorded by Shri P. N. Barot was read over to him and was correct and proper as stated by him. In the opinion of this court, this part of the statement of the witness is sought to be proved despite the fact that the same does not bring out any contradiction in the evidence of the witness. Under the circumstances, such question ought not to have been permitted to be put to the witness and this part of the evidence is, therefore, not admissible.

190.13 PW-178 Shri P. N. Barot, the Investigating Officer has admitted that he has recorded the statement of this witness on 19.4.2002. Certain extracts of the police statement of this witness have been put to the Investigating Officer. This witness has been examined as a panch witness and the extracts which have been put to the Investigating Officer have not been used to contradict any part of the primary statement of the witness, and hence, are not admissible in evidence.

190.14 SUBMISSIONS : The learned counsel for the appellants submitted that this witness was present near the Noorani Masjid in the morning, where he saw the mobs, wherein some local residents of Gangotri and Jawannagar are shown as members of the mob, but still he has not implicated any one as accused. Referring to paragraph 72 of his cross-examination, it was pointed out that the witness has admitted that applications made to the SIT of certain persons have been written by him, but the concerned witnesses have denied these facts in their depositions, which also raises a doubt about the truthfulness of those witnesses. It was pointed out

that as deposed by this witness, people were joining the mob which indicates that people had spontaneously gathered there and later on the size of the mob had increased, which indicates that the incident was not pre-planned.

190.15 The attention of the court was invited to the provisions of section 138 of the Evidence Act for the proposition that the cross-examination need not be confined to the facts which the witness has testified in his examination-in-chief.

190.16 ANALYSIS: This witness has been examined by the prosecution as a panch witness of the inquest panchnama of Kudratbibi Khurshidahmed. The witness was also a panch of the panchnama of the house of Kamruddin Muradali Shaikh and has proved both the panchnamas. Insofar as the veracity of the panchnamas is concerned, the defence has not raised any dispute. However, the witness has been examined with regard to the events that took place on the day of the incident as well as the applications made by him on behalf of various witnesses. In the cross-examination of this witness, it has been brought out that he has written down applications for several witnesses. Insofar as the incident is concerned, since the witness has not been examined as an eyewitness, the facts elicited in the cross-examination have no relevance. PW-280 the assignee officer has been cross-examined with regard to the facts deposed by the witness regarding the incident. However, since the witness has not been examined as an eyewitness, no such facts had been stated by him in his examination-in-chief and, therefore, no contradiction could have been proved through the testimony of the assignee

officer.

191. **PW-209 Shabana Bundubhai Kureshi**, aged 28 years, has been examined at Exhibit-1463. This witness has deposed that at present, her father, her three brothers, two sister-in-laws and brother's three children are all residing together. Her mother's name was Zarina. She died in the communal riots. Moreover, her younger sister Naseem also died in the communal riots.

191.1 The incident took place on 28.2.2002. On the day of the incident, there was a call for Gujarat Bandh. On 27.2.2002, she had seen news on the T.V. that in view of a train incident at Godhra, there was a call for bandh on 28.2.2002. In view of such news, the people of their area were frightened and many people stayed awake at night, including her and her mother. She went to sleep very late at night. On 28.2.2002, in the morning, her mother woke her up and told her that a mob had come to Noorani Masjid and was attacking. Upon hearing this, she woke up and went to the terrace of her house. From the terrace of her house, one can see on the road in front. On the road, which goes to Jawannagar where Uday Gas Agency is situated, assault was going on and there was a fire, which she had seen.

191.2 At this time, her mother called them down and hence, she, her sister Rukshana, her sister Naseem and her brother Raja came down, whereupon their mother told them to go to the S.R.P. Quarters. Thereafter, all four of the brother and sisters started going to the S.R.P. Quarters. For the purpose of entering the S.R.P. Quarters, there was a gap in the wall. When

they went there, S.R.P. personnel were present. They requested them to let them go inside, however, they did not permit them to go inside and told them that they would not let them go inside and that they were to die today. Today was the day of their death and that they wanted to see as to how they looked like when they are naked.

191.3 Upon hearing this, her sister Naseem told her that instead of dying at their hands, it would be better that they should go to their own area and die there. Thereafter, they went to Barkatkhalas house, which is situated in the last lane of Jawannagar. All the four brothers and sisters had gone there. However, later on, her mother and others had also come there.

191.4 At Barkatkhalas house there were other Muslims also. She sat down to read the Quran Sharif there. Some person came and told them that Lane No.1 of Jawannagar has been burnt. Gaurikhala's (who is known as as Garui Aapa) house is situated opposite Barkatkhalas house. They climbed on the terrace of her house. From the terrace of Gaurikhala's house, one can go to the terrace of Gangotri Society. In this manner, they had gone to the terrace of Gangotri Society. Thereafter, they climbed down from the terrace of Gangotri Society.

191.5 In Gangotri Society, there was a big hall like a shuttered shop. They went and sat in the hall. Other than them, there were around two hundred to two hundred and fifty Muslims. At that time, it must have been around 2:30 in the afternoon.

191.6 When she set off in the morning, she had not even brushed her teeth and she was very thirsty. She asked a woman standing near Gangotri Society for some water; however, she told her that they would not get water. At this time, her sister Naseem told her that these people will not give her water and asked her to come back. At this time, Jaybhavani came from the opposite side and patted her on her head and told her, "*Niece, I am arranging for food for you*". Thereafter, Naseem took her back to the hall. When she went into the hall, her mother was sleeping and she went and lay down next to her mother.

191.7 Thereafter, on that day in the evening, at around 5:00 to 5:30, Jaybhavani and Manu Bhangi (A-28) came from the opposite side. Both of them stood outside the hall and told them to empty the hall and go towards Teesra Kuva, where vehicles have been arranged for them. Thereafter, they came out of the hall to the road and started going towards Teesra Kuva. There were many other Muslims with them, but she and her mother were right in front.

191.8 She went towards Teesra Kuva and saw that there was a very huge mob there. The persons in the mob had pipes, swords, hockey sticks and sticks etc. in their hands. Thereafter, she told her mother that if they both went in front, the mob would first kill both of them and hence, they turned back.

191.9 While they were coming back, another mob of persons with pipes, swords, hockey sticks, etc. was standing near Gangotri Society and they started assaulting the Muslims

who were left behind them. They were running from Teesra Kuva to Gangotri, while the Gangotri – Gopinath people were coming towards them. At this time, the public started running helter skelter. There is a passage between Gangotri Gopinath Society, where there is a water tank. They all entered in the passage. At this time, all the members of their family got separated. However, when she went into the passage, she, her mother, her sister Naseem and her brother Raja, were together.

191.10 When they entered the passage, the persons in the mob surrounded them from all four sides. In this mob, she had seen Suresh Langda (A-22), Dalpat's son (Pintoo) (A-60), Jaybhavani's son (A-40), Naresh (A-1), Hareh (A-10), Manu (A-28), two sons of Marathi, Vilas (A-53), Jaybhavani, Dalpat and Guddu Chhara and several other people.

191.12 At this time, all the persons she named above were there in the mob on the road in the opposite side of the passage and the said mob had cut a boy named Siddique with a dagger and assaulted him, due to which he was injured on the neck and upon his taveez being cut, it broke and fell. Thereafter, Siddique was assaulted with pipes and he tried to protect himself by putting his hands across his head, all of which she had seen. Thereafter, some inflammable substance like kerosene was poured on Siddique and he was set on fire. Siddique died on the spot.

191.13 After Siddique's incident, she had seen that the people in the mob wherein the people whom she has named were there, they had pulled a girl from Hussainnagar and

taken her away. At this time, upon seeing all this, her sister Naseem, who was standing near her was terrified and fled. Whereupon, these people surrounded her sister and inflicted a pipe blow on her head. Thereafter, they poured kerosene on her and set her on fire and she too died.

191.14 Upon seeing all this, her mother started shouting and running, whereupon, Suresh Langda caught her mother. Suresh Langdo caught her mother and stabbed her on stomach with a gupti. Thereafter, all the persons whom she has named and other people in the mob, together, burnt her mother alive. Her mother also died on the spot.

191.15 At this time, the moment the Muslims who were in the passage came out, the people in the mob were catching them and assaulting and burning them. At this time, the people in the mob must have thought that possibly, the Muslims in the passage may escape and hence, they started assaulting them in the passage itself and started pouring kerosene and burning them all together.

191.16 Upon a fire being kindled, she jumped on a wall in the passage and sat on it, whereupon the persons in the mob pelted stones on her leg. Upon a stone striking her, she fell on the other side of the wall. Upon seeing all this, she was frightened. The people in the mob were hurling very dirty abuses and were burning people and hence, she was afraid. After sitting on the other side of the wall for one or two minutes she came out of the gate which was there and went to a terrace of Gangotri Society.

191.17 At the terrace where she went, there were other Muslims. There were Muslims on three terraces of Gangotri Society. They sat on the terrace till late at night. Thereafter, Samsubhai (PW-202) came to the terrace at night. Samsubhai told them that vehicles have arrived on the road, and hence, they should come with him. They came on the road on foot, and from there, they boarded the vehicles and went to Shah Alam camp.

191.18 She stayed at the Shah Alam camp for around six months. About two and half months after the incident, the police had recorded her statement. She had narrated all the facts before the police.

191.19 Thereafter, she had also made an application to the SIT. The SIT had recorded her statement twice.

191.20 The witness has thereafter deposed that she was called to identify two accused and she had gone there and identified an accused by the name of Vilas.

191.21 The witness has stated that she can identify the persons whom she has named in her deposition. Out of the accused named by her, Guddu Chhara, Dalpat and Jaybhavani have died and she can identify all the accused.

191.22 The witness has thereafter identified Naresh (A-1), Haresh (A-10), Suresh Langda (A-22), Manu (A-28), Jaybhavani's son Mukesh (A-40), Vilas (A-53) and Dalpat's son (A-60), correctly.

191.23 CROSS-EXAMINATION: In her cross-examination, this witness has stated that she is totally illiterate and she has not studied anything, except Quran-e-Sharif. She has not studied in Hindi medium. She has not studied at all. It is true that she can speak Hindi, but does not know how to read or write in Hindi. The witness is shown an application-Mark 644/9 made to the SIT. The witness has admitted her signature at the end of the application and has stated that she only knows how to sign which she has learnt. She does not know whether the signature can be said to be in Gujarati or in Hindi and that her sister in law has taught her to sign and that much she knew.

191.24 She has stated that her sister Ruksana is elder to her, whereas brother Raja is younger than her. The witness has admitted that after they climbed down from the terrace of the house and till they reached Gauri Apa's house, Rukshana was with her. She has admitted that her brother Raja was also with her. She has stated that her mother had come after the four brothers and sisters had reached Barkat Khala's house. She has stated that she knows Barkat Khala since her childhood and that when she left Barkat Khala and Gauri Apa's houses, till then, they both were not with her.

191.25 The witness has admitted that the police had not beaten them near S.R.P. Quarters on that day and has voluntarily stated that they were threatening them and were driving them away. The witness has denied that while she was standing near S.R.P. compound wall, no Muslim boy was injured. The witness has stated that a boy by the name of Sharif was injured on the chest with a stone. She has further stated that Sharif has died in the incident.

191.26 In her cross examination it has come out that she knows Shamsubhai since a long time and that she has grown up under him. She has admitted that on that day she had seen Shamsu only when he came to call them from the terrace; except that she has not seen him through out the day. She has stated that Vilas's Test Identification Parade was carried out when she was at the camp. However, she knew him from the beginning as he was residing in their lane. The witness has denied that in her statement dated 2002, recorded at the camp, she has not given the name of any of the accused named by her before the court. The witness admitted that she had informed the SIT people that she could show them the house in which the two Marathi boys, whom she knew, were residing. She has stated that Vilas used to reside in their area and therefore, she knew him. However, prior to the incident he had changed his house, but he used to reside in the area since her childhood, and hence, she knew him. The witness has stated that she cannot say as to how long they had stayed at Barkat Khala's house; as to whether it was for one or two hours. She has stated that they had not stayed at Gauri Khala's house and that they had immediately gone from her terrace into Gangotri Society. The witness has denied that the mob was on the open ground on Naroda side and has clarified that the mob was towards Teesra Kuva. The witness has admitted that when she asked for water at Gangotri Society, there were people residing there. She must have asked for water at Gangotri Society at 2:30 in the evening. She has admitted that at 2:30 residents of Gangotri had not assaulted them nor driven them away. She has admitted that in the hall where two hundred to two hundred fifty Muslims were hiding,

Bhavani had not brought any other mob. The witness has voluntarily stated that Bhavani and other people were the persons who got them out of the hall and they first wanted them to come out of the hall and thereafter assault them.

191.27 The witness is shown an application Mark 644/9 and she has identified her signature thereon. She has stated that she had made this application to the SIT. The application is given Exhibit No.1464. The witness has stated that she came to know that she is required to make such application because there were discussions going on in the chawl that some officer from Delhi is going to come and investigate in the case. The witness is thereafter cross examined with regard to who wrote down the application for her and the manner in which it was done. The witness has admitted that in her application Exhibit 1464 she has not named any accused and has voluntarily stated that those facts were required to be given by her personally. The witness has denied that in her statement recoded by the SIT she has not stated the exact place where her mother and sister were killed and who had killed them. In her cross examination it has come out that after the application Exhibit 1464 was made, the SIT has called her by issuing summons. Summons was received by her at her house and when she went for recording her statement, her elder sister was her.

191.28 The witness has admitted that at the time of the incident she was at home. The witness has admitted that her mother had woken her up in the morning. She has denied that all the facts stated by her with regard to the S.R.P. Quarters, shutter, lane and passage are false. She has denied that in the

year 2008 voluntary organizations persuaded her and tutored her, and accordingly, she has falsely given the names of the accused. The witness has denied that she had not seen any of the accused named by her in the examination-in-chief anywhere and that they were not in the mob on the day of the incident. The witness has denied that prior to deposing before the court, an NGO had got her to memorize her statement and taught her what to depose. The witness has voluntarily stated that she does not know who the NGO is.

191.29 The witness has denied that she, Rukshana and Shamsu, all of them had gone to Raeeskhan's office at Shahpur in the year 2008 and the Muslims residing at Patiya had gathered there. The witness has denied that at the instance of Raeeskhan, all the persons from Patiya had got their applications written by the same person.

191.30 The witness has been extensively cross-examined with regard to the topography of the area as well as their relation with the people in the neighbourhood. The witness has denied that she has not stated the facts stated by her in her examination-in-chief, when the police recorded her statement at the camp.

191.31 In her cross examination, it has further been elicited that after hearing the news about the incident, firstly she had gone home. She came to know the news from her mother, after which, firstly she went to the terrace of their house. She does not remember the exact time when she went on the terrace. She has stated that her house has only a ground floor and does not have first floor, but it has terrace, which is

concrete terrace. There were other people with her on the terrace at that time. The witness has stated that she knows that the people, who were there with her, were people of her chawl, but she does not remember their names. The witness has admitted that when she was watching from the terrace, a few people were entering from the side of Jawannagar. She has stated that when she had seen, at that time very few people were coming inside. The witness has admitted that she knows the people who reside in Jawannagar; she mostly knew them by their faces.

191.32 The witness has stated that she does not know as to how long they stayed at the hall after coming from Bharkat Khala's house. She has admitted that they stayed there till the evening. She has clarified that they stayed there till it was almost evening. The witness has stated that when she says almost evening, what she wants to say is that the time must have been around 5:00 in the evening. The witness has admitted that what they feared was what would happen to them and that the attackers would come there. The witness has voluntarily stated that they were rendered homeless and their houses were burnt, and hence, they were afraid. She has admitted that from inside the hall they could not see what was happening outside. The witness has stated that while she was in hall she came to know that her house was burnt, for the reason that they had received such news while they were at Barkat Khala's house. The witness has stated that from the hall they came out into something like a lane and from there they came on the road. Gangotri and Gopinath Societies were near the road. She had admitted that if one goes further on the road towards the left side, Noorani Masjid is situated and towards

right side, Teesra Kuva and the road going to Naroda are situated. The witness has stated that on the day of the incident, only her brother Raja was with her and her other brothers had got separated. The witness has stated that she does not know exactly when both of her brothers got separated. She has admitted that they were not with her. The witness has admitted that after coming on the road they had looked at the side of the road, at that time she had not seen mobs on either side of the road. At that time she had not seen any one damaging or setting things on fire. When they went from the road towards Teesra Kuva and were at the entrance of the open ground, they had seen the mob. She has admitted that while she was on the road, she could not see Teesra Kuva, but could only see open ground on which Teesra Kuva is situated.

191.33 The witness has admitted that upon seeing them, the mob started coming towards them, but they had started fleeing. They had run till the passage. She does not know exactly how many minutes she had run. The witness has admitted that the mob ran after them and reached upto the passage, upto them. She has stated that the mob was not comprised of ten thousand to fifteen thousand people. She has stated that she does not know how many people were there in the mob, but it was a mob. The witness has stated that for the purpose of protecting their lives, they had not entered inside the houses. The witness has stated that at present she does not remember as to what she did to protect their lives after reaching the passage. The witness has stated that she cannot say as to how many feet the height of the passage was. In her cross-examination it has come out that from the passage one

can either come out on the road or would have to jump over the compound wall. She has stated that while they were in the passage they were surrounded and that there were only Muslims inside the passage. The people in the mob had not assaulted her with any weapons, but had pelted stones at her. No person has slapped her or boxed her. She has admitted that she does not know as to who had thrown the stone with which she was injured. She has admitted that only one stone had struck her. She has stated that when she was lastly jumping over the compound wall, at that time she was injured by stone. The witness has stated that when she was jumping over the wall, nobody had caught her nor pulled her. She has voluntarily stated that, that is why the stone was thrown at her. The witness has stated that she does not know as to how many people had jumped over the compound wall before or after her. She has stated that she has not helped anyone other than her family members to jump over the wall and has voluntarily stated that she helped her brother Raja to jump over the wall.

191.34 The witness has stated that she does not know exactly how much time had passed by since the time she entered the passage and jumped over the compound wall. The witness has stated that between the time she entered the passage and jumped over the compound wall, she was sitting on the compound wall. It was slightly dark. The witness has voluntarily stated that when she entered the passage it was bright and everything was visible. She has denied that the duration between the time she entered the passage and jumped the compound wall was very small. The witness has voluntarily stated that she stood in the passage for quite a

long time and while she was standing there she was not injured by any stone. The witness has stated that till she came into the passage she had not seen any stone pelting. The witness has admitted that height of the compound wall over which she jumped, was more than her height. The witness has voluntarily stated that till date she herself cannot understand as to how she managed to jump over the wall. She has stated that, however, she was injured on her hand. The witness has admitted that if she was standing on one side of the compound wall, she would not be able to see the other side of the compound wall. She has admitted that there was glass on the compound wall.

191.35 In her cross-examination it has come out that after jumping over the compound wall when she was going to Gangotri, she was alone and at that time it had become dark. She has admitted that the house on the terrace of which she has gone in Gangotri Society, was a Hindu's house. The witness has denied that she was not injured because she was not at any such place. She has denied that she had not got any injury certificate about the stone injury sustained by her and has stated that she has such injury certificate.

191.36 The witness has denied that she has not seen the accused named by her in her examination-in-chief on the day of the incident, and at the place of the incident, because she was not present on that day and that she was deposing as tutored to her by organizations and others.

191.37 In her cross-examination she has stated that when her statement was recorded at the camp, no policeman had

read it over to her. The SIT has read over her statement dated 11.5.2002 to her.

191.38 The witness is confronted with the contents of paragraph 3 of her examination-in-chief from the second line to the fourth line. The contents of paragraphs 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 (the third line to the last line), 15, 16 (first four lines) and 18, are read over to the witness to the effect that she has not stated such facts in her statement dated 11.5.2002, which she has denied. The witness has denied that the facts stated by her in paragraph 20 of her examination-in-chief that Shamsu has called from terrace, is not stated by her in police statement dated 11.5.2002. The witness has admitted that she was given a zero certificate in connection with the treatment given to her at Shah Alam Camp.

191.39 The witness has denied that on 28.2.2002 she was not in the Naroda Patiya area and had not seen the incident stated by her in her examination-in-chief, and therefore, she had not stated these facts in her statement dated 11.5.2002 and that she had given a statement to the effect that she could not recognize any one and in her statement dated 11.5.2002, she has stated that her brother and mother had seen the incident and had informed her about it. She has denied that she is falsely deposing before the court and has voluntarily stated that she has stated all these facts at the time when her statement came to be recorded on 11.5.2002. The witness has been cross-examined with regard to certain facts that had occurred on the day prior to the incident. Various extracts of her statement dated 11.5.2002 are put to the witness wherein she has, inter alia, stated that Hindu people from Gangotri

Society and Gopinath Society had told them to flee towards Narodagam so that they could escape, and hence, they had come out from there and that they ran and they reached near Gopinath Society, when mobs also came running towards them and they surrounded her mother Zarina, aged 50 years and younger sister Naseem, aged 17 years. Out of fear they returned back and went and sat on the terrace of Gangotri Society and the people in the mob, had sprinkled kerosene or petrol on her mother Zarinabanu and sister Naseem and set them ablaze. The witness is further confronted with the fact that in her statement she has stated that they had seen the incident from the terrace of Gangotri Society, but there were innumerable people in the area, due to which they could not recognize any one.

191.40 The witness has voluntarily stated that her mother and sister were firstly physically assaulted and injured and thereafter were set ablaze and that her brother Raja was with her and both of them had seen the incident together and she has stated such facts in statement recorded by the police. The witness has denied that her statement was recorded on the day when the panchnama was drawn. The panchnama is produced with purshis Exhibit 1478 and the panchnama is given Exhibit No.1479.

191.41 The witness has denied that her sister and mother were burnt under the tank in the passage and has stated that they were burnt in front of the tank in the passage. The witness has denied that there was a road opposite the passage and both of them were set ablaze on the opposite side, after crossing the road, and has stated that they were killed on the

road in front of the passage and burnt there.

191.42 The witness has stated that people in the mob had first assaulted Naseem and then set her ablaze. She has admitted that at the time when both of them were burnt she was in the passage near water tank. The witness has denied that at this time her mother and sister Naseem were totally burnt.

191.43 The witness has admitted that from Barkat Khala's house, she, her mother and her sister were together till they were burnt near the passage. Till they died, they were together. The witness has stated that she had not seen her mother and sister being taken to any other place from that place. The witness has admitted that she has not seen any person killing her mother and sister and burning them in Jawannagar, lane No.3. The witness has denied that she has not seen the killing of her mother and sister on the road near water tank and that she is falsely deposing before the court. The witness has admitted that no one has killed her mother and set her ablaze in Jawannagar, lane no.3. The witness has denied that her sister Naseem was not assaulted by anyone with a pipe or any other weapon. The witness has denied that she does not know as to who had killed Siddique and how.

191.44 The witness has stated that she cannot say exactly for how many minutes the incident of Siddique, Naseem and her mother went on. The witness has denied that she had seen the incident of only these three persons and had not seen any other incident. She has stated that they were first assaulting the people near the passage and thereafter came to

the passage to kill them. The witness has admitted that those who were in the passage were being burnt in the passage and those who were killed outside were burnt outside. The witness has stated that when kerosene was poured on them and a match stick was lit, she was not sitting on the wall; rather she was standing in the interior side of the passage. The witness has stated that she cannot say as to how many people she has seen being set ablaze. She has stated that she has seen other people being killed and burnt.

191.45 The witness has stated that she cannot even approximately say as to how many people were there in the passage. She has stated that they had also come inside the passage and killed people, but she cannot say how many people were killed in this manner. She cannot say for how many minutes she stood in the passage, but after the mob was burning women, she had jumped over the compound wall and gone away.

191.46 In her cross-examination, it has come out that the mob which pulled her mother and sister was not comprised of only twenty to twenty five people, but was a huge mob. They had pulled them away from the passage. The witness has admitted that the people in the mob had surrounded her mother and sister and started assaulting them. The witness has voluntarily stated that Suresh Langda had assaulted her mother with gupti. She has denied that there were mobs on all four sides and has voluntarily stated that on one side there was the S.T. Workshop wall and on the other two sides there was a road and they were in the middle. A mob had also come from the direction of Noorani Masjid as well as from the

direction of Teesra Kuva and they were caught in between the mobs which came from both the sides. The witness has stated that she cannot say that both these mobs had come together and pulled her mother and sister, for the reason that she did not know as to which person was in which mob.

191.47 The witness has admitted that no sooner than her mother and sister were assaulted, they fell on the ground. She has admitted that no sooner than they fell down, kerosene was poured on them and they were set ablaze. She has admitted that at that time lamps were not on. She has stated that it was not necessary, for the reason that it was day time. At this time it must have been around 6:00 to 6:30 in the evening.

191.48 The witness has admitted that Raja and Guddu are her brothers. On the day of the incident, both of them had sustained injuries. She has stated that Raja was with them right from the beginning, from morning on the day of incident.

191.49 In her cross-examination, it has come out that she does not know the names of any of Hindus residing in the chawls. She has stated that the two Marathi boys reside in the chawls. She knew them only by faces. She does not know their names. Upon being asked whether she knows any Hindu in that area, she has stated that she knows Guddu Chara, who passes by their lane everyday. She does not know other Hindus residing in Hussainnagar or Jawannagar. She does not know any Hindu in Gangotri and Gopinath Society, but she knows them by faces. In her cross-examination it has come out that she had no occasion to visit any Hindus and that they have no relations of talking and socializing with any Hindu,

except that when they did not have water supply at their place, they had to go to fetch water from Dalpat and Jai Bhavani's place. The witness has admitted that out of the accused whom she has identified before the court, she does not have any sort of relations with any of them. The witness has admitted that the test identification parade had been carried out through her in the year 2008, after six years. She has admitted that in the test identification parade she had identified only one person. She has voluntarily stated that other accused had put on weight after the incident, and hence, she could identify only one person. The witness has denied that the accused persons whom she had identified, namely, Vilas accused No.53 was falsely named by her, only for the reason that they wanted to buy his house at cheaper rates, but he was not willing to sell his house to them. She has admitted that she had seen all the accused near the water tank and voluntarily stated that she has seen the two Marathi boys from the terrace on the same day. She had seen them near the water tank. The witness is thereafter cross-examined with regard to her application Exhibit 1464 and as regards who identified her mother's dead body.

191.50 In her cross-examination, she has denied that in her statement recorded at the camp she has named Manu or attributed any role to him and that she has stated that Manu had come with Jai Bhavani and talked about preparing meals for them and that she had seen a girl being pulled by the people in the mob, have not been stated by her in the statement recorded at the camp.

191.51 To prove the omissions and contradictions as to her

previous statements, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

191.52 PW-278 Shri R.B. Joshi, the assignee officer in his cross-examination has admitted that he had recorded the statement of this witness on 11.5.2002. The witness has stated that he does not remember as to whether he has recorded statements of about sixty witnesses in connection with the investigation in this offence. He has admitted that in connection with this investigation, the SIT had recorded his statement. (See contents of paragraphs 159 and 160 of PW-278). The assignee officer has admitted that this witness had not named any accused in the statement recorded by him. The assignee officer has admitted that certain parts of paragraph 3 of the examination in chief of this witness are read over to him, namely that on 27.2.2002 she had seen the news in the T.V. that on account of the Godhra Train incident, have not been stated by the witness in the statement recorded by him. In the opinion of this court, the fact regarding the witness having seen something on the television can hardly be said to be a relevant fact so as to be considered to be an omission amounting to contradiction. Such questions, therefore, should not have been permitted to be put to the witness.

191.53 The contents of paragraph 3 of the examination-in-chief of this witness from the fifth line till the end are shown to the assignee officer, who has admitted that such facts have not been stated by the witness in her statement recorded by the police. Once again, the facts stated in paragraph 3 are merely facts that transpired prior to the incident and cannot be

said to be omissions in the nature of contradictions and hence, ought not to have been permitted to be put to the witness.

191.54 The contents of paragraph 4 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him, but has stated that the witness has stated that they had gone to Gangotri Society from the side of the S.R.P. camp.

191.55 The contents of paragraph 5 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him.

191.56 The contents of paragraph 6 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that the witness has not verbatim stated these facts in the statement recorded by him, but the witness had stated that they were in the hall at Gangotri Society when they came to know that two houses of the witnesses wherein tenants are living had been set on fire and burnt by the Hindu mob.

191.57 The contents of paragraph 7 of the examination-in-chief of the witness from the second line to the last line are put to the assignee officer, who has admitted that the witness has not stated such facts in the same words. However, she has stated that there were other Muslims from the chawl also.

191.58 The contents of paragraphs 8 and 9 of the

examination-in-chief of this witness are read over to the assignee officer who has admitted that all these facts have not been stated by the witness in the statement recorded by him, but has stated that the witness had stated that her mother was also in the hall. The assignee officer has admitted that the witness has not stated before him that Jaybhavani and Manu Bhangi had come and while standing outside the hall they had told them to vacate the hall saying that that vehicles had been arranged for them towards Teesra Kuva. He, however, has clarified that the witness has stated that Hindu people from Gangotri and Gopinath Societies had told them to run away towards Naroda Gam to save themselves due to which, they had gone there. The assignee officer has denied that when the witness has stated any fact regarding Hindus from Gangotri Society, he had tried to obtain more information. He has stated that he was required to carry out the task assigned to him by his higher officer who was the Investigating Officer and to submit the case papers to him and that he was not required to do any work of investigation, and hence, he used to take down what the witness had stated and used to see that the statements are handed over to the Investigating Officer.

191.59 The contents of paragraph 11 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated such facts before him. He, however, has stated that the witness had stated that when they reached near Gangotri Society, the people in the mob came running near them.

191.60 Certain part of paragraph 12 of the examination-in-chief of the witness as extracted in paragraph 170 of the

deposition of the assignee officer, are put to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him.

191.61 The contents of paragraph 13 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness had stated that they entered the passage where the people in the mob surrounded them from all four sides. In the mob, she had seen Suresh Langdo, Dalpat's son, Jaybhawani's son, Naresh, Haresh, Manu, two sons of Marathi, Jaybhawani, Dalpat and Guddu Chhara, have not been stated by her in the statement recorded by him. He, however, has clarified that the witness has stated that when they reached near Gopinath Society, the people of the mob were there.

191.62 The contents of paragraph 14 of the examination-in-chief of this witness from the third line to the last line are read over to the assignee officer, who has admitted that she has not stated such facts in the statement recorded by him. The contents of first seven lines of paragraph 15 of the examination- in-chief of this witness are read over to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him.

191.63 The contents of first four lines of paragraph 16 and the contents of paragraph 17 as well as certain parts of paragraphs 18 and 20 of the examination-in-chief, as extracted in the cross-examination of PW-278, are read over to him and he has admitted that the witness has not stated such facts in the statement recorded by him.

191.64 The assignee officer has admitted that the witness had stated before him that in Jawannagar chawl they have in all eight houses wherein in house No.383 articles relating to kitchen and household goods were being kept and they used to have meals there and in that house at night, her mother, her sister Ruksana her three brothers and her maternal aunt's son Raees used to sleep and she and her father used to sleep in House No.325/1, her sister Naseem used to sleep with her mother. One wonders as to how such facts stated in the police statement of the witness could be permitted to be brought on record, more so, when they are not at all relevant.

191.65 The assignee officer has admitted that witness had stated before him that all the members of the family were at home and were doing household work and her brothers were sleeping, at that time, at around 10 o'clock other Muslims residing in their chawl were shouting that Hindu mobs have entered their chawl and their houses and ransacking and burning them, and hence, they three sisters and three brothers as well as her mother and father and her maternal aunt's son Raees closed their house and left it and ran from the side of the S.R.P. camp and went to Gangotri Society where the residents of Gangotri Society did not let them and the other Muslim families enter Gangotri Society. He has further admitted that the witness has stated before him that they started telling that both their houses as well as where their tenants are staying have been set on fire by the Hindu mob, due to which, her mother was profusely crying. However, in their chawl, the people in the mob had created a lot of hubbub and the mobs were standing nearby also, due to which, it was not possible for them to go to their chawl. Therefore, till

around 4 o'clock in the evening they sat in the hall in Gangotri Society and at 4 o'clock, when, the witness has also stated before him that while running when they reached near Gopinath Society, the people from the mob came running near them and had surrounded her mother Zarina aged 50 and sister Naseem aged 17 and all of them were frightened and turned back and went and sat on a terrace of Gangotri Society and the people in the mob had sprinkled kerosene / petrol on her mother Zarina and sister Naseem and had set them ablaze. They had seen all this from the terrace of the Gangotri Society; however, there were countless people in the mob and hence, they could not recognize anyone. Her mother and her sister Naseem were burnt alive and killed and the people from the Hindu mob had burnt them, which her younger brother Raja had stated, which incident he had seen with his own eyes.

191.66 The assignee officer has admitted that this witness had not stated anything with regard to any physical violence and injury to her mother and sister. However, she had stated that the people in the mob had sprinkled kerosene over mother Zarina and sister Naseem and set them ablaze and they were burnt to death. The assignee officer has admitted that the witness has stated before him that she does not know who had burnt her mother and sister and there were many people in the mob. The assignee officer has admitted that he had kept the witness with him while carrying out the panchnama of the room in which her father was residing. He has also admitted that on the day when the panchnama was drawn, on the same day the statement of the witness was recorded. The assignee officer has further admitted that in the statement recorded by him, the witness has not stated

regarding her sister Naseem and mother Zarina being assaulted by any weapon or that Suresh Langdo had inflicted a blow with a gupti on her mother or that her sister Naseem was assaulted with a pipe on her head or that she had seen Siddique being hit by a dagger due to which his taveez had broken, in the statement recorded by him.

191.67 PW-327 Shri V.V. Chaudhary, the Investigating Officer (S.I.T.), has in his cross-examination, admitted that he has recorded the statements of this witness on 23.5.2008 and 14.9.2008. The Investigating Officer has denied that this witness has not stated before him that the same were written as stated by her and are correct and proper. The Investigating Officer has denied that the witness has not stated before him the exact place where her mother and sister were killed and who had killed them. The Investigating Officer has stated that he wants to clarify that this witness had stated before him that she was running with her sister, mother and brother, at that time, a huge mob was coming from the direction of Gangotri Society, and hence, they were frightened and in the pandemonium, the witness's brother and sister got separated. At that time, there was something like a house and they had run towards it and there was no space to get out from there. Hence, all of them, women and men, stood there and from the opposite side Guddu Chara, Suresh Chhara, Naresh Chhara, Hariyo Chhara, Dalpat, Jaybhawani, Jaybhawani's son and Dalpat's son, whose name she does not know but whom she can recognize if she sees them; that she had seen Suresh Langdo and his two brothers, whom she can recognize by face. Over and above them, there were two Marathi boys who are brothers and live in the last house in the first lane, whom she

can recognize if she sees them, who were bringing the mob towards them and while they were standing there, the mob of people attacked them and pulled a boy called Siddique and assaulted him and killed him and one young girl and her sister Naseem got separated while they were running and the people in the mob caught her; assaulted her with a pipe, sprinkled kerosene on her and set her ablaze. Suresh Langdo had stabbed her mother on the stomach with a gupti and had sprinkled something like kerosene over her and set her ablaze which the witness had seen with her own eyes. All this was stated by the witness in her statement dated 23.5.2008.

191.68 SUBMISSIONS: The learned counsel for the appellants submitted that this witness, in paragraph 10 of her examination-in-chief, has stated that Jaybhavani and Manu came and asked them to leave the hall. It was submitted that as regards who told them to leave the godown, different versions have been stated by different witnesses. Referring to the contents of paragraph 13 of her examination-in-chief and the paragraph 146 of her cross-examination, it was submitted that this witness did not know anyone by their names, and therefore, she could not have given the names of the accused without a test identification parade. It was submitted that while the witness claims to have been in the passage when the incidents took place, she does not refer to the presence of any of the other witnesses who were in the passage. It was submitted that when the witness has not referred to any other persons in the passage, her presence at the scene of offence is rendered doubtful. It was submitted that it is highly improbable that the witness could have remained in the passage for such a long time without anyone attacking her. It was submitted that

the witness has admitted in her cross-examination that she did not know any accused except Guddu by name at the time of the incident, which indicates that she had wrongly given the names of the accused before the court and in her statement before the SIT. This fact is further strengthened by the fact that in her police statement, she has not given the name of any accused and in her first statement before the SIT, she has not stated that though she had given the names of the accused to the police, they have not written them down. Such explanation has come at a later stage in her statement dated 14.9.2008. It was submitted that it is highly doubtful that the witness has seen the incident of the passage and the named accused being present there as the dead bodies of her mother, her sister and Siddique have not been identified from the bodies recovered at the passage. It was submitted that this witness has not referred to other persons of Jawannagar, like PW-114, PW-191 and PW-137, etc., who claim to have been present at the passage in their evidence before the court. It was submitted that there are vital and important contradictions between the evidence of this witness before the court and her first version before the police, which go to the root of the matter as she has not named any accused and she says that she saw the incident from the terrace of a house at Gangotri. It was submitted that this witness does not inspire confidence and her evidence cannot be considered to be reliable and unimpeachable evidence. It was further pointed out that this witness has not referred to the incident of Salim and Wasim being thrown from the tank.

191.69 Various contradictions in the testimony of the witness were pointed out to the effect that from the testimony

of PW-278, the assignee officer, who recorded the statement of this witness, it has come out that the witness had not given the names of the accused, but had stated that Hindu people had told them that if they flee to Naroda, they would be saved. In the context of paragraph 11 of her examination-in-chief, it was pointed out that before the Investigating Officer, the witness has stated that when they reached near Gopinath, the mob was coming towards them. It was submitted that the attribution to the accused driving them to Teesra Kuva was not there. It was submitted that in the police statement dated 11.5.2002, this witness has not given the names of any of the accused, which would further confirm the absence of the names. It was submitted that except for Guddu, Dalpat and Bhavani, according to the witness herself, she did not know any other Hindu, including the other accused named in the deposition and she had specifically said that she had no relations of any sort with any other accused. It was submitted that therefore, the witness had not named such accused in her first statement dated 11.5.2002 and furthermore in her statement, as proved by the Investigating officer, she has stated that she did not know any of the persons in the mob who killed her mother Zarina and sister Naseem. It was submitted that therefore, for the first time before the SIT, the names of the accused have come on record in the year 2008. It was submitted that this may be tested in view of the version of the witness as stated in paragraphs 70, 71 and 133 of her deposition to see the plausibility as to whether from the place where she is claiming she had seen the incident, it was possible or not; whether she was there for a considerable time; for jumping the wall with pieces of glass affixed in it, which was higher in height than the height of the witness; whether it

was possible for her to sit on it for some time and to jump it to save her life.

191.70 It was submitted that accused No.53 Vilas has been identified only by this witness and that too, in the test identification parade conducted in the year 2008. Referring to paragraph 13 of her examination-in-chief, it was submitted that the witness has only referred to two sons of a Marathi without giving any description. It was submitted that it is very hazardous to believe the only identification in the court without naming him in either of the statements and without naming him in the court. It was submitted that except for the limited evidence of this witness, there is no evidence whatsoever against accused No.53 – Vilas.

191.71 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has specifically stated about killing of her family members in the passage. She is sought to be cross-examined, and a contradiction qua her application Exhibit-1614 is sought to be brought on record to the effect that she has not mentioned the names of any of the accused. It was submitted that the witness has explained that the application was only made for the purpose of recording her statement and that she has stated everything in detail before the SIT in person. It was submitted that the witness is sought to be contradicted qua the place where her mother and sister were killed, but she has confined to her statement before the SIT and her examination-in-chief. It was submitted that the defence has tried to contradict her with respect to her statement recorded by the SIT but those contradictions are of a trivial nature and cannot be considered to be major

contradictions going to the root of the matter.

191.72 It was submitted that insofar as the killing of Siddique is concerned, reference to his incident is also made by PW-37. It was submitted that as regards the contradiction and omission in the testimony of PW-37 about time, this witness also says about Siddique being killed in the evening. It was submitted that as regards the omissions and contradictions in the statement dated 11.5.2002, such contradictions have not been brought out in accordance with law. It was submitted that, therefore, any such omission which is not in accordance with law, cannot be considered to be a material omission, as it is not properly proved. It was submitted that there is no occasion on the part of the witness to tell untruth as she has lost her family members and, therefore, her testimony is credible and believable and as regards the accused whom she has identified, it is proved beyond doubt that they were part of the mob and that they had committed overt acts in the mob.

191.73 ANALYSIS: This witness claims to have seen the named accused assault and kill her mother Zarina and sister Naseem in the passage near the water tank. In the cross-examination of the witness, various omissions have been brought out as to her statement dated 11.5.2002 recorded by PW-278. The omissions and contradictions in the testimony of the witness qua such police statement have been duly proved through the testimony of PW-278. If the testimony of the witness is considered without considering the part in respect of which omissions and contradictions have been proved, it emerges that on 28.2.2002, there was a call for Gujarat Bandh.

From the terrace of their house, they could see the main road and on the road behind Jawannagar where Uday Gas Agency is situated, she had seen incidents of assault and arson. Thereafter, she, along with her brothers and sisters, had gone to Gangotri Society via S.R.P. Quarters. At Gangotri Society they had gone to a big hall with shutters. Her mother was also present with them in the shuttered hall. While they were in the hall, certain persons told them to go out of the hall, as arrangements had been made for them near Teesra Kuva. When they reached near Gopinath Society, there was a mob coming from the opposite side, and hence, they all started coming back. At this time, all the members of her family got separated but in the passage where they went, she, her mother, her sister Naseem and her brother Raja were together. The mob was there on the road in front of the passage. The mob surrounded her sister and poured kerosene on her and set her ablaze and she died there. Thereafter, the people in the mob burnt her mother alive, who also died on the spot. She thereafter, fled to Gangotri Society and took refuge on a terrace. When she went on the terrace there were other Muslims also and late at night, a vehicle came and they boarded the vehicle and went to the Shah Alam relief camp.

191.74 From the cross-examination of the witness, it has been elicited that they did not stay at Gauri Khala's terrace and straightaway went to Gangotri Society. It has further been elicited that she had stayed in the hall till around 5 o'clock in the evening. From the facts, elicited in her cross-examination, the version of the witness that initially they had gone towards Gauri Khala's house is borne out and a further fact that is brought on record is that she had stayed in the hall till 5

o'clock in the evening. In her cross-examination, it has also been elicited that they were at the spot from where one enters the open ground of Teesra Kuva from the road and on seeing them, the mob came towards them and they had fled towards the passage. From her cross-examination, it has further come out that from the passage one can go either on the road or jump over the compound wall and that they were surrounded in the passage. She has also stated that there were only Muslims in the passage. The mob had not assaulted her with weapons but had pelted stones at her and when she entered the passage, there was daylight and one could see everything. The witness has admitted that the wall was more than her height and has expressed surprise as to how she could jump over it. She has also admitted that pieces of glass were affixed on the wall. It has further been elicited that when she jumped over the wall and went to Gangotri, it had become dark. From the cross-examination of the witness, it has come out that she had jumped over the wall and had come out on the road through the gate and gone to Gangotri Society. A perusal of the video of the scene of offence reveals that at the relevant time, there was an open space next to the compound wall and the passage of the water tank which had a gate. Therefore, the version given by the witness that she had jumped over the wall and come out through the gate is supported by the video of the scene of offence. The concerned assignee officer PW-278, who has been examined to bring out the omissions and contradictions in her statement recorded by him has stated that the witness has clearly stated before him that the people in the mob had sprinkled kerosene and petrol on her mother Zarina and sister Naseem and had set them ablaze and they were burnt to death. In the opinion of this court, therefore,

when the witness refers to her brother Raja having witnessed the incident with his own eyes does not mean that she herself has not witnessed the incident.

191.75 The discrepancy in her statement recorded by the police and in her deposition before the court is to the extent that she has not referred to the incident having taken place at the passage but says that when they reached Gopinath, the mob ran and came near them and surrounded her mother and sister, which is more or less the same place, except that there is no specific reference to the incident having taken place near the passage.

191.76 In the opinion of this court, if the testimony of the witness regarding her having witnessed the incident from the passage is taken into consideration, there is no major contradictions in her police statement insofar as the fact regarding her having witnessed the incident is concerned. The major omission, which is in the nature of contradiction in the testimony of this witness, is that before the police she had not named any accused and had specifically, stated that since there were many people in the mob, she could not recognise anyone. Therefore, to the extent the witness has named the accused and attributed specific roles to them, she cannot be believed. Of course, before the SIT in the year 2008, the witness has named the accused and accused No.53 Vilas has been identified by her in a test identification parade, however, considering the events that have taken place in the intervening period, it would be hazardous to rely upon the statement of the witness, which has come on record after more than six years of the incident, for the purpose of establishing

the charge against the accused.

191.77 The contention that the police had not written down the names of the accused, as stated by the witness, does not inspire confidence, inasmuch as, in the case of other witnesses, the names of these very accused have been written down by the concerned police officers. However, the rest of the testimony of the witness regarding she and her family members having gone to the shuttered hall; having been able to escape from the open ground; the mob having surrounded them near Gopinath and having assaulted and set her mother and sister ablaze, is consistent with her police statement and there is no reason to discard her entire testimony. The testimony of this witness, however, would not support the prosecution case to establish the charge against the named accused.

191.78 On behalf of the appellants, it has been submitted that while the witness claims to have been in the passage when the incident took place, she does not refer to the presence of other witnesses who were in the passage, which renders her presence at the scene of offence doubtful. It has also been contended that the witness has not referred to the incidents of Wasim and Salim being thrown from the tank, which also shows that she was not present at the scene of offence.

191.79 In the opinion of this court, at the time when the incident took place, all the victims/witnesses were in a state of terror and one would hardly expect them to look around and see as to who were the other persons who are present with

them. At such a time, the main thing in the mind of each person would be as to how to escape from the situation. Therefore, not noticing who else was present and not noticing any other incident that had taken place in the passage can hardly be a relevant factor for considering as to whether or not, the witness was present at the scene of offence. Moreover, when there are a large number of persons, the witness would be more concerned with what was happening to his/her family members and, therefore, not noticing what has happened to the other persons, would hardly impeach the credibility of such witness.

191.80 Insofar as the witness claiming to have jumped over the wall is concerned, when a person is faced with a situation like the one in which the witness was, one is able to do things which one would not be able to do under normal circumstances. Therefore, jumping over the wall over which other witnesses and persons have also jumped over, cannot be said to be not believable having regard to the facts and circumstances of the case.

191.81 Except to the extent the witness has improved upon her original version by naming several accused persons whom she has also identified before the court, by and large, the testimony of this witness appears to be credible and hence, to the extent referred to hereinabove, it can be accepted.

192. **PW-212 Rukshana Bundubhai Kureshi**, aged 28 years, has been examined at Exhibit-1507. This witness has deposed that she is residing at *Lane No.1, Jawannagar* since her childhood. At present, she is married and is living with her

husband and child.

192.1 The incident took place on 28.2.2002. At the time of the incident, she, her mother and father, her sister, her brother as well as two younger sisters and three brothers, were all residing together.

192.2 In the context of the incident of burning of a train at Godhra on 27.2.2002, there was a call for bandh on 28.2.2002. Upon hearing this news, they were afraid, therefore, they had stayed awake till late at night. On that day, in the morning at around 8:00 to 8:30, her mother Zarinabanu told them that many mobs have gathered at Natraj Hotel and are pelting stones at the Noorani Masjid; hence, they had gone to the terrace. Upon going to the terrace of their house, she saw that many mobs had gathered towards Natraj Hotel and the Noorani Masjid and a mob was also coming from the direction of Krushnanagar. Her mother told them to come down and go to the S.R.P. Quarters.

192.3 Hence, she, her sisters Shabana and Nasim and her brother Raja, all four of them, went to the S.R.P. Quarters. There were many people of their community near S.R.P. Quarters. They wanted to go inside the S.R.P. Quarters, however, despite their having requested them to let them go inside, the S.R.P. people standing there did not permit them to go inside and told them that there are no orders to take them inside, today they have to die and that, they would see what they look like when they are naked. Therefore, they left the S.R.P. Quarters and went to Barkatkhala's house through Lane No.3, Jawannagar. She does not know what the time was.

192.4 At Barkatkhalā's house where they went, there were other people of their community also. Her mother also came there and told them that they should go from there as there was looting, etc. and that the first lane has been ransacked and houses have been set on fire. Thereafter, they went from Gaurikhala's terrace to Gangotri Society. There is a big hall in Gangotri Society and all of them went and sat inside the hall. There were many other people of their community there. All of them namely, her mother, her sisters Shabana, Naseem and brother Raja were together and there were approximately two hundred and fifty other people of their community.

192.5 When they were all sitting in the big hall, Jaybhavani came there. He told them that they should sit there and that they were hungry for the entire day, hence he would make arrangements for food and drink for them. At that time, her mother told Jaybhavani to take her three daughters and son Raja to his house and let them sit there. However, Jaybhavani refused to do so. Jaybhavani thereafter told them that arrangements have been made for them to go out towards Naroda Teesra Kuva and hence, they should go out from there. Upon hearing this, they all came out. There were many people. When they came out, Jaybhavani gestured to the mob which was coming from the direction of the Noorani Masjid, to come there. This was a mob of Hindus.

192.6 Upon coming out of the hall, she got separated from her brother, sisters and mother and was left alone. The people from their community started going towards Teesra Kuva and their people who had gone ahead, all of them suddenly started

coming back fast and said that there was a big mob of Hindus there, with weapons in their hands. She was frightened and was saying “mummy, mummy” everywhere. She asked the people who were coming back as to what had happened and they told her that a big mob of Hindus with weapons in their hands had come.

192.7 She started running with the people of her community and while running, she suddenly saw that Suresh Langda had inflicted a blow with a gupti (dagger) in her mother’s stomach. In the mob which was assaulting her mother, **Naresh, Haresh, Suresh Langdo, Guddu Chhara** and others were there. **Jaybhavani’s daughter** was giving water to the people in the mob. In the mob, **Jaybhavani, Jaybhavani’s son, Dalpat, Dalpat’s son, Chintu** as well as one light eyed and curly haired person with an iron pipe in his hand were also there.

192.8 There were other people with the people in this mob. They were burning people belonging to their community and were assaulting them and Jaybhavani’s daughter was giving quilts soaked with kerosene to the persons in the mob.

192.9 At this time, it was bright and it was not dark and the time was around 5:30 to 6:00. All the while crying, she went and sat on a terrace of Gangotri Society. There were many other people of their community on the terrace of Gangotri. While she was on the terrace, a woman who was burning came with a child in her arms and the child was also burnt. The woman was crying for help and was saying that many people from their community have been killed by these

persons and burnt.

192.10 Thereafter, two boys came with a pitcher filled with water and asked them whether they wanted to drink water. Out of fear, they did not drink water. They felt that the persons who had come to give them water, might go down and inform as to who was hiding.

192.11 Thereafter, at night, somebody shouted from below that a police vehicle had come to take them. However, because of fear, they did not come out. Thereafter, Samsubhai came on the terrace and told them that a vehicle had come and it would take them safely, and hence, they had got down.

192.12 When they got down from the terrace and were going to the vehicle, they saw many dead and burnt people on the road and their houses were in flames. Thereafter, they were seated in the vehicle. When the vehicle was going near Saijpur Tower, at that time, near Natraj Hotel, a mob was standing and a mob was also standing at Saijpur Tower. The persons in the mob pelted stones on their vehicles, at which point of time, the police fired in the air and lobbed tear gas shells. Thereafter, they were taken to Shah Alam camp in the police vehicle.

192.13 They stayed at the Shah Alam camp for around six months. The police recorded her statement at the camp after two and a half months. After recording her statement at the camp, the police had taken them to their house. Their houses were lying in a burnt condition and the panchnamas of their houses were drawn.

192.14 She had made an application to the SIT and the SIT had recorded her statements on two occasions. In these communal riots, her sister Naseem and her mother Zarina both have died.

192.15 The witness has stated that she can identify the accused named by her. Jaybhavani, Guddu Chhara and Dalpat are presently not alive. The witness has thereafter identified the curly haired person (A-60) Pintu alias Dalpat's son, Suresh Langdo (A-22) in whose hand there was a gupti and who had inflicted blows with gupti and killed her mother, Chintu (A-31), Naresh (A-1), Haresh (A-10), Jaybhavani's daughter (A-61) and Jaybhavani's son (A-40). The witness has, accordingly, identified all the accused correctly.

192.16 CROSS-EXAMINATION: In the cross-examination of the witness, it has come out that her sister Shabana is younger than her. The witness has got married in the year 2008. The witness has denied that in her family, she and Shabana are both educated. She has stated that they have not even studied in Urdu medium and that her sister Shabana knows the Quran-e-Sharif. The witness has stated that nobody teaches Hindi or Gujarati in her house. However, her sister Shabana was learning from her sister-in-law (brother's wife) and she has learnt how to sign.

192.17 In her cross-examination, it has come out that she does not know every person residing in the neighbourhood, but knows several people by their names and several people by their faces and some people she does not know at all. The

witness has admitted that while she was at Barkatkhala's house, till then the people in the mob had not attacked Barkatkhala's house. The witness has denied that she does not know where her mother had gone after they came out of Barkatkhala's house. She, however, has stated that her father was not at all with them. The witness is thereafter cross-examined with regard to the whereabouts of her father on the day of the incident. She is also cross-examined with regard to her statement as well as her sister's statement recorded by the police, etc.

192.18 The witness has stated that she came to know that the SIT has come and that the statements can be given, from the educated people of their area who had read the advertisement. She had dictated the application made to the SIT and that a boy had written down what she had stated. The witness has admitted that she had stated before the police whatever had happened with her. She has admitted that in the application before the SIT, she had only stated that she wants to give her statement in person.

192.19 The witness has admitted that behind their house, there is a pit where the boys play cricket. The witness has denied that Guddu used to come to play cricket in the pit behind their building. The witness has admitted that Suresh and Chintu used to come to play cricket in the pit behind their house. The witness has denied that Naresh, Haresh, Jaybhavani's sons and daughter used to come to play cricket in the pit. The witness has denied that since the accused No.1 Naresh used to play cricket, they used to quarrel everyday. The witness has denied that as the cricket balls used to fall in

their house, she had quarrels with them.

192.20 The witness has denied that she had not seen anything on the day of the incident and that she was not present and she is falsely deposing before the court at the instance of their organisations and that when the incident took place, none of the accused persons identified by her were present.

192.21 The attention of the witness is drawn to the last four lines of paragraph 5 of her examination-in-chief as well as the first line of paragraph 6 of her examination-in-chief, wherein she has stated that “and therefore, they had come out from S.R.P. Quarters and through the third lane of Jawannagar, gone to Barkatkhala’s house. When they reached Barkatkhala’s house, other people from their community were there,” to the effect that she has not stated these facts in her statements dated 3.6.2008 and 14.9.2008 recorded by the SIT.

192.22 The contents of paragraph 8 of her examination-in-chief from the second line to the seventh line are read over to the witness, wherein she has stated that the people from their community started going towards Teesra Kuva. There, the people who had gone ahead suddenly and hastily started coming back and informed that that there is a huge Hindu mob and they had weapons in their hands. Out of fear, she was shouting “mummy, mummy”, to the effect that this witness has not stated such facts in her statements recorded by the SIT.

192.23 In her cross-examination, the witness has admitted

that prior to the incident of 2002, all the people in their chawl used to live together amicably. The people of their community used to call them on occasions and they used to visit them. She has admitted that she has never gone to attend any Hindu celebration. Prior to the incident, they did not have any relations any Hindu whereby they would visit them. During the times of happiness and grief also, Hindus did not come to their house. She only knew those Hindus who used to come to fetch water from her house and did not know anyone else. The witness has stated that prior to the incident, except for Muslims, she did not have any relations with anyone. In her cross-examination, she has stated that Guddu Chhara used to reside in Lane No.2. She did not have any house in that line and used to go towards that side only to purchase vegetables. She has stated that she did not go to Guddu Chhara's house, but used to go to the shop which was situated there. The witness has stated that prior to the incident she did not know anything about Guddu Chhara. She has denied that she is falsely stating that she did not know anything about Guddu Chhara. The witness has stated that she does not know that Guddu Chhara was involved in liquor business. The witness has denied that since Guddu Chhara was engaged in the liquor business and though she was aware of it, she was saying that she did not know it for the reason that she and Guddu used to have quarrels in this regard.

192.24 The witness is cross-examined with regard to the topography of the area. The witness has admitted that if one looks from their terrace towards Noorani Masjid, they can see the road. The witness has stated that prior to the incident, they could see the road. The witness has admitted that Gauri Apa's

house is situated in the last lane of Jawannagar. She has stated that Barkatkhalas house is also in that lane. The witness has admitted that Gangotri Society is adjoining the lane in which Gauri Apa's house is situated. The witness has admitted that the majority of the houses other than Gauri Apa's house have tin sheet roofs. The witness has voluntarily stated that some of the terraces were concrete terraces. The witness has denied that at the time of the incident, one could not see Noorani Masjid from her terrace, nor could one see the Noorani Masjid road or the road going towards Krushnanagar.

192.25 The witness has stated that at the time of the incident, her maternal aunt's son Rais used to reside with them. He had come to visit them at that time and she stated that on the day of the incident when she started going towards S.R.P. Quarters, Rais was not with her. The witness has stated that when she went to Barkatkhalas house and thereafter to Gangotri, till then she had not met Rais. She has not asked her mother or anyone else about the whereabouts of Rais. The witness has stated that on that day, she was not worried about Rais for the reason that on that day, everyone was concerned with protecting his life. The witness is thereafter cross-examined with regard to how long she had stayed at the S.R.P. Quarters and the number of people who were sitting there, etc.

192.26 In her cross-examination, it has further come out that she had gone into the shuttered hall through the shutter, namely that, the shutter was open. She does not know how many shutters were open; she had not seen any doors and windows in the hall; she herself was very frightened; when she went into the hall, there were many people inside the hall;

after the public came inside the hall, the shutter was closed; the shutter was not locked from inside, it was just pulled down. The witness has stated that when she was in the hall at that time, she had not seen any Hindu mob in Gangotri Society.

192.27 In her cross-examination, it has come out that when she came out of the shuttered hall, there were a few people behind her and many people in front of her. The witness has admitted that her family members were with her in the shuttered room. She has stated that upon coming out from the shuttered hall, she got separated from them, but they all came out altogether. The witness has stated that when she came out of the shuttered hall, she was not holding anyone's hand and at that time, there was an atmosphere of fear.

192.28 The witness has admitted that after coming out from the shuttered hall, she had reached up to the road. When she came on the road, she did not see any mob. The witness has stated that on that day as well as even today, she does not know as to which society is situated on the road. The witness has admitted that on the road, she was running behind the people of her community. After coming out of the shuttered hall, she was running. The witness has stated that after coming out of the hall on the road, she does not know how far she ran. She has stated that there were people of her community behind her also.

192.29 The witness has stated that while she was running on the road, she had not seen any member of her family. The witness has admitted that as soon as she came to know that the mob had come, she started going back fast. The witness

has admitted that to protect her life, she was going back with speed. The witness has stated that while turning back, she was looking for a place to hide and has voluntarily stated that while she was coming back in this manner, she had seen the mob of people which was standing there and assaulting her mother. At that time, she was so close to the mob that they could see each other's faces.

192.30 The witness has admitted that when she saw her mother being assaulted, nobody tried to assault her, but she had fled to the lane. The witness has stated that nobody had followed in the lane to assault her. She does not know which lane she had entered. She has stated that in the lane which she entered, people from her community were running. The witness has admitted that while the people of her community were running helter skelter in the lane, no one from the mob had assaulted them.

192.31 The witness has stated that when her mother was assaulted at that time, the mob was also assaulting other people from their community. The witness has admitted that she does not know the names of those who were killed and those who were injured. The witness has stated that she had seen them assaulting people of their community from the lane. The witness has stated that upon seeing her mother being assaulted, she was frightened and went away. The witness has denied that she had fled back on the road of the shuttered hall. The witness has stated that while they were returning, she had not reached the lane from which they had come out. The witness has admitted that from the lane in which she entered, she had directly reached Gangotri Society. In her cross-

examination, it has come out that, to reach Gangotri Society, she was not required to jump over any wall and could straightaway reach the hall in Gangotri Society. She has stated that she does not know as to in which terrace of Gangotri Society she had reached at night. She cannot say as to on which side of the shuttered hall, this terrace was.

192.32 In her cross-examination, it has come out that at that time when she went back to Gangotri for the last time, the people from her community were running in front of her and upon seeing them, she too, had gone on the terrace. The witness has denied that in fact, she does not know as to what incident has taken place with her mother and sister.

192.33 The witness has admitted that she had willingly given her statement dated 11.5.2002. Certain parts of her statement dated 11.5.2002 are put to the witness, wherein she has stated that at that time, at around 10 o'clock, the people in their chawls started shouting "run, run, the Hindu mobs have come inside the chawls" due to which, all the members of their family together left their house and fled from there and went from near the S.R.P. camp to Gangotri Society and they were not permitted to enter Gangotri Society due to which, they were terrified. There is a big room in Gangotri Society which has shutters and they had entered that room and they were sitting there. At that time, the other people from their chawl also came running there and sat with them and those who came there had told them that both their houses were set on fire by the Hindu mobs due to which, her mother started crying and till 4 o'clock, they stayed in Gangotri Society. At around 4 o'clock, the Hindu people from Gangotri Society and

Gopinath Society had told them that they should quietly go away from there towards Naroda Gam and they would be safe. Therefore, her parents and her brother, sisters as well as her maternal aunt's son Rais, aged 23 years and other Muslims were fleeing towards Naroda Gam and while running, when they reached near Gopinath Society, a huge Hindu mob was present there, due to which, when they reached near the wall of Gopinath Society, the mob had come near them and the people in the mob had surrounded her mother Zarina, aged 50 years and sister Naseem, aged 17 years, due to which they all were frightened and turned back and went and sat on a terrace of Gangotri Society and the mob had sprinkled kerosene on her mother Zarina and sister Naseem and ignited a fire and set them ablaze, which they had seen from the terrace. However, there were many people in the mob and hence, they do not know anyone and her mother and sister died on the spot and they had not gone to see them and they had stayed on the terrace of Gangotri Society and at around 10 to 11 o'clock at night, the police came with vehicles and took them to Shah Alam camp. She and her father, her sister Shabana and her three brothers and maternal aunt's son Rais had gone to Shah Alam camp. She does not know as to when the police had carried out the rituals upon the death of her mother and sister and that her maternal aunt's son Rais was also injured in the stone pelting by the mob and at present, he has gone to Aligarh. It may be noted that this part of the police statement of the witness is simply brought on record without seeking to contradict any part of her evidence.

192.34 The witness has denied that the accused whom she has named in her examination-in-chief and has attributed

roles, have not been named by her in her statement dated 11.5.2002.

192.35 From her cross-examination, it has come out that her statement dated 14.9.2008 was recorded to clarify as to why the facts stated by her before the SIT were not stated earlier and she had informed the SIT that whatever she had stated before them had all been stated by her before the police. The witness has denied that her statement dated 11.5.2002 was read over to her when her statement dated 3.6.2008 came to be recorded. The witness has voluntarily stated that her statement dated 11.5.2002 was read over to her when her statement dated 14.9.2008 was recorded. It appears that in the statement dated 3.6.2008, there is no reference to the statement dated 11.5.2002 being read over to the witness.

192.36 In the cross-examination of this witness, it has come out that after 11.5.2002, there was a discussion in their area that the police has not recorded what was stated by them. The witness has stated that she does not remember exactly as to after how much time after they returned from the camp and went to reside in their area, that such discussions started in their area. The witness has stated that prior to her marriage, she was residing at her paternal home and during that period also, there were discussions amongst the people that the police had not recorded their statements as stated by them. The witness has admitted that she has not lodged any complaint regarding the police not recording her statement as stated by her.

192.37 The witness has stated that prior to her statement before the SIT, no social worker or leader had come to meet her. The witness has denied that prior to going for recording her statement by the SIT, the leaders and workers of their community had prepared her as regards what she should state in her statement and had tutored her. The witness has denied that whatever she was told and tutored by those who had come with her, was stated by her before the SIT. She has denied that she has stated all the correct facts in her statement dated 11.5.2002; however, subsequently upon the leaders of her community tutoring her, she had given a changed version before the SIT and that since the statement recorded in the year 2002 was correct, she had not made any application till 2008.

192.38 The witness has denied that none of the incidents and facts stated by her in her examination-in-chief have taken place in her presence. The witness has denied that she is falsely deposing before the court and due to personal vengeance, though the accused were not present, she is falsely implicating them.

192.39 The witness has deposed that on the day of the incident she had gone from her house towards S.R.P. Quarters through Jawannagar Lane No.1. The witness has admitted that when she entered Barkatkhala's house in her lane, till then there were no disturbances. At that time, when she was going to S.R.P. Quarters, she had not seen any rioting in Lane No.3. The witness has admitted that from Gauri Apa's Terrace, they had climbed down to Gangotri Society.

192.40 The witness has stated that after she left the hall at Gangotri Society, she had fled towards Teesra Kuva. The witness has admitted that as soon as they came out of the hall, Shabana got separated from them. The witness has admitted that she does not know as to by which road Shabana had gone after she came out of the hall. The witness has admitted that she had to turn around to see the attack on her mother. She has denied that there were mobs of Muslims behind her and her mother was in that mob. She has denied that the mobs which had attacked had come from all four sides. The witness has stated that the mobs had come from the direction of Noorani Masjid and Teesra Kuva. She has admitted that there were a large number of people in the mobs, but as out of fear they were running, she is not certain about it.

192.41 The witness has stated that she has seen her mother being attacked with a gupti. She has stated that she had not waited to see whether she had fallen down there. She had entered inside the lane. She has stated that she cannot say exactly where her mother was attacked, but it was on the Gopinath – Gangotri road. The witness has stated that she has not noted any physical features of the persons whom she had seen. The witness has admitted that during the course of investigation, no test identification parade of the accused persons whom she had identified was carried out.

192.42 The witness has denied that the accused persons whom she had identified had not assaulted her mother with a gupti and burnt her anywhere on the S.T. Workshop and Teesra Kuva road. She has denied that her mother was killed in Lane No.3, Jawannagar. The witness has denied that

Barkatkhala and Gauri Apa's lane is called Lane No.3 and Barkatkhala's house is situated in Lane No.3, which is next to the S.R.P. Group - 2 and her mother had died there. The witness has admitted that she had not seen her mother's incident at Lane No.3, Jawannagar and has voluntarily stated that because her mother did not die there.

192.43 The witness has admitted that at the camp, she had lodged a complaint in connection with her mother's death. The witness has admitted that in the complaint, she had stated everything. The witness has admitted that the police was in uniform. The witness has stated that she does not know as to whether the police were writing down everything stated by her and has voluntarily stated that they had not written down everything that she had stated. In her cross-examination, it has further come out that after the incident she had gone from the camp to her house to see the damage. The police had taken her there. The police had drawn a panchnama of the damage caused to her house. The police had put questions to her with regard to the damage. The witness has admitted that while drawing the loss and damage panchnama, she had not given the names of the accused persons whom she had named in the examination-in-chief, for the reason that they were asking her about the damage, and hence, there was no necessity to give the names of these persons.

192.44 The witness has denied that her younger brother Raja had seen the incident of her mother and that she and her other family members had not seen it.

192.45 The witness has admitted that she had made an

application to the SIT for recording her statement. The witness has identified her thumb impression in the application Mark 644/44 and the application is given Exhibit.1515. The witness is thereafter cross-examined with regard to where and how the application was made. The witness has denied that at the instance of the SIT and the people of her Jamaat, she had falsely given the names of the accused in her deposition.

192.46 The witness has admitted that Lalabhai is her brother-in-law. The witness has stated that she does not know that there is a dispute between Lalabhai and Suresh Langda and that there was a fight and Suresh Langda had beaten her brother-in-law, due to which, at the instance of Lalabhai, she was wrongly giving the name of Suresh Langda. The witness has denied that her mother used to tie a rakhi to Bhavani and Dalpat and that as stated by her in paragraph 7 of her examination-in-chief, since Jaybhavani had refused to let her and her mother sit in his house, keeping a grudge against him, she has falsely given the names of Jaybhavani's son and daughter.

192.47 The court has posed a question to the witness, wherein she has admitted that she does not understand the distinction between a complaint and a statement and considers everything written down by the police as a complaint. In her further cross-examination, the witness has stated that she has not put her thumb impression below anything written by the police at the camp.

192.48 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-

examined the concerned assignee officer/Investigating Officer who had recorded such statement.

192.49 PW 278 Shri R.B. Joshi, the assignee officer has admitted that he has recorded the statement of this witness on 11.5.2002 and that he had read over the contents of the statement of the witness. The assignee officer has admitted that this witness has stated before him that on 28.2.2002, there was a call for Gujarat Bandh and they were at home. At that time, they were having tea and snacks. At that time, it must have been around 10 o'clock in the morning when the people of their chawl started shouting "run, run" the Hindu mobs have come to the chawls"; hence, all the people in their house together left the house and fled from there and from the side of S.R.P. Quarters went to Gangotri Society but were not permitted to enter Gangotri Society. Hence, they all entered a huge shuttered room in Gangotri Society and were sitting there. At that time other people from the chawl also came running to the room where they were sitting and started telling them that both their houses have been set on fire by the Hindu mob and have been burnt, due to which, her mother started profusely crying and till 4 o'clock they had remained in Gangotri Society. At around 4 o'clock, the Hindu people of Gangotri Society and Gopinath Society had told them to slowly escape from there and go towards Naroda Gam then they would be safe, due to which, they as well as their mother and father and brothers and sisters as well as her maternal aunt's son, Raees aged 23 and other Muslims were running and going towards Naroda Gam and while running, when they reached near Gopinath Society, a huge Hindu mob was present there, due to which, when they reached near the compound wall of

Gopinath Society the people in the mob had come near them and the people in the mob surrounded her mother Zarina aged 50 and her sister Naseem, due to which, out of fear, they turned back and went and sat on the terrace of Gangotri Society and the people in the mob sprinkled kerosene/ petrol on her mother Zarina and sister Naseem and ignited a fire and burnt them, which they had seen from the terrace. However, since there were a large number of people in the mob they could not recognise any one and her mother and her sister Naseem died on the spot and they had not gone to see them and had remained on the terrace of Gangotri Society till around 10 to 11 o'clock at night, after which, the policemen came with vehicles and took them to Shah Alam camp. She, as well as her father, her sister Shabana and her three brothers and maternal aunt's son Raees had gone to the Shah Alam camp and as to when the police had carried out rituals pursuant to the death of her mother and sister, she does not know and that her maternal aunt's son was also injured in the stone pelting by the mob, who at present has gone to Aligarh. The assignee officer has admitted that the witness in the statement recorded by him has not named Pintu, Suresh, Chintu, Naresh, Hariyo, Bhawani's daughter and Bhawani's son by name and has also not attributed any role to them.

192.50 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statements of this witness on 3.6.2008 and 14.9.2008.

192.51 The contents of paragraphs 5 and 8 of the examination-in-chief of the witness, as reproduced in

paragraph 662 of the deposition of the Investigating Officer are read over to the Investigating Officer, who has admitted that these facts have not been stated by the witness in the statement recorded by him. The Investigating Officer has admitted that this witness in her statement dated 14.9.2008 had stated before him that upon being asked personally, she is giving further statement and that earlier she had given her statement dated 11.5.2002 which is as dictated by her and is correct and proper.

192.52 The contents of paragraph 104 of the deposition of the witness are read over to the Investigating Officer who has admitted that these facts have been stated by the witness in the statement recorded by him. It may be noted that paragraph 104 of the deposition are not any facts stated by the witness, but the contents of the statement dated 3.6.2008 of this witness, as recorded by the SIT are put to the witness, which she has denied.

192.53 It may be noted that a statement under section 161 of the Code can only be used to contradict a witness qua something stated by the witness in his/her examination-in-chief. Thus, what is stated by a witness in his/her statement before the police, cannot be brought on record, except for the purpose of contradicting a witness and it is only when the statement is put to contradict a witness, that such statement can be proved through the testimony of the Investigating Officer. In the present case, the witness has been confronted with her statement recorded by the SIT not for the purpose of contradicting her but merely to bring on record some facts, which is not permissible in law and this part of her testimony

is, therefore, not admissible in evidence.

192.54 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the contents of paragraph 72 of the cross-examination of the witness, wherein she has denied that she has not given the names or attributed any role to the accused named by her in her examination-in-chief, in her statement dated 11.5.2002, to submit that a contradiction as regards the names of the accused and the role attributed by the witness has been brought on record.

192.55 Reference was made to paragraph 137 of the evidence of PW-278 to submit that the assignee officer has admitted that the witness has not named any accused in the statement recorded by him. It was submitted that the witness has given a narration of four different incidents involving different accused. In paragraph 7 of her examination-in-chief, she has implicated Jaybhavani and in paragraph 9 of her examination-in-chief, she has made specific allegations about the injuries caused to her mother against four accused, viz., Suresh, Naresh, Hareh, Guddu, Jaybhavani's daughter, Jaybhavani, Jaybhavani's son, Chintu and one light eyed boy. It was submitted that the allegations basically are against first four accused, then there are no specific allegations against the others as to when Jaybhavani's daughter was serving water. It was submitted that except Jaybhavani, Guddu and Dalpat, no names of other accused have been given by the witness to the police in her first available statement dated 11.5.2002. All the names have come for the first time before the SIT. It was submitted that the witness has given the narration of four different incidents involving different accused. In the first

incident, she refers to Jaybhavani. In paragraph 9, in the second part, a specific allegation is made with regard to assault made on her mother by way of a gupti blow by Suresh, Naresh, Haresh and Guddu. It was submitted that on a conjoint reading of these allegations, it is clear that her mother's assailants are Suresh, Naresh and Haresh. It was submitted that Jaybhavani's daughter was serving water. In paragraph 10, once again general allegations are made with specific reference to Jaybhavani's daughter that she was dispensing kerosene to the members of the mob. It was submitted that if all these four incidents are taken together, except Jaybhavani, Guddu and Dalpat, names of no other accused are given by the witness to the police in her statement dated 11.5.2002. It was submitted that the names of all other accused have been given by the witness for the first time before the SIT. It was submitted that six names have been given before the SIT for the first time, either by relationship or by their first name, but no attempt is made to establish their identity by holding a test identification parade to rule out the possibility of wrong or incorrect implication of an accused. It was submitted that Pintu's name is not there in the police statement and comes up for the first time before the SIT. It was submitted that before the court, she has identified a curly haired person as being accused No.60 Pintu alias Dalpat's son. Therefore, insofar as Dalpat's son Pintu is concerned, there is a clear misidentification. As far as the SIT statement is concerned, it is not alleged and even before the court that the police had not correctly recorded the statement to miss out the name which she wanted to give.

192.56 The learned counsel further invited the attention of

the court to certain discrepancies between the testimony of PW-209 Shabana who is the sister of this witness and the testimony of this witness, to submit that Shabana in her testimony has referred to the presence of Bhavani and Manu, whereas this witness refers only to the presence of Bhavani. Thus, there is an inconsistency between two statements. It was submitted that according to Shabana, there was no mob on the road on the side of Noorani Masjid. It was submitted that this witness in paragraph 61 of her cross-examination, has stated that she has not seen a mob on the road when she came out and has thereby contradicted herself. It was submitted that according to this witness, while she was fleeing, she looked back and saw her mother's incident. The learned counsel submitted that the witness would not look back, but would be looking over her safety. It was submitted that it is natural human conduct that when a person is running, he will not look back to see how many persons were there.

192.57 It was submitted that this witness in her examination-in-chief, has referred to a woman with a small child in her hand, both of whom were burnt, to submit that this refers to Raziabanu (PW-251), however, the words put in the mouth of Raziabanu have not been stated by the said witness. It was submitted that when the witness reached Gangotri, it was dark and therefore, she could not have seen anything. It was submitted that except Suresh, no weapons are shown in the hands of any accused and that it is highly doubtful as to whether she had seen any accused there burning them and hence, everything becomes highly doubtful.

192.58 It was submitted that Mahammadmaharroof

Abdulrauf Pathan (PW-191) has stated that Guddu has covered his face with a cloth, whereas some of the witnesses have stated that there were people wearing khakhi shorts and undershirts. It was submitted that no test identification parade has been carried out for the rest of the accused. There are vital and important contradictions in the deposition of this witness and between her deposition and the statement before the police. In her first police statement dated 11.5.2002, she had not given the names of the accused, but thereafter has given the names before the SIT and before the court. Therefore, from her deposition before the court, it clearly transpires that she has not seen the incident of her sister and her mother and has also not seen the named accused. There are also vital and important inconsistencies in her deposition before the court and her sister Shabana Bundubhai Kureshi (PW-209)'s deposition as well as PW-91 and others. It was submitted that this witness is, therefore, not a credible witness and no part of her statement can be relied upon to establish the charge against the accused.

192.59 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is the sister of PW-209 Shabana and corroborates what Shabana has also deposed and has identified the accused. It was submitted that so far as the omission in respect of paragraphs 5 and 6 of her examination-in-chief in her statements dated 3.6.2008 and 19.9.2008 are concerned, the same are not material omissions for two reasons. Firstly, that her entire statement was not read over to her, and secondly, the fact that they went to Barkat Khala's house and her mother came, is corroborated by her sister Shabana. It was submitted that a suggestion is made in

paragraph 35 of her cross-examination that Suresh, Chintu, Naresh, Haresh, son of Jaybhavani and daughter of Jaybhavani had come to play in the khada and there was some scuffle and, therefore, she is wrongly implicating the accused. It was submitted that such a suggestion is of a trivial nature and cannot be said to be a reason for wrongly naming those persons before the court. It was submitted that insofar as the damage to the property is concerned, the same is not relevant as regards the incident in question and omission of the same is not relevant for the purpose of considering the complicity of the accused.

192.60 It was submitted that as regards other omissions with respect to her statement dated 11.5.2002, the same are not in respect of the incident in question. It was submitted that the witness has already stated before the SIT and before the court and, therefore, the veracity and genuineness of her version about identification is not impeachable and, therefore, involvement of the accused named and identified is proved beyond reasonable doubt.

192.61 ANALYSIS: This witness has been cross-examined at length. Her cross-examination runs into 113 paragraphs. In the entire cross-examination, the only omission and contradiction qua her police statement dated 11.5.2002 is with regard to her not having named any accused in such statement. Insofar as the remaining part of her testimony is concerned, a perusal of the cross-examination of the witness clearly shows that the witness has not been contradicted with any fact stated by her in her examination-in-chief as to her statement dated 11.5.2002 recorded by the police. Except for a general

statement that she has not stated the names and the roles attributed to the accused in her statement dated 15.2.2002, no part of the examination-in-chief of the witness is read over to her for the purpose of contradicting her. Therefore, all that is stated by the witness in her examination-in-chief goes unchallenged. In the cross-examination of the witness, all that has been done is that she is confronted with her police statement without seeking to contradict any part of her testimony and the Investigating Officer is also examined only for the purpose of bringing on record the contents of her police statement. It is settled legal position that the statement recorded under section 161 of the Code can only be used to contradict a witness and not for any other purpose. Therefore, simpliciter no reference could have been made to the witness. Therefore, the entire testimony of the witness goes unchallenged except to the extent that before the police she has not named any accused.

192.62 From the cross-examination of the witness and the testimony of PW-278 the assignee officer who had recorded her statement dated 11.5.2002, it has been established that the witness had not named any accused in the statement recorded by him. Therefore, for the first time, the names of the accused have been disclosed by this witness in her statement recorded by the SIT in the year 2008. The submission of the witness that though at the relevant time she had named the accused, the concerned police officer had not recorded such names, does not merit acceptance, for the reason that the accused named by this witness have also been named by the other witnesses, wherein the concerned Investigating Officer has recorded their names. Therefore, there would be no reason

for the Investigating Officer to not record the names of such accused in her statement. Therefore, it would be very hazardous to rely upon the testimony of this witness to the extent she has named the accused who have allegedly committed the offence when such names have come on record more than six years after the incident.

192.63 Besides, the witness claims to have seen the incident when she looked back while she was running to escape from the clutches of the mob. It is difficult to believe that while fleeing from the scene of offence, the witness could have turned back and seen the incident so clearly as to be able to clearly see how her mother and sister were assaulted and killed. Therefore, to the extent the witness says that she had seen Suresh Langda inflicting a blow with a dagger on her mother's stomach and the role attributed to the accused is concerned, the same appears to be in the nature of improvement and to that extent, the testimony of this witness does not appear to be believable. However, insofar as the manner in which the incident had taken place and the other factors stated by the witness are concerned, neither have the same been challenged in her cross-examination nor do such facts appear to be not credible. Therefore, as regards the version given by the witness regarding the sequence of events in which the incident had occurred, she comes across as a credible and trustworthy witness and there is no reason to discard her entire testimony. To the extent referred to hereinabove, the testimony of the witness deserves to be accepted. However, her testimony would not in any manner assist the prosecution in establishing the charge against the named accused.

193. **PW-213 Hasibkhan Achchhankhan Pathan**, aged 42 years, has been examined at Exhibit-1522. This witness has deposed that his native place is District Farukabad, Uttar Pradesh. He is residing at *Kashiram Mama-ni-Chali* since his birth. At present, he is running a meat shop. In the year 2002, he had a provision store by the name of Farheen Kirana Stores in Hussainnagar.

193.1 In the year 2002, he, his wife Yasminbanu, his three daughters and his son were residing together.

193.2 The incident took place on 28.2.2002. On 27.2.2002, from the news in the T.V., they came to know that the incident of burning a train at Godhra had taken place. On 27.2.2002, the Hindu mob set the Muslim cabins and stalls on fire in Krushnanagar area. Thereafter, on 28.2.2002, the Vishwa Hindu Parishad gave a call for bandh.

193.3 No communal riots had taken place in their area prior to the year 2002 and hence, his family did not have any cause to fear insofar as their area is concerned. Hence, they went to sleep on time at night.

193.4 On 28.2.2002, in the morning at around 7:30 to 8:00, he was at home. At this time, the police came to his house. Shri Mysorewala and Shri Gohel, both of whom were Police Inspectors as well as other police staff had come to his house along with other police staff. They had taken him together with them as they wanted to see as to where the masjid was situated in their area. He had gone with the police.

They moved aside the curtains in the houses and searched inside the houses as well as behind the tank. They had also inspected the masjid. When they came from Juni (Old) Masjid to Noorani Masjid, at that time, tea and snack carts near the Noorani Masjid were open, however, the same were shut down pursuant to instructions issued by Shri Mysorewala to his staff. Thereafter, at around 9:00 to 9:15, the police went towards the Natraj Hotel.

193.5 A few minutes thereafter, the mobs started coming from the direction of the Natraj Hotel towards the Noorani Masjid. Moreover, the mobs also started coming from the direction of Krushnanagar to the Noorani Masjid. The policemen were in front of the mob. More or less all of those policemen, who were with him in the morning, were in front of the mobs. The mobs were vandalizing the stalls and carts near the Noorani Masjid. The mobs which came from the direction of Krushnanagar were burning the chawls and the houses on the road. Due to this, some persons of the Muslim community gathered at the corner of the chawls.

193.6 He had seen the police as well as several accused in the mob. In the mob, he had seen **Bipin Panchal (A-44), Mukesh alias Guddu Chhara, Babubhai Vanzara (A-33), Suresh Langdo (A-22) and Navin Chhagan Chharo (A-51)**. The witness has deposed that the persons named by him were all leading the mob and had weapons in their hands. Amongst them, Bipin Panchal had a sword and a revolver in his hands, Guddu had a dharia in his hand, Babu Vanzara had a sword in his hand, Suresh Langdo had a pipe in his hand and Navin Chhara had a gas cylinder with him.

193.7 Bipin Panchal was screaming and shouting and was calling the people in the mob. They were standing on the road and were beckoning people in the mob towards the Noorani Masjid. The rest of the accused were also vandalizing whatever came in their hands and were breaking carts, cabins, etc. Navin Chhara was bringing gas cylinders, taking out the pin, wrapping a cloth and lighting the gas cylinder and was putting them in the Noorani Masjid and the houses of Muslims.

193.8 At this time, in order to draw the attention of the police, the Muslims started shouting, "*Save the masjid.*" Whereupon, the police started firing at the Muslim mob and lobbed tear gas shells. At this time, Abid, Piru, Khalid, etc. were injured by bullets. At this time, he went on the terrace of Atikkhan which comes after leaving five to six shops from the Noorani Masjid and was watching everything from there.

193.9 Thereafter, the Hindu mobs started going towards the area of *Chetandas-ni-Chali*, *Badarsing-ni-Chali*, *Taherabibi Chali*, *Hussainnagar* and *Jawannagar*. At these places, they were burning the houses and pelting stones and in all this, the police were with them. Thereafter, he went towards the chawl which is known as *Juni Masjid-ni-Chali* and which is also known as *Jikarhasan-ni-Chali*, to his in-law's house.

193.10 When he went there, he learnt from his wife that his three children, namely, his two daughters and son were missing. Upon inquiring, he found that on the day of the incident in the morning, his pan-cabin was to be inaugurated and hence, his three children had gone there. At first he had

searched for his children, but in the meanwhile, he remembered that his children may have gone to the pan-cabin which was to be inaugurated.

193.11 The people in the mob who had come from Natraj Hotel as well as Krushnanagar were armed with weapons and many persons had tied saffron bands on their heads, they were wearing white undershirts and khakhi shorts, they had trishuls, dharias, pipes, sticks, cans of kerosene and gas cylinders, etc. in their hands.

193.12 He met Mahammadhussainbhai at his in-law's house. He (the witness) had told him that he was worried about his children because they had gone to the pan-cabin which was to be inaugurated and what would have happened to them. Thereafter, he along with his friend Mahammadhussain had gone to look for his children towards his pan-cabin and on reaching there and he saw that the pan-cabin which was to be inaugurated was burnt and there were charred corpses lying on the road. Upon seeing all this, he was very frightened. Thereafter, he and Mahammadhussain went into the lanes of Jawannagar, where people from their community of all ages were sitting and hiding out of fear and anxiety.

193.13 He inquired from those people of the Muslim community who were standing there about his children and he came to know that their young family members were nowhere to be found and that they themselves were worrying about them. In every family, someone or the other was missing.

193.14 Thereafter, he went towards the S.R.P. compound wall, where the S.R.P. Jawans were standing. One side of the S.R.P. compound wall adjoins Jawannagar. He went there, where several Muslims were standing. The S.R.P. people were standing there with guns. At this time, voices of mobs shouting "kill, cut" started coming from Jawannagar. The mobs were shouting from the Jawannagar pit. At this time, the Muslims beseeched the S.R.P. people to let them go inside the S.R.P. Quarters. At that time, the S.R.P. personnel started beating the Muslims. Where the Muslims were standing, the S.R.P. compound wall was broken from where, there were exit road for going into the S.R.P. Quarters. At this time, a person with S.R.P. name plate had beaten him and on the name plate, it was written in Gujarati "K. P. Parikh".

193.15 At this time, the mob which had come to the Jawannagar pit came in the Jawannagar chawls as well as the Muslim areas. At this time, the S.R.P. jawans started beating the Muslims. In all this, there was a stampede amongst the Muslims wherein some climbed on the stairs, some on terraces and some went and hid in the lanes and passages. The Muslims who fell into the hands of the Hindu mobs were killed and burnt. On the day of the incident, many Muslims were killed.

193.16 When all this happened, it must have been around 4:00 to 5:00 in the afternoon. He also ran and climbed a staircase and hid on a terrace. At this time, in the pushing and pulling that went on in the terrace, a boy of their locality named Ayub, fell down and injured his leg and he could not walk. Upon his falling down, somebody had made him sit in a

rickshaw.

193.17 Bipin Panchal, Guddu and Bhavanisingh who is known as Ratilal alias Bhavani, came near his rickshaw and killed Ayub who was sitting in the rickshaw and set the rickshaw on fire. He could see all this from the terrace where he was and he had witnessed all this with his own eyes.

193.18 He could see all this from behind the plastic tank and cement pillars beneath the parapet of the wall. After this incident, he got down from the terrace into Gangotri Society. At this time, there was a fire on all four sides of Hussainnagar and at that time, the mobs were not there. They i.e. he and other Muslims returned to Hussainnagar.

193.19 When they reached Hussainnagar, the people standing on the terrace of the Pinjara's house, which was situated on the opposite side, gestured to them and called them up. Hence, they went to the terrace of the Pinjara's house, where there were around sixty people on the terrace, all of whom were Muslim men and women. From the terrace, they saw the people in the mob were burning all the houses in Jawannagar.

193.20 Thereafter, upon it becoming slightly dark, from the direction of Naroda Patiya, he could hear the sounds of tapes being played. The voices were of Sindhis and Chharas who were singing and dancing and they continued to sit on the terrace. Thereafter, late at night, the police came. The police called out and said that they had come to take the Muslims to the Shah Alam camp. Upon believing that they could trust

them, they came down and were taken to the Shah Alam camp. At this time, on the way at Saijpur, Amdupura, Naroda Patiya, Maninagar etc., stones were being pelted at the police vehicles which were taking them. In this manner, he went to the Shah Alam camp.

193.21 He had inquired about his daughter Rukhsar, son Rameezkhan and daughter Nazmeen, because, he had not found them on the day of the incident. While he was at the camp, seven days after the incident, somebody told him that all his three children were at somebody's house at the S.R.P. Quarters. Thereafter, the police brought his three children from the S.R.P. Quarters to Shah Alam camp. In this manner, he had met his three children seven days after the incident and till then, he had no news about them.

193.22 He had stayed at the camp for approximately four months. Thereafter, he had gone to Juhapura to stay at his sister's house, where also they stayed for three months.

193.23 In the incident, his scooter, house, two shops, all his household articles, ornaments and everything else was destroyed and in this manner, he had suffered loss.

193.24 From the Shah Alam camp, he had gone with the police for drawing a panchnama of his shop. The panchnama of the shop was drawn and he had narrated to the police the names of the accused as well as their acts and the police had told him that their job was only limited to drawing the panchnama and that they had only asked his name and address, etc. and did not write down the other details stated

by him.

193.25 From Juhapura, he returned to his home in *Kashiram-ni-Chali*.

193.26 He came to know upon reading in the newspapers, that a SIT team had come. He had learnt that they were going to investigate into the incident of communal riots, and hence, he had made an application to the SIT. He received summons from the SIT and hence, he had gone to Gandhinagar. His statement was recorded by the SIT at Gandhinagar. Thereafter, the SIT had come to Naroda Patiya where his second statement was recorded. He had narrated all the facts regarding the incident to the SIT.

193.27 The witness has deposed that he has learnt that Bhavani and Guddu are dead and that he can identify all the accused named by him. The witness has thereafter, identified Suresh Langdo (A-22), Navin Chharo (A-51), Bipin Panchal (A-44) and Babu Vanzara (A-33) correctly.

193.28 CROSS-EXAMINATION: This witness is cross-examined with regard to the topography of the area. In his cross-examination, it has come out that Atikkhan's house is situated in the line of Noorani Masjid, where there are shops on the front side and a house on the rear side. In his cross-examination, it has come out that there were five to six other people all of whom were men, when he went on the terrace of Atikkhan's house. The witness has denied that the house was under construction. He has stated that the house, as on today also, is in the same incomplete condition. The witness has

admitted that the terrace of the house is on pillars. On the ground floor of the house, there is a shop and residence, whereas the first floor is on pillars and on the terrace, a parapet and staircase have also been constructed. There is no wall on the terrace except for the parapet. The witness has stated that he was on Atikkhan's terrace for two to two and a half hours. While he was on the ground, he had not seen any Muslim woman cross the road from the S.T. Workshop and come and talk to the police who were standing there. The witness has voluntarily stated that he had seen a woman in police uniform whose name is Aminaben. The witness has admitted that when he went to his in-law's house in Jikarhussain-ni- Chali, he had met his wife. In his cross-examination, it has come out that his pan-galla which was to be inaugurated, was in the last lane of Hussainnagar. He has stated that on the day of the incident, he had gone to his cabin on the road adjoining the S.T. Workshop compound wall and that they were stealthily and worriedly going. The witness has admitted that he and Mahammadbhai were not prevented from going there by anyone and has voluntarily stated that by the time he went there, everything was burnt in the chawl and the mobs had gone ahead and many people were lying dead there. The witness has denied that all these corpses were lying on the S.T. Workshop compound wall road. The witness has stated that some of the dead bodies were on the road and some were in the lanes of Hussainnagar. He has stated that he had reached his cabin in the afternoon, but does not know the exact time.

193.29 In his cross-examination, it has come out that from Jawannagar-ni-Chali; he had reached near the S.R.P. compound

wall, both of which are adjoining each other. He had gone from the Jawannagar lane which directly goes near the S.R.P. Quarters, that is, from Jawannagar Lane No.1. He had met Muslims in the lane on that day. The witness has admitted that there were Muslims in Jawannagar. He has clarified that there were a few Muslims who were hiding and that a majority of the people had left their houses and gone away somewhere. He has stated that when he went from Jawannagar Lane No.1 towards the S.R.P. Quarters, he had seen houses, cots etc. burning. The witness has stated that he cannot even approximately state the time when he reached the compound wall of the S.R.P. Quarters, however, it was day time. At that time, there were around three hundred to four hundred people there. The witness has denied that he had stood near the S.R.P. Quarters wall for about an hour. The witness has denied that in the stampede when he went to climb the staircase, it had become dark. The witness has stated that he cannot say how long he was sitting on the terrace with the plastic tank. The witness has denied that on that day, he had only gone on the terrace with the plastic tank. He has stated that he had not gone on any other terrace of Gangotri Society, but he had gone on terrace in Hussainnagar on Pinjara's house. The witness has admitted that on that day, there were no mobs at the time when they had come to Hussainnagar.

193.30 In his cross-examination, it has further come out that he had occasion to go to the last lane of Hussainnagar for the inauguration of his pan-galla at around 11 o'clock. A Maulvi was going to come for the inauguration ceremony. His children, namely, his son Rameezkhan, his daughters Rukshar and Nazmeen had all gone to his pan-cabin for inauguration.

He does not remember that with whom his children had gone for the inauguration. The witness does not know whether on that day there was inauguration of any other shop or pan-galla or pan parlour in Hussainnagar. He has stated that there was no reason for him not to go to the pan-galla in the morning, but he was going to go there only when it was time. The witness has admitted that he had felt that the SIT had recorded more facts than stated by him. The witness is shown the application Mark 644/37 and he has identified his signature at the end of the application. The witness is given the application and the contents of the application are read over to the witness who is admitted that the facts stated therein are correct and it is exhibited at Exhibit-1529. The witness is cross-examined with regard to the application as to who had written it down for him, when and where etc. The panchnama of the Kirana shop of this witness is produced along with a purshis Exhibit-1530 and the panchnama is given Exhibit-1531. The witness has stated that he cannot say whether all the facts stated therein are correct as the long time has elapsed. The witness is cross-examined with regard to the contents of his application and he has clarified that only purpose for making the application was that the SIT should record the statement and there was no necessity for writing anything else. In the cross-examination of the witness, it has come out that he had told the police who were coming to the camp as well as the Crime Branch people and the Naroda Police Station people to record his complaint and has voluntarily stated that the police used to tell him to go away or else they would put him behind the bars. The witness has stated that at every place he had gone to state what he had stated in his examination-in-chief with regard to the communal riots. He has stated that he had

made all attempts to see that the police write down the facts regarding the incident. He has admitted that his statement was recorded at Naroda by the SIT on 14.9.2008. The witness has admitted that his statement was read over to him by the SIT and that the SIT had taken his signature. He has stated that they had written wrong facts in the statement and that they should remove them. He has stated that in the statement the SIT had recorded that he was involved in chain snatching, offences of loot and gambling case as well as murder case. He does not remember as to whether except for this, anything else is also incorrectly recorded in the statement. The witness has stated that he does not know that in this incident, a person named Ranjit was killed. He has stated that he does not know as to whether the police had arrested him in Ranjit's murder case, but has stated that the police had arrested him. The witness has stated that he knows Ismail Chhotubhai Kathiyar. The witness has admitted that he was his co-accused in that case. He has stated that he does not know case number and has admitted that a session's case was tried against him and has voluntarily stated that he was acquitted in the offence. The witness has admitted that in the case against him, he was charged with the offence of killing Ranjit. The witness has denied that the Sessions Court has directed further investigation in the case and has voluntarily stated that the Sessions Court has directed the police to find out the real culprits. A copy of the session's case is produced on record at Exhibit-1532. The witness has admitted that in the context of this case (Sessions Case No.241/02, 242/02), he had been arrested for seven months from Juhapura. In this case, he must have stayed in jail for around one month after which, he was enlarged on bail. The witness has admitted that Vejalpur police

had arrested him and has stated that when he was arrested by Vejalpur police, he had stated the facts regarding the incident to them. The witness has voluntarily stated that he had stated before the police that they were victims of the incident and that their community has suffered a lot of loss and that they were wrongly arresting him, however, they had not listened to him. The witness has admitted that from 2004 to 2008, till he made application Exhibit-1529, he had not informed any authority in writing about the facts of the incident and the names of the accused. He has voluntarily stated that he had orally made representations to many authorities. The witness has denied that since the appeal against the decision in Ranjit murder case is pending in the High Court since 2004, to pressurize the accused, he has wrongly given their names. The witness has stated that he has got no monetary transactions with the accused identified by him and has no social relations with them. The witness has admitted that when he was near Noorani Masjid, the mobs of both the sides were different. The witness has voluntarily stated that when he went to the terrace, the mobs had merged. The witness has admitted that even when the mobs were separated, he had identified accused whom he had identified before the court. He had seen Bipin Panchal, Babu Vanzara, Navin Chhara in the mob coming from Krushnanagar as well as Guddu Chhara and Suresh Langda in the mob coming from the direction of Natraj. The witness has stated that in the year 2002, he had a shop in Hussainnagar. He has denied that from the year 2002 to 2008, his shop was adjoining Babu Vanzara's shop. The witness has denied that even prior to 2008, he had forcibly tried to purchase Babu Vanzara's shop from him at a lesser price and since Babu Vanzara was not selling the property to him, after

2008, he had wrongly given his name.

193.31 In the cross-examination of this witness, it has come out that he had not seen any rickshaw standing in the Jawannagar lanes through which he had passed. The witness has stated that he does not remember as to whether in the lanes of Gangotri Society through which he passed, where any rickshaw was lying. The witness has denied that he had got down from Gangotri Society into Jawannagar. He has denied that there was no rickshaw in Jawannagar at that time. He has stated that he had seen the rickshaw in which a boy named Ayub was made to sit near the S.R.P. compound wall. This rickshaw was on the road which comes out from the last lane of Jawannagar near the S.R.P. compound wall.

193.32 The witness has admitted that at that time, no lights were on the electric poles when he went from Jawannagar to Gangotri society and has voluntarily stated that at that time, it was a day light and there was no need of it. The witness has denied that he has not gone near the S.R.P. compound wall or on any terrace on the day of the incident and that he is stating false facts that he has not seen Ayub and he is stating false facts. The witness has admitted that he has studied only up till 5th standard and does not know how to read or write English.

193.33 Certain omissions in his statements dated 2.6.2008 and 14.6.2008 recorded by the SIT are brought out in the cross-examination of the witness. The witness has denied that on the day of the incident, the police had come and obtained details of the area from him and had stated that the police had

only taken him with them. He has stated that he knows that the person who rolled the gas cylinders and brought them was Navin Chharo. He has denied that considering the circumstances of that day, it was not possible for any person to roll the gas cylinders and take it. The witness has denied that prior to this case, he had demanded three lakh rupees from Navinbhai, and upon Navinbhai not giving the money as demanded by him, he had falsely implicated him in this case.

193.34 The defence has cross-examined the Investigating Officer/assignee officer who had recorded the statement of this witness to bring out the omissions and contradictions therein.

193.35 PW-291 M. B. Raj, the assignee officer has, in his cross-examination, admitted that he had recorded the statement of this witness on 17.7.2002. He has admitted that before him, the witness had stated that on 28.2.2002, there being a call for Gujarat Bandh in the context of Godhra train murder incident, at 9:30 to 10:00 in the morning, a mob of ten to fifteen thousand Hindus armed with weapons charged towards Hussainnagar shouting "kill, cut" due to which, there was a pandemonium and hence, he had closed the shutter of his shop, locked it and fled to protect his life.

193.36 The contents of paragraphs 6, 7, 8, 9, 10, 11 and 13 to 23 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that this witness has not stated the facts stated therein in the statement recorded by him. The contents of paragraph 12 of the examination-in-chief of the witness are read over to the assignee officer who has denied that all the facts stated by the witness have not

been stated by him in the statement recorded by him. The assignee officer has stated that the witness had not given the names of different chawls, but had given the name of Hussainnagar. Similarly, where the witness had stated that he had gone to his in-law's house, he had stated that he had gone home. Other than that, the remaining facts have not been stated by him.

193.37 The assignee officer has admitted that this witness had not named any accused in the statement recorded by him. The assignee officer has admitted that on the day when he had recorded the statement of this witness, on the same day, he had also drawn a panchnama of his property. He has admitted that it has not happened that he had told the witness that the task of the police is limited to the panchnama and that he had only asked him his name and surname.

193.38 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), has in his cross-examination admitted that he has recorded the statements of this witness on 2.6.2008 and 14.9.2008. The contents of paragraphs 53, 84, 116 and 125 of the deposition of the witness are read over to the Investigating Officer, who has admitted that the following facts were stated by the witness in the statements recorded by him, namely that "*.....the name K.P. Parikh was written, he had beaten mr, at this time it was around 5:30 to 6:00*", "*..... since my wife had not given the names of the accused in her statement, I had made an application to the SIT...*"; "*.... when I was present at 9:00 to 9:15 at that time....*"; "*..... and it had become slightly dark at that time a boy named Ayub tried to run away and had jumped from the top and had sustained fractures....*".

193.39 The Investigating Officer has admitted that this witness in the statement dated 2.6.2008 recorded by him had stated that while searching for his children he had gone towards the S.R.P. Quarters together with the people belonging to his community, there, in the field opposite Jawannagar, a huge mob of Hindus armed with weapons was standing, to protect themselves they had resorted to cross stone pelting.

193.40 The contents of paragraph 8 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that thereafter after a few minutes, the people in the mob from the direction of Natraj started coming towards the Noorani Masjid. Moreover, from Krushnanagar also the mob started coming towards the Noorani Masjid. The police were in front of the mob, those police who were with him in the morning almost all of them were in front of the mob. The mobs started damaging carts and stalls near the Noorani Masjid. The mob which came from the side of Krushnanagar started burning the chawls and the houses. Because of this, a few people from their Muslim community gathered at the corner of the chawl. The Investigating Officer has admitted that the witness has verbatim not stated these facts in the statement recorded by him. However, in the statement recorded by him, the witness has stated that they had roamed around the area and had got the shops, stalls etc. shut down and had paid a visit, in the meanwhile at around 9:30 to 10 o'clock mobs of people started gathering near Natraj Hotel as well as Krushnanagar and were coming towards the Noorani Masjid.

193.41 The witness had also stated that the mobs of people

had gathered and were coming towards the Noorani Masjid and the police were also in front of them. The Investigating Officer has stated that except for this, the other facts are not stated in the statement.

193.42 The Investigating Officer has admitted that the facts stated in paragraph 10 of the examination-in-chief of the witness namely that Bipin Panchal was screaming and shouting and was calling the people of the mob, have not been stated by the witness in the statement recorded by him, however, the witness has stated that Bipin Panchal was leading the mob and has also stated the other facts.

193.43 The Investigating Officer has admitted that in the first four lines of paragraph 14 of his examination-in-chief, the witness has not mentioned the words, "certain people".

193.44 Certain extracts of paragraph 21 of the deposition of the witness are read over to the Investigating Officer wherein the witness has stated that he could see everything from the cement pillars below the parapet wall and the plastic tank on the terrace. After the incident, he got down from the terrace into the Gangotri Society. At this time, there was fire on all four sides in their Hussainnagar and at that time, the mobs were not there. They, that is, he and other Muslims returned to Hussainnagar. The Investigating Officer has admitted that these facts have not been stated by the witness in the statement recorded by him.

193.45 It may be noted that at the time of contradicting this witness only the first three lines of this paragraph, namely

that the witness could see everything from between the plastic tank and the cement pillars below the parapet wall. The rest of the portion has not been put to the witness. Under the circumstances, when the witness is not sought to be contradicted qua that part of his examination in chief, the question of proving any omission through the cross-examination of the Investigating Officer would not arise. To that extent, this part of the testimony of the Investigating Officer is inadmissible in evidence.

193.46 The contents of paragraph 28 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that he had come with the police from the Shah Alam camp for preparing the panchnama of the shop. The panchnama of the shop was drawn there at that time, he had informed the police about the names of the accused and the acts committed by them, however, the police had told them that the job of the police was limited to the panchnama and that police had then asked his name, address etc. and they had not recorded the other facts stated by him. The Investigating Officer has admitted that the witness has not stated these facts in the statement recorded by him.

193.47 SUBMISSIONS: The learned counsel for the appellants-accused submitted that three statements of this witness have been recorded; one on 17.7.2002 by PW-291, and two statements have been recorded by the SIT on 2.6.2008 and 14.9.2008. It was submitted that this witness has made a grievance that the police had not recorded what was stated by him. It was submitted that the witness has, in paragraph 28 of the examination-in-chief, himself mentioned that when the

police came to draw the panchnama, he had stated before the police the names of the accused and their roles, but the police did not record such facts, except the details regarding his name, address, etc., saying that the police was only required to draw panchnama. It was submitted that PW-291 the assignee officer, who had recorded his statement dated 17.7.2002 was specifically put a question in this regard and in reply thereto the officer had said that statement of this witness was recorded on the same day when the panchnama of his property was drawn. It was pointed out that the officer has also admitted that it has not happened that the police had told him that the task of the police is only limited to drawing the panchnama and that he had recorded only his name and address, which means that the officer did record his statement as stated by him. It was further submitted that it is proved on record now through the testimony of PW-327 the Investigating Officer (SIT) that what the witness has stated in paragraph 28 of his examination-in-chief has not been stated by him before the SIT, which clearly means that the witness is making such a grievance for the first time before the court.

193.49 The learned counsel submitted that this witness in paragraphs 9 to 18 of his examination-in-chief, does not state the time of the various facts narrated by him, including leaving Kashiram Mama's chawl to come to his house at Zikarhasan-ni-Chali and to the galla which was inaugurated at Jawannagar; then going to the S.R.P. compound; going upon a terrace; from the terrace, going to Gangotri and then coming back to Hussainnagar and going to the Pinjara's house. It was submitted that from morning 9:00 to 9:15 to 4:00 to 5:00 and even subsequent thereto, he does not give the time as to

exactly at what time, what he did and where he was. It was submitted that in the fact situation it was not possible for him to come back from Gangotri to Hussainnagar after 5:00 p.m. and go to the Pinjara's house. It was submitted that after Ayub's incident in Jawannagar, if he says that he had gone to Hussainnagar and the Pinjara's house, he is not telling the truth before the court. It was submitted that the witness has not stated that from which terrace he had seen the incident. It was pointed out that the acquaintance with the accused has not been established and that no test identification parade has been carried out, to ascertain the identity of the accused. It was submitted that as to whether he could have named anybody either in the police statement or before the court, is itself doubtful. It was further submitted that while this witness says that the police had taken him with them, PW-274 Shri K.K. Mysorewala does not say that he went with this witness. It was submitted that the role attributed by this witness to Navin Chhara has not been stated by any witness. It was further submitted that he could not have identified any of the injured persons from Atikkhan's building. According to the learned counsel, from the evidence of this witness, it transpires that he has not seen any incident during the day and he has narrated the facts before the SIT and before the court, after coming to know about the incidents of the day from other persons. It was submitted that there are vital and important inconsistencies between the evidence of this witness and the evidence of other witnesses, like, PW-189, PW-138, PW-143, etc. as regards the happenings at Hussainnagar and at the S.R.P. Quarters. It was submitted that as per his police statement, after seeing the mob, he closed the kirana store in the last lane of Hussainnagar and went home. It was submitted that it is highly

improbable that a person, who being afraid of the mob had closed his shop and fled to his home, would again come out of his house and go to different places where the mobs were burning houses and killing people. It was submitted that the evidence of this witness is not reliable and does not inspire confidence. The attention of the court was invited to the testimony of PW-185 Mahammad Ayub Shofilal Shaikh, at page-19 paragraph 45, wherein reference is made to the inauguration of Asif's the paan cabin. It was submitted that Hasibkhan is also known as Asif. It was submitted that thus, the inauguration in Lane No.6 was of Asif's pan cabin, which creates a doubt about the version of the witness that his paan cabin was to be inaugurated on that day. It was, accordingly, submitted that this witness is not a credible and trustworthy witness, and no part of his evidence can be relied upon to prove the charge against any of the accused.

193.50 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that several questions have been put to the witness regarding the incident of Ranjit, to the effect that he was an accused in that incident and has, therefore, falsely implicated many accused. It was submitted that the incident of Ranjit had nothing to do with the morning incident at which point of time Ranjit incident had not taken place. Therefore, there is no reason to connect the two incidents. So far as the morning incident is concerned it was submitted that no material contradiction has been brought out in the statement of this witness recorded by the SIT. The witness had spotted accused No.44, 33, 22 and 51 with weapons in their hands in the morning.

193.51 It was submitted that insofar as the incident of Ayub is concerned, the witness has named accused No.44 Bipin Panchal, Guddu and Bhavani as assaulting Ayub. Therefore, the witness is consistent about the morning incident and also the incident of Ayub which he has stated in his examination-in-chief, and, therefore, there is no major contradiction which would dent the credibility of the witness as regards the contradiction brought out in paragraphs 96 and 97 of his cross-examination. In respect of the statement dated 17.7.2002, it was submitted that the witness has already stated that he was on the road near his shop, and, therefore, the suggestion made by the defence was denied. It was submitted that in the above view of the matter, this witness is credible and believable and so far as the accused who have been identified by him, namely, accused No.22, 51, 44 and 33 are concerned, it is proved beyond reasonable doubt that they were part of a mob with lethal weapons and accused No.44 was also a party to the killing of Ayub.

193.52 ANALYSIS: From the testimony of this witness, it emerges that at the relevant time his statement came to be recorded on 17.7.2002 by the assignee officer of the concerned Investigating Officer. Subsequently, his statement came to be recorded before the S.I.T. In his examination-in-chief, the witness has stated that he had seen Bipin Panchal (A-44), Mukesh Alias Guddu Chara (deceased), Babubhai Alias Babu Vanjara (A-33), Suresh Langda (A-22) and Navin Chhara (A-51) in the mob with the police on the road in the morning. The witness has also attributed specific weapons to them and has attributed specific roles to Bipin Panchal and Navin Chhara. The witness has deposed that thereafter there was

firing by the police and teargas shells were lobbed, wherein Abid, Piru, Khalid, etc. were injured. At that time the witness had gone to Atik Khan's terrace which is near the Noorani Masjid. According to the witness thereafter the mobs started entering the chawls and the witness had gone to his in-law's house at Jikarhasan-ni-Chali. Thereafter, he went to look for his children, who had gone at the place where his paan cabin was to be inaugurated on that day, and together with one Mohammed Hussain he had gone to look for his children at Jawannagar. Thereafter, he had gone towards the S.R.P. Compound wall, where many Muslims were standing. At that time a mob came from the direction of Jawannagar, but the S.R.P. people did not let them enter inside. The mob came from the direction of Jawannagar into Muslim areas and at the same time the S.R.P. people started assaulting Muslims and there was a stampede among Muslims, some of whom fled on the stairs, others on the terrace and some into the lanes. All this had happened around 4:00 to 5:00 in the evening and he had hidden on a terrace. At that time in the chaos, a youth named Ayub, fell from the terrace and injured his leg and could not walk. Somebody made him sit in a rickshaw. Bipin Panchal, Guddu, Bhavanisingh, who is known as Ratilal alias Bhavani, killed Ayub and set the rickshaw ablaze, all of which he had seen from the terrace. Thereafter, he climbed down from the terrace of Gangotri Society and went towards Hussainnagar and took shelter on the terrace of Pinjara's house.

193.53 In his cross-examination, the witness has admitted that from the year 2004 to 2008, till he made application Exhibit 1529, he had not stated the facts regarding the incident or names of the accused before any authority and has

voluntarily stated that he had made oral representations to many authorities. From the cross-examination of the witness as well as cross-examination of the assignee officer, who had recorded his statement on 17.7.2002, it is established that the witness had not named any accused in his statement dated 17.7.2002. This witness was implicated in the Ranjit murder case and was subsequently acquitted by the trial court. This witness had stayed at the Shah Alam Camp for around four months after the incident. From the oral evidence of this witness it emerges that at the relevant time when his statement was recorded on 17.7.2002 he had not named any accused nor had he narrated the incident of Ayub. Subsequently, at a belated stage when he made the application to the SIT for recording his statement as well as in his statement recorded by the SIT, he has named the accused and attributed specific roles to them. Insofar as acquaintance with the accused named by the witness is concerned, the same has been brought out by the defence in the cross-examination of the witness. Considering the fact that in his initial statement the witness has not named the accused and has named them at a much belated stage after a period of six years without any plausible explanation for the same, it would be hazardous for the court to rely upon his testimony for the purpose of proving the charge against the accused named by him.

194. **PW-214 Saberabanu Abdulaziz Shaikh**, aged 33 years, has been examined at Exhibit-1547. This witness has deposed that she was residing at *Bapunagar* since her childhood and at present, even after her marriage, she is residing there with her husband and her three children.

194.1 The incident took place at Naroda Patiya on 28.2.2002. Her elder brother-in-law Naeemuddin was residing at Hussainnagar in the year 2002. About fifteen days prior to the incident, they had come to stay at her brother-in-law's house at Hussainnagar as he had invited them to come to stay at their house. She, her husband and her children, all of them had gone to Hussainnagar to her brother-in-law's place.

194.2 In the year 2002, she had three children. Her elder son was Wasim, aged 8 years, her second son Salim, aged 6 years and her third son Sabir, aged 4 years. Her husband's name is Abdulaziz Shaikh and he was doing tailoring work at Gheekanta.

194.3 On the day of the incident, she was at Patiya at her brother-in-law's house. They woke up at around 7 o'clock in the morning on that day and had the breakfast and woke up the children and also gave them breakfast. On that day, in the morning at about 9 o'clock, sounds started coming from outside that a big mob of Hindus had come and they have attacked the Noorani Masjid. At that time, her aunt-in-law told them to read the Quran Sharif. Thereafter, the people in the mob entered the chawls with weapons like sticks, pipes, swords etc. The mobs also entered Hussainnagar. The mobs started advancing forward and they (the witness and others) started going towards the rear side. The people of her family as well as other people of the chawl were all together.

194.4 In the direction in which they were going, there was a closed house which had a chain and they went inside and sat there. They had opened the chain lock and entered. She does

not know as to whose house it was. When they were in the house, they heard that the mob was also coming in that direction, and hence, they set off from there and they reached a house with a terrace. From the terrace of that house, they got down in a house of a Hindu society. In this society, there was a huge godown with shutters and they went and sat in the godown. At this time, her family members were with her and they sat there for a considerably long time.

194.5 After a little while, a person came there and he told them that arrangements have been made to send them towards the open ground, and hence, they should come to the ground. Therefore, they came out of the godown and started going towards the open ground.

194.6 At this time, a mob was coming from the open ground. The mob was coming with petrol, kerosene, pipes, swords, etc. and hence, they ran towards the chawls. From the direction of the chawls, another mob was coming from outside. The people in this mob also had kerosene, petrol and weapons in their hands. At this time, there was a water tank in a passage and they all entered into the passage. There, the people of the mob pelted stones at them and assaulted them with sticks and other weapons. Many people were standing on the tank, and from the terrace of the tank, these people were throwing kerosene, petrol and quilts upon them and were setting them on fire. At this time, her brother-in-law Yunusbhai was with them and both her sons were in his hands. Her sons' names were Wasim and Salim. A woman came and snatched both the children from her brother-in-law's hands and climbed on the water tank and threw her children into the burning fire.

194.7 Her younger son Sabbir was with her. At this time, her husband had jumped over the wall which was there and with a view to see that the mob does not throw her son Sabbir also in the fire, she threw him on the other side of the compound wall. Both her children who were thrown in the fire died on the spot.

194.8 In the incident, she sustained burn injuries on both her hands, her back, her chest and her legs.

194.9 In the fire which the mob had ignited at the scene of incident, she too had sustained burns on different parts of her body in the same fire. On account of being burnt in this manner, she was lying at the scene of incident till late at night.

194.10 Late at night, the police came to the spot and took them to the Civil Hospital for treatment. She stayed at the Civil Hospital for treatment for two months. Upon her treatment being over, she had gone to the Shah Alam camp. In the meanwhile, her husband had met her at the Civil Hospital and thereafter, she had met her child at the Shah Alam camp.

194.11 The witness has further deposed that she does not know any of the persons in the mob, who had as stated earlier, committed the acts as narrated by her. At the time of the incident, she had come to her brother-in-law's house for the first time and hence, she was a stranger to the Naroda area and its people.

194.12 CROSS EXAMINATION: In her cross-

examination, the witness has stated that her husband's full name is Abdulaziz Abdulhamid Shaikh. The witness has been cross-examined as to her statement dated 3.3.2002 recorded by the police to the effect that she has not stated the facts stated by her in paragraphs 6, 7 and 8 of her deposition.

194.13 In the cross-examination of this witness, the contents of paragraphs 6, 7 and 8 of her examination-in-chief are read over to her, to the effect that she has not stated such facts in her statement dated 3.3.2002, which the witness has denied. The witness is also read over the contents of paragraph 9 of her examination-in-chief to the effect that she has not stated such facts in her sole statement recorded by the police. Certain extracts of the witness's statement are put to her wherein the witness has stated that on 28.2.2002 *jhumme raat* at 6 o'clock in the evening, about five thousand persons belonging to the Hindu community entered their chawls with petrol and kerosene cans, sticks and pipes in their hands whereupon there was a pandemonium in the chawls. She, her husband, children and the people of the chawl went running and came near Gangotri Society and in the meanwhile, the people in the mob started throwing kerosene at their houses and burning them. The witness has voluntarily stated she did not even know of a society by the name of Gangotri Society. The witness has admitted that in her statement she has stated that upon the mob coming from the other side, petrol and kerosene was thrown on the people of their chawl and they were set ablaze and in the meanwhile, her husband jumped over the wall nearby and upon setting them ablaze, both her sons Wasim and Salim were burnt there and she had sustained burn injuries on both her hands, legs, chest and back and in

the meanwhile, upon the police vehicles coming. ... The witness has denied that she had also stated that upon the police vehicles coming, the mob had fled.

194.14 The witness has stated that she is not aware that some Magistrate had come to record her dying declaration when she was under treatment at the Civil Hospital. She has stated that while she was at the Civil Hospital, many people had come to record her statement. She has admitted that some lady had also come to record her statement. The witness has denied that she has not seen the incident and that she is falsely deposing before the court.

194.15 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

194.16 PW-296 Shri J. V. Surela, the assignee officer in his cross-examination has admitted that he has recorded the statement of this witness on 3.3.2002. The contents of paragraphs 6 to 8 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

194.17 The assignee officer has admitted that the witness has not stated before him that she had come near the passage of the water tank and had entered it and that the people in the mob had assaulted her.

194.18 The assignee officer has admitted that in the statement recorded by him, the witness had not stated the words “from the terrace of the water tank”, out of the facts stated by her namely that from the terrace of the water tank, people had thrown kerosene, petrol and quilts. The assignee officer has admitted that in the statement recorded by him, this witness has not attributed any role to any woman in the incident. However, she has stated that in the incident she and her children were set on fire by the mob, wherein she had sustained burn injuries and both her children had died. The assignee officer has also admitted that the witness had stated before him that on 28.2.2002, *jhumme raat* in the evening at 6 o'clock, around five thousand people belonging to the Hindu community entered their chawls with tins of petrol and kerosene and sticks and pipes and there was a stampede in the chawl. In the meanwhile, she, her husband, her children and the people of the chawl went running and reached near Gangotri Society. In the meanwhile, the people in the mob poured petrol and kerosene on their houses and set their houses on fire. Upon the police coming, the people in the mob fled.

194.19 SUBMISSIONS: The learned counsel for the appellants submitted that this witness in her examination-in-chief has stated that one person had come to the godown and told them to go towards the field where arrangement was made for them, which is inconsistent with what is stated by other witnesses, who have given different version about the people who came and told them to go out of the godown.

194.20 It was submitted that the witness has not named or

identified anyone but considering the contents of paragraph 9 of her examination-in-chief together with paragraph 20 of her examination-in-chief, the fact regarding somebody having snatched her sons and thrown them in the fire is not there in her initial version and that the fact regarding her sons being thrown in the fire by a woman are missing in her deposition. (Both, the dying declaration as well as the statement have been recorded on 3.3.2002, despite which the dying declaration does not contain any details).

194.21 ANALYSIS: This witness is an injured eyewitness, who has sustained burn injuries all over her body. The fact that the witness has sustained injuries during the incident has been established by the injury certificate Exhibit-370, which has been produced on record. The sole statement of this witness was recorded on 3.3.2002 at the Civil Hospital. The contents of her statement have been sought to be brought on record in the cross-examination of the witness and are sought to be proved through the testimony of the concerned assignee officer. The witness has deposed that on the day of the incident, she was staying at her brother-in-law's house at Patiya and has deposed that the mob started entering the chawl, and hence, they had left Hussainnagar and had gone on the rear side together with family members. The witness has stated that they had first gone to a closed house and were sitting there. However, upon the mob coming near, they had climbed on a terrace house and from there they had climbed down into a Hindu Society. In the society, there was a shuttered godown, where she was sitting with her family members. After sometime, a person came and said that arrangements were

made towards the open ground and asked them to go there, and hence, they had gone out of the godown towards the open field. At that time, there was a mob in the open field, which was armed with weapons and was carrying petrol and kerosene, and hence, they had fled towards the chawl. From the side of the chawl also, a mob was coming, which was armed with weapons and had petrol and kerosene. At that time, they had all rushed into a passage of the water tank where the people in the mob had pelted stones and had assaulted them with sticks and weapons. There were many people standing on the water tank, and these people were throwing kerosene, petrol and quilts, on them and setting them ablaze. Her brother-in-law Yunusbhai was with them and he was carrying both her sons named Wasim and Salim. A woman snatched both her sons from her brother-in-law and climbed over the water tank and threw them into the fire. The witness has been sought to be contradicted to the effect that she has not stated such facts in her police statement. In her police statement dated 3.3.2002, which has been brought on record, it has been recorded that the witness has stated that while fleeing they reached Gangotri Society. According to the witness, she was a stranger to that area and was not even aware of the existence of a society by the name of Gangotri. Hence, there was no question of the witness stating that they had reached Gangotri Society. Therefore, it appears doubtful as to whether the assignee officer had recorded the statement truthfully and correctly, as stated by the witness. Another reason to suspect the veracity of the statement recorded by the assignee officer is that he has recorded that upon the police vehicles coming, the mobs had fled, which gives an indication that the statement had been written down by the

officer on his own, inasmuch as, no police vehicles had come to the site of the incident and it is nobody's case that the mobs had fled upon the police coming. Therefore, no reliance can be placed upon such statement, which does not appear to have been recorded in terms of the version given by the witness. Such statement, therefore, cannot be used for the purpose of bringing out omissions and contradictions in the testimony of the witness. Therefore, the narration of events, as given by the witness, is required to be accepted.

194.22 This witness, being a visitor in that area, was not acquainted with the people in the locality and, therefore, could not identify any of the accused, which she has specifically stated in paragraph 14 of her examination-in-chief. Therefore, the testimony of this witness does not come to the aid of the prosecution for establishing the charge against any of the accused.

195. **PW-215 Ashokbhai Hemrajbhai Pandit**, aged 30 years, has been examined at Exhibit-1554. This witness has deposed that on 11.3.2002, he was called by the police to Naroda Patiya, Opposite the Noorani Masjid for the purpose of shooting the video of the scene of offence. The videography of the scene of offence was done between 5:00 to 6:00 in the evening. The scene of offence was pointed out by the police officer and accordingly, he carried out the videography. The spot was opposite the Noorani Masjid, near the S.T. Workshop in Jawannagar and other chawls as well as the societies. The videography was done in the presence of two panchas and the cassette of the video recording was handed over to the police officer on the spot in the presence of the panchas. The witness

has further deposed that upon handing over the video cassette, the same was sealed in a white cloth bag in the presence of the panchas and after verifying the formalities, the signatures of the panchas were taken on the spot.

195.1 The police had recorded his statement in connection with the videography done by him. The video cassette was taken out of the white bag and was shown to the witness who had stated that it was the very same cassette in which he had recorded the videography of the scene of offence on 11.3.2002. The panchnama of the video cassette is exhibited as Exhibit-1228 and the panch slips on the video cassette are exhibited as Exhibits-1229 and 1230.

195.2 The cross-examination of the witness is formal in nature and nothing substantial has been elicited so as to dent the credibility of the witness.

195.3 ANALYSIS: Through the testimony of this witness, the prosecution has proved that contents of the video cassette of the scene of offence as well as the panchnama that was drawn while handing over the video cassette to the police.

196. **PW-216 Sanjay Babubhai Bharvad**, aged 35 years, has been examined at Exhibit-1555. This witness is a witness of the scene of offence panchnama. The witness has deposed that on 9.3.2002, at about 5:00 to 5:30 in the evening, the police had come to call him for the purpose of drawing a panchnama. The police took him to *Hussain-ni-Chali, Naroda Patiya*. *Hussain-ni-Chali* is situated opposite the Noorani Masjid. There was another person also and the police

came along with them. The panchnama was of the scene of offence of the place where the riots had taken place. A Police Officer Shri Solanki had shown the scene of offence.

196.1 The area opposite the S.T. Workshop is mainly a Muslim area, where there are eighteen to nineteen chawls. The interior sides of the chawls had caught fire and the houses had been broken and had been vandalized. After the eighteen to nineteen chawls are over, there is a water tank and below the water tank, there is a room above which, the water tank is situated. They had gone to all the areas of the chawls as well as to the water tank. Damage had also been caused near the water tank. There are approximately eleven shops after the water tank. Thereafter, there is a huge open ground and on the interior side, the S.R.P. Quarters are situated. Beyond the S.R.P. Quarters, the timber marts are situated. They had seen all this also. The S.R.P. Quarters compound wall appeared to have broken recently at that time. Everything was destroyed there and a panchnama of the entire area was drawn. Whatever they had seen at the site, was written down. His signature as well as the signature of the other panch was also taken. Whatever they saw, was written down.

196.2 The witness was shown the panchnama Mark 134/44, which is comprised of, in all, four pages containing handwritings on both the sides. The witness has stated that the end part of the panchnama as well as the margin bears his signature. The other signature is of the second panch who was with him.

196.3 The witness states that he can read, but he reads

very slowly, and hence, the panchnama was read over to him.

196.4 The witness has admitted the contents of the panchnama which has been read over to him, as correct and the panchnama is, accordingly, exhibited as Exhibit-1556.

196.5 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that prior to Exhibit-1556; no other panchnama was read over to him. The witness has admitted that the measurements of the roads shown in the panchnama are correct. The witness has voluntarily stated that he had held one end of the measurement tape himself.

196.6 ANALYSIS: Through the testimony of this witness the prosecution has proved the additional panchnama of the scene of offence Exhibit 1556, which is a more detailed panchnama of the scene of offence and gives a better picture of the houses and shops situated parallel to the S.T. Workshop compound wall as well as the location of the lanes of the chawls.

196.7 PANCHNAMA EXHIBIT 1556: Since this panchnama gives a clearer picture of the scene of offence, reference may be made to the same in detail. A per the panchnama, the road between the S.T. Workshop wall and the chawls is 15 feet wide. The wall of the S.T. Workshop compound is 8 feet high and there is a 7 feet high wire fencing above it. Upon entering Hussain-ni-chali, firstly there are two houses on the right side after which there is lane No.1 for the purpose of going to the houses inside the lane. Thereafter in the same line after leaving five houses there is lane No.2 and

at the entrance of the lane there is a telephone pole. Thereafter after leaving two houses is lane No.3 and at the entrance after leaving one house is lane No.4. Thereafter there are two houses, then comes lane No.5 and upon that lane being over there are three other houses after which comes Lane No.6 after that lane is over there are three houses and then comes lane No.7 and thereafter after leaving two houses there is lane No.8. Leaving two houses thereafter, comes lane No.9 after which there are four shops in the line and two houses after which there is lane No.10 and after lane No.10 there are three houses and thereafter there is space for going to lane No.11. Thereafter there is one house and lane No.12 starts. Thereafter, after leaving two houses and two shops, there is a public toilet behind which there is open space. Thereafter in the same line there is a big iron gate in the compound wall. A small gate and iron grill has been fitted and thereafter there is the lane No.13. Thereafter there are two residential houses and then comes lane No.14 and towards the north of the entrance of the lane, there is a shop called Mahakali Dughdalaya and on the southern wall of the shop there is a tin board of Jawaharnagar Vikas Trust Board, on which names of the office bearers is written, below which there is a notice board. From where Hussainnagar-ni-chali starts till Mahakali Dughdalaya all the houses in the line belong to people of the Muslim community. From the entrance of the chawls till the wall of Mahakali Dughdalaya the distance of the road is 981 feet. The distance between the shutter of Mahakali Dughdalaya and the S.T. Workshop compound wall is 20 feet. From here to the entrance of the lane there is a curve and no straight road can be seen. There are three houses in the line of Mahakali Dughdalaya and thereafter comes the shop of Khwaja

Flour Factory. Thereafter comes lane No.15 and there is an electric pole bearing No.A.S.4./16 opposite lane No.15 on the opposite side touching the S.T. Workshop compound wall.

196.8 At the entrance of lane No.15 on the east there is house No.8201, which belongs to Ratilal Somabhai Rathod [known as Jaybhavani (deceased)]. Its main entrance door is towards the wall of the S.T. Workshop. The distance between the western wall of Mahakali Dugdhalaya and house No.8201 including lane No.15, is 81 feet. Touching house No.8201, is the house of Dalpatsinh Abhesinh Jadeja (another deceased accused). Thereafter there is lane No.16. Thereafter, after leaving two houses comes lane No.17. After leaving two houses is lane No.18 and thereafter there is the godown place. Its compound wall is 6 feet high. From house No.8201 till the end of the compound the distance is 330 feet. After the compound of the wall is over, there is a passage which is about 11 feet wide. Inside the passage after leaving 32 feet there is a huge water tank where there is a room below and above the pillars there is a huge tank. Between the room and the compound wall of the godown is a narrow lane which is 2 feet wide. At the end of the compound wall at the entrance of the 11 feet passage, there is a paan-galla by the name of Gayatri Pan Palace. Adjoining the galla, towards the east, there are eleven shuttered shops in a line with their doors facing the north. Between the rear wall of the first shop viz. Shop No.11 and the room of the water tank there is a two feet passage for coming out. Gayatri Pan Palace, which is situated near the southern wall of Shop No.11, is 4 feet wide and 7 feet high. The door of the cabin opens towards the S.T. Workshop compound wall, which at present is closed. From the western wall, Shop

No.11 of the shopping centre till the eastern wall of Shop No.1, the distance of the shopping centre is 119 feet. All the shutters of the shops open towards the compound wall of the workshop after which, comes lane No.19 which is 18 feet wide. From this lane the houses of Gopinath Society start. The measurement till the rear side of the last wall of the houses on the eastern side of the society is 197 feet. From that spot, the S.T. Workshop compound wall also takes a turn from the north to the south and it turns with the curve of the road towards the east. Near the turning there are four twin bungalows of the new under construction Gokul Society and the houses end here and thereafter till far there is open space which is towards the east of the road. After leaving the open space, Mohannagar Society, canal, Navyug School, etc., are situated. At the end of Gokul Society, towards the south from the open space when one turns from the east towards the west, there is a trail for walking. Small vehicles can pass through this small road. Towards the south of the road, after leaving the open space, there are lines of S.R.P. residential houses which are at a distance of 500 feet. On the northern side of the trail, there is an open space for entry and egress into the lanes of the residential houses. Towards the south thereof, the compound wall of the S.R.P. lines houses is situated. From the compound wall there is a way for going and coming into the chawls. For the purpose of ingress and egress from the chawls, there is an opening in the wall. Going from the opening towards the chawls there is a shop named Rashid Hair Art. The lane is of Jawaharnagar and at the western corner of the lane there is a shop by the name of Gayatri Kirana Store which is called the first lane of Jawaharnagar. On the left side of the lane there is a 7 feet high brick wall of which around 20 feet has been

recently/freshly broken. Upon going out of the broken wall on the western side there is a huge open space which is known as the khadawali (pit) place and towards the south of the pit at quite a distance, the houses of SRP line and compound wall are situated. Which is six feet in height and there is five feet wire fencing. Thus, in all, the compound wall is ten feet high. Towards the north of the pit Muslims residential houses are situated. Towards the east and the west of the pit area, there is a road which goes towards the Highway No.8 on the western side. Towards north of the pit area along the boundary of the road, the gates of Ambica Timbers, Panchvati Timber Mart and B.L. Enterprise are situated on the road towards the south. Thereafter, further in the line, Jayshree Krushna Timber Mart, Shakti Timber Mart, Satyanarayan Timber Mart and Uday Gas Agency are situated. Thereafter, in the line, Hanumanji's temple is situated and opposite the temple after leaving the road, the godown of Krushna Products is situated, whereas on the opposite side after leaving the road, Sai Electrical Works is situated. Thus, on both sides of the road, there are godowns. After leaving the godowns when one goes ahead, one can go towards the national highway road. After one comes out of this road, on the road there is a big tin board which has been fixed high up. The board is horizontal wherein the names of Satyanarayan Timber and Jyoti Industries are written. Upon standing on the main road and looking at the road going towards the east, the open space of the pit is not visible. On the north of the corner of the road, there is an AEC pole on which the words "A.S./42" are written in English. Towards the north of the road, on the ground floor, J.R. Electricals, Vishal Auto Parts, Ruby Engineering are situated. On the first floor, Look Me Beauty Parlour with its door facing the west is

situated. Towards the north of this building, a two storeyed Jaiveer Complex is situated. The compound wall of the complex is 10 feet high. In line with Jaiveer Complex, a shop named Milan Hair Cutting is situated. After the houses in this line, there is an open space. Thereafter, the Naroda Narol National Highway No.8 is situated. After leaving the highway, and leaving the open space, in the line of the buildings situated on the opposite side, Gurukrupa Kirana Store is situated. In that line, Pandit-ni Chali, Jakirhussain-ni Chali, Kashiram-ni chali and the Noorani Masjid are also situated, beside which on the road, on the milestone, Narol/0 is written. The distance between Gurukrupa Kirana Store and Milan Hair Cutting is 190 feet which is in the east west direction. The highway road is in the north south direction. Till far, parallel to the highway, open space can be seen. AEC pillar A.S./42 is situated near the tall board of Satyanarayan Timber Mart. From there till the corner of the road going towards Hussain-ni-Chali, the north south distance is 457 feet.

197. **PW-217 Salim Rahimbhai Shaikh**, aged 35 years, has been examined at Exhibit-1562. The witness has deposed that he is residing at *Chetandas-ni Chali* since his birth. He has studied up till the 7th standard. His native place is *Hubli, Karnataka*. In the year 2002, he was doing electric work.

197.1 In the year 2002, his family was comprised of his younger brother Sabir, his younger brother Rashid, his mother Rabiya Bibi and his wife and her son Mustufa, all were residing together.

197.2 In February, 2002, his wife and son Mustufa had

gone to Karnataka as his wife was about to deliver.

197.3 The incident took place on 28.2.2002. On the day of the incident, at 8 o'clock, his mother, who used to work in a thread factory at Naroda road, had gone there and they were all at home. There was a call for bandh on 28.2.2002. Due to disturbances which were going on outside, his mother returned from her service at 9 o'clock in the morning. After his mother came back, since stone pelting was going on at the masjid and there were disturbances outside, they locked their house and all of them went to Gangotri Society and sat there. They sat at Gangotri Society till 5:00 to 6:00 in the evening.

197.4 Thereafter, at around 5:00 to 6:00 in the evening, a mob of Hindus armed with weapon came from the direction of Teesra Kuva. They had pipes, swords etc. in their hands. At that time, the S.R.P. people released tear gas whereafter, there was a stampede there. At this time, in the chaos, his mother's hand got unclasped from his hand. Thereafter, he went on the terrace of a house in Gangotri Society and sat there. Other Muslims were also sitting there.

197.5 About one and a half to two hours after he went and sat on the terrace, his brother Rashid came on the terrace. Before he went to the terrace, **Tiwari Conductor (A-25), Bhavani** and others were standing there with sticks. Thereafter, he had gone on the terrace. Rashid had met him on the terrace. Rashid's head as well as both his hands were burnt. Thereafter, his brother Sabir also came there.

197.6 Thereafter, at around 11 to 12 o'clock at night, all

the three brothers went from the very same terrace to the Shah Alam camp in a police vehicle.

197.7 His brother Rashid had told him that his mother had been burnt by **Sachin** from the mob. He had also told him that this Sachin had assaulted his mother with a pipe in the open space near the water tank between Gangotri and Gopinath Society and had sprinkled kerosene on her and set her ablaze. The witness has stated that he himself has not seen the incident, but upon his brother Rashid telling him, he came to know about the incident. They stayed at the camp for more than five to six months.

197.8 He was taking his mother and going from his house towards Gangotri Society when somebody from the mob threw a brick at them, which struck him on the back and he was injured by it. However, he had not taken any treatment in connection therewith.

197.9 The witness does not remember as to whether the police had recorded any statement of his in connection with the incident at the camp. The SIT people had recorded his statements twice.

197.10 The witness has stated that as far as he knows, Bhavani is dead and he can identify Sachin Modi (A-52) and Tiwari Conductor (A-25) even today. The witness has thereafter identified accused No.25 Tiwari correctly and has stated that Sachin Modi is not present. Sachin Modi had given an exemption application on that day, and hence, there is a deemed identification.

197.11 CROSS-EXAMINATION: This witness in his cross-examination has admitted that he had personally gone for drawing the panchnama of the damage caused to his house. He has admitted that on the same day that the panchnama was drawn, that is, on 7.6.2002, the police had also recorded his statement. The witness is confronted with his statement dated 20.6.2008 recorded by the SIT to the effect that he has stated therein that he met his brother Rashid there, who informed him that a riotous Hindu mob had inflicted a pipe blow on their mother and had felled her and sprinkled kerosene, petrol and burnt her alive near Gopinath Society. The witness has voluntarily stated that he has also stated as to who had killed his mother. He has denied that he has not given the name of Sachin Modi before the SIT.

197.12 The witness has stated that he does not remember clearly but he might have stated before the SIT that he knows this Sachin, who is approximately 30 years old. He does not know what business he carries on at present, he may not even be able to identify him as six years have passed and he cannot identify him. The witness has denied that in his statement dated 7.6.2002, he has stated that as per the information given by his brother Rashid, the people of Gopinath Society, whose names he does not know but whom he knows by their faces, they as well as the youths residing next to their shop, whose names he does not know had come together and inflicted a blow with a pipe on his mother's forehead and sprinkled kerosene on her and set her ablaze and caused her death. He does not know any person in the riotous mob. The witness has voluntarily stated that he had given the names of

Tiwari, Sachin as well as Bhavanisingh. The witness has denied that in his statement dated 7.6.2002, he had not stated any facts regarding Tiwari, Bhavani or Sachin. The witness has admitted that the SIT or any other investigating agency had during the course of investigation not carried out any test identification parade of the three accused.

197.13 In his cross-examination, the witness has further stated that he had seen Tiwari and Bhavani at around 5 o'clock in the evening. He has admitted that he had seen them in Gangotri Society. He has admitted that when he saw both of them, they were on the ground in Gangotri Society. The witness has stated that he does not remember whether he had seen them while he was on the terrace. The witness has admitted that they were at a distance of 10 to 15 feet from him.

197.14 The witness has stated that he cannot say exactly on which terrace of Gangotri Society he had gone. He has admitted that Bhavani and Tiwari were also in the mob which was running helter skelter. The witness has stated that he does not know that in this stampede, Hindus and Muslims all were running to Gangotri Society. He has admitted that Tiwari and Bhavani had not assaulted him at that time. He has admitted that the S.R.P. people were releasing teargas at the mobs which were fleeing to Gangotri Society. He has admitted that Bhavani and Tiwari reside somewhere in Gangotri Society. He has denied that his brother has not told him anything about Sachin and that he is falsely deposing about Bhavani and Tiwari.

197.15 To prove the omissions and contradictions as to his previous statements, the defence has cross-examined the concerned assignee officer/Investigating Officer who recorded such statements.

197.16 PW-281 Shri D. S. Vaghela, the assignee officer has admitted that this witness, in his statement recorded on 7.6.2002, has stated that the police were releasing tear gas shells from both sides and were also firing. That as per the information given by his brother Rashid, his mother was given a pipe blow on her head and kerosene was sprinkled on her and she was done to death by people from Gopinath Society whose names he does not know, but they can be identified by their faces and the boy from the house next to their shop whose name he does not know, was also there. All of them have together inflicted pipe blows on her head, sprinkled kerosene and done her to death. That he could not recognize any person in the mob. The assignee officer has admitted that this witness has not named Tiwari, Bhavani or Sachin in the statement recorded by him, nor has he attributed any role to them.

197.17 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statements of this witness on 20.6.2008 and 25.9.2008. The contents of paragraph 17 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that there he met his brother Rashid who told him that people in the riotous Hindu mob had felled their mother by inflicting a blow with a pipe on her head and had sprinkled kerosene/petrol on her and burnt her alive

near Gangotri Society.

197.18 The Investigating Officer has stated that he wants to clarify that in the statement recorded by him, over and above the above sentence, there are further sentences whereafter the witness has stated that as stated to him by his brother Rashid, the people who killed his mother were Sachin, who resides near Saijpur Tower and other persons. He has stated these facts as well as stated that he knew Sachin since the last thirty years. As can be seen from the cross-examination of the Investigating Officer, though only certain part of the statement of the witness is put to him, wherein there is no reference to any accused, the Investigating Officer in the cross-examination has referred to certain statements made by the witness in the statement recorded by him, which also discloses the names of the accused. The Investigating Officer is only required to prove or deny a contradiction. The contents of the statement of the witness cannot be brought on record, except to the extent necessary to explain such contradiction. Therefore, to the extent the Investigating Officer has referred to the witness having referred to Sachin, the same is inadmissible in evidence.

197.19 The Investigating Officer has admitted that this witness had stated before him that he knows Sachin since about 30 years but he does not know as to what business he does. At present, he might not even be able to identify him since a time of around six years has elapsed, and hence, he may not be able to identify him.

197.20 SUBMISSIONS: The learned counsel for the

appellants drew the attention of the court to paragraph 20 of the examination-in-chief of the witness to point out that a contradiction has been brought out in his statement dated 7.6.2002 recorded by PW-281, to the effect that he had not given the names of Tiwari, Sachin and Bhavani, which has been proved through the testimony of PW-281 who has told that this witness has not named any accused or attributed any role to them. It was submitted that even before the SIT, there is no specific attribution to Sachin. It was submitted that Bhavani and Tiwari are local residents, even as per the evidence of this witness, before the police, no allegations are made against Tiwari and Bhavani and for the first time before the SIT, he has attributed only this role that before he went up to the terrace, he saw Tiwari and Bhavani standing with sticks, however, no overt act or role is attributed to them.

197.21 The learned Special Public Prosecutor submitted that in the cross-examination of this witness an omission is sought to be brought out in respect of the statement recorded by the S.I.T. on 20.6.2008, viz. his brother Rashid had intimated him that a Hindu mob had assaulted their mother and she was killed and that who has killed their mother is not stated in his statement before the police. It was submitted that not naming Sachin before the S.I.T. or the police is not a material omission, because he has not seen Sachin killing his mother, but it was told to him by his brother. Therefore, the omission with respect to Sachin is not a material omission insofar as the incident is concerned. It was submitted that insofar as Tiwari is concerned he has identified him, and, therefore, the presence of Tiwari at the place of incident has been proved beyond reasonable doubt.

197.22 ANALYSIS: This witness has testified that on the day of the incident, on account of the disturbances that were going on, they had gone to a terrace of Gangotri Society and were sitting there till 5 to 6 o'clock in the evening. Thereafter, a huge mob came armed with weapons and while they were fleeing, his mother's hand got unclasped from his hand and thereafter he went and sat on the terrace of his house in Gangotri Society, where other Muslims were sitting. Before going on the terrace he had seen Tiwari Conductor and Bhavani standing below. The witness has further stated that his brother Rashid has told him that his mother had been burnt by Sachin in the mob in the open space near the water tank of Gopinath- Gangotri Society by sprinkling petrol and setting her ablaze. The witness has identified accused No.25 Tiwari in the dock, whereas accused Sachin had filed exemption application, and therefore, he is deemed to have been identified.

197.23 In the cross examination of the witness a contradiction has been brought out that he had not named any of the three accused, namely, Tiwari, Bhavani or Sachin in his statement dated 7.6.2002. The witness is sought to be contradicted as to his statement dated 20.6.2008 to the effect that he had not named Sachin Modi in such statement. It appears that in such statement the witness has not named Sachin in the manner in which he has named him in his examination in chief, but has stated that his brother had told him that amongst the persons who killed his mother were Sachin and other people. In his cross-examination the witness has admitted that Bhavani and Tiwari had not assaulted him and they were residents of Gangotri Society.

197.24 Considering the evidence of this witness in its totality, at the relevant time when his statement was recorded on 7.6.2002, he had not named any of the accused. Insofar as the incident regarding his mother being killed by the mob, at the relevant time as well as before the court, the witness has stated that his brother Rashid had informed him about such incident. Therefore, insofar as the involvement of accused Sachin is concerned, the same is based upon hearsay and has not been witnessed by the witness. Insofar as the involvement of accused No.25 Tiwari is concerned, the witness has not named him in his statement recorded on 7.6.2002 and has named him for the first time after a period of more than six years, in the year 2008. Moreover, as admitted by the witness in his cross-examination, Tiwari and Bhavani did not cause any harm to him and that they were residents of that area. Under the circumstances, no criminal complicity can be attributed to the accused from the testimony of this witness.

197.25 In light of the above, the testimony of this witness would not come to the aid of the prosecution in establishing the charge against either of the two named living accused.

198. **PW-218 Abdulrashid Rahimbhai Shaikh**, aged 28 years, has been examined at Exhibit-1564. The witness has deposed that in the year 2008, he was residing at *Chetandasn-Chali*. In the year 2002 also, he was residing at *Chetandasn-Chali* and he is residing there since his childhood.

198.1 In the year 2002, his family was comprised of his mother, his three brothers, his sister-in-law as well as his

nephew. His mother's name was Rabiya Bibi. In the year 2002, he used to do tailoring work of ready-made clothes. His mother used to work in a thread factory situated at Naroda Patiya road. At present, his elder brother Salim resides at *Chetandasi-Chali*.

198.2 The incident took place on 28.2.2002. On that day, in the morning between 9:00 to 9:30, he was present at home. His mother had gone for her job and from there, since the factory was closed, she came back at around 9:00 to 9:30 in the morning.

198.3 He woke up at home and heard sounds of Hindu mobs. He went out and saw that Hindu mobs were ransacking the Noorani Masjid and setting it on fire and a riotous Hindu mob was standing near the S.T. Workshop. They were standing there and watching and they told the police to protect the Noorani Masjid, but the police was not listening to them at that time and instead, fired at them and released tear gas shells. On account of firing by the police, when the Hindu mobs were rioting, a boy named Mustaq was injured by a bullet. Upon seeing all this, they locked their house and went towards the rear side towards Jawannagar and from there, they tried to go inside the S.R.P. Quarters, but the S.R.P. people did not let them go inside, and hence, throughout the day, they had to run around a lot.

198.4 At about 5:00 to 6:00 in the evening, they were running towards Teesra Kuva, when a Hindu mob also came from that direction. Hence, they came near a water tank between Gangotri and Gopinath Society and were trying to

hide there, when a mob of Hindus came from the direction of the S.T. Workshop, wherein **Sachin** was also there. Sachin had a bloodstained hockey stick in his hand. At that time, in a stampede, his family members got separated from him. He and his mother were together. Hindu mobs came from both the sides. At the water tank, he, his mother and other Muslims were surrounded by the people in the mob. At this time, from the top of the water tank and the terrace of the continuous shops, kerosene and inflammable substances were being poured and after pouring such inflammable substances, they were being set on fire. The Hindu mob was assaulting them with weapons like swords, pipes, etc.

198.5 At that time, Sachin hit his mother with the pipe in his hand which he had seen. The other people in the mob also assaulted his mother. Thereafter, they poured kerosene over his mother and set her ablaze. At this time, kerosene was also poured on his head and his head was burnt, whereupon his mother's hand got unclasped from his hand and he started scratching his head with both his hands and he was burnt on his both hands.

198.6 His mother died on the spot in the incident. Upon getting a chance, he went towards Gangotri Society and sat on a terrace there. At this place, he met his brothers Salim and Sabir and he told his brother Salim all the facts as to how his mother has died. He had stayed on the terrace till late at night till the police came. Thereafter, they went in a police vehicle to Shah Alam.

198.7 At the camp, he met his other brother Khalid also.

Khalid had sustained injury on his leg. He and Khalid took treatment at the Shah Alam camp. He stayed at the Shah Alam camp for three months. Thereafter, he and Sabir went away to their native place at Karnataka.

198.8 The witness has stated that he knows Sachin Modi and that, today also, he can identify Sachin. The witness has thereafter stated that Sachin is not seen in the court. It appears that accused No.52 Sachin Modi had filed an exemption application which was granted. Therefore, the said accused is deemed to have been identified by this witness.

198.9 CROSS EXAMINATION: In the cross-examination of this witness, he has been contradicted as to his statement recorded by the SIT to the effect that he had not stated that Sachin had a pipe in his hand and that he had inflicted blows on his mother with that pipe.

198.10 The witness has denied the suggestion that as he had not seen Sachin on the day of the incident, he had not stated any fact regarding Sachin to his brother Salim.

198.11 The witness has denied that he had only informed his brother Salim that the persons in the mob had killed their mother.

198.12 The witness is contradicted as to his statement dated 3.7.2008, to the effect that he had not told his brother Salim that Sachin had inflicted any blow on his mother Rabiya Bibi. (It appears that the witness had not attributed any role to Sachin in the act of assaulting and burning his mother,

but has stated that Sachin was there in the riotous mob with a hockey in his hand and that he knew him. However, in his statement dated 25.9.2008, the role as attributed to Sachin in his deposition, has been stated.).

198.13 The witness has admitted that all four brothers were there together in the camp and that his elder brother Salim's statement was also recorded at the camp. The witness has denied that because his brother's statement was recorded in the year 2002, he had not got his statement recorded at the camp. The witness has voluntarily stated that he himself had gone for getting his statement recorded, however, the police had not recorded his statement.

198.14 The witness has denied that before the SIT in his statement dated 25.9.2008, he had stated that since one member of the family had already given his statement before the Crime Branch police, he had not given any statement.

198.15 In the cross-examination of this witness, it has come out that on the day of the incident, when he came out on the road for about five minutes, there was *inter se* stone pelting. The witness has further deposed that he has not seen any Muslim being injured in *inter se* stone pelting. He has also stated that he has not seen any Hindu being injured on account of the stone pelting by the Muslims. The witness has stated that he has only stood there to watch the stone pelting. The witness has admitted that there were many other people who were not part of the riotous mob, but coming there to watch like him.

198.16 The witness has admitted that he has not made any application to the SIT for recording his statement and does not remember as to who gave him instructions to get his statement recorded by the STI and as to whether he had been served with any summons by the SIT.

198.17 The witness has admitted that prior to the SIT recording his statement, he had not lodged any complaint with regard to the incident in which his mother had died. The witness has denied that he has not seen the incident and that at the instance of the leaders of their community, he was falsely deposing.

198.18 To prove the omissions and contradictions in the previous statements of this witness, the defence has cross-examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) who had recorded such statements. The Investigating Officer has, in his cross-examination, admitted that he had recorded the statements of this witness on 3.7.2008 and 25.9.2009. The Investigating Officer has admitted that in the statement recorded by him, the witness has not stated that Sachin had a pipe in his hand and that he had assaulted his mother with that pipe. The Investigating Officer has stated that the witness had stated that together with the people in the mob he had seen Sachin Modi with a hockey covered with blood and he, together with the other people in the mob, was involved in killing Rabiya Bibi and setting her ablaze. Such facts have been stated by the witness in the statement dated 25.9.2008. The Investigating Officer has stated that the witness has not stated the fact regarding Sachin having a pipe but the other facts have been stated by

the witness in the statement recorded by him.

198.19 The Investigating Officer has admitted that in his statements dated 3.7.2008 and 25.9.2008, the witness has stated that from there he went and hid on a terrace of Gangotri Society where he met his brothers Salim and Sabir and he told them that the people in the mob had assaulted his mother Rabiya Bibi on the head with a pipe and felled her and had sprinkled kerosene petrol on her and burnt her alive near the water tank. In the context of this incident, his brother Salim had given a statement before the Crime Branch police and since one member of the family had given the statement, he had not given his statement.

198.20 SUBMISSIONS: The learned advocate for the appellants submitted that no police statement of this witness has been recorded though his brother told the police that it was this witness who had informed him about the incident. It was submitted that even in his first available statement before the SIT, this witness has not stated anything about Sachin, nor has he attributed any role to him. In his second statement dated 25.9.2008, the witness has simply stated that Sachin was seen with a bloodstained hockey and he participated with others in killing his mother by burning her.

198.21 The learned advocate further submitted that though this witness is the only eyewitness of his mother Rabiya Bibi's incident, police statement has not been recorded. Even in his first statement dated 3.7.2008 before the SIT, he does not implicate accused No.52 Sachin and that Sachin's presence in the mob with a hockey stick with reference to the 3rd July

statement comes out only in the note below paragraph 15 of the testimony of this witness, which is on its face contrary to the witness's evidence and there is nothing so stated by the Investigating Officer in paragraph 677, nor is there any re-examination of this witness in this regard. That means, the name of Sachin with bloodstained hockey and his general participation with others, comes on record for the first time in his second statement dated 25.9.2008. Moreover, in paragraph 7 of his examination-in-chief, the witness has changed the weapon attributed to the accused No.52 from hockey stick to pipe. It was submitted that in paragraph 16 of his deposition, the witness has voluntarily stated that he had gone to give his statement, but the police did not record it; however in paragraph 17 of his deposition, he has been confronted with his statement dated 25.9.2008, [which is proved through the Investigating Officer (PW-327) in paragraph 677] to the effect that he had explained therein that he had not given his statement as one of the members of his family had already given his statement before the Crime Branch. Reference was made to paragraph 22 of his deposition to submit that this witness has not made any complaint regarding his mother's death.

198.22 It was submitted that even if his brother's (PW 217) evidence is closely seen, he never said in his police statement that his brother ever told him about any participation of accused No.52 in the incident of killing of his mother. However, his brother for the first time states before the SIT in his first statement dated 20.6.2008 that he came to know about the participation of accused No.52 in the killing his mother from his brother (PW 218). His brother's (PW 217) evidence is of no

consequence, being hearsay and there is also material improvement about the weapon and manner of participation before the court as proved by the Investigating Officer PW 281 (paragraph 66) and Investigating Officer PW 327 (paragraphs 673 and 674), and therefore, the testimony of both the brothers is not believable qua accused No.52.

198.23 The learned Special Public Prosecutor submitted that in the incident that took place, his mother was killed by the mob and he had himself seen the incident and was also injured. It was submitted that the witness had seen the incident and narrated to his brother and there is no reason to disbelieve him.

198.24 ANALYSIS: The testimony of PW-217 Salim Rahimbhai Shaikh, who is the brother of this witness, is required to be considered together with the testimony of this witness. As per the version given by PW-217, it was his brother Rashid, who had narrated the incident wherein his mother was killed near the water tank. It may be noted that despite the fact that the statement of PW-217 was recorded on 7.6.2002, wherein he had stated that his brother had informed him about the incident wherein his mother was killed by the mob, the Investigating Officer at the relevant time has not thought it fit to record the testimony of this witness, who in fact had witnessed the killing of his mother. Consequently, no statement of this witness has been recorded at the relevant time and for the first time his statement has been recorded on 3.7.2008 by the S.I.T. and then on 25.9.2008.

198.25 From the omissions and contradictions brought out

in the testimony of this witness as to his statements recorded by the S.I.T., it is revealed that in his statement dated 3.7.2008 he had named Sachin as being present with a blood-stained hockey stick, but had not attributed any role to him in killing his mother. In his subsequent statement dated 25.9.2008 the witness has been examined as regards his acquaintance with Sachin and for the first time he has attributed a role to him to the effect that he was in the mob with a hockey stick and had participated in the killing and burning of his mother Rabiabibi. In his examination-in-chief, the witness has further improved upon his version and stated that Sachin had a pipe in his hand and had inflicted blows on his mother. Thus, step by step there are improvements in his statements and lastly in his deposition, he has attributed a clear role to accused Sachin.

198.26 Having regard to the fact that no statement of this witness has been recorded at the relevant time as well as keeping in view the fact that this witness has narrated the incident regarding the murder of his mother to his brother Salim PW-217, whose statement was recorded on 7.6.2002, but the said witness had not named Sachin as an accused at the relevant time, it would be hazardous to rely upon the testimony of this witness against the said accused for implicating him in such a serious offence.

199. **PW-219 Noorbanu Zakirhussain Saiyed**, aged 37 years, has been examined at Exhibit-1568. The witness has deposed that after the incident, since the last eight to nine years, she is residing at *Citizennagar*. On 27.2.2002, the incident of burning a train at Godhra took place. On the next day, the Naroda incident took place.

199.1 At the time of the incident, she used to reside at *Lane No.4, Hussainnagar, Naroda Patiya*. At that time, she used to reside with her four sons and her husband. Her husband Zakirhussain used to drive a private Eicher vehicle.

199.2 On 27.2.2002 in the evening, she had sent her elder son Javedhussain to Bapunagar to her mother's place. At Bapunagar, stone pelting was going on outside the Samjuba Hospital. In view of the stone pelting, thereafter he did not go to her mother's place, but returned to their house in a rickshaw. After coming back, he told her that at Bapunagar, the people are burning buses and rickshaws and pelting stones and in this manner, she came to know about the incident of 27.2.2002.

199.3 On 27.2.2002, after her son returned home, they had heard commotion on the road near their house. All the commotion was in connection with the burning of a train at Godhra. Thereafter, on the same day at night, at around 9:00 to 9:30, people were chanting "Jay Shri Ram" near Natraj Hotel. They were shouting and were burning the tyres. She took all these events lightly and they had their meals and stayed at home. After a little while, they came to know that on the next day, that is, on 28.2.2002, there was a call for bandh.

199.4 On the next day, as there was a call for bandh, they had thought that they would wake up at leisure as they did not have to go for work. She woke up at leisure. In the morning, she went to the S.T. Workshop to buy vegetables and at that time, there was a huge mob there. The people in the mob were

shouting “Jay Shri Ram” and “kill, cut”. The people in the mob had tied saffron bands around their heads and were wearing white undershirts and khakhi shorts and many people were in vehicles and while others were standing outside the vehicles. They had trishuls, swords and cans of petrol, etc. in their hands.

199.5 The people of this mob attacked their Noorani Masjid. They poured petrol and set the masjid on fire. On seeing all this, she was frightened and returned home. This was prior to noon and she does not know the exact time.

199.6 After coming home, she told the people residing near her house, about the mob she had seen near the Noorani Masjid and the slogans they were shouting, etc.

199.7 The people in the mob thereafter started entering into their chawls. Her son Javedhussain told them to stay at home and said that he would come back in a little while. Thereafter, Javedhussain went out to see. The people in the mob, who had entered into their lanes, had burnt a house belonging to a person of the Muslim community. This house was situated next to the flour mill and it was the first house. This house was situated opposite the compound wall of the S.T. Workshop on the other side of the road and was the first house. Four or five women of their community *inter se* decided that they would go and make a representation to the police because the people were burning the houses belonging to their community in the presence of the police. Upon four or five women going and making a representation to the police, the police told them “Go away; go inside! Today, it is the day for

you Muslims to die! Today is your last day”.

199.8 Upon hearing this from the police and as the police did not do anything, they returned back to their homes. Thereafter, the police started shooting at the Muslims. Out of fear, many people of their lanes had left their houses and had gone on the rear side. Whereas the people in the mob were entering the houses and were destroying the goods in their houses and were bursting gas cylinders and pelting stones.

199.9 When the police was firing, at that time, her maternal aunt's son Khalid was injured on the waist by a bullet and he had fallen down on the spot. People from their community lifted Khalid and put him in the house of somebody belonging to their community. During this period, the mob started swelling. She does not know as to at what time Khalid was injured by the bullet. The mob was burning their houses and their household articles, etc. and they were running far away.

199.10 All of them went and hid in the house of the Pinjara, where many Muslims were hiding. At this time, the mob started burning anything that came in their hands and they had also burnt the people alive. When she was at the Pinjara's house, as her son Javedhussain was not there, she was feeling very anxious and hence, she went out of the Pinjara's house. Outside, she met Bhavani. She told Bhavani, *“Look at what is happening, please do something.”* Upon hearing her, Bhavani told her that he had called the police and that everything would become peaceful. She, therefore, told Bhavani that the police themselves were shooting, then what were the police

going to do! Whereupon Bhavani told her not to worry and that he was making *kadhi khichdi* to feed them. At this time, Bhavani's younger daughter was with him. She started saying that, "*In your community, don't you cook kadhi – khichadi when somebody is dead*". Therefore, she asked her as to why she was saying such things. Thereafter, both of them went away and she went off to search for her son.

199.11 When she went to look for her son, there were many people in the mob and she was afraid. They were bursting gas cylinders and burning houses and they had reduced the houses to ashes. She stealthily went till Jawannagar, looking for her son, but she could not find him. She was about to return to the Pinjara's house, when there was a huge mob there, and hence, she hid below a paan-cabin. From under the paan-cabin, she saw that many people from the mob were coming and the people from their community were running helter skelter. She saw a mob standing near Jaybhavani's house. She saw that Noori, Jadikhala and her son's son, that is, Jadikhala's grandson who was with them, all were near Jaybhavani's house. At that time, she saw that Jaybhavani and his daughter were driving everyone out of their house and were telling them that if the mob comes, there will be difficulty. They had driven everyone out, but thereafter they called the mob. They called the mob behind their house. Jaybhavani and his daughter gave kerosene soaked quilts to the mob. They were soaking the quilts in kerosene and were giving them. Moreover, several people in the mob also had kerosene with them.

199.12 Guddu was there in the mob and there were other

people also. They used kerosene soaked quilts and set Jadikhala, Noori and Jadikhala's grandson on fire. In the act of burning them in this manner, Jaybhavani and his younger daughter had also participated. She saw all this from under the paan-cabin. From under the cabin, she saw that the people in the mob were catching hold of living people and burning them. Upon seeing all this, she lost her mind and was very frightened.

199.13 After all this, upon getting a chance, she went back to the Pinjara's house. In the entire incident, the Muslims out of fear had fled to Gangotri Society. Out of the people who had fled, many did not remain alive on that day.

199.14 Upon getting a chance, she had gone to the Pinjara's house. At that time, the people in the mob had also entered the S.T. Workshop. At this time, it was evening and from the S.T., the people were hurling very dirty abuses which were unbearable for Muslims to hear. They stayed at the Pinjara's house till 1:30 at night. There were many people there. The people were coming to the Pinjara's house at night and knocking the door, however, out of fear, they had not opened the door. Those who were knocking the door said from outside that they were people belonging to their community and were not members of the mob, whereupon they opened the door. They took them opposite the Noorani Masjid, where the police vehicle was parked and in that vehicle, they were taken to the Shah Alam camp. While they were being taken in this manner, on the way, their vehicles were attacked. The police accompanying them told the driver not to stop the vehicle, and hence, he did not stop the vehicle and they were

taken to the Shah Alam camp in the vehicle.

199.15 She stayed at the Shah Alam camp for about six months. The police had not recorded her statement at the Shah Alam camp. The police had made a panchnama at that time. For that purpose, she had gone to Naroda Patiya. After about six months, she had returned to Naroda Patiya from the camp. They had returned to their house at Hussainnagar, Lane No.4. After they stayed in their house for two to three months, the Relief Committee gave them a house, whereafter they came to stay at the Relief Committee's house at Citizennagar and at present also, she is residing there.

199.16 The witness has stated that all the facts that she has deposed before the court, she has stated to the SIT and that, in all, her two statements have been recorded by the SIT. One was recorded at her house in Citizennagar.

199.17 The SIT had called her to the Gheekanta Court for identification of Jaybhavani's daughter. She had gone to the Gheekanta Court and identified her.

199.18 The witness has stated that even today, she can identify Jaybhavani's younger daughter (Geeta A-56).

199.19 The witness has stated that as per her knowledge, Guddu and Jaybhavani have passed away. The witness has stated that in the mob which was burning her maternal aunt Jadikhala, her grandson and Noori, a boy named Suresh was also present. She does not know Suresh's full name. However, Jaybhavani's daughter was addressing him as Suresh and was

talking to him, and hence, she came to know that his name is Suresh. She has stated that she can identify Suresh.

199.20 The witness has thereafter correctly identified Jaybhavani's younger daughter (A-56) and Suresh (A-22) before the court.

199.21 CROSS-EXAMINATION: In the cross-examination of this witness, it has come out that she was residing in the Naroda Patiya area since fifteen years prior to the incident. Prior thereto, she was residing at Bapunagar. The witness has admitted that on 28.2.2002 in the morning, she had gone to purchase vegetables from Padmaben's shop at 9:00 to 9:30 in the morning. The witness has stated that she cannot say as to what is the distance between Padmaben's shop and the carts near the Noorani Masjid and has voluntarily stated that one can see Natraj Hotel from near Padmaben's shop. The witness has stated that she cannot say how long it took her to purchase the vegetables. She has denied that when she went to Padmaben's shop, the situation of that area was normal.

199.22 The witness has denied that in the entire day, she had taken shelter only at the Pinjara's house. The Pinjara's house is adjoining her house in Hussainnagar Lane No.4. It is a two storeyed house. The witness has admitted that in the Pinjara's house, she had taken shelter in a room. She has denied that because she was in the room, she could not see what was happening in the chawl outside. The witness has stated that she had gone to the room late in the evening and prior thereto, she was outside at the corner of the lane. She has stated that she cannot say as to how long she was at the

corner of the lane as, at that time, they were concerned about saving their lives. The witness has stated that throughout the day, they used to go to the corner of the lane and come back to the Pinjara's house. The witness has admitted that when she came out of the Pinjara's house, the people of the mob had not stopped her. She has stated that the mob had not come up to the Pinjara's house and had entered Lane No.2 and 3. The witness has stated that she cannot say exactly at what time, the houses were set on fire and has stated that in many houses there were two gas cylinders and by using these gas cylinders, the people in the mob were setting them on fire. There was fire on all four sides.

199.23 The witness has denied that Bhavanibhai knew that the Muslims had taken shelter in the Pinjara's house, despite which, Bhavanibhai had not brought the mob to the Pinjara's house. She has voluntarily stated that he did not know as to where they had taken shelter. The talk about kadhi and khichdi had taken place near Jaybhavani's house.

199.24 The witness has stated that at the time when she met Bhavanibhai near his house, one Farida was with her when he talked about kadhi khichdi. Apart from Farida there were other people also with her. The witness has admitted that at that time, the mob was not there. The witness has admitted that Bhavani had talked with her peacefully, however, thereafter, Bhavani had called the mobs.

199.25 The witness has stated that out of the four women who had gone with her to tell the police that though they were standing there the mobs were burning houses, one was Farida.

The other women were from the nearby lanes in their locality. They had gone to tell the police in front of the S.T. Workshop, where there is a way for going into their lane.

199.26 In her cross-examination, the witness has stated that Khalid was injured in the police firing after they had gone to request the police. The witness has stated that she does not know the boys who lifted Khalid and took him; however, they were from their mohalla. She has stated that she knows as to whose house Khalid was taken and that she had gone to visit him. Only Muslims were with Khalid at that time, wherein there were more women and they were crying. She too had waited there for some time. She had stated that Khalid was kept in the house adjoining the Pinjara's house, which house is situated in Lane No.4 in Hussainnagar.

199.27 In her cross-examination it has come out that there are two houses of Pinjaras in Hussainnagar. One is Latifbhai's and the other house is of Umrudhin Pinjara. The witness has voluntarily stated that only Umrudhin Pinjara's house has two floors and Latif's house has only a ground floor. The witness has stated that she had gone from Hussainnagar to Jawannagar in the evening. The witness has stated that the paan-galla mentioned by her is in Jawannagar. The paan-galla was a wooden cabin. She does not know whose paan-galla it was but she had seen the paan-galla prior to the incident also. The witness has stated that she does not remember exactly how long she was in the galla; however, after the mob was not looking, she had gone back to the Pinjara's house. The witness has denied that she had lost her senses to such an extent that she did not know what was happening nearby. The witness has

stated that what she wants to say is that she was terrified. She has stated that when she came out from the paan-galla, it was still daylight and it was not night. She has admitted that she was lying on the ground under the paan-galla.

199.28 The witness has admitted that till she returned to the Pinjara's house, no person in the mob had attacked the Pinjara's house. The witness has voluntarily stated that as far as she knows, till then, no attack had taken place in Lane No.4.

199.29 The witness has denied that she has not seen the incident or the facts as stated by her in her examination-in-chief and that at the instance of the people of her community and NGOs, she is falsely deposing before the court and that she has not seen Bhavani or his daughter.

199.30 The witness has denied that she has seen the entire road from S.T. Workshop up to Teesra Kuva. She has stated that she has seen the road from the ST. Workshop compound wall upto Jaybhavani's house. She has denied that she used to pass through the road every day. The witness has stated that she does not know as to how many gallas were there on her way to the S.T. Workshop. The witness has stated that while going from her house towards Teesra Kuva she had seen a galla, which was near Bhavanibhai's house and she is talking about that galla.

199.31 The witness has stated that she is not aware as to whether Bhavani's front door falls on the side of the S.T. Workshop road. She has voluntarily stated that all that she knows is that his house is near Jawannagar. The witness has

admitted that when the door of her house does not face the road and that the door of her house opens towards Lane No.4 Hussainnagar. Her house is after two houses from the S.T. Workshop compound wall road when one enters the chawl. The witness has denied that at that time on the road coming out from their chawl, there was a paan-galla and has stated that she does not know as to on that day, how many gallas were there on the road.

199.32 The witness is shown an application Mark 644/42 and the signature at the end of the document. The witness has identified the signature to be hers. The contents of the application are read over to the witness, who has admitted the same. The application is exhibited as Exhibit-1572. The witness has thereafter been cross-examined regarding who had written the application, where and how it was forwarded, etc. The witness has stated that she does not know as to whether her statement was recorded on the day when the panchnama was drawn. The witness has denied that on the day when the panchnama was drawn, the police had written down something and she had put her signature thereon.

199.33 The witness has stated that before the SIT, she had stated that she had gone for drawing of the panchnama and had given the names of the accused; however, such facts were not recorded. The witness has denied that she has also told the SIT that she had gone to lodge a complaint but her complaint was not recorded. The witness has admitted that the SIT had read over her statement to her and there were no incorrect facts therein.

199.34 The witness is confronted with her statement dated 17.5.2002 wherein she had stated that on 28.2.2002, she was present at home and doing household work and her husband was also present at home. At that time, at around 9:00 to 10:00 in the morning, all of a sudden, one could hear commotion on the road and hence, she came out to see. The mobs of people belonging to the Hindu community had gathered on all four sides and were pelting stones on the masjid as well as their chawls and immediately she had come home and taken her husband and children and gone to Umarbhai's house and hide there and had stayed there till 2 o'clock at night, after which, upon the police vehicle coming they had gone to the Shah Alam relief camp. In the riots, no member of her family had sustained any kind of injury or loss of life. The witness has voluntarily stated that she had stated facts as stated before the court. The witness has denied that in her statement dated 17.5.2002 she has not stated any fact regarding her having seen the incident of Jadikhala, Noori and Jadikhala's grandson or named the accused or the role played by them. The witness has voluntarily stated that she had stated these facts before the police, however, the police had stated that at that time they were only to record the panchnama, and hence, had not written it down.

199.35 The contents of paragraphs 5 and 6 as well as the contents of paragraph 7 from the fourth line to the fifth line, the contents of paragraph 8 from the second line to the last lined, the contents of paragraph 10 from the second line to the end, the contents of paragraphs 11, 12, 13, 15, 16, 17, 18, 20, 21 and the first three lines of paragraph 26 are read over to the witness to the effect that she had not stated these facts in

her statement dated 17.5.2002, which the witness has denied. The witness has asserted that she had stated all these facts before the police. The witness has denied that till her statement dated 3.6.2008 came to be recorded; she did not know any girl by the name of Geeta. The witness has admitted that on 3.6.2008 she knew Geeta. The witness has denied that, in fact, till her statement dated 24.9.2008 came to be recorded, she did not know Geeta. The witness has stated that she does not know whether Geeta's test identification parade took place before 3.6.2008 and 24.9.2008. She has admitted that till the test identification parade was carried out, she did not know Geeta's name.

199.36 The witness has stated that, at present, she does not remember as to after how many years after the incident, Geeta's test identification parade was conducted. She, however, is not in a position to state exactly when such test identification parade was conducted.

199.37 In her cross-examination, it has come out that she did not visit Jaybhavani's house and did not know as to how many family members and how many women were there in Jaybhavani's house. The witness has denied that in her statements dated 24.9.2008 and 3.6.2008, had shown Geeta to be a suspect. The witness has admitted that in her first statement dated 3.6.2008 recorded by the SIT; she had not given Geeta's name because till then, she did not know her name.

199.38 The witness has admitted that she had no social relations with Guddu, Bhavani or Suresh Langdo nor did she

have any other dealings with them. The witness has admitted that she does not know where Suresh and Guddu are residing and what business they are carrying on.

199.39 The witness has admitted that when she went towards Jawannagar to search for her son, it was approximately 7:30. The witness has admitted that Khalid was the first person from the Muslim community to be injured by a bullet. Khalid was struck by a bullet on the road adjoining the S.T. Workshop compound wall. The witness has admitted that after Khalid was injured by a bullet, the Muslim boys had lifted him and taken him inside. She has admitted that when Khalid was injured by a bullet, it must have been around 12 o'clock in the afternoon but she does not know the exact time.

199.40 The witness is confronted with certain extracts of her statement recorded on 3.6.2008 by the SIT, however, since the witness is not confronted with her earlier statement as to any facts stated by her in her primary evidence, this part of her deposition is inadmissible in evidence.

199.41 The witness has admitted that during the course of investigation, no test identification parade of Guddu Chhara, Suresh Langdo or Bhavani has been conducted through her. The witness has admitted that there is only one woman by the name of Jadikhala in their area. This Jadikhala had died during the riots. The witness has admitted that she had seen Jadikhala outside Bhavani's house on the day of the incident. She has admitted that Jadikhala's name is Hajrabibi. The witness has admitted that there were four to five other persons with Jadikhala and has stated that she had not seen Jadikhala and

four to five other persons entering Bhavani's house.

199.42 The witness has denied that in her statement dated 3.6.2008, she has stated that Jadikhala and four to five persons of her community were burnt in Bhavanisingh's house. She has stated that they were burnt near the part outside Jaybhavani's house. The witness has denied that in the statement dated 3.6.2008 she had stated that at that time there were four to five persons from their community at Jaybhavani's house and Bhavanisingh and his younger daughter called the mob and gave the mob kerosene and poured kerosene on quilts and the mob assaulted and burnt her maternal aunt Hajrabibi alias Jadikhala as well as her grandson and a girl called Noori who was engaged, wherein she had seen Bhavanisingh and his daughter with her own eyes. The witness has voluntarily stated that she did not mean to say that they were set ablaze in Jaybhavani's house and that what she wanted to say was that they were set on fire outside near Jaybhavani's house.

199.43 The witness has admitted that Noori, Jadikhala and Jadikhala's grandson were set on fire at a little distance from Jaybhavani's house. They were set ablaze in front of Jaybhavani's door. The witness has admitted that after they were set ablaze they fell down. The witness has denied that she had not seen anyone burning Jadikhala and she has not seen any incident of Jadikhala and that at the instance of the SIT people she was falsely deposing before the court. She has admitted that she has been given a house without any consideration by the people of her community. She has denied that the people of her community had given the house to her for free for giving false evidence before the court. The witness

has voluntarily stated that the people in the SIT are not her relatives and that the incident of Naroda Patiya had actually taken place and she has stated what she has seen, and she has no reason to lie.

199.44 In her cross-examination, it has come out that the galla under which she had taken shelter did not have four wheels. The upper portion of the galla comprised of a tin cabin. The witness has denied that the tins were also affixed on the lower portion of the galla and has stated that the galla had four legs and that the four legs were made of wood. The witness has stated that she does not know as to whether the galla was set ablaze in the riots but has stated that while she was under it, it was not burnt. The witness has admitted that the distance between Bhawani's house and the galla was very small and that the galla is in the direction from Hussainnagar to Jawannagar. The witness has stated that she does not know whether if one goes straight ahead from the galla one would reach the S.R.P. Quarters. The witness has admitted that she has not seen that Jadikhala had died in any lane or in any house of Jawannagar. The witness has admitted that on that day, she had not gone towards Teesra Kuva and that on that day, she had not seen the road up to the water tank near Gangotri Society and Teesra Kuva.

199.45 To prove the omissions and contradictions as to her previous statements, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

199.46 PW-278 Shri R. B. Joshi, the assignee officer has in

his cross-examination admitted that he has recorded the statement of this witness on 17.5.2002 He has denied that this witness had given her address as Lane No.4, Jawannagar and has stated that the witness had given her address as Naroda Patiya, S.T. Workshop, Hussainnagar. The assignee officer has admitted that this witness in her statement recorded by him had stated that on 28.2.2002, she was present at home and was doing household work and her husband was also present at home. At that time at around 9:00 to 10:00 in the morning, all of a sudden, there was commotion on the road outside. Hence, she came out and saw that mobs of people belonging to the Hindu community had gathered on all four sides and were pelting stones at the masjid and thereafter, upon stones being pelted on their chawls, she immediately came home and took her husband and children and went and hide in the house of Umarbhai in their chawl and they were sitting there till 2 o'clock at night, whereafter upon a police vehicle coming, they had boarded the vehicle and come to the Shah Alam relief camp. That she was with her husband and children and that in the riots, no member of her family had sustained any injury or suffered any loss of life.

199.47 The contents of paragraph 57 of the deposition of the witness are read over to the assignee officer, who has admitted that such facts have been stated by the witness in the statement recorded by him. A perusal of the manner in which the facts have been put to the assignee officer creates an impression that such facts have in fact been stated by the witness in her deposition. However, it appears that these are only contents of her statement recorded by the assignee officer, which the witness has denied. It is settled legal position

that through the process of cross-examination, the facts stated by a witness in the statement recorded by the police under section 161 cannot be brought on record.

199.48 The assignee officer has further admitted that this witness in her statement recorded by him had not stated any facts regarding the incident of Jadikhala, Noori and Jadikhala's grandchildren and had also not given the names of any accused or attributed any role to them. The assignee officer has denied that he had not written down what the witness has stated and that he had told her that he was only recording the panchnama, and hence, such facts are not required to be stated in this statement. The contents of paragraphs 5, 6, 11, 12, 13, 15 to 18, 20, 21 and from the fourth line to the fifth line of paragraph 7, the second line to the last line of paragraph 8, the second line to the last line of paragraph 10 and the first three lines of paragraph 26 are read over to the assignee officer, who has admitted that the witness has not stated such facts in the statement recorded by him. The assignee officer has admitted that the Investigating Officer had not given any instructions to take any steps for carrying out any test identification parade.

199.49 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), has in his cross-examination admitted that he has recorded the statements of this witness on 3.6.2008 and 24.9.2008. The Investigating Officer has admitted that this witness in the statement recorded by him has stated that "*..... my statement dated 17.5.2002 is read over to me, which is only in respect of the damage caused to my house and at the relevant time the police had not taken any statement*

regarding the accused and the incident....” “.....and since the mob was also pelting stones at our chawls, under the impression that we would sustain more injuries in the firing, we had fled towards Hussainnagar, but as the mob was behind us, we also pelted stones in retaliation, however, since the people in the mob were armed and were more in number.....” “..... at that time, at Jaybhavani’s house there were four to five persons from our community, including my maternal aunt Hajrabibi alias Jadikhala. Bhavanisingh and his younger daughter called the people in the mob and gave them kerosene and poured kerosene over quilts and killed and burnt my maternal aunt and her grandchildren who were with her as well as a girl named Noori who was engaged, wherein she had seen Jaybhavani and his daughter with her own eyes....”

199.50 It may be noted that this witness has not narrated any incident regarding Noori, Jadikhala and Jadikhala’s grandson being assaulted and set ablaze in front of Jaybhavani’s house in her statement recorded by the police. This version has come on record for the first time before the SIT. When it is the case of the witness that she saw the entire incident from under a paan galla, was then it not the duty of the Investigating Officer to ascertain the location of the paan-galla and ensure that the same is brought on record? On a perusal of the evidence on record, there is nothing to indicate that there was any paan galla located in such a position as to enable the witness such witness an incident in front of Jaybhavani’s house in the manner narrated by her. All that the Investigating Officer has done is record another statement of the witness, whose statement was already recorded by the police earlier. When in the further statement the witness has

come out with a new story, it was the duty of the Investigating Officer to find out evidence to corroborate the version given by the witness. Upon a query by the court, the learned Special Public Prosecutor, though assisted by three advocates including the learned Assistant Special Public Prosecutor who had appeared before the trial court as well as a police personnel from the SIT, was not in a position to indicate the presence of a paan galla in the vicinity of Jaybhavani's house from under which she could have witnessed the incident. Considering the topography of Jaybhavani's house, which is situated on the side of the S.T. Workshop road and faces the road, a paan galla would have to be located on the road for her to have witnessed the incident from under it. The only paan galla located there is the one in the passage of the water tank, and it is not the case of the witness that she had gone to the passage.

199.51 SUBMISSIONS: The learned counsel for the appellants submitted that the evidence of this witness is in three parts. Firstly, while they were outside the Pinjara's house, Bhavanisingh and accused No.56 Geeta had met her outside the Pinjara's house and there was a conversation between them. Secondly, in the evening while she was beneath the paan-galla, she saw the accused calling the mob at the back of their house and passing on kerosene soaked quilts, where also she refers to Jaybhavani and Geeta. Thirdly, they had used such kerosene soaked quilts. The accused had set ablaze Jadikhala, Noori and Jadikhala's grandson at the house of Bhavanisingh referable to four accused, Guddu, Bhavani, Geeta and Suresh. It was submitted that there are material omissions of material facts in her police statement

from paragraph 5 to paragraph 26, which are proved through the testimony of the Investigating Officer concerned. As far as the accused are concerned, their names and alleged roles attributed were not stated before the police and are stated for the first time before the SIT. Even before the SIT, various facts narrated by her like four to five women including the witness having gone to the police to make a representation; that the accused in the mob had burst gas cylinders; having gone inside the Pinjara's house in the fact situation, coming out and going towards Jawannagar, the presence of Bhavanisingh's younger daughter at the place below the Pinjara's house and her driving out the people along with Bhavani; after seeing several persons being burnt and killed, going back to the Pinjara's house, etc.; are facts which are on the face of it not believable and the same are not so said or corroborated by the evidence of other witnesses. It was submitted that her claim that she went under the paan-galla after she left the Pinjara's house and had seen the incident of Jadikhala, Noori and Jadikhala's grandson is not feasible and possible, mainly for two reasons. Firstly, it is not the case of the prosecution that these three persons have been killed at or outside Jaybhavani's house. According to the say of this witness before the police, as proved by the Investigating Officer (PW-278) that after she entered the Pinjara's house till 2:00 a.m. on the next day, she and her family members kept on hiding. It was submitted that insofar as accused No.22 is concerned, after her entire chief is over, at the stage of identification of the accused, the witness has added a paragraph referring to the name of Suresh, which was not there before the police and in view of the fact that she had no acquaintance with him, as stated in paragraph 74, his identity is doubtful and is not established beyond doubt,

particularly when no test identification parade has been held to identify him.

199.52 As regards accused No.56 Geeta, it was submitted that the allegation made by her in all three incidents are not only far from truth but till her statement was recorded by the SIT on 3.6.2008, her name is not disclosed by the witness. It was submitted that there is nothing to show that when the witness for the first time before the SIT has referred as to her the younger daughter of Jay Bhavani, it A-56 whose identity can be said to have been established beyond reasonable doubt.

199.53 It was urged that in view of her admission, that from beneath the paan-galla she cannot see the fourth lane of Jawannagar, there is no question of her being able to see either the house of Jaybhavani or the passage where the alleged incident had taken place, which rules out the possibility of her being the eyewitness of Jadikhala's incident. It was submitted that this witness is not a credible witness. After six and a half years, when she has implicated accused No.56 and accused No.22, it would be hazardous to believe such a witness as regards the participation of the accused.

199.54 ANALYSIS: As per the version given by this witness, upon mob coming, they had left their house and taken refuge in the Pinjara's house, where many Muslims were hiding. The witness claims that from the Pinjara's house she had gone to Jawannagar to look for her son. When she saw a huge mob coming she had hidden under a paan cabin. The witness has further deposed that under the paan cabin she

saw a mob standing in front of Jaybhavani's house, and Noori, Jadikhala and Jadikhala's grandson were near Jaybhavani's house. At that time Jaybhavani and his daughter were driving them out and telling them that if the mob comes, there will be difficulty. They were driving every one out, but thereafter they had called the mob behind their house. Jaybhavani and his younger daughter had given kerosene-soaked quilts to the mob. Several people in the mob also had kerosene with them. Guddu and other people were in the mob and using the kerosene-soaked quilts, they had set ablaze Jadikhala, Noori and Jadikala's grandson. Jaybhavani and his younger daughter were involved in setting them ablaze in this manner. She had seen all this from below the galla (cabin). Considering the evidence as stated above it is difficult to believe that from under the paan cabin, when there was such a huge mob and Muslims were fleeing from the spot, she could hear what Jaybhavani and his daughter were speaking. While in the main part of her deposition, the witness has implicated Jaybhavani and his younger daughter, subsequently, she has deposed that in the mob she had also seen a youth named Suresh. She has stated that she did not know his full name, but Jaybhavani's daughter had addressed him as Suresh and talked with him, and, hence, she came to know that his name was Suresh. This again is difficult to believe inasmuch as from under the paan cabin, at a distance from Jaybhavani's house it would not have been possible for the witness to hear any conversation between Suresh and Jaybhavani's daughter.

199.55 In her examination-in-chief, the witness has stated that she had met Jaybhavani and his daughter when she came out of the Pinjara's house, whereas in her cross-examination

she says that the conversation with regard to *kadhi khichdi* took place outside Jaybhavani's house. In her examination-in-chief she has stated that she had gone outside to look for her son and when she reached Jawannagar, a huge mob had come and she has hidden herself under paan cabin. In these circumstances, after she left the Pinjara's house, there was no occasion for her to have reached near Jaybhavani's house where such conversation could have taken place inasmuch as Jaybhavani's house is situated at the end of Jawannagar where Gangotri Society begins.

199.56 Insofar as the location of the paan cabin is concerned, the witness, in paragraph 44 of her cross-examination, has stated that it was situated in Jawannagar and was a wooden cabin. In paragraph 92 of her cross-examination, the witness has stated that the paan cabin had four wooden legs and was at a short distance from Jaybhavani's house. The galla (cabin) was after Hussainnagar towards the side of Jawannagar. In her cross-examination it has been brought out that in her police statement she had not stated any fact regarding the incident of Jadikhala, Noori and Jadikhala's son, nor the names of the accused and the roles played by them. Considering the overall testimony of this witness, she does not come across as a truthful witness and her testimony is full of improvements, exaggerations and embellishment. Her testimony is also contrary to the testimony of majority of the witnesses, who have stated that the incident of Jadikhala took place near the passage of the water tank. Except for this witness, no other witness has stated regarding any incident having taken place in front of Jaybhavani's house. Considering the manner in which the witness has stated that she has seen

the incident, she does not come across as a truthful witness. While she has stated that she has seen the entire incident from under the paan cabin, nothing has been brought on record to indicate exactly where such paan cabin is situated.

199.57 It may be noted that this witness, in her statement recorded by the police, has not narrated any incident regarding Jadikhala, Noori and Jadikhala's grandson being assaulted and set ablaze in front of Jaybhavani's house. This version has come on record for the first time before the SIT. As noted hereinabove, it is the case of the witness that she saw the entire incident from under the paan cabin. In these circumstances, it was the duty of the Investigating Officer to ascertain the location of the paan cabin and ensure that the same is brought on record. A perusal of the evidence on record shows that there is nothing to indicate that there was any pan cabin located in such a position so as to enable the witness to see the incident in front of Jaybhavani's house in the manner narrated by her. However, all that the Investigating Officer (SIT) has done is to record another statement of the witness, whose statement had already been recorded by the police on 17.5.2002. When in her further statement the witness has come out with a version different from the version recorded by the police, it was the duty of the concerned Investigating Officer to find evidence to corroborate the version given by the witness. Upon a query by the court regarding the location of the paan cabin, the learned Special Public Prosecutor, though assisted by three advocates including the learned Assistant Special Public Prosecutor, who had appeared before the trial court as well as police personnel from the SIT, who has been assisting in the matter right from the inception, was not in a

position to point out to the court the presence of a paan cabin in the vicinity of Jaybhavani's house from under which the witness could have seen the incident. Considering the topography of Jaybhavani's house, which is situated on the side of the S.T. Workshop road and which faces the road, the paan cabin would have to be located on the road for the witness to have seen the incident from under it. The only paan cabin which is located there, in terms of the panchnama and other evidence on record, is the one in the passage of water tank, and it is not the case of the witness that she had gone to the passage.

199.58 Having regard to the testimony of this witness, who has named the accused for the first time after a period of more than six years before the SIT and considering the manner in which she claims to have seen the accused, the witness does not appear to be credible and truthful witness and her evidence cannot be taken into consideration for the purpose of establishing the charge against the accused named by her.

200. **PW-223 Gulammahammad Faizmahammad Pathan**, aged 42 years, has been examined at Exhibit-1596. The witness has deposed that his native is *Village Motidav, District Mahesana, Gujarat*.

200.1 The witness has deposed that he is residing at *Pandit-ni-Chali, next to the S.T. Workshop* since the last twenty five years. Since the last twelve years, he is serving as a watchman.

200.2 In the year 2002, he was working as a watchman at

Uday Gas Agency, Naroda Patiya as well as J. K. Timber Mart.

200.3 As a watchman, his duty hours were from 8:00 at night to 8:00 in the morning. In the year 2002 also, his duty hours were the same. He used to work as a watchman at night, and in the day time, he used to ply an auto rickshaw.

200.4 On 28.2.2002, that is, from 8 o'clock at night of 27.2.2002 till 8 o'clock in the morning of 28.2.2002, he was discharging duties at Uday Gas Agency and J. K. Timber Mart.

200.5 On 28.2.2002, the Vishwa Hindu Parishad had given a call for bandh. On 28.2.2002, in the morning, he was at Uday Gas Agency. On 28.2.2002, at about 8 o'clock, the workers of Uday Gas Agency had come to the workplace. He came to know about it as they had knocked at the gate. He had told them that there was a bandh call on that day, and hence, their employer has kept the agency closed and therefore, they should all go back, and accordingly, they had gone back. During this period, the customers of the gas agency also started coming, but he has sent them back. Thereafter, he closed the gate of the agency and went home.

200.6 On 28.2.2002, in the morning, when he was at home, a mob came and there was a lot of commotion, and hence, with a view to save his life as well as the lives of his family members, he took his family members and went to Uday Gas Agency. Upon returning to Uday Gas Agency from his house, he saw mobs on the side of Krushnanagar as well as Naroda Patiya. The people in the mob were shouting. He had reached Uday Gas Agency where he had kept his family

members on the upper floor and he remained down stairs.

200.7 In the afternoon, at about 12:30, a white coloured ambulance like vehicle came to the agency. The vehicle had a Red Cross mark and it had a red light which is the sign of an ambulance. There were around twenty-five people in this vehicle and the people told him to open the gate, but he had not opened the gate, saying that there were no orders from his employer to open the gate. When he said this to them, about fifteen people jumped over the gate and came inside the compound of their gas agency.

200.8 At that time, there was a truck filled with gas cylinders in the compound of the agency. The people who had come asked for gas cylinders; however, he told them that since there were no orders from his employer, he could not give them the cylinders. He had asked one of the persons who had come, to talk with his employer on his residential telephone number. He first talked with his employer and thereafter, handed over the telephone to the other person. He had informed his employer that these people were asking for gas cylinders and that he had refused to give them and that upon his refusing to open the gate, they had jumped and come inside. His employer told him on the telephone not to give the gas cylinders and told him that he was coming. Despite his employer having said that the gas cylinders were not to be given, the people who had come forcibly took away the gas cylinders. These people had forcibly taken away approximately twenty to twenty five gas cylinders.

200.9 All this happened at around 12:00 to 12:30 in the

afternoon. Thereafter, he had informed his employer that they had taken away the gas cylinders in this manner. His employer came to the agency at around 4:00 to 4:30. He had brought policemen with him. He had told his employer that approximately twenty five gas cylinders have been taken by the mob of people. Thereafter, his employer left with the police. Subsequently, his employer Shri Rameshchandra Nathalal Patel had lodged a complaint with the police station.

200.10 Thereafter on 28.2.2002, his family members stayed at Uday Gas Agency. On the next day, the Police Commissioner came to the gas agency to see the scene of incident. He came and inspected the place. Thereafter, the witness took his family members and left them at the Shah Alam camp. He and his family members stayed there for about three to six months. At the camp, his mother's health had deteriorated, and hence, he had taken to his paternal uncle's house. His mother has thereafter died on account of the illness at his paternal uncle's house.

200.11 On 28.2.2002, as well as in the incidents that took place thereafter, the people in the mob had looted his house in Pandit-ni-Chali and caused damage.

200.12 The Crime Branch as well as the SIT had recorded his statement in connection with the incident. While he was at the Shah Alam camp, a policeman had taken him to his house to carry out a survey. At that time also, the police had recorded his statement.

200.13 CROSS-EXAMINATION: This witness in his

cross-examination has admitted that Uday Gas Agency and J.K. Timber Mart are situated adjoining each other. He has admitted that during his service as a Watchman, he used to keep rotating between both the places turn by turn. The witness has admitted that he has stated all the facts regarding what he had seen at Uday Gas Agency on the day of the incident in his examination-in-chief. The witness has admitted that except for what he has stated in his examination-in-chief, he has not seen any other facts and has, therefore, not mentioned them.

200.14 The witness is cross-examined with regard to the topography of the area. He has admitted that from his gas agency, the Jawannagar pit can be clearly seen. The witness has voluntarily stated that from the outer part of the gas agency, the Jawannagar pit can be seen. The witness has admitted that after coming from out of the gas agency and crossing the National Highway road, Bipin Auto Centre is situated. The witness has admitted that on 28.2.2002, Bipin Auto Centre had been set on fire, which he had seen. The witness has admitted that he has no knowledge about what happened to the ambulance which had come on that day and in which direction it had gone. The witness has admitted that the ambulance like vehicle had come at about 12:30 in the afternoon. He has admitted that his employer came with the police at about 4:30 in the evening for the first time. He has admitted that there was only one policeman. The witness has denied that on that day from morning to evening, he was on the outer part of Uday Gas Agency. He has admitted that on that day, he had not seen any vehicle on the road going from Uday Gas Agency towards Jawannagar pit. The witness has

admitted that on the day of the incident, he had not seen any police vehicle coming to Uday Gas Agency and that only one policeman had come.

200.15 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is the Watchman of Uday Gas Agency. He has not seen any mob going towards Jawannagar. Though he was on the ground floor of Uday Gas Agency he has not seen any mob going from Jawannagar to the S.R.P. Quarters during the day.

200.16 ANALYSIS: This witness was working as a watchman at Uday Gas Agency at the relevant time. Nothing much turns upon the testimony of this witness, who has only deposed regarding twenty two to twenty five gas cylinders having been forcibly taken by some persons, who had come in an ambulance in the afternoon on the day of the incident. This witness has not implicated any accused, nor had he narrated any incident relating to the offence in question.

201. **PW-224 Chandbhai Abdulrasid Shaikh**, aged 48 years, has been examined at Exhibit-1601. The witness has deposed that in the year 2002, he was residing at *Lane No.1, Jawannagar*. At that time, his wife and his daughter were residing with him. In the year 2002, he was doing tailoring work in *Pandit-ni-Chali, Near Noorani Masjid*. He is an illiterate.

201.1 The incident took place on 28.2.2002. At that time, the Vishwa Hindu Parishad had given a call for bandh. On that day, at around 9:00 to 9:15 in the morning, he had set out from his house to go for his job and had come out on the road.

201.2 When he came out, there was a mob near the gate of the S.T. Workshop. He came and stood there. There, he saw that stone pelting had started. The Hindus were pelting the stones on the Muslims. After pelting stones for some time, the people in the mob started setting the stalls and cabins on fire. Thereafter, the police lobbed tear gas at them. After lobbing the tear gas shells, the police resorted to firing. After the firing was over, the people in the mob set Noorani Masjid on fire. He had seen all this. He had to go to Pandit-ni-Chali for his job, but he could not go there on account of the incidents. Thereafter, he returned home.

201.3 After returning home, he told his family members about all the things that were going on on the road and everyone at home started crying.

201.4 Behind his house in Jawannagar, there is a compound wall. The people in the mob started entering Jawannagar and started breaking the wall behind his house, whereupon he and his family members were terrified. They, therefore, came out from his house and went out. For a little while, he stood there. Thereafter, the mob started breaking the other side of the wall, whereupon they left their house and went towards his mother's house. His mother's house was near the S.R.P. compound wall behind his house.

201.5 The persons who were breaking the compound wall were shouting slogans, "kill, cut". The mob was breaking the compound wall. In the mob, he had seen **Suresh Langdo (A-22)** and **Guddu Chhara** also. They were breaking the

compound wall. After breaking the compound wall, they came inside into the chawls of Jawannagar. At this time, they were shouting “kill, cut”.

201.6 Guddu Chhara and Suresh Langda had swords in their hands. They reached his mother’s place, however, his mother and his three brothers and their families had also left their house and gone out. They were standing near the compound wall of the S.R.P. Quarters. The people in the mob came to their chawls and started assaulting, cutting and burning. The mob had burnt a boy named Ayub near the S.R.P. compound wall.

201.7 Thereafter, they went to Gangotri Society through Gauri Apa’s terrace. They sat on the terrace. Thereafter, at night, when they were on the terrace, a police vehicle had come and they were taken in that vehicle to the Shah Alam camp.

201.8 Later on, they came to know that his sister Salima had been set ablaze and she had died in the incident. He had also learnt that his brother Zakirhussain’s son Shahrukh, who was 6 years old at that time, was also set ablaze and he too had died.

201.9 The witness has deposed that in the incident, his house had been set on fire. They had stayed at the camp for six months. The police had orally examined him in connection with the incident and had drawn a panchnama of his house. He knows Guddu and Suresh. He does not know where Guddu is at present and said that he can identify the accused.

201.10 The witness has thereafter identified Suresh (A-22) correctly.

201.11 CROSS-EXAMINATION: This witness in his cross-examination has stated that he does not know the exact date on which the police had recorded his statement at the camp but has stated that he remembers that his statement was recorded on the day when the police had taken him for the purpose of conducting survey, which was approximately about two and a half months after the incident. The witness is cross-examined with regard to the conditions at the camp as to whether leaders of their community were coming there and who was coming there to help them. The witness has admitted that from the people who were in the camp, he used to have conversation about the incident with his acquaintances. The witness has voluntarily stated that while talking about these things, the some person would give the figure of the dead as 500 and someone would say a lesser or a bigger figure. However, lastly they had come to know that the figure of the number of deaths was around 100. The witness has stated that he has not given any complaint in connection with the facts regarding the incident and has voluntarily stated that he has given his FIR or his statement which is his complaint.

201.12 The contents of first two lines of paragraph 4 of the examination-in-chief are read over to the witness, wherein he has stated that when he came out there was a mob near the S.T. Workshop gate to the effect that he has not stated such facts in his statement recorded by the police, which the witness has denied. The witness is read over the contents of

paragraphs 5, 6 and the contents of four lines from the second line of paragraph 7 of the examination-in-chief of the witness to the effect that he has not stated such facts in his police statement, which he has denied. The contents of paragraph 8 from the second line to the last line are read over to the witness. It appears that the trial court has not recorded as to what had transpired after reading over that part of the examination-in-chief to the witness. However, from the note below, it appears that the witness is confronted with that part of his examination-in-chief to the effect that he has not stated such facts in his police statement, which the witness has denied. It may be noted that in paragraph 8 of his examination-in-chief the witness has stated that when they reached his mother's place, his mother and his three brothers and their families had also left their homes and had gone out. They were standing near the S.R.P. compound wall. The mob came and started assaulting, cutting and setting ablaze the people from their chawl. The mob had set ablaze a boy named Ayub near the S.R.P. compound wall.

201.13 The trial court in a note below the part where the witness is confronted with his police statement has recorded that in his statement, the witness has stated that in the Hindu mob, Suresh Chhara, whom the witness knows by his face, was roaming around with a sword and was shouting "kill" "cut", and Guddu Chhara who resides behind the S.R.P. camp had a sword with him and was with the mob and there was stone pelting from the side of the S.T. Workshop also and they were burning bus seats and throwing them and that except for that, the other facts are not there in the statement. It may be noted that part of what is stated by the witness in the examination-

in-chief and the facts which the court has noted are totally different. When the witness has not mentioned anything about Suresh Chhara roaming around with the sword and shouting “kill” “cut”, as well as the fact regarding stone pelting, bus seats being thrown from the S.T. Workshop, the trial court was not justified in making reference to such facts, inasmuch as insofar as the Guddu Chhara and Suresh Chhara having swords in their hands is stated in paragraph 8 of the examination-in-chief and the witness has not been contradicted in respect of that portion of his examination-in-chief.

201.14 The witness has denied that the incident of the wall being broken took place while he was on Gauri Apa’s terrace. He has denied that during the entire day of the incident, he had not seen Suresh or Guddu anywhere and, therefore, in his statement he has not stated as to where and at what time and from where he had seen Guddu and Suresh.

201.15 The witness has admitted that Ayub was set ablaze near the S.R.P. compound wall. He has denied that the mob which set Ayub ablaze was comprised of only twenty-five to fifty people and has stated that he cannot give the exact number. He has stated that he had seen the incident from the Gauri Bhabhi’s terrace. The witness has stated that he does not know where the mob had surrounded Ayub but only knows that Ayub was set ablaze. The witness has denied that he has not seen any incident and that at the instance of the people of his community and the leaders of his community he was falsely deposing before the court.

201.16 The witness has admitted that he has no monetary

or any other relations with Suresh. He has no social relations with Suresh. The witness has voluntarily stated that Suresh used to visit his area. The witness has admitted that no test identification parade to identify Suresh and Guddu has been carried out by the police during the course of investigation and has voluntarily stated that he knew Suresh right from the beginning and that Guddu resides in their area and hence, he knew him also from the beginning.

201.17 To prove the omissions and contradictions as to the previous statement of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

201.18 PW-278 Shri R.B. Joshi, the assignee officer in his cross-examination has admitted that he had recorded the statement of this witness on 7.5.2002. The assignee officer has admitted that this witness had not stated that there was a mob near the gate of the S.T. Workshop but has stated that the witness has stated that when he came to the road, there were many Hindu people. The contents of paragraphs 5 and 6 and the four lines from second line to paragraph 7 of the examination-in-chief of this witness are read over to the assignee officer who has admitted that this witness has not stated any such facts in the statement recorded by him. The contents of paragraph 8 from the second line to the last line are put to the assignee officer who has denied that the witness has not stated all these facts in the statement recorded by him. The assignee officer has stated that this witness has stated that in this Hindu mob Suresh Chhara roaming with a sword and was shouting "kill" "cut" whom the witness had

seen and that secondly, Guddu Chhara who resides behind S.R.P. camp had a sword with him and was with the mob. There was also stone pelting from the S.T. Workshop and seats of buses were being burnt, except for this, the other facts stated in paragraph 8 have not been stated by the witness.

201.19 The contents of paragraphs 28, 29 and 30 have been put to the assignee officer, who has admitted that such facts were stated by the witness in the statement recorded by him. Once again, the question put to the assignee officer gives an impression that these are the facts stated by the witness in the deposition and not facts which are stated in the statement. If the witness has himself stated these facts in the statement recorded by the police as well as in his examination-in-chief, there was no question of proving the same through the testimony of the Investigating Officer. The assignee officer has admitted that this witness has not stated that he had seen the incident of the wall being demolished from Gauri Apa's terrace. He, however, has clarified that the witness has stated the facts regarding his having gone to Gauri Apa's terrace. The assignee officer has admitted that the witness has not stated any fact regarding at what time and or where he had seen Suresh and Guddu in the entire day. However, the witness had stated that he had seen them in the mob and has also stated as to what they were doing.

201.20 SUBMISSIONS: The learned counsel for the appellants submitted that this witness admittedly does not say as to what time and where he had seen Suresh and from which place. Though the witness claims that he knows Suresh, the acquaintance with Suresh is not established and no test

identification parade has been held. Referring to paragraph 6 of the examination-in-chief of the witness, it was pointed out that there is no reference of time and hence, there is no indication as to at what time the incident took place. Referring to the contents of paragraphs 6 to 8 of the examination-in-chief, of the witness, it was submitted that the contents thereof are very vague. Therefore, it is difficult to believe that the incidents have happened, as narrated by the witness.

201.21 As regards the incident of Ayub, it was submitted that the witness has stated that the mob had set Ayub on fire. It was submitted that if he had seen the incident, he would have stated two facts. Firstly, regarding Ayub jumping from the terrace and receiving injury and secondly, Ayub being set on fire in a rickshaw. It was submitted that these facts are prominently missing and, therefore, even if the witness says so, for the first time before the court, he is not to be believed. It was submitted that this witness does not refer to any mob from Krushnanagar though he talks about firing. He does not talk about anyone being injured in the firing. It was submitted that this witness left his house at 2:30 to 3:00 in the afternoon. It was submitted that the fact regarding the witness having seen both the accused before the wall was broken is highly improbable. Reference was made to the testimony of PW-143 Dildar Umrao Saiyed to submit that the said witness has stated that the wall was broken at 12:00 to 1:00. Therefore, if the wall was already broken, there was no question of breaking the wall again.

201.22 Reference was made to the contents of paragraph 28 of the cross-examination of the witness to point out that

witness has stated that he went to Gauri Apa's terrace in the evening and saw Ayub being burnt from the S.R.P. Quarters. It was submitted that this witness had again gone to Gauri Apa's terrace after Ayub was burnt. If the witness had seen the incident of Ayub, other witness would also have narrated this incident. Those witnesses have named Guddu whereas this witness has not named Guddu which means he has not seen the incident. It was submitted that looking to the inconsistencies in the evidence of this witness, he is not reliable and his testimony does not inspire confidence.

201.23 Mr. P. G. Desai, learned Special Public Prosecutor, submitted that in the cross-examination of this witness nothing much has been brought out except that the witness had gone to his mother's place. It was submitted that such an omission is not a material omission which would affect the prosecution case. It was submitted that the witness has named and identified accused No.22 Suresh Chhara, and therefore, his evidence is truthful, credible and believable.

201.24 ANALYSIS: From the testimony of this witness it emerges that in the morning he came out on the road and saw stones being pelted by Hindus at Muslims. After pelting stones, the mob started setting ablaze carts and stalls. Thereafter, the police lobbed teargas shells and resorted to firing. Thereafter, the mob had set the Noorani Masjid ablaze. Upon seeing all this, he had returned to his house in Pandit-ni-Chali. The witness in his examination-in-chief has mentioned the presence Suresh Langda (Accused No.22) and Guddu Chhara in the mob which had broken the Jawannagar compound wall and has deposed that Suresh Langda was

armed with weapons. However, an omission in the nature of contradiction has been brought out in his cross-examination, which has been proved through the testimony of the assignee officer PW-278, to the effect that the witness has not mentioned that he had seen Suresh Langda and Guddu Chhara in the mob which had broken the compound wall, nor had he narrated any fact regarding the compound wall having been broken. However, it appears that in his police statement he had mentioned the presence of Guddu Chhara and Suresh Langda in the mob and had also stated that Suresh Langda had a sword in his hand. However, the exact time and place where he had seen the two accused had not been mentioned. Insofar as reference to the incident of a youth named Ayub being set ablaze near S.R.P. compound wall is concerned, such fact was not mentioned by the witness in his previous statement and hence is a subsequent improvement.

201.25 Considering the overall testimony of the witness, it is established that he had seen Guddu Chhara and Suresh Langda (A-22) in the mob on the day of the incident.

202. **PW-225 Firoz alias Baba Khwajamoyuddin Shaikh**, aged 30 years, has been examined at Exhibit-1607. The witness has deposed that he is illiterate and in the year 2002, he was residing at *Mansuri-ni-Chali, Behind Noorani Masjid, Naroda Patiya*. His native place is Karnataka.

202.1 In the year 2002, he together with his mother, his brother Chand, his sister-in-law and his wife, all were residing together at *Mansuri-ni-Chali*. However, in the month of February, 2002, his wife had gone to his in-law's house at

Hussainnagar for her delivery.

202.2 His father-in-law's name is Khalidbhai. In the year 2002, he was working in a garage by the name of "Jashoda Body". His brother used to work in a bakery at Naroda Patiya at the relevant time. His wife Kausharbanu was working in a thread factory at Naroda.

202.3 He does not remember the month. The incident took place on 28th date in the year 2002. On that day, there was a call for bandh. He does not know who had given such a call and why such a call was given.

202.4 On the day of the incident, he was at home in the morning. On that day, after 9 o'clock in the morning, he went on the road near Noorani Masjid when he saw that people in the mob were pelting stones and setting things ablaze. They were setting the cabins and stalls on fire. They were pelting stones at the masjid.

202.5 From there, he went to fetch his wife from Hussainnagar, being his in-law's place. At Hussainnagar also, the mob had gathered and they were assaulting the Muslims. When he went inside Hussainnagar, there were mobs inside and they were shouting "kill, cut" and were burning the houses. Out of fear, he went away from there. While running, he had gone to Jawannagar pit.

202.6 At this time, it was around 4 o'clock in the afternoon. In the pit, he saw his mother-in-law and his wife. He does not know his mother-in-law's name. He saw that the

people in the mob had surrounded his mother-in-law and his wife. His wife was pregnant and the time for her delivery was very near.

202.7 A person with a cloth tied over his face inflicted a blow with a sword on his wife. Out of fear, he fled away from there and went to the S.R.P. Quarters. He went inside the S.R.P. Quarters and sat there till around 12 o'clock at night, whereafter upon a police vehicle coming, he went to the relief camp. He was taken to the Dariyakhan Ghummat relief camp.

202.8 He stayed at the camp for around three to four months. In the meanwhile, the police had orally examined him in connection with the incident. After a sword blow was inflicted on his wife, he had gone away from there. After going to the camp, he came to know that his wife Kausharbanu died in the incident. At the camp, he also came to know that his mother-in-law had also died in the incident.

202.9 CROSS EXAMINATION: This witness is extensively cross-examined with regard to the topography of the area near Noorani Masjid. In his cross-examination, the witness has admitted that the S.T. Workshop mob had crossed the road and had come near the Noorani Masjid. He has admitted that upon seeing this, he crossed the road and went towards Hussainnagar chawl. The witness has denied that he was a part of the Muslim mob and he had also resorted to pelting stones, glass and pieces of bulbs. The witness has denied that he was pelting stones and glass from Noorani Masjid. He has admitted that to protect the masjid, there was cross stone pelting by the Muslim mob.

202.10 The witness has admitted that Jenbi is his mother-in-law. He has denied that at that time, he has taken his mother-in-law Jenbi and his wife Kasuarbanu and was fleeing in the Jawannagar pit. The witness has voluntarily stated that he had gone there to look. The witness has admitted that when he went to look there, his wife Kausarbibi and his mother-in-law Jenbi were in the Jawannagar pit. His wife Kausarbibi was being assaulted with a sword and hence, he had fled from there.

202.11 The witness has stated that he does not remember as to how many people were there in this sword attack. He has further stated that there were around twenty to thirty persons. The witness has stated that he does not know as to whether his wife had screamed when she was assaulted with a sword. The witness has stated that he had heard the people in the mob shouting "kill" "cut". The witness has admitted that the assailants had covered their faces with clothes and only the eyes could be seen. The witness has admitted that that his wife Kausarbibi was assaulted with a sword in the Jawannagar pit and killed there and he had immediately fled from there.

202.12 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has deposed contrary to the evidence of the other witnesses but has not been declared hostile. It was submitted that this witness is the husband of deceased Kausarbibi and son-in-law of Jenbi and, therefore, there are all reasons to believe that he is telling the facts that he has actually seen about them before the police and also the court, and that this witness has no reason to lie. It was submitted that the person who is alleged to have given the

blow by the sword is neither named nor identified. According to this witness, this incident took place at 4:00 p.m., whereas the say of the other witnesses is contrary to this, wherein the time, the manner, the place as well as the name of the accused, materially differ, which again are in contradiction with the say of this witness. It was contended that the version qua Kausarbibi is also found contrary to the medical evidence on record and, therefore, from no angle the incident of Kausarbibi as is differently stated by different witnesses and as is stated by this witness had occurred, and that the incident is all got up and unbelievable qua all individual accused, who are implicated by different witnesses differently.

202.13 Mr. P. G. Desai, learned Special Public Prosecutor, submitted that the witness has stuck to his earlier version during the course of his cross-examination by describing the incident of sword blow having been inflicted on his wife Kausarbanu stating that thereafter he went away from that place to save his own life. It was submitted that the witness has not implicated any accused person as the person who gave blow to his wife Kausarbanu with a sword. It was submitted that so far as this witness is concerned, reference to Kausarbanu is to his wife, but as regards the incident of taking foetus out of the womb and killing the foetus and the lady by the accused No.28 is concerned, the victim may not be the same Kausarbanu, in view of the fact that there is reference in one of the statements of PW-147 Reshambanu (paragraph 22) about the same incident.

202.14 ANALYSIS: As per the narration of events deposed by this witness, he was at home in the morning and he had

gone on the road near the Noorani Masjid at 9 o'clock, where mobs were pelting stones and committing arson. From there he went to his in-law's house at Hussainnagar to fetch his wife. At Hussainnagar, mobs had gathered and were assaulting Muslims. He, therefore, fled towards Jawannagar khada. At around 4:00 p.m. he saw his wife and mother-in-law in the khada (Jawannagar pit). The mob had encircled his wife and mother-in-law and a person with a cloth tied on his head assaulted his wife with a sword, whereupon the witness fled from the scene.

202.15 Having regard to the testimony of this witness, he is a chance witness, who appears to be at the spot by chance. The statement of this witness was not recorded at the relevant time when the incident took place. The version of the incident as given by this witness is contrary to the version given by other witnesses. From the evidence on record it emerges that Kausarbanu, wife of this witness, was killed near the passage of the water tank. Insofar as Jawannagar Khada is concerned, not a single witness has narrated any such incident having taken place there. This witness, therefore, does not come across as a credible or trustworthy witness and one fails to understand as to why the prosecution has examined such a witness whose version is totally inconsistent with the prosecution case. Insofar as the submission made by the learned Special Public Prosecutor that Kausarbanu, wife of this witness may not be same Kausarbanu who was killed near the passage is concerned, such submission is too far-fetched inasmuch as, it is nobody's case that there were two Kausarbanus, who were pregnant and who had been killed in the incident.

202.16 The witness has not named any accused in his testimony and even otherwise the version given by the witness does not inspire confidence and no reliance can be placed upon the testimony of this witness to establish the prosecution case.

203. **PW-226 Salim Allabax Shaikh**, has been examined at Exhibit-1608. He has stated that he can understand a little Gujarati, but will depose in Hindi because he can speak in Hindi. He is a native of District Gulbarga, Karnataka State.

203.1 At present, he is residing in the last lane of Jawannagar, but earlier he used to reside in the first lane of Jawannagar.

203.2 The incident took place on 28.2.2002. On the day of the incident also, he was residing at lane No.1, Jawannagar with his mother Akhtarbi, his elder brother Mahammad Ayub, his sister-in-law, his nephews, his nieces, his sister and his younger brother Mubarak. At that time, his sister was pregnant and had come to their house for her delivery. He had studied upto the 2nd standard.

203.3 On the day of the incident, he was at home. While he was having a bath, he came to know that there were disturbances outside and that the Muslims were being killed outside and that the mobs had come. After taking a bath, he came out and went near the S.T. Workshop. He went out and saw that there were mobs from the side of Krushnanagar as

well as Natraj Hotel. The people in the mob were setting the houses and shops on the road on fire and were coming forward. Thereafter, the police had released tear gas there. Thereafter, he saw that one or two persons were injured by bullets, but he does not know who fired the bullets. Upon seeing all this, he did not have courage to stay there, and hence, he went back to his house.

203.4 After going home, he told his family members about the incidents on the road and advised them that they should go away from there. Thereafter, only his elder brother stayed at home and the rest of the family members, left their house at 3 o'clock in the afternoon. After leaving, they went to the lanes on the rear side. He is presently residing in the lane where they went.

203.5 They stayed in the lane, thereafter, the people in the mob started entering the chawls. They started damaging the houses and setting them on fire. He had come to know that a gas cylinder had been thrown in his house, but he has not seen it. Amongst the persons in the mob, he had seen Bhavani, Guddu and Suresh. Suresh was wearing a sky blue coloured T-shirt and his face was covered by a handkerchief. There was a weapon in his hand, but he does not remember exactly as to whether it was a sword or a pipe. Bhavani and Suresh as well as the other people in the mob had weapons in their hands and the people in the mob were not empty handed.

203.6 Thereafter, he went and left his family members at Gangotri Society and he stayed there.

203.7 Thereafter, someone told him that someone had murdered his elder brother and set him ablaze. He has seen this while he was standing on the terrace of Gangotri Society. He had seen his brother burning. His mother was also with his brother. He had made his mother sit in a lane on the rear side. Before his brother was set ablaze, two to three persons had brought his brother to a lane and made him sit there. He had received news that his brother had sustained a fracture and upon coming to know of the place where he was, he took his younger brother and went near his elder brother. He saw his elder brother sitting there, and till then nothing had happened to him. He had come to know that he had fractured his leg. He, himself had seen his elder brother.

203.8 He and his younger brother lifted his elder brother and seated him in a house where other people were also sitting. That place was also the last lane of Jawannagar. They had also seated their mother at that place.

203.9 After they had seated his brother and his mother at that place, Guddu had come. Guddu had seen them and gone away. Thereafter, he took his younger brother and went to inquire about his family members who were sitting in Gangotri Society. When he went to Gangotri Society, he came to know that his elder brother had been burnt to death.

203.10 From the terrace of Gangotri, he saw that there were twenty to twenty five persons standing, including his brother and mother, and Guddu was also amongst them. He (the witness) gestured to his mother and called her from there. His mother came towards where they were and, thereafter, he

took her and went to Gangotri Society where his family members were. They stayed there till 12 o'clock at night. Thereafter, upon the police vehicles coming at 12:00 to 12:30 at night, they sat in their vehicles and went to the Shah Alam camp.

203.11 They stayed at the Shah Alam camp for five to six months. His brother, as already narrated by him, died on the spot.

203.12 The SIT had recorded his statement in respect of the incident.

203.13 The witness has stated that he knows Guddu Chhara, Bhavani and Suresh Langda. Guddu and Bhavani have passed away and Suresh Langda is alive. He can identify all of them. The witness has thereafter identified accused No.22 Suresh Langda in the dock. The witness has further stated that the name of his brother, who died in the incident, was Mahammad Ayub.

203.14 CROSS-EXAMINATION: In his cross-examination, it has come out that after the incident he had no occasion to meet Guddu, Bhavani and Suresh. The witness has admitted that after all these years on the basis of his memory, he has identified Suresh Langda. The witness has voluntarily stated that he knew all three of them since prior to the incident as they used to visit their area.

203.15 In his cross-examination, the witness has admitted that he had gone on the road at around 9:30 in the morning on

the day of the incident. The witness has admitted that at that time, there was a mob of ten to fifteen thousand people on the road. The witness has stated that he does not know that the people in the mob were pelting stones to get the shops shut down. The witness has stated that all that he knows is that, when he came out, there was stone pelting. The witness is confronted with certain extracts of his statement dated 26.5.2008 recorded by the SIT, but such statement has not been put to the witness to contradict any part of his evidence, and hence, the same not being admissible in evidence, it is not necessary to refer to it.

203.16 In the cross-examination of this witness, it has further come out that in the morning, out of the three accused, he had seen only Bhavani in the mob which came from the direction of Natraj. The witness has admitted that till he left his house at 3 o'clock in the afternoon, he had not seen the other two accused. In the morning, he was near the S.T. Workshop. The witness has denied that he had identified Bhavani in a mob of fifteen thousand people and has voluntarily stated that while he was standing near the S.T. Workshop, at that time, Bhavani came out of the chawl and went in the mob coming from the direction of Natraj Hotel. The witness has denied that only because he had seen Bhavani, he had stated that he had seen him in the Natraj mob. The witness has stated that he saw Bhavani from the mob which was coming from the direction of Natraj Hotel and hence, he was stating so. He had seen Bhavani talking with the people in the mob.

203.17 The witness has denied that if he sees somebody only once, even then after several years, he can recognize

such person and has voluntarily stated that he had seen these three people since his childhood.

203.18 The witness has admitted that he had no social or financial relations with the three accused. He has denied that he and his mother were together and had seen Ayub's incident together.

203.19 The contents of the third line of paragraph 9 of his examination-in-chief are read over to the witness, wherein he has stated that he was while standing on the terrace of Gangotri, to the effect that he has not stated such facts in his statement recorded by the SIT, which the witness has denied. The contents of the third and fourth line of paragraph 12 of his examination-in-chief are read over to the witness, wherein he had stated that he had gestured to his mother and called her from that place, to the effect that he had not stated such facts in his statement recorded by the SIT, which the witness has denied.

203.20 The witness has admitted that he can recognize people from a distance. He has admitted in his examination-in-chief that he has given the names of only those persons, whom he had seen on the day of the incident. The witness has admitted that since he could not recognize others, he had not given their names.

203.21 The witness is cross-examined with regard to the topography of the area. The witness has stated that he does not know in whose house he had hidden Ayub and that as on date also, he does not know where he has made his mother

and Ayub to sit. The witness has admitted that the house was in the last lane of Jawannagar and has denied that Ayub was killed in the house where he had left him. Certain extracts of his statement recorded by the SIT are sought to be put to the witness, however, since the same are not put to the witness to contradict any part of his evidence, they are not admissible in evidence.

203.22 The witness has admitted that he does not know as to on whose terrace he was in Gangotri Society. The witness has admitted that from the terrace of Gangotri Society, he could not see the house in which Ayub was hidden. The witness has admitted that from the terrace, he could see the lane of the house in which he was hidden. He has stated that from the terrace where he was hiding, the house where Ayub was hiding was at a distance of around 200 to 300 feet. The witness has admitted that Ayub's incident had taken place at a distance from where he could clearly see it.

203.23 To prove the omissions and contradictions as to the previous statement of this witness, the defence has cross-examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who in his cross-examination has admitted that he has recorded the statement of this witness on 26.5.2008. The Investigating Officer has admitted that this witness in the statement recorded by him had stated that *".....since the riotous mob was committing arson, Muslims had also gathered and there was cross stone pelting....."* (paragraph 22); *".....at this time, the police had fired at the Muslim mob, wherein two persons were injured by bullets, which he had seen with his own eyes....."* (paragraph 23); *".....out of fear, he hid in a*

house at Jawannagar with his family; however, as the mobs were setting the Muslim chawls on fire and were killing Muslims, together with the people in the house they came out of their house at 3 o'clock....." (paragraph 24); "...he had come near his mother and seen that Guddu Chhara and the people with him, had ignited a fire and burnt him.....".

203.24 The contents of paragraphs 29 and 32 of the deposition of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

203.25 The contents of the last three lines of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that he had stood on the terrace of Gangotri Society and seen. The Investigating Officer has admitted that in his statement, the witness has not stated that he had seen from the terrace but had stated that he had come near his mother and seen.

203.26 SUBMISSIONS: The learned counsel for the appellants submitted that this witness had stated before the SIT that it was the police who had resorted to firing, but in his deposition, he has stated that he does not know who had fired the bullets. It was submitted that this witness has not given any statement or complaint prior to the recording of his statement by the SIT. In his examination-in-chief, he has not attributed any overt act to any of the accused. According to him, the incident of his brother has taken place in two parts. He came to know that his brother had sustained a fracture and somebody had made him sit near a lane. He along with his

younger brother went to him and found that he had sustained a fracture. The witness says that his brother was physically lifted by him and his younger brother and he was made to sit inside a house with their mother. He, thereafter, went away to Gangotri as stated in paragraph 11 and then, he says that from the terrace of Gangotri, he saw his brother burnt.

203.27 It was submitted that these facts, if seen with reference to paragraph 36 of his cross-examination, he has admitted that after his brother was hidden in a house, Guddu came along and that thereafter, he brought other ten persons and they had killed his brother by inflicting sword blows in the presence of his mother, whereas, as per his statement, he has stated that from the terrace where he was hiding, the house where Ayub was hiding was at a distance of around 200 to 300 feet, where he was burnt. It was submitted that thus, not only does he state contrary facts before the SIT and before the court, his version does not inspire any confidence as there is a clear proved omission about he having seen the incident from the terrace of Gangotri regarding his brother being found burning. It was submitted that the witness has pleaded ignorance as to in which house Ayub was made to sit. The say that his mother was then called back by gesturing is not believable in the fact situation because if his mother was present when Ayub was killed, she would not have been spared by the mob. It was submitted that his younger brother Mubarak and mother Akhtarbi, who would be very important witnesses, have not been examined to prove the facts regarding Ayub's incident.

203.28 It was submitted that all the facts as stated by the

witness though found contradictory *inter se* are in further contradiction to the incident of Ayub being stated by other witnesses, viz., after he jumped from the terrace, the mob put him in a rickshaw and set him ablaze. Therefore, from no angle, a consistent story is coming out regarding Ayub's incident, about the place where he is allegedly killed, the manner in which he is killed, whether he was set ablaze at the house where he was hiding or in a rickshaw as claimed by other witnesses; and further whether Ayub's incident has taken place consecutively, viz. his falling and immediately being killed; or that the sequence has taken place in two parts with a considerable gap in between.

203.29 It was further submitted that the witness has no acquaintance with accused No.22 as stated by him, and in view of the material contradictions in his testimony, it is very difficult to believe any participation of Suresh when nothing specifically is alleged against him.

203.30 Mr. P. G. Desai, learned Special Public Prosecutor, submitted that the contradictions brought out in the cross-examination of this witness are not material as he has clearly stated as to how and under what circumstances deceased Bhavani had been recognized from the mob. It was submitted that Ayub has been killed and this witness is not cross examined in that regard and no material contradiction has brought out in the cross examination of the witness as per the provisions of law. It was contended that the witness has not given statements in the year 2002, but had given an application to the Police Commissioner in the year 2002, and on that basis, the S.I.T. had recorded his statement in the year

2008. Therefore, this witness who has lost his brother, is believable. It was submitted that whether the fracture sustained by his brother was because of the fall from the terrace or not, the fact remains that he was set ablaze as stated by the witness. Therefore, the evidence of his brother being set ablaze is supportive evidence so far as other witnesses are concerned.

203.31 ANALYSIS: This witness is the brother of Ayub, who was killed in an incident. The evidence on record reveals that no statement of this witness was recorded by the police at the relevant time and for the first time his statement came to be recorded by the S.I.T. in the year 2008. On a perusal of the testimony of this witness, the entire story put forth by the witness in his examination-in-chief does not inspire confidence. According to this witness he was a resident of Lane No.1, Jawannagar. He left his house with the entire family, except his elder brother Ayub, at about 3 o'clock in the afternoon. They went in the lanes and the mob was ransacking the houses. The witness saw three accused, namely, Bhavani, Guddu and Suresh (accused No.22) in the mob. Thereafter, he left his family at Gangotri Society and was standing there. At this point of time somebody came and told him that his brother has been killed and burnt. The witness has stated that from the terrace of Gangotri, he saw his brother burning. However, prior thereto, he had heard that his brother had sustained a fracture, and therefore, he had gone with his younger brother, lifted his elder brother, taken him to a house and got him seated there. Subsequently, he had seen the incident of his brother being burnt. The entire sequence of events as narrated by this witness does not have a ring of truth in it, inasmuch as,

it is difficult to believe the manner in which the witness has been moving around. Moreover, the testimony of this witness with regard to the incident of Ayub also does not inspire confidence inasmuch as majority of the witnesses have stated that after Ayub jumped/ fell from the terrace, some of the accused had assaulted him, put him in a rickshaw and set him ablaze, whereas as per the version given by this witness, Ayub had fractured his leg, thereafter he and his brother lifted him and took him to a house and subsequently the accused had burnt him.

203.32 Having regard to the quality of the evidence of this witness together with the fact that such version had come for the first time in the year 2008, when his statement came to be recorded by the SIT, no reliance can be placed upon his testimony to prove the charge against the accused named by him.

204. **PW-227 Zuber Khan Islam Khan Pathan**, aged 38 years, has been examined at Exhibit-1614. The witness has deposed that he is residing at *Khemchand-ni-Chali, Opposite S.T. Workshop, Behind Noorani Masjid, Naroda Patiya* since his birth. His family is comprised of his wife, two sons and a daughter. In the year 2002 also, he was residing together with his wife and his three children.

204.1 In the year 2002, he was serving in a fruit shop. At present, he is working in a unit which disposes of old clothes.

204.2 The incident took place on 28.2.2002. On that day, the Vishwa Hindu Parishad had given a call for Gujarat Bandh.

On that day in the morning, he was at home. On that day, at around 9:00 to 9:15 in the morning, he had gone to Milan Hotel, near the Noorani Masjid to drink tea. There, two to three friends had gone to drink tea. On that day, at that time, he had seen that the mobs were coming from both the sides from Natraj Hotel as well as Krushnanagar. These mobs were comprised of Hindus. The people in the mobs were sitting in rickshaws and saying, "*Bandiyas, shut your shops*". He went towards Krushnanagar to watch. On seeing the mobs there, they were afraid and came back from the gate of the S.R.P. Quarters. They returned to Milan Hotel and they had a talk with the owner of Milan Hotel and told him to close the hotel.

204.3 At that time, in the mob, from the side of Krushnanagar, he had seen Bipin Panchal (A-44). He had a sword in his hand. In the same mob, Guddu Chhara and Babu Garagewala (A-33) was also present. Guddu Chhara and Babu Garagewala (A-33) both had iron pipes in their hands. The Krushnanagar mob was shouting and vandalizing and was burning tyres in the middle of the road. Thereafter, he went to Natraj Hotel. In the mob from Natraj Hotel, he had seen Mayaben Kodnani on the road. The people in that mob had saffron flags and were wearing khakhi shorts. Mayaben was telling the people in the mob that they should go forward and that she was with them. Thereafter, he returned to the Noorani Masjid.

204.4 Near the Noorani Masjid, he told the people of his community that the situation was tense and that they should be careful. The mob of Hindus was pelting stones at the Noorani Masjid. Upon Mayaben saying, what he had stated, to

the mob, out of fear and caution, he came to the Noorani Masjid and asked the people of his community to be careful.

204.5 On that day, there was a police point at the Noorani Masjid. The people at the police point told them that they would reason with the Hindu mob and that nothing would happen and told them to take the people of their community home. Upon hearing this from the police, he had taken the people belonging to his community from the Noorani Masjid to their homes.

204.6 While he was taking the people of his community, he saw that people belonging to the Hindu community were pelting stones and burning rags. At this time, the police lobbed tear gas shells at the people of their community. The police did not give them any help. The police had released tear gas and at this time, the people in the mob were saying "*You, Bandiyas will not escape; you say Jay Shri Ram*". At this time, people ran helter skelter to save their lives. The people in the mob were shouting "kill, cut".

204.7 The people in the mob were stopping the traffic on the road and were burning vehicles, cars and rickshaws and were causing destruction. Till that time, he was at the Noorani Masjid. Thereafter, he crossed the road and went towards Hussainnagar, which is situated next to the S.T. Workshop.

204.8 When he went to Hussainnagar, there also a Hindu mob was standing. They were assaulting people belonging to the Muslim community with weapons and were burning houses and throwing burning rags. There was also firing in

Hussainnagar. There was private firing as well as police firing. In this firing, a boy named Abidali had died. Abidali had died immediately. Upon this happening, there was a stampede amidst the Muslim public. At that time, he and the other people belonging to his community started going towards Jawannagar. They had gone to Jawannagar from 1:00 to 1:30 in the afternoon. He had gone straight from Hussainnagar to Jawannagar.

204.9 Thereafter, at about 4:00 to 4:30, they had gone to the S.R.P. Quarters. At the S.R.P. Quarters, they requested them to let them to enter the quarters. At that time, the Jawans told them that there are orders from above, and hence, they would not let them enter. Thereafter, they sat at the Jawannagar Chhapra (hutments) till around 5:30.

204.10 While they were sitting in this manner, Guddu Chhara, Babu Garagewala, Suresh Langda had come and seen them. Thereafter, these three people had come with a mob of Hindus and this mob had pelted stones at the people of the Muslim community. Thereafter, they went towards Gangotri Society. There, they had asked the people for help. However, they had not helped them. They had closed the doors of their houses. Thereafter, they returned to Hussainnagar.

204.11 Thereafter, they had gone to Umrudhin's house at Hussainnagar, which was a two storeyed house and they had gone there and hid there. Approximately two hundred to three hundred people had taken shelter at this place. They had stayed at Umrudhin's house till around 2:00 to 2:30 at night. Thereafter, upon the police coming to call them at night, they

were frightened. As they were afraid, they did not come out. They had felt that Hindu mobs might have come. Upon the police coming once again, they had taken them to the Shah Alam camp.

204.12 He had stayed at the Shah Alam camp for one to one and a quarter months. During this period, he had made an application dated 3.6.2002 to the Commissioner office. Thereafter, his statement was recorded by the SIT at Gandhinagar.

204.13 In the riots, his house was looted and damaged. He had lost about six tolas of gold and had also sustained other damages.

204.14 During the stone throwing on the day of the incident, he was injured on the right leg and had taken treatment at the relief camp.

204.15 In the year 2002, he had also another house at Pandit-ni- Chali, behind the Noorani Masjid. This house was set on fire during the incident. His house was looted, ransacked and then set on fire and he had suffered loss.

204.16 The witness has stated that he knows Guddu, Babu Garagewala and Suresh Langda and can identify all of them. Guddu has passed away. The witness has further stated that he can also identify Bipin Panchal and Mayaben Kodnani. The witness has thereafter identified Mayaben Kodnani (A-37), Suresh Langdo (A-22) and Bipin Panchal (A-44) correctly. The witness has stated that Babu Garagewala is not present,

though he was present. Therefore, the witness has not been able to identify Babubhai alias Babu Vanzara (A-33).

204.17 CROSS-EXAMINATION: In the cross-examination of this witness, it has come out that he has studied upto the 5th standard. The witness has admitted that his statement was recorded at the SIT office at Gandhinagar on 26.5.2008. He has admitted that the facts stated by him in the statement recorded by the SIT, had not been stated by him before any authority like the police, Collector, etc. prior thereto. The witness has admitted that he has not made any application to the SIT for recording his statement and has voluntarily stated that on 6.3.2002, he had made an application from the camp. He had not made any application addressed to any SIT authority to record his statement. The witness is cross-examined with regard to the conditions at the camp.

204.18 [During the course of the recording of the evidence, the learned counsel for the defence wanted to refer to the complaint of the applicant which is on the record to cross-examine the witness. The learned Special Public Prosecutor had submitted that no separate offence had been registered pursuant to the complaint of the applicant and that it is included in the main complaint being I-C.R. No.100/02].

204.19 The witness has admitted that in his application dated 6.3.2002, addressed to the Police Commissioner, he had stated all that he had seen. The witness has identified his signature at the bottom of the certified copy of the complaint. The witness has also identified his signature at the bottom of the readymade complaint as well as the loss damage analysis

form. The witness has admitted that the contents of the application are correct. However, in the loss damage analysis form, the number of his family members is stated to be seven, whereas actually it is five. The witness has further stated that moreover, in the application read over to him, one name is not written down which is Mayaben Kodnani's name. Other than that, all the facts stated therein are true. The complaint application and the loss damage analysis form are jointly given Exhibit-1616.

204.20 The witness has admitted that both, the complaint application as well as the loss damage analysis form, are printed wherein the facts are required to be filled in by hand. The witness has admitted that it has not happened that he has gone out of the camp and got the complaint application and form printed. The witness is not aware as to who came to him in the camp with the form. The witness has admitted that the forms were being filled up at the tables. He does not know the name of the person who wrote the form. The witness has stated that the document Exhibit-1616 was not read over to him. The witness has admitted that he had read the application form for the first time on that day. The witness has denied that document Exhibit-1616 was read over to him by the SIT at Gandhinagar. The witness has denied that in his application Exhibit-1616, he has not named Guddu, Mayaben and Suresh Langda. The witness has denied that in his complaint application Exhibit-1616, he has not stated the facts stated by him in the examination-in-chief and has voluntarily stated that he had dictated the same, but he is not aware whether they had written it down. The witness has admitted that many people belonging to their community were getting such printed

applications written down. The witness has admitted that there were volunteers and people belonging to the Muslim community who used to write down the applications. The witness has admitted that the document Exhibit-1616 bears two signatures of his. The witness has admitted that there are two signatures at the bottom of the form, but has stated that only one of the signatures is his. The witness has admitted that before the SIT, he has not stated that names of certain accused have been left out in the printed complaint application Exhibit-1616 and that the role played by the accused has not been written down.

204.21 The witness has admitted that ordinarily, he has breakfast at 7:00 to 7:30 in the morning. He has admitted that on the day of the incident, he was at home till 9 o'clock in the morning. The witness has admitted that on the day of the incident, till he was at home till 9 o'clock in the morning, there was no stone pelting. The witness has admitted that prior to 9 o'clock in the morning; there were no mobs on the Ahmedabad – Kalupur road and the Dhanurdhari Mata road. The witness has admitted that till 9 o'clock in the morning, he was sitting outside on the veranda and till then, there were no mobs. The witness has admitted that if one wants to go to the Noorani Masjid from his house, one can go through the internal roads of their chawls and that one can also go from the road going towards Dhanurdhari Mata temple through Krushnanagar. The witness is also cross-examined with regard to the topography of the area.

204.22 The witness has admitted that he had seen the people with saffron stoles/scarves, khakhi shorts and white

undershirts and that the mob was comprised of a large number of people. He had not seen Bipin and Babu Garagewala wearing saffron stoles, khakhi shorts and white undershirts. He has also stated that he also had not seen Guddu and Suresh wearing khakhi shorts and white undershirts and saffron scarves on their faces. The witness has stated that in the Krushnanagar mob also, he had not seen any person with a cloth tied over his face where only his eyes could be seen.

204.23 The witness has admitted that upon reaching the S.R.P. Quarters, he had seen the mob on Krushnanagar cross roads. The witness has admitted that he had identified the accused in the mob from the S.R.P. Quarters gate. The witness is once again cross-examined with regard to the topography of the area and the police points which had been placed in the area on that day. The witness has admitted that the mob was creating a lot of noise. When he came from Natraj Hotel to Milan Hotel, at that time, he did not have a talk with anyone on the road. He has admitted that when he went in this manner, the mob was in the middle and he had passed through the mob and when he returned through the mob, nobody had assaulted him or stopped him. He has admitted that there were huge mobs on all four sides. He has admitted that at this time, persons wearing khakhi shorts with stoles and cloths tied over their faces were there. The witness has admitted that in the mob which he had seen from Krushnanagar, many people had flags in their hands.

204.24 The witness has admitted that at this time, he had seen people coming in luxury buses and alighting from them. The luxury buses were coming from the main road on the

Naroda side.

204.25 The witness has admitted that after returning to Milan Hotel from the S.R.P. Quarters, he had sat there for about five minutes and again gone to Natraj Hotel, when he saw Mayaben in the car. The witness has denied that Mayaben was wearing a saree and salwar and had tied a saffron band. The witness has stated that Mayaben had not tied anything on her face or waist. He has not seen her wearing a helmet. The witness has admitted that at that time, there were Hindu mobs near Mayaben. The witness has admitted that at that time, he had gone and stood next to Mayaben and was standing there for two to five minutes. The witness has admitted that at that time, no one did anything to him. The witness has denied that after he saw Mayaben, she had crossed the mob and gone away from there. The witness has voluntarily stated that Mayaben had remained there. When he left, Mayaben was present. After he left, he does not know whether Mayaben had stayed there or not.

204.26 The witness has admitted that he had come to Hussainnagar. Before going to Hussainnagar, he had crossed the road and was standing underneath a tree near the S.T. Workshop. He had stood near the gate for around ten to fifteen minutes and thereafter, gone to Hussainnagar. The witness has admitted that while going on this road, after crossing three or four chawls, Hussainnagar-ni-Chali is situated. The witness has admitted that Muslims had fled inside the S.T. Workshop road. The witness has admitted that Abid was injured by a bullet near Hussainnagar lane.

204.27 The witness has stated that after Abid was injured by a bullet near Hussainnagar-ni-Chali, he had not taken him inside. He has stated that he had not seen the police firing from a police point near the Noorani Masjid. He had not seen the police firing from the S.T. Workshop towards Hussainnagar. The witness has admitted that there was a police point near the S.T. Workshop gate. The witness has admitted that there were four armed policemen at the S.T. Workshop gate, but has not seen any of the four policemen firing towards the Noorani Masjid. The witness has stated that Abid was injured by a bullet in his stomach. The witness has admitted that when Abid was injured by a bullet, it must have been around 12:00 to 12:30 in the afternoon. He has denied that till 6 o'clock in the evening, he had not seen Guddu, Suresh and Babu Garagewala. He has stated that he had no talking relations with Babu, Guddu, Bipin and Suresh and they do not visit each other's place and do not have any give and take relations.

204.28 The witness has stated that he knows that Bipin Auto Centre belongs to Bipinbhai. The witness has denied that when he did not get work from A.S. Automobiles, on that day he would go to wash cars at Bipinbhai's place and Bipinbhai used to pay him Rs.100/- per day for washing the cars and thus, prior to the incident, he had gone to Bipinbhai Autowala about fifteen to sixteen times and Bipinbhai had not paid him the amount towards such labour, and hence, he was falsely implicating him in the incident. The witness has denied that he had falsely given the name of Bipinbhai at the instance of certain people.

204.29 In his cross-examination, it has further come out

that he has seen Mayaben's hospital. He has admitted that if one comes out of his house and crosses the road, Mayaben's hospital is on the opposite side. The witness has admitted that he and his wife had no occasion to go to Mayaben's hospital. The witness has admitted that he has no give and take relations with Mayaben and does not have any speaking relations with her. The witness has admitted that he knows Mayaben as the M.L.A. of their area and has seen her photographs in the newspapers and advertisements. The witness has denied that he had needed the help of Mayaben for obtaining the balance amount towards the damage sustained by him from the Government. The witness has denied that he had asked Mayaben to help him in getting the compensation due to him from the Government, but as she had refused to do so, he had got angry and had falsely implicated her in the case. The witness has denied that he has not seen any of the accused whom he had named in his examination-in-chief, and hence, he had not lodged any complaint stating the names of all the accused and attributing the roles to them. The witness has further denied that it is at the instance of the SIT that he was falsely deposing on oath.

204.30 The witness has admitted that there were women and men in Umrudin's house. He has admitted that after he went inside the house, no other persons have come in. The witness has denied that in Umrudin's house, women were made to sit on the rear side and the men were sitting in the front side and stated that everyone were sitting together and men and women were not made to sit separately. People were sitting in the two rooms and on the terrace of Umrudin's house and that he was sitting on the terrace. The witness has

stated that after he went to Hussainnagar, the police started firing. He has admitted that Abid was injured in the police firing.

204.31 SUBMISSIONS: The learned counsel for the appellants submitted that no police statement of this witness has been recorded. The witness had given a printed complaint on 6.3.2002 (Exhibit-1616). According to the witness, it was given by him and upon the contents thereof being read, he has admitted the same, accepting the fact that the name of Mayaben is omitted in it though given. But the fact remains that he had not given the name of any accused as stated by him in his examination-in-chief at the first available opportunity on 6.3.2002 or at any subsequent stage until his statement was recorded by the SIT.

204.32 Referring to paragraph 6 of his examination-in-chief, it was submitted that after seeing the violent mob, he says that he crossed the road which is highly unlikely and he is not giving a correct account of the facts. Referring to the contents of paragraph 7 of his examination-in-chief, it was submitted that the witness has stated that Mayaben was in the mob, but he does not say that she came in a car. It was submitted that in the printed application, there are names of Bipin and Babu, but the names of Guddu, Suresh and Mayaben are not stated in that application. Referring to the cross-examination of the witness (paragraph 37), it was submitted that the witness has stated that out of the names stated by him, one name, that is, Mayaben is left out. It was submitted that even if at this stage he does not say that the three names given by him are not there in the application, which indicates that the other accused

were sought to be consciously roped in at a belated stage. Referring to the contents of paragraph 7 of the examination-in-chief of the witness, it was submitted that the witness refers to saffron flags which no other witness has stated. Referring to the contents of paragraphs 8 and 9 of his examination-in-chief, it was submitted that the witness has posed as a leader which is not said by any other witness and that the position of the witness was such that it is not believable that he would so dominate the group of persons of such community.

204.33 Referring to the contents of paragraph 14 of the examination-in-chief of the witness, it was submitted that Babu has not been identified and it appears that at this stage, all the Hindus had left the houses and had gone. Inviting the attention of the court to the contents of paragraph 15 of his examination-in-chief, it was submitted that it was not possible for the witness to return to Hussainnagar at this time. Therefore, whether the witness is giving the correct account of what he has seen is very doubtful. It was submitted that insofar as naming of the accused in the printed form is concerned, even if it is admitted, it may not be considered as a corroborative piece of evidence to corroborate the evidence of the witness when he names such accused subsequently. It was submitted that what is stated by the witness in the printed complaint signed by him and sent to the Commissioner of Police, the contents whereof he has admitted, runs completely contrary to the deposition of the witness. It was submitted that the naming an accused in such a printed complaint, which is also not referred to in his police statement or SIT statement or before the court, should not be taken as having any corroborative value to lend assurance to any such contrary

allegations made in the deposition.

204.34 Referring to the contents of paragraph 45 of his cross-examination, it was submitted that even before the SIT when his statement was recorded, he has consciously improved upon the entire story and implicated more persons whom he has named and identified before the court, however, one of whom though stated in the printed complaint, that is, accused No.33 is not identified before the court and that the accused who are not named in the application are named and identified. It was submitted that the entire testimony of the witness is doubtful as the whole story is coming up after six years. It was submitted that the witness has tried to talk about both the police and private firing in paragraph 12, whereas in the last paragraph 83, last two lines, he has specifically admitted that he saw Abid being injured in the police firing. It was submitted that in the cross-examination of the witness, it is clearly brought out that he had no acquaintances with Babu, Guddu, Bipin and Suresh, and in the absence of any test identification parade, the identification for the first time before the court should not be accepted.

204.35 It was submitted that out of several witnesses who have named Mayaben, only two witnesses have stated that they have seen Mayaben at the Natraj Hotel, and, therefore, the version given by the witness is contrary to the version given by the other witnesses. It was submitted that the fact that the witness says that there was firing at Hussainnagar shows that the witness was not present as Abid was not killed at Hussainnagar.

204.36 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the presence of this witness at the scene of offence is not doubted. He has narrated two incidents, one that took place in the morning and the other in the afternoon. In the first incident, he spotted some of the accused persons in the mob, who were instigating the mob. For that incident, the defence failed to dislodge the theory of the prosecution during the course of cross-examination. It was submitted that the prosecution has proved through this witness about the presence of the accused in the morning and also in the evening, including the overt acts of the accused in both the incidents.

204.37 It was submitted that insofar as the printed complaint and the names of the accused persons are concerned, the witness being illiterate might not have any occasion to go through the contents and only because in the printed complaint, the names are not mentioned and are mentioned in the year 2008, the evidence should be discarded, is not the correct approach. It was submitted that the credibility of this witness is not impeached so far as the two incidents are concerned, and hence, his testimony is required to be believed.

204.38 ANALYSIS: As per the version given by this witness in his examination-in-chief, at 9:15 to 9:30 he went to Milan Hotel near the Noorani Masjid to have tea. He saw mobs from Natraj and Krushnanagar. The mobs of Hindus were sitting in rickshaws and making certain disparaging utterances. From there, he went to Krushnanagar to watch and upon seeing the mobs there, out of fear, he returned to Milan Hotel from the

S.R.P. gate. There, he had a talk with the hotel people and advising them to shut the hotel. At that time, in the mob from the side of Krushnanagar, he saw Bipin Panchal (A-44), Guddu Chhara (deceased) and Babu Garagewala (A-33), all of whom were armed with weapons. Thereafter, he went in front of Natraj Hotel. In the Natraj Hotel mob, he saw Mayaben Kodnani on the road. The people in the mob had saffron flags and were wearing khakhi shorts. Mayaben exhorted the mob to go ahead saying that she was with them. Thereafter, he returned to the Noorani Masjid. The witness has also stated that the people in the mob were stopping the traffic on the road and were burning cars and rickshaws. He went from there to Hussainnagar, where also Hindu mobs were present and they were assaulting the Muslims and were setting the houses on fire. There was firing at Hussainnagar, both private and police. One Abid was injured and the people of their community started running helter skelter. At this time, the other people went towards Jawannagar. When he reached Jawannagar, it was around 1:00 to 1:30. At around 4:00 to 4:30, they went to S.R.P. Quarters, but were not permitted to enter inside. They sat there till 5:00 p.m. While they were sitting there, Guddu Chhara, Babu Garagewala and Suresh Langda saw them and came with a mob of Hindus and started pelting stones at them. Thereafter, they went towards Gangotri Society. They asked for help from the people there but did not get any and hence, they returned to Hussainnagar and went to Umrudhin's house and hid there. The witness has identified Mayaben Kodnani (A-37), Bipin Panchal (A-44) and Suresh Langda (A-22) but could not identify Babu Garagewala correctly.

204.39 In his cross-examination, the witness has admitted

that prior to his statement being recorded by the SIT, he had not stated facts about the incident before any authority.

204.40 Insofar as implication of A-37 Mayaben Kodnani is concerned, the same shall be referred to while considering the evidence against the said accused in relation to the charge of conspiracy.

204.41 This witness has also admitted that Abid was injured near the lane in Hussainnagar. He has stated that the police started firing after he went to Hussainnagar and has admitted that Abid was injured in police firing. Thus, while most of the witnesses referred to Abid having been injured in the police firing on the road near the S.T. Workshop, this witness refers to police firing at Hussainnagar and Abid being injured by a bullet at Hussainnagar, which is contrary to the evidence of majority of the witnesses. The version given by the witness regarding the mobs stopping the traffic and burning cars and rickshaws is also not borne out from the record, inasmuch as, the evidence on record reveals that right from the morning, the traffic on the road was sporadic and none of the witnesses have stated that the people in the mob had stopped the traffic and were burning vehicles on the road. The entire story put forth by the witness is contrary to the evidence on record. The statement of this witness was recorded for the first time before the SIT. Prior thereto, no statement of this witness was recorded; however, a printed complaint Exhibit-1616 was made by this applicant, wherein he has not named any of the accused. A perusal of the complaint Exhibit-1616 reveals that it is signed by the witness and, therefore, it appears that the witness is not illiterate. Therefore, he would be well aware of the contents thereof.

204.42 It is quite disturbing that the witnesses who have come at the stage of SIT have made statements and have deposed contrary to the basic prosecution case. The SIT has been constituted by the Supreme Court to carry out further investigation as the victims had complained that the earlier investigation was not proper. Therefore, one would expect that the quality of investigation carried out by the SIT would be better than the investigation carried out by the earlier authority. However, some of the witnesses who have been introduced at the stage of the SIT have only succeeded in contradicting the prosecution case. For example, the inclusion of this witness as well as PW-225 Firoz Khwajamohiyuddin Shaikh, husband of Kausarbanu, as prosecution witnesses gives rise to a suspicion as regards the bona fides of the SIT in the matter of carrying out the investigation and bringing the culprits to book.

204.43 Considering the overall testimony of this witness, he does not come across as a credible and trustworthy witness and no part of his evidence can be relied upon for the purpose of proving the charge against the accused.

205. **PW-228 Javed Ismail Shaikh**, aged 22 years, has been examined at Exhibit-1621. The witness has deposed that he can understand Gujarati, but would find it more convenient to depose in Hindi and hence, he will give his testimony in Hindi.

205.1 The witness has deposed that he has studied upto the 3rd standard in Hindi medium. In the year 2002, he was

residing in *Lane No.1, Hussainnagar, Naroda Patiya*. He was born at Naroda Patiya. His native place is *Gulbarga, Karnataka State*.

205.2 In the year 2002, he, his father, his mother Noorjahanbanu and his sister Sufiyabanu were residing together. At that time, his mother was working in a thread factory and his father used to do tailoring work. He used to work as a conductor in a loading rickshaw.

205.3 The incident took place on 28.2.2002. On the day prior to the incident, he was at his job. During the course of his service, his rickshaw was at Krushnanagar on that day. There, in the context of the Godhra incident, stalls, cabins etc. were being made to shut down. The traffic of vehicles was also being stopped. On the day prior to the incident, in the evening, at around 5 o'clock, his employer had dropped him at Krushnanagar, and from there, he had gone home on foot.

205.4 On 28.2.2002, the day of the incident, he was at home and as per his routine, he left his home at around 9 o'clock and came to Patiya cross roads. There, he saw that the shops were closed. Thereafter, he sat there for a little while. At that time, he saw a jeep coming from the direction of the Noorani Masjid. The jeep was open jeep like those in which marriage processions are taken out. There were around fifteen to twenty people sitting in the jeep. They had saffron bands tied on their heads. They had swords and tridents in their hands. Several people also had daggers in their hands. They were coming towards the Noorani Masjid.

205.5 At Patiya cross roads, there is a temple of Jay Ambe Ma. The armed people in the jeep got down near the temple. Behind these people, another mob of Hindus was following. One more mob was coming from the direction of Krushnanagar. This mob was causing damages and while it was coming. The mob came near the Noorani Masjid and attacked the Noorani Masjid. They had pelted stones and had thrown gas cylinders, etc. inside the Noorani Masjid.

205.6 The police lobbed tear gas shells and resorted to firing at the Muslims who were present at the site to protect the masjid. In the police firing, one Mohammadhussain of their chawl was injured by a bullet. Priya Talkieswala Pirubhai was also injured in the shooting. Out of fear, he (the witness) went home from there.

205.7 When he went home, he saw that his family members as well as their relatives were sitting in his house. Thereafter, they stayed at his house till 12 o'clock in the noon. The people of the mob thereafter started to enter their chawls, whereupon they left their house and went towards Jawannagar. The people in the mob were causing destruction. They went to Jawannagar where other Muslims were sitting. They stayed there till around 4 o'clock in the evening. He does not know at whose house they were in Jawannagar.

205.8 At the place where they had stayed at Jawannagar, Bhavanisingh came. Bhavanisingh told them to come out from there and to come to a hall near his house and sit there. Upon hearing this, other Muslims started going and they also started following Bhavani. They sat in the hall for a little while.

205.9 Thereafter, Bhavanisingh came and told them that they should leave that place and that arrangements have been made for them towards Teesra Kuva. They started going in that direction and they saw a mob was standing there. He saw that the people in the mob had weapons like swords, dharias, guptis, cans of petrol, etc. Upon seeing the people in the mob, the Muslims started returning to their chawls. The mob followed them while they were returning, another mob came from the direction of the Muslim chawls, that is, Jawannagar. They were going towards Jawannagar; however, they could not reach Jawannagar. Before they could reach Jawannagar, they were caught in a passage near the water tank which is situated between Gopinath and Gangotri Society.

205.10 Several people, who could jump over the wall near the water tank, got away. However, they could not go. Both the mobs had stopped them there. Babu Bajrangi was there in the mob with a sword in his hand. He was showing them the newspapers and telling them that these were the photographs of the Godhra incident and that their condition would also be the same. Thereafter, Babu Bajrangi said "Jay Shri Ram" and started assaulting the Muslims. In the mob, he saw Guddu Chhara, Bhavanisingh, Suresh Chhara (A-22) and Manubhai (A-28). All these people and the other people in the mob said "Jay Shri Ram" and started assaulting. These people were throwing burning rags on them from the terrace of the tank.

205.11 In this incident, infant children came to be burnt alive. He was one of the persons, who were caught in all this. In this incident, there was stone pelting also and he himself

was injured on the right side of his forehead by a stone. He hid between bushes in the passage between Gopinath and Gangotri Society. He and his family members got separated in this incident. The incident took place at about 6:30 to 7:00 in the evening. He saw that his maternal aunt's daughter Kausarbanu, wife of Khalid Noormahammad Shaikh was also there at the time of the incident. She was trying to save herself from the mob. At that time, four people had caught hold of her. He saw that Babu Bajrangi struck a blow with a sword on her stomach and cut it open. Babu Bajrangi took out the foetus on the tip of the sword and swirled the foetus and threw it into the fire. Like other people were thrown into the fire, these people also threw Kausarbanu in the fire. In the mob, he had seen a woman whom he does not know. Her clothes were torn and the people in the mob were inserting an iron pipe inside her private parts. She was lying in an unconscious condition. He saw another woman named Kudratbibi who was fully burnt and was lying in a totally burnt condition at the spot. The people in the mob had pelted stones at Kudratbibi who was lying in this manner. There, something like a mass of muscle had come out from her head. She was completely burnt.

205.12 At the scene of incident , the people in the mob were trying to ascertain as to who was alive and who was dead and for this purpose, they were hitting the people who were lying there. He was trying to come out of the bushes when the people in the mob came there, and hence, he too lay down on the spot between the corpses and pretended to be dead. At this time, they were trying to ascertain whether anyone was alive and Guddu Chhara had inflicted a blow with a pipe on his head.

205.13 On the day of the incident, since morning, he had not eaten or drank anything, and hence, after Guddu hit him, he became unconscious at the scene of incident.

205.14 At around 10:00 to 10:30 at night, when he regained consciousness, he was still there. He saw that nearby, there were dead bodies which were burnt to ashes. When he got up and tried to go, on the road he could hear sounds of fire crackers and bands. Thereafter, he got up and went out. He went on the road outside walking against the S.T. compound wall. When he came out like this, there were burning corpses on the road.

205.15 Thereafter, he came to the highway which leads to Narol. Thereafter, he went on foot through *Soni-ni-Chali* through Krushnanagar and Thakkarnagar. When he reached near Geeta Gauri Cinema, he saw a Hindu mob attacking the shops of Muslims. From there, he went hiding and via CTM Ambika Hotel, went to his employer's house. His employer was a Hindu. At around 12 o'clock at night, he reached his employer's house.

205.16 Upon seeing him, his employer immediately called him inside the house. On seeing his condition, he gave him food, water and clothes. At this time, his hands and feet were burnt and he had also sustained an injury on his head. Thereafter, he (his employer) sent him with a person on his motorbike to the L. G. Hospital for treatment. At around 1 to 2 o'clock at night, they reached the L.G. Hospital. The doctors on duty there gave him treatment and bandaged him. His

employer had paid the expenses to the hospital. He was not admitted to the hospital and his employer had a talk with the doctor inside. Thereafter, his employer had left him at the L. G. Hospital.

205.17 He stayed at the L. G. Hospital for three or four days, but not as a patient. His employer used to come to meet him there. He used to eat and drink from the stall outside the L. G. Hospital.

205.18 At the L. G. Hospital, he talked to a Muslim compounder who used to come from Shah Alam about the incident. Thereafter, he took him to Shah Alam and left him at the Shah Alam relief camp.

205.19 At the camp, he met his maternal uncle Noormahammad. Upon his maternal uncle asking him about his family members, he told him that in the incident that took place in the passage of Gangotri – Gopinath, his mother, father and sister were killed by the mob. At the relief camp, he came to know that six family members of his maternal aunt Jenabbibi were also killed in the same incident. Thereafter, he stayed there for about seven to eight months. The witness has deposed that as stated by him, he had seen Bhavani, Guddu, Babu Bajrangi, Manubhai and Suresh Chhara in the incident and that he can identify them today also. The witness has thereafter identified Suresh Chhara (A-22), Babu Bajrangi (A-18) and Manubhai (A-28) correctly. The witness has further deposed that in the incident, his house at Hussainnagar was looted and burnt. His statement was recorded by the SIT in connection with the incident.

205.20 CROSS-EXAMINATION: In his cross-examination, the witness has admitted that in connection with the injury sustained by him in the incident, he had received in all Rs.1,25,000/- from the Government. The witness has admitted that for the death of his mother, father and sister, he had received compensation of Rs.15 lakh. The witness has voluntarily stated that the compensation was received in the name of his elder brother and has admitted that he and his brother had divided the amount and taken half share each. The witness has admitted that towards the damage caused to his house, he had received Rs.7,500/-. The witness has admitted that prior to his sole statement being recorded by the SIT, his statement was not recorded anywhere. The witness has admitted that when his statement was recorded, he was 18 years old. He has admitted that his statement was recorded by the SIT at Gandhinagar and that while recording the statement, he was asked questions in Hindi.

205.21 The witness has admitted that at the time of the incident, his age was 14 years and that at the time of deposing, his age was 22 years.

205.22 The witness has admitted that he has not seen the incident near the water tank regarding the death of his mother, father and sister. The witness has admitted that he had not seen the incident in which Jenabbibi and six of her family members had died in this incident at the water tank. The witness has denied that the incident near the water tank took place at 7:30 in the evening and has stated that it took place at around 6:30 to 7:00 in the evening. The witness has stated

that the name of his loading rickshaw owner is Kalpesh Bihola, who resides at Ganganagar Society, C.T.M. The witness has deposed that on the day of the incident, it took him around one and a half hours to reach to his employer's residence on foot. The witness is cross-examined with regard to topography of the area. In his cross-examination, he has stated that he had told his employer Sheth Kalpeshbhai limited facts about the incident and had casually informed him about the reason for going to his house. The witness has stated that at present, he does not remember whether he had informed his employer Kalpeshbhai about the incidents sequence-wise. He has stated that he had stayed at Kalpeshbhai's house for around one hour. The witness has admitted that he has not informed the doctor who gave him treatment at L.G. Hospital any facts regarding the incident. They had reached the L.G. Hospital between 1:30 to 2:00 at night. He had not seen any police table or any police sitting at the L.G. Hospital. He had not got any case papers prepared at the L.G. Hospital. He does not have any receipt of the amount paid at the L.G. Hospital and has voluntarily stated that his employer had paid the amount required to be paid there. He was treated for two days at the L.G. Hospital and has voluntarily stated that he had not stayed as an indoor patient who was allotted any bed. He merely used to stay in the L.G. Hospital lobby. The witness has stated that after he went there, he was given dressing only once. Thereafter, he was given treatment for his burns at the Shah Alam camp. He was not given any stitches on the injury sustained by him on his head and only dressing was done and the bandage was tied. The witness has stated that his injury certificate was given by the Shah Alam camp which was produced before the Government. His injury certificate was not

issued by the L.G. Hospital. The witness has denied that he had not gone to the L.G. Hospital on that day.

205.23 The contents of paragraph-21 of his examination-in-chief are read over to the witness to the effect that he has not stated such facts in his statement recorded by the SIT.

205.24 In his cross-examination, it has come out that his uncle (maternal aunt's husband) had met him on the day when he reached the Shah Alam camp. His uncle's name was Khalid Noormahammad Shaikh. The witness has admitted that Kausar was married to Firoz Khwaja Maiyuddin shaikh. He has admitted that he (Firoz) is his brother-in-law. The witness has admitted that his uncle informed him that his mother, father and sister, all three have died in the incident. The witness has admitted that he had informed his uncle Khalid about the manner in which Kausar was burnt as well as everything regarding Kausar's incident. In his cross-examination, it has come out that Kudratbibi was residing in Kumbhaji-ni-Chali and he used to reside in the first lane of Hussainnagar. He did not have any occasion to meet Kudratbibi and she had never talked with him.

205.25 The witness has denied that no one had assaulted Kausar with a sword and that her foetus had not come out and that nobody had killed her foetus and put it on the tip of the sword and swirled it and thrown it in the fire and that he was stating incorrect facts. The witness has denied that Kausar's dead body was found and its postmortem was conducted. He has denied that he has not seen Kausar's incident and has not seen her dead body and that he was falsely stating about the

entire incident.

205.26 In his cross-examination, it has come out that he had stood at the S.T. Workshop for about fifteen minutes on the day of the incident. At that time, he had seen a jeep which had come from the direction of Kubernagar. The witness has admitted that about fifteen to twenty persons wearing white undershirts and khakhi shorts were sitting in the jeep and they were armed with weapons. He had not seen any flags in the hands of the persons who got down from the jeep, but their vehicle had a flag. After the persons in the jeep got down, the mobs started going ahead slowly. The people who got down from the jeep were in front and the people in the mob were behind them and they had gone to the Noorani Masjid. The witness has stated that he does not know whether the people who got down from the jeep had talked to the people in the mob. The witness has admitted that these people had attacked the Noorani Masjid with swords, bottles and gas cylinders. The witness has stated that thereafter, he had gone outside the S.T. Workshop where at present the Naroda Police Chowky is situated. The witness has admitted that at that time, the Muslims were standing there. These Muslims had come to protect the masjid. The witness has admitted that to protect the masjid, the Muslims had pelted stones in opposition. The witness has denied that from the side of the Muslims, acid bulbs, broken glass bottles and tube-lights were thrown at the Hindu mobs. The witness has admitted that till the stone pelting continued, he was there. He was where the Muslim mob was and that he was in the Muslim mob. The witness has admitted that till there was firing for the first time, he had stood on the road and till then, he had not gone into the lane

of Hussainnagar.

205.27 The witness has stated that he does not know Abid who was injured by a bullet. He has not seen any person by the name of Abid who was injured by a bullet on his private parts on the road. The witness has stated that Pirubhai and Mahammad were injured by bullets on the Hussainnagar road which is on the service road. He had seen the firing. He has admitted that prior to the firing, tear gas shells were lobbed. The witness has admitted that the police who were on the side of the Noorani Masjid, had fired from the side of the service road and Mahammadbhai and Pirubhai were injured by the bullets. The witness has stated that he does not know whether there was any firing thereafter, because as soon as there was firing, out of fear, he had gone home.

205.28 The witness has stated that he has not seen the lines of Jawannagar. He has not seen any Umrudin's house in Jawannagar. The house in which he stayed in Jawannagar was a Muslim's house. It was possibly in the second lane. The witness has admitted that he had stayed there till around 4 o'clock. The witness has admitted that when he was at Jawannagar, till 4 o'clock, it was peaceful in that house. The witness has voluntarily stated that the sounds of disturbances were coming from nearby. The witness has stated that he does not know whether there was any rioting outside that house in Jawannagar because he had not come out of that house. After he came out from the house, there was a stampede amidst the public. The rioting was on the road. After coming out of the house at 4 o'clock, they were sitting in the hall shown by Bhavanisingh.

205.29 The witness has admitted that the Hindus as well as the Muslims residing in the chawls were running helter skelter out of fear to save their lives. The witness has denied that there were around three hundred people in the Bhavani's hall. The witness has voluntarily stated that all that he can say is that the hall was full. The witness has stated that he does not remember as to whether any of his acquaintances were there. He, however, has stated that Kausar was with him. In the hall also, Kausar was with her mother and he had seen both of them in the hall. The witness has admitted that Kausar and her mother had come to the hall on foot. He has admitted that till they were inside the hall, he has not seen Kausar being injured. The witness has denied that when he came out of the hall, Kausar also ran with him. He has stated that Kausar was holding her mother's hand and was walking. They were walking together. From the hall till Teesra Kuva road, they had reached together. They had reached the curve of the S.T. compound wall and thereafter, they had returned.

205.30 The witness has admitted that from this place, one can see Hussainnagar Lane No.1. From there, they had walked to Gopinath Society. At that time, they had seen a mob with a large number of people coming from the side of Teesra Kuva. There, they were surrounded by the people in the mob. There was pandemonium there. The witness has admitted that the Muslims were running to save their lives and the people in the Hindu mob were running to kill them. The mob was not very huge. There must have been around two hundred to two hundred and fifty people. He does not know as to how many people were there in the mob from the other side. This mob

was coming from the direction of the Jawannagar chawls.

205.31 In his cross-examination, it has come out that the passage of the water tank must be around twenty to twenty five feet wide. The length of the passage is around fifteen to twenty feet. The witness has admitted that in this passage, there is a water tank and a room below it. The witness has admitted that on the wall of the passage, pieces of glass have been affixed. The wall is around four to five feet high. The witness has admitted that Gopinath Society falls on one side of the wall of the passage and Gangotri Society falls on the other side of the wall of the passage. The witness has denied that from the wall of the passage, there is no way for going and has stated that there was a way in the wall. The witness has admitted that from the wall, there was a way for going into Gopinath Society. The witness has admitted that on that day, the shops near the tank were closed. The witness has denied that on that day, there were no walls near the passage. The witness has stated that there was one wall in front of the passage. This wall was next to Gopinath Society. He has denied that he has not seen any such wall on the road going from Hussainnagar to Jawannagar. The witness has stated that he had seen a cabin near Jawannagar. The witness has denied that from the wall near Jawannagar, one cannot see the interior side of the area of the tank.

205.32 The witness has stated that he had seen his parents in the passage. The witness has admitted that at the time when he saw Kausar's incident and prior thereto, he had not seen the incident of his father, mother and sister. He has stated that he had seen Kausar and her mother near the wall

of the passage. The wall of the passage was not the wall near the passage of the water tank. Kausar was killed and burnt on the part outside the passage. The witness has admitted that she was killed outside the passage towards the side of Gopinath and was burnt there. She was killed outside the passage towards the Gopinath Society. The witness has stated that he had not seen Guddu assaulting Kausar with a sword. The witness has stated that he had not seen Guddu take out his sister's foetus on the tip of a sword and swirl it and throw it in the fire. He had also not seen Bhavani in this manner. The witness has voluntarily stated that he had seen Babu Bajrangi in this manner.

205.33 In his cross-examination, it has further come out that he was at the water tank for more than two hours and that the incident near the tank went on for more than two hours. The witness has admitted that at that time, he did not shout or scream or ask for help and has voluntarily stated that at that time, there was no one to help them. The witness has stated that he did feel that Kausar was his sister and that he should save her. He, however, has stated that if he had gone to save her, they would have killed him. At that time, Kausar was at a distance of about twelve feet from him.

205.34 The witness has admitted that within the distance of twelve feet, Hindu people were standing. The witness has denied that at this time, the other mobs kept on coming from the direction of the Jawannagar chawls and Teesra Kuva. The witness has admitted that at that time, there was a stampede. He has admitted that in this incident, Kausarbanu and her mother were together. He had seen only Kausarbanu being

killed. The witness has stated that Kausarbanu was not surrounded on all four sides by the mob; however, four persons had caught hold of her and had surrounded her. The witness has admitted that he has not seen as to what happened to Kausarbanu's mother.

205.35 The witness has admitted that when Kausarbanu fell down, her foetus had come out and after it came out, the foetus was taken on the tip of a sword and was swirled. The witness has admitted that at that time, a fire was burning near the water tank. The witness has admitted that Kausarbanu and her foetus were thrown into the burning fire. The witness has admitted that upon a second blow being given, the foetus had come out and had fallen on the ground.

205.36 The witness has stated that he cannot say exactly as to how long Kausarbanu's incident went on. The witness has admitted that the incident took place for more than fifteen to twenty minutes. Kausarbanu and her foetus were burnt in the fire. The witness has stated that he had only seen both of them being thrown in the fire and at that time, he was in near those bushes. The witness has admitted that there was no tree there and that there were only bushes and such bushes were on the interior side. The witness has voluntarily stated that there was also a way there. The witness has admitted that this way is for going to Gopinath. The witness has denied that the entire road is full of bushes. The witness has stated that the bushes were near the tank. He had stated that he had not seen anyone come or go through that way. The witness has denied that there were no bushes there and there was no place for anyone to hide there.

205.37 In his cross-examination, it has come out that at the time of the incident he did not visit the homes of any Hindus in the Naroda Patiya area. The witness has denied that Manu, Guddu, Suresh, Babu etc., all were coming running on that day and has voluntarily stated that they were present at the site of the incident. The witness has admitted that these people were with the mob. The witness has admitted that the mob was running and coming.

205.38 The witness has admitted that at the time of the incident, he did not have any occasion to visit the homes of the accused persons whom he has identified before the court and that they did not have any business relations or social relations with him. He had no occasion to talk with them from the day of the incident till date and did not have any kind of relations with them and he does not know where all the accused are residing. The witness has admitted that no test identification parade has been carried out through him.

205.39 The witness has denied the suggestion that he did not know any of the accused whom he had identified before the court and that he is falsely deposing before the court. The witness has admitted that the SIT had called him for recording his statement and has voluntarily stated that he had received a summons. The witness has admitted that except for the application made to the SIT, he had not made any application or complaint prior thereto. In his cross-examination, it has come out that he had got the application made to the SIT through some other person and had not written it on his own. The application Mark 644/7 which is a handwritten application,

is shown to the witness. The contents of the application are read over to the witness who has admitted that the same are true. The application is exhibited as Exhibit-1623. The witness is also cross-examined with regard to the manner in which the application was made.

205.40 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 28.5.2008. He has admitted that this witness had stated before him that several people could jump over the wall near the water tank.

205.41 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is a cousin of Kausarbanu and was a minor at the relevant time when the incident took place. It was submitted that admittedly at the time of the incident, this witness was hardly twelve and a half years of age and no statement of his was recorded prior to his SIT statement. It was submitted that though he shares the facts about the incident with his uncle, that is, the father of Kausarbanu, no complaint of the incident has been filed by either of them. In the very incident, which he claims to have witnessed, three members of his family, including his parents and sister have died and six family members of his aunt Jenabbibi have also died, but surprisingly, the witness does not refer to any facts of killing of any of them, including the place, weapons and names of the accused. Therefore, it appears that after six and a half years he is brought as a witness of the so called incident of Kausarbanu and her mother with a view to implicate more number of accused who were not involved by any other victims/witnesses either in the police statements or

in their statements before the SIT. It was submitted that the veracity of the evidence of this witness, therefore, needs to be tested from various facts that he has narrated in his examination-in-chief from the angle of possibility, plausibility or otherwise existence thereof in view of the evidence of all other witnesses. Such facts are, firstly, that the facts stated by him are not stated by other witnesses, and, therefore, his version is not plausible. Secondly, no witness has stated that anyone has shown a newspaper at this place and this is the only witness who refers to the presence of Babu Bajrangi. It was submitted that the naming the accused persons is also with a deliberate design to give a natural colour to the testimony of this witness.

205.42 It was submitted that the witness claims that he had hidden himself behind some bushes. That again, his hiding was not a claim of any other witness and whether it is possible that he could have escaped from the sight of the accused also when inflammable substances were thrown from the upper part of the tank and the terraces is not explainable. It was submitted that causing injury to Kausarbanu in the way it is projected and taking out the foetus on the point of the sword and then throwing it in the fire are facts going completely contrary to the medical evidence, particularly the postmortem report of Kausarbanu Exhibit-657, inquest panchnama Exhibit-662 and the doctor concerned who has carried out the postmortem of Kausarbanu (PW-103). It was submitted that even this allegation of taking out the foetus on the tip of the sword is attributed by some to Guddu and by some to Bhavani. It is not the case of the prosecution that the very act of so causing injury and taking out the foetus with a sword is

committed by more than one accused. Therefore, qua the accused persons, totally inconsistent versions are brought on record by the prosecution.

205.43 Apart from the inconsistencies in the evidence of Kausarbanu's husband PW-225, as is brought out by the prosecution, the incident of Kausarbanu and causing her injury takes place two and half hours before the allegations made here, that is, at about 4:00 p.m. in the Jawannagar pit and one person whose face was covered by a cloth is alleged to have caused injuries to her by sword. It was submitted that this witness says that when Kausarbanu's incident occurred at about 7:00 p.m., she was not found with any injury on her body at that point of time and that she came to this place with her mother, coming out of the hall after the evening hours. Therefore, it is very doubtful whether the incident of Kausarbanu as alleged by this witness has, in fact, occurred the way in which it is projected by any of the named accused at the place so stated and at that point of time. Referring to paragraph 14 of his examination-in-chief, it was pointed out that if the witness was pretending that he was dead, his eyes would have been closed and therefore, he could not have seen Guddu hitting him. It was urged that there are all chances that this witness is not an eyewitness and he is a got up witness to implicate Babu Bajrangi and the version put forth is not possible.

205.44 It was pointed out that insofar as the incident of Kausarbanu is concerned, there are four witnesses: Reshmabanu Nadeembhai Saiyed (PW-147), who has stated that she had seen the incident and has implicated only Guddu

Suresh and Bhavani and she does not implicate Babu Bajrangi; Jannatbibi Kallubhai Shaikh (PW-142) in all her statements does not name Babu Bajrangi and she has made allegations against Guddu, Bhavani, Suresh and Manu. Even in her statement before the SIT and for the first time in the court, the name of Babu Bajrangi (A-18) is brought in, which clearly indicates that accused No.18 is specifically targeted for his apparent false implication and the witnesses were so tutored to name him and identify. It was submitted that there are other witness Firozbhai alias Babakhwaja Moyuddin Shaikh (PW-225), husband of Kausarbanu and the present witness. It was, accordingly, urged that it is absolutely not believable that any such incident has taken place at the hands of Babu Bajrangi (A-18). It was submitted that if the mob had killed Kausarbanu on the side of Gopinath, it is highly improbable that this witness could have seen the incident from where he was hiding. It was submitted that if he was hiding, he could not have seen the incident even if it took place on the road outside the passage as there were many people in the passage.

205.45 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that in the case of this witness, there is no question of too many contradictions because there is only one statement recorded by the SIT. At the time of the incident, the witness was fourteen years of age. It was submitted that insofar as the part regarding the death of his parents in the incident and the rest of the incident narrated by him, there is no contradiction and, therefore, this witness is believable and credible.

205.46 ANALYSIS: As pointed out by the learned Special

Public Prosecutor, the sole statement of this witness was recorded by the SIT in the year 2008. At the time of the incident, the witness was fourteen years of age. As per the version given by this witness, in the morning at around 9 o'clock, he had gone towards Patiya Char Rasta when he found that the shops were closed. The witness has deposed that he had seen a jeep coming from the direction of Natraj Hotel, wherein fifteen to twenty persons who had tied saffron bands on their heads and had swords and trishuls in their hands and some of them had guptis were sitting and they were going towards the Noorani Masjid. That the people in the jeep had got down at Jay Ambe Temple near Patiya and behind them another mob of Hindus had come. One mob had come from Krushnagar near the Noorani Masjid and had attacked the Noorani Masjid. The witness has referred to bursting of teargas shells and firing by the police wherein Mohammadbhai and Pirubhai were injured. According to this witness, he went home. They sat at home till around 12 o'clock, after which the mobs started entering their chawls and they left their house and went towards Jawannagar. They sat in Jawannagar till around 4:00 in the evening. At the place where they were at Jawannagar, Bhavani came and told them that there was a hall near his house and they should sit there, and hence, they had gone and were sitting in the hall. Thereafter, Bhavanisingh told them to come out from there and go towards Teesra Kuva where arrangements were made for them. When they went in that direction, a mob was standing there, which was armed with weapons and had cans of kerosene, etc. Upon seeing the mob, the Muslims started going back to the chawls. The mob followed them and another mob came from the direction of the Muslim chawls. They were going towards Jawannagar but could

not reach there. Before they could reach Jawannagar, there was a water tank near Gopinath Gangotri Society. They were caught in the passage of the water tank. Several people could jump over the wall and escape but some of them could not. The people in both the mobs had surrounded them. In the mob, he had seen Babu Bajrangi (A-18), Guddu Chhara, Bhavanising, Suresh Chhara (A-22) and Manubhai (A-28). These people started hacking down and killing people and were also throwing burning rags from the terraces. He has stated that small children were being burnt alive and he was amongst the people who were stuck there. This witness has stated that he had hidden himself behind the bushes in the passage of Gopinath Gangotri Society. According to this witness, at the time of the incident he got separated from his family members. The incident took place at around 6:30 to 7:00 in the evening and he had seen Babu Bajrangi inflicting a blow with a sword on his maternal aunt's daughter Kausarbanu's stomach and splitting her stomach and taking out the foetus at the tip of the sword and bouncing it and throwing it in the fire. Other people threw Kausarbanu into the fire. The witness has also referred to an incident where the clothes of another woman were torn off and she was brutalised by the people of the mob. The witness has also referred to an incident regarding Kudratbibi. The witness has stated that he had hidden himself under the dead bodies and pretended that he was dead, when Guddu Chhara came and dealt a blow with a pipe on his head, after which he became unconscious. According to the witness, he regained consciousness at around 10:30 at night when there were dead bodies which were reduced to ashes near him. He went on the road and somehow reached his employer's house. His employer gave him food

and water and clothes and took him to the L.G. Hospital for treatment. In the incident, his mother, father and sister have died. His maternal aunt Jenabbibi and six members of her family were also killed in the incident. In his cross-examination, the witness has admitted that he had not seen the incident at the water tank, which resulted in the death of his parents and his sister. From the cross-examination of this witness it brought out that his maternal uncle's name was Khalid Noormohammad Shaikh and Kausarbanu was his daughter and as per the witness Kausarbanu was married to Firoz Khwajamohiyuddin Shaikh. Therefore, it is established that Kausarbanu, who died in the incident near the water tank is PW-225 Firoz Khwajamohiyuddin Shaikh's wife. The submission advanced by the learned Special Public Prosecutor regarding the version given by PW-225 Firoz Khwajamohiyuddin Shaikh that the Kausarbanu who was killed in the incident at Jawannagar Khada may be a different Kausarbanu, therefore, stands negated, inasmuch as, from the testimony of this witness, it is established that the Kausarbanu, who died in the incident at the water tank is the wife of PW-225.

205.47 In the cross-examination of this witness, the topography of the area in and around the water tank has been clearly brought out. This witness has been cross-examined at length regarding Kausarbanu's incident and he has withstood such cross-examination, which gives rise to the belief that the version given by the witness is true.

205.48 However, insofar as naming the accused is concerned, it would be risky to accept such version which has come at such a belated stage, more so, when nothing has been

brought on record to establish the acquaintance of the witness with the accused and no test identification parade has been carried out to establish the identity of the accused. This witness at the relevant time was fourteen years of age and some of the accused named by him are not residents of the chawls. Therefore, it was incumbent upon the prosecution to bring out the acquaintance with the accused.

205.49 In paragraph 76 of his cross-examination, certain facts relating to the incident of Kausarbanu have been brought out by way of admission, which is in consonance with the prosecution case.

205.50 Insofar as the incident of Kudratbibi and a woman being stripped and brutalised by the mob is concerned, the same appears to be in the nature of exaggeration and does not have a ring of truth. It may be noted that the statement of this witness came to be recorded for the first time before the SIT. The witness has deposed that after the incident, he had gone to his employer's house and was thereafter taken to the L.G. Hospital, where he was given treatment. However, the prosecution has not examined his employer as a witness to corroborate the version given by this witness and further no investigation appears to have been carried out to bring on record the fact that the witness was given treatment at the L.G. Hospital to corroborate his version.

205.51 Thus, while the narration of the incident of Kausarbanu by this witness appears to be truthful and credible, the naming of the accused at a belated stage cannot be accepted.

206. **PW-229 Sairabanu Khwajahussain Shaikh**, aged 40 years, has been examined at Exhibit-1628. The witness has deposed that she can understand Gujarati, but she finds it more convenient to speak in Hindi and therefore, will depose in Hindi. The witness has stated that she is a native of *Gulbarga, Karnataka State* and is residing at Ahmedabad since the last 30 to 35 years.

206.1 She has studied in Urdu medium till the 7th standard at Ahmedabad. Her husband was suffering from T.B., and he died on 24.12.1994. She had three children. The names of her sons are Saifuddin, Azaruddin and Harun. Her children were aged 13 years, 11 years and 9 years respectively at the time of the incident. In the year 2002, she was doing tailoring work at home and over and above that, she also used to work in the thread factory.

206.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh.

206.3 On the day of the incident, she was at home in the morning. At around 8:00 to 8:15, she had gone to a thread factory for her job. She was working in Shri Laljibhai's thread factory. This thread factory was situated at Saijpur tower, Naroda Road, next to Excise Chowky. She had reached the factory. On that day at around 08:45, a phone call was received from their employer Jirubhai at the factory that since there is was a call for bandh, the factory is to be kept closed. Their supervisor Dineshbhai informed them about this. After giving them this telephonic message, Dineshbhai told them all

to go home. Upon hearing Dineshbhai, all those who were in the factory, including the witness, left the factory.

206.4 In this manner, she returned home at around 9:00 to 9:15 from the factory. When she was returning from the factory, at that time, almost everywhere on the road, there were mobs of both the Hindus and Muslims. Her children were at home on that time. Her children used to go to school. On that day, the school was closed. After going home, she started doing the household chores. At this time, there were sounds of shouting. The Hindu mob was shouting. On hearing these sounds, she came out of the house. She went on the road and saw that the people in the mob were attacking the Noorani Masjid and the mob of people near the S.T. Workshop were pelting stones.

206.5 While she was doing her household work, her children had gone out to play. Upon hearing the commotion, she went out to look for her children. Stone pelting was going on near the Noorani Masjid and the S.T. Workshop. The police were also there near the S.T. Workshop at that time. She thought of going back to Bombay to her mother's place together with her kids. Hence, she started looking for her children. Stone pelting was going on near the Noorani Masjid as well as the S.T. Workshop. She went to search for her children on the road near the S.T. Workshop, where she found her children. She took her children and went to the bus stop to go in the municipal bus. After going there, she came to know that the buses were not running.

206.6 She took her children and returned home when a

policeman from near the S.T. Workshop came to where she was standing and told her that they should go inside. At that time, stone pelting was going on near the S.T. Workshop. Tear gas shells were being lobbed by the police. At this time, on account of the smoke that was emitted, nothing could be seen and at that time, her elder son Saifuddin sustained injury on his right hand and right leg and at the same place, her younger son was also injured in the stone pelting. In all this, she started going with her three children towards Hussainnagar when her son Azharuddin's hand slipped out of her hand. Stone pelting was going on from the S.T. Workshop till one enters the Hussainnagar. There was stone pelting everywhere. Taking her children, she entered in the Pinjara's house situated in Hussainnagar. She hid there. At this time, there were other Muslim men and women in that house.

206.7 At this time, there was a mob of Hindus in Hussainnagar-ni-Chali. In the mob, Chharas, Sindhis, including Suresh Chhara and Sahejad Chhara and Chhara women were also there. The people in this mob were looting the houses and were setting them ablaze. Jayedabibi's house is situated opposite the house in which she was sitting and at that time, she saw Chharas looting that house and set it on fire.

206.8 At this time, when she was in Pinjara's house, Sahejad Chhara and Suresh Chhara came to the window falling on that side and said that each woman together with two children should go with them and they would take them to a safe place. They (the witness and others) told them, that if they wanted to take them, they should take all of them together otherwise they would leave everything to the will of

Allah. They (the mob) showed them the newspaper and told them that, *"Look, what kind of atrocities you Muslims have committed; go away to Hyderabad and don't ever return"*. Thereafter, they went in the other direction.

206.9 They were at the Pinjara's house till around 5:00 to 5:30. There at around 5:00 to 5:30, two policemen had come there. They told them to come down as vehicles had come to take them. They did not trust them because they were not wearing belts and did not have caps on their heads. Despite this, four to five women from amongst them went out and found that there was no police vehicle. When they came out to see as to whether there was a vehicle or not, they saw a dead body burning. This dead body was burning in Lane No.1 of Hussainnagar. It was Maiyuddin's dead body. The witness has stated that she is saying that the dead body was Maiyuddin's because he was handicapped and a vehicle for handicapped persons was lying next to this dead body. Upon seeing his dead body, they were frightened, and hence, they returned to the Pinjara's house and hid there again. The house in which they were hiding belonged to Habibbhai Pinjara and they were hiding on the ground floor of that house. After a little while, they left that house and hid in a house which was four to five houses away. She does not know as to whom that house belonged. Thereafter they went to another house, and were hiding there, till 12 o'clock at night. After 12 o'clock, the police came and shouted that they had come to take them wherever they wanted to go. Thereafter, all of them came out of their house and went on foot to the corner of the S.T. Workshop. The policemen standing there took them in a vehicle to the Shah Alam relief camp.

206.10 When they had alighted from the bus and were going towards the relief camp, at that time, she met her nephew Maheboob Khurshid on the road. He was totally burnt. This Maheboob was her sister-in-law's son. He told her that all had been burnt, killed and hacked down and that in the incident that took place between Gangotri and Gopinath Society, everyone was killed and hacked down and that in this incident, he too was inflicted a blow on head with a sword and set on fire. Together with him, his seven to eight year old daughter Shabnambanu and his son Mahammadsafi, who must be about five years old, both these children were also in a burnt condition. His daughter was fully burnt and his son was burnt to a certain extent.

206.11 She took all three of them and went to the V. S. Hospital. When she went to the camp, both her sons were with her and she had no news about her third son. She left her children with somebody else at the camp and went with her sister-in-law's son, his children to the V.S. Hospital. She stayed with them for four or five days at the V.S. Hospital and took care of them.

206.12 During the course of treatment, on the fifth day, her nephew's daughter Shabnambanu and nephew Maheboob both of them died. Prior to his death, while she was at the hospital, Maheboob had told her that her sister-in-law Shahjahan, her husband Sarmuddin Khalid, her sister-in-law's two children Asif, aged 4, her second son Rafiq, aged 2, her sister-in-law's husband Sarmuddin, pregnant Kausharbanu and Sarmuddin's mother Jenabbibi, all had died in the incident near Gopinath –

Gangotri Society. They too were killed, hacked down and set ablaze at the same place. In the meanwhile, Mahammadsafi's mother came to the hospital and she handed over her son to her and returned to the Shah Alam camp. During these five days, her lost son Azharuddin had also come to the camp. At the camp, thereafter she found all her three children.

206.13 Her two children, who were hurt in the stone pelting, were treated at the camp. She had stayed in the camp for around seven months. While she was at the camp, the police had come. Their house was looted and vandalised during the incident. All the household articles and things in her house were looted in the incident and she had sustained a loss of around rupees one and half to two lakh.

206.14 Her statement was recorded at the relief camp. The SIT had recorded her statement at Gandhinagar also. The witness has stated that she would identify the accused and has identified Sahejad Chhara (A-26) and Suresh Chhara (A-22) correctly.

206.15 CROSS EXAMINATION: In the cross-examination of this witness it has come out that she had stayed at the factory till 9:15 in the morning. She had returned home from the factory through the road passing through the chawls. She has admitted that when she was returning, there was the mob belonging to their community near the Noorani Masjid. She has denied that when she crossed the road and came, at that time men belonging to their community were standing there.

206.16 The witness has stated that after returning from the

factory she had stayed at home till 9:45 in the morning. She has denied that Muslims were pelting stones near the Noorani Masjid. The witness has stated that stone pelting was going on in front of the Noorani Masjid, at which point of time she had crossed the road and gone to the bus stand. The witness has stated that while she was at the camp she had not made any application to the Police Commissioner. She has admitted that she signs in Gujarati.

206.17 At this stage, the learned counsel for the defence has sought permission to refer to the complaint application and loss and damage analysis form for the purpose of cross-examining the witness. The learned Assistant Special Public Prosecutor submitted that, in all, twelve complaints have been merged with Naroda Police Station C.R. No.I-188 of 2002, wherein the complaint application in question is at serial No.3.

206.18 The witness is shown the end portion of the complaint application at page 257, in response to which she has stated that the signature below the same is faint and she cannot identify it. Internal page 258 of the loss and damage application is shown to the witness and she has identified her signature at the end of the document. The witness has denied that the organizers of the camp and the leaders at the camp had approached her to inquire if she wanted to register a complaint. The witness does not remember as to whether she had made any complaint application at the camp.

206.19 The witness has admitted that when she was at the camp, on 12.5.2002, her police statement had been recorded. The witness has denied that she has stated in her statement

that she could not recognize any of the accused. The witness has voluntarily stated that she had given the names, but she does not know whether they have written them down. The witness has denied that when accused Suresh and Sahejad talked with her through window, they told her to wear a saree. The witness is sought to be confronted with her statement dated 28.5.2008 to contradict certain facts elicited during the course of her cross-examination, which is not permissible in law and therefore, not admissible in evidence.

206.20 The witness has stated that she does not remember whether, at the time when the panchnama of the damage caused to her house was drawn, she had also signed the complaint application. The witness has stated that she does not remember as to whether in connection with the loss sustained by her, she had filled in any form and signed the same.

206.21 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

206.22 PW-293 Shri B.T. Karoliya, the assignee officer has in his cross-examination admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness in the statement recorded by him had not given the name of any accused and had merely stated that amongst the people who had resorted to arson, there were people belonging to the Chhara community.

206.23 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), has in his cross-examination, admitted that he has recorded the statement of this witness on 28.5.2008, wherein the witness has stated that Suresh Langdo and Sahejad Chhara had told them to wear sarees and come out.

206.24 SUBMISSIONS: The learned counsel for the appellants submitted that this witness had not given the names of accused No.22 and 26 at the first available opportunity and had given them for the first time before the SIT. It was submitted that apart from the fact that this version comes up for the first time before SIT, the facts narrated by the witness are not believable on the face of it, for the reason that if they were hiding, they would not have been able to see what is going on outside. It was submitted that moreover the facts stated in paragraph 11 of her deposition are totally unnatural. Referring to the contents of paragraph 13 of her examination-in-chief, it was submitted that it is not probable that when the riots were at their peak in Jawannagar, women would venture out of the Pinjara's house and go up to lane No.1. It was submitted that the witness has stated that she saw Moinuddin's dead body burning at 5:00 to 5:30 in the evening, which is contrary to what some other witnesses have stated. It was urged that the witness has not attributed any overt role to the accused, and hence, her testimony cannot be relied upon to base a conviction in such a serious offence.

206.25 ANALYSIS: From the evidence of this witness, it emerges that at the relevant time when her statement came to be recorded by the police on 12.5.2002, the witness has stated that she does not know any of the accused. Thereafter her

statement came to be recorded by the Investigating Officer (SIT) in the year 2008, more than six years after the incident, wherein she has named the two accused. As per the version given by the witness in her testimony, she had taken refuge in the Pinjara's house and was hiding there on the ground floor. According to the witness a Hindu mob came to Hussainnagar wherein she saw Sahejad Chhara and Suresh Chhara and Chhara women who were committing loot and arson, however, the witness does not say from where she saw them committing such acts. Since the witness was inside the house on the ground floor, it is doubtful that she could have seen what was happening outside. The witness has further deposed that Sahejad Chhara and Suresh Chhara came to the window and asked the women and children to accompany them saying that they would take them to a safe place, whereupon the witness said that if they wanted to take them they should take all of them or leave it to the will of Allah. Thereafter the two accused showed them the newspaper and told them to see what atrocities the Muslims had committed and told them to go away to Hyderabad and not return. If the conversation between the witness and others and the two accused is believed to be true, then also according to the witness the accused offered to take them to a safe place; however, the witness and others said that they should take all of them. Whereupon the accused showed them the newspaper pointing out the atrocities committed by the Muslims and told them to go to Hyderabad and not come back. This part of the incident apart from being unnatural does not show any criminal complicity on the part of the two accused.

206.26 Considering the fact that when her statement came

to be recorded in May, 2002, the witness has not named any accused; the manner in which the witness claims to have seen the accused committing loot and arson as well as the conversation between the accused and the Muslim women in the Pinjara's house, as well as the fact that the witness has named the accused for the first time more than six years after the incident; the testimony of this witness does not appear to be credible insofar as the involvement of the accused is concerned. The evidence of this witness would therefore, not help the prosecution to prove the charge against the named accused.

207. **PW-230 Mahammadrafik Abdulkarim Shaikh**, aged 53 years, has been examined at Exhibit-1635. The witness has deposed that he knows Gujarati. He is a native of Bharuch district and has studied upto the 7th standard in Gujarati.

207.1 The witness has deposed that since his birth, he was residing in Naroda Patiya area. Since the last fifteen years, he is residing at *Lane No.5, Hussainnagar*.

207.2 In the year 2002, he was residing at Lane No.5, Hussainnagar with his family. His family was comprised of his three daughters and a son as well as his wife Bilkisbanu, all of whom were residing together. In the year 2002, he used to do heavy driving for a private party wherein he used to drive big buses, luxury buses, cars etc.

207.3 The incident took place on 28.2.2002. On that day at around 8 o'clock, he was sleeping at home. In the morning,

between 8:30 to 9:00, his wife woke him up and told him that there were disturbances outside and asked him to at least go out and see. Thereafter, he went to the corner of the S.T. Workshop, Opposite the Noorani Masjid. He went there and saw that four policemen were standing there. The people belonging to the Muslim community were also standing there. The people belonging to the Hindu community were standing near Natraj Hotel. The mob thereafter came forward. The mob came near the Noorani Masjid. Near the Noorani Masjid, the mob burnt tyres, set shops on fire, set the masjid on fire and thereafter, there was a cross stone pelting. Thereafter, the police told them to maintain peace and not to pelt stones and that everything would end.

207.4 Thereafter, he was standing in Dilip-ni-Chali near his paan-cabin. In the morning at about 11:00, he saw that a lot of public had gathered towards Krushnanagar as well as Natraj Hotel. At this time, there was a lot of stone pelting from the opposite side, whereupon the police left them and went towards the side of Natraj Hotel. Thereafter, it became very crowded.

207.5 In the crowd, Manoj Videowala was present. Manoj Videowala took a policeman's revolver and started firing with the revolver. In this firing, Mahammad Abid was injured on the waist and Pirubhai was injured by a bullet on his right leg. Thereafter, there was police firing also. In the police firing, Kaladiya was injured on the neck with a bullet. In the same firing, Mahammad Kaiyum was injured with a bullet on his hand. Thereafter, the police lobbed tear gas shells in huge quantities. Upon the police releasing the tear gas, there was a

stampede amongst them and in the stampede, they started going towards their area. He also went towards Hussainnagar.

207.6 Thereafter, the mobs from Natraj and Krushnanagar started entering their chawls. After coming to the chawls, they started vandalizing, assaulting and looting. They were also setting their chawls on fire. At that time, there was a stampede. Such stampede took place at about 4:00 to 5:00 in the afternoon, at which point of time they were terrified.

207.7 Out of fear, he too took his two children and wife and climbed on a terrace of Gangotri or Gopinath Society. His other two children had gone to the S.R.P. Quarters right from the morning. When he went to the terrace with his family, he saw that Guddu Chhara and Suresh were pushing twenty seven to twenty eight persons and taking them towards a water tank. At this time, it was around 5:30 to 6:00 in the evening.

207.8 After the people were taken to the water tank, from the top of the tank, some inflammable substances were thrown down upon the twenty seven to twenty eight women, men and children who were standing there and they set them on fire. These twenty seven to twenty eight persons were screaming for help. He had seen all this and had also heard their voices. However, he was very frightened and he himself felt that they would also do the same to him, and hence, he hid inside the parapet of the terrace.

207.9 When he had seen all this from the parapet, there were a lot of flames. He hid there till around 8 o'clock. Thereafter, the police jeep had come.

207.10 At about 8 o'clock, the police jeep had come and the youth of Gopinath had shouted that the police have come to save them and hence, whoever was hiding should come down. Upon hearing this, he took his wife and children and came down. Upon coming down, he saw that there was a police jeep and on the opposite side, dead bodies were burning. From that fire later on also cries of "*help, help*" could be heard. The police officer told him to separate the burning corpses and he had refused to do so. Thereafter, the police took him, his wife and his two children to the Naroda Police Station. His son Mahammadasif, daughter Taslimbanu and his wife were with him.

207.11 From the Naroda Police Station, late at night, they were sent to the Shah Alam camp. He stayed at the Shah Alam camp with his family for three months. In the incident, everything was looted from his house and it was set on fire. He found his other two children after staying at the camp for a week. Thereafter, he had come to know that they had gone with his brother to the Shahibaug relief camp. Upon finding his children, he had felt relieved because they had thought that they too might have died in the incident.

207.12 The police recorded his statement at the camp. The SIT had also recorded his statement.

207.13 The witness has deposed that he can identify Manoj Videowala, Guddu and Suresh whom he had seen in the incident. The witness has deposed that at present, Guddu is dead and he can identify Suresh and Manoj if they are in the

court. Thereafter, the witness has identified Suresh (A-22) and Manoj Videowala (A-41) correctly.

207.14 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that at the time when he woke up the mob had not entered his lane. The witness has admitted that lane No.5 Hussainnagar is situated in the centre of Hussainnagar. The witness has admitted that on that day, when he came out of the house, other persons had also come out of their house upon hearing the sounds. In the cross-examination, it has further come out that when he went and stood outside, there was a mob near the Noorani Masjid, the mob was rioting. The witness has admitted that he was peacefully standing there and watching. He has stated that where he was standing, there were around twenty-five to thirty people from their community and about ten to fifteen persons belonging to the Muslim community were standing near the Noorani Masjid. They were standing towards the Muslim chawls situated behind the Noorani Masjid. The witness has stated that to drive away the mobs of Hindus, all the people of their community had also made attempts wherein the youths were trying to make such attempts. He has stated that at present, he cannot give the name of any such youth. The witness has stated that the Hindus in the mobs were thousands in number and that he could only see heads. He has stated that he had remained at the corner of the S.T. Workshop for about two hours after which he had gone away. The witness has admitted that the mob which was standing near the Noorani Masjid and Natraj Hotel had not caused any harm to him. The witness has voluntarily stated that he was not standing at one place and that he was moving around for a while to the paan-galla then

near the chawls and then to the corner of the S.T. Workshop. The witness has stated that during these two hours, he had gone to his galla several times and had also gone several times to the chawl on the rear side. He was roaming around in Pandit-ni-chali, Kumbhaji-ni-chali. He has voluntarily stated that he was telling the people in the chawl that the mob has come and that they could go towards the rear side to save themselves. He has stated that he had told many people to move away towards the rear side, which included Hindus also. He has stated that at that time, there was no discrimination between Hindus and Muslims in their chawls and that Hindus were also there. He has admitted that during these two hours, no mob had entered the chawls. He has stated that afterwards when a huge mob gathered outside, he had gone back to his chawl. He has stated that to protect their lives they were roaming around here and there in the chawl and were searching for places to hide. That till around 5:30 to 6:00 in the evening, he was roaming around. During this period, from 5 to 6 o'clock, no person in the mob had caught him. The witness has voluntarily stated that if any person in the mob had caught him, he would certainly have been killed. He has admitted that while he was roaming around till 5 or 6 o'clock, he had not met any mob on the way.

207.15 The witness has admitted that in his statement dated 13.5.2002 recorded by the police at the camp, he had stated that, on 28.2.2002, as per his routine, his son had opened his paan-galla and was carrying on his business and that in the morning at 8:00 to 8:30 he had woken up and after completing his morning regime, at around 9:00 to 10:30 on account of Gujarat bandh, mobs of people had gathered and

were pelting stones, and hence, his son had shut down his paan-galla and had come to his house and informed him about the stone pelting, therefore, he had gone out to have a look and saw that stone pelting was going on, and hence, he had returned back. The witness has voluntarily stated that his wife had also woken him and told him and as regards his having returned, as stated by him earlier, it is in the sense that he kept on going and coming.

207.16 The witness has denied that he has also stated that he was at home with his family and upon the riots escalating, out of fear, he had locked his house and taken his family and gone to the S.R.P. Quarters, which was nearby where other people from the chawl were going, and had spent the whole day there. Thereafter, on 1.3.2002 at around 2:30 at night, the police vehicle had come there and he along with his family and other persons from the chawl, had together with police bandobast been taken to the Shah Alam relief camp where at present, he was staying with his family.

207.17 The witness has admitted that in the very same statement he has also stated with regard to the damage sustained by him on account of the riots. The witness has admitted that neither he nor any member of his family has been injured in the incident. The witness has been cross-examined with regard to the topography of the area. The witness has admitted that after he came out, he was on the service road near the S.T. Workshop throughout the period. He had seen Manoj near Natraj Hotel, whereas he had seen Suresh and Guddu on the interior sides of the chawl.

207.18 The witness has admitted that he has not heard Manoj talking with the police and had voluntarily stated that it was not possible to hear from such a distance. He has admitted that he had seen that Manoj had asked the police for the revolver and that the police had given the revolver to Manoj. He has stated that what he wants to say is that Manoj had snatched the revolver from the police. He has admitted that the person who gave the revolver was a police constable. The witness has denied that in the statement recorded by the police, he has not stated any such detail regarding Manoj having snatched or asked for a revolver. The witness has stated that he had stated before the police and that he does not know as to what the police had written down.

207.19 The contents of the first five lines of paragraph 7 of his examination-in-chief are read over to the witness. He has denied that in both his statements, he has not stated the fact regarding Pirubhai and Abid having been injured by bullets in the firing done by Manoj Videowala. The witness has admitted that there is only one person by the name of Abid who was injured by a bullet in the firing on that day. He has stated that he had seen Abid being injured by the bullet with his own eyes. He has stated that Abid was injured by the bullet where the S.T. compound wall ends, that is, near where at present the Patiya Police Chowky is situated. The witness has denied that Abid had sustained a bullet injury at the entrance of a lane of Hussainnagar. The witness has admitted that there was a mob near Natraj Hotel and Abid was injured by a bullet from that side. He has stated that Abid was injured by the bullet prior to 11 o'clock in the morning and it must have been approximately 10:30 to 11:00. He has denied that Abid had

sustained bullet injury after 12 o'clock in the afternoon.

207.20 The witness has admitted that Mohammad Kaladiya and Kaiyyum had also sustained bullet injuries at the same place where Abid was injured by a bullet and it had come from the direction of the mob near Natraj Hotel and that the bullet was from police firing.

207.21 The witness has admitted that in neither of his statements, he has stated that tyres were burnt near the Noorani Masjid. He has admitted that he has not stated in his statements that police had told them to maintain peace and that everything would be over. He has also not stated that he was standing in Dilip-ni-chali at the paan-galla. He had also not stated in both his statements that he had seen from the parapet of the terrace. The witness has stated that he does not remember whether in the statements recorded at the camp, he had stated any facts regarding the three accused or the role played by the three accused during the day of the incident. The witness has denied the suggestion that with a view to extract more money from the Government as well as from the Hindus he was falsely deposing before the court. He has denied the suggestion that he has not seen the incident and has not seen the named accused at the site and that he is falsely deposing.

207.22 In the cross-examination of this witness, it has come out that the stone pelting on the road started after he reached there. The witness has admitted that that it may be that like him many people had come to watch on the road out of curiosity. The witness has stated that except for his family,

there was no other person on the terrace where he was hiding. That the house on the terrace of which he was hiding was two houses away from the water tank. The witness has admitted that that from the place where he was hiding, he could not see the lower part of the water tank while he was in a hiding position. The witness has denied that while hiding, one could not see the road going through the S.T. Workshop compound wall.

207.23 The witness has stated that he has no social or financial relations with Suresh and does not have any relations of talking to him or visiting his house. The witness has admitted that Suresh is lame. He has admitted that he has no monetary, social or any other relations of visiting Manojbhai's house. He has admitted that no test identification of the above persons was carried out through him.

207.24 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

207.25 PW-300 Shri N.S. Malek, the assignee officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that this witness has not attributed any role to any accused in the statement recorded by him. The assignee officer has admitted that this witness had stated before him that he was present at home with his family and upon the riots escalating, out of fear, he locked his house and took his family members and together with the other people from his chawl,

went to the S.R.P. Quarters, which is situated nearby and passed the entire day there. Thereafter on 1.3.2002, at around 2:30 at night, the police vehicle had come there and in the said police vehicle, he, together with his family and other people of the chawl, together with police bandobast were dropped at the Shah Alam relief camp and at present, he is at the relief camp with his family

207.26 The assignee officer has admitted that this witness had in the statement recorded by him not stated that Manoj had snatched or asked or taken the revolver. The assignee officer has admitted that the witness has not stated before him that Manoj Videowala had taken the police revolver and fired and in the firing, Piru and Abid were injured by bullets.

207.27 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 18.6.2008. He has further admitted that this witness in the statement recorded by him had not stated that Manoj had snatched the revolver, asked for it or taken it. He has stated that the witness in his statement dated 18.6.2008 had stated that Manoj Sindhi had snatched a rifle from the police and had fired towards where they were standing.

207.28 The first five lines of paragraph 9 of the examination-in- chief of the witness are read over to the Investigating Officer, who has admitted that the witness has not stated before him that in the firing by Manoj, Piru was injured by a bullet on his leg and Abid on his waist. The Investigating Officer has stated that the witness had stated

before him that in the firing Manoj Videowala had caused injury. He has stated that in the statement, the witness has referred to a rifle, whereas in the deposition he has mentioned revolver.

207.29 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has not named Manoj, Guddu or Suresh in his police statement and he has come out with two different stories qua them for the first time before the SIT.

207.30 Against accused No.41 Manoj, the allegation is about snatching away or taking away a revolver from police personnel, who he says in the cross-examination that he was a police constable and has fired from it and Abid and Piru received injuries, which is not believable for the reason that firstly, constables are not given revolvers; secondly there is ample evidence on record that Abid and Piru sustained injuries in police firing; thirdly before the SIT the witness has stated about snatching away rifle for the first time and has thereafter improved the version before the court to snatching of a revolver. It was submitted that when the witness had no acquaintance with accused No.41 at all, as narrated in paragraph 61 of his cross-examination, in the absence of a test identification parade, his version for the first time before the SIT and then improved before the court, cannot be believed.

207.31 As far as Guddu and accused No.22 are concerned, the story narrated in paragraph 9 that at about 5:00 to 6:00 p.m. they were pushing and driving away some twenty seven to twenty eight persons towards water tank, which he saw

from parapet of some terrace in Gangotri Society, which he does not know, it was submitted that the story on the face of it is not believable, as firstly he has stated this for the first time before the SIT; secondly, in the fact situation it is not possible to believe that two persons, one of whom is handicapped, could push and drive away so many people in a particular direction; thirdly, the omission in both of his statements about his having seen such incident from the parapet of his terrace; and lastly the say of this witness before the police as proved by the Investigating Officer is in complete contradiction to what has been stated by him in paragraphs 9 and 10 of his examination-in-chief as he went with his family to the S.R.P. Quarters after locking his house and had stayed there for the whole day and had only come out on the next date at 2:30 a.m. to go to the relief camp with the police. It was, accordingly, urged that therefore, the entire version of this witness in respect of the three accused is not believable.

207.32 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness had spotted accused No.41 Manoj in the mob and had also seen accused No.22 and Guddu Chara between 5 to 6 o'clock. It was submitted that this witness knew only two persons and, therefore, he has named only two persons, which does not mean that there were only two persons, who were driving and pushing them. It was submitted that the contradiction brought out in paragraph 27 of the cross-examination in respect of the statement dated 13.5.2002 is not in accordance with the provisions of section 162 of the Code read with section 145 of the Evidence Act. It was submitted that the witness has also stated about snatching of rifle by accused No.41 and there is no cross-

examination except as to nature of weapon, and, therefore, the credibility of this witness is not impeached and his presence is also established and the witness is required to be believed.

207.33 ANALYSIS : From the testimony of this witness, it emerges that in his police statement dated 13.5.2002 recorded by PW-300, the witness had not stated any fact regarding presence of accused No.41 Manoj Videowala and his having a revolver with him with which he had fired. In his cross-examination, it has further been brought out that in his statement recorded by the police, he had not stated any fact regarding Guddu Chhara and Suresh (Accused No.22) having pushed twenty seven to twenty eight people towards the water tank or attributed any role to these accused.

207.34 This witness has alleged that Manoj Videowala was present in the mob and had fired with a revolver, wherein Mohammadabid was injured on the waist and Pirubhai was injured on his right leg. From the overall evidence which has come on record, there was police firing in the morning wherein Mohammadabid and Pirubhai were injured. This witness in his original statement has not referred to any firing by Manoj nor has he named him in such statement. Subsequently, at a belated stage, when his statement came to be recorded by the SIT on 18.6.2008, he has implicated Manoj and had stated that Manoj had snatched a rifle from the police and fired towards where they were standing. Thus, for the first time, in his statement before the SIT, the witness has named Manoj Videowala and has alleged that he had fired from a revolver. The evidence of this witness is, therefore, contrary to the

evidence of the other witnesses, who had come out on the road. Moreover, as noticed earlier, it appears that after the SIT came into picture, a version is sought to be put forth whereby certain accused are roped in and are alleged to have fired at the Muslims wherein certain Muslims were injured. This appears more of an exercise to exonerate the police from the death and injuries caused on account of firing in the morning.

207.35 Insofar as accused Suresh and Guddu are concerned, the witness had not implicated them in his statement recorded by the police at the relevant time. In the version given by him in his examination-in-chief, he has said that twenty seven to twenty eight persons were being pushed by them and taken towards a water tank. Such version put forth by the witness is to say the least preposterous. No witness has come forth stating that twenty seven to twenty eight persons were pushed by anyone. The entire version is that while the witness and others were going towards Teesra Kuva, there was a mob coming from that direction and, therefore, they had gone towards Gangotri Society where another mob came from the opposite side and they were caught in between the two mobs and went towards the passage of the water tank where the massacre took place. Therefore, the version given by this witness does not appear to be a correct version of the incident.

207.36 Under the circumstances, when the witness has named Manoj Videowala and Suresh Chhara for the first time before the SIT and the role attributed by him to them in his deposition before the court, is not credible, no reliance can be placed upon the testimony of this witness to prove the charge

against the accused and he does not come across as a credible and trustworthy witness.

208. **PW-231 Zulekhabegum Mahammadayub Shaikh**, aged 40 years, has been examined at Exhibit-1637. The witness has deposed that she can understand a little Gujarati, but would depose in Hindi as it is more convenient for her to speak in Hindi. The witness has deposed that she is a native of *Gulbarga District, Karnataka State*.

208.1 The witness has deposed that prior to where she is presently residing, she used to reside at *Lane No.1, Jawannagar*. In the year 2002, she was residing at Jawannagar, which is also known as Jawaharnagar with her entire family that comprised of her, her husband, her four sons, two daughters, her brother-in-law, her sister-in-law and her mother-in-law.

208.2 The incident took place on 28.2.2002. On that day, it was a Thursday and there was a call for bandh. On the day of the incident, in the morning, all of them were at home when her brother-in-law Abdulsalim went on the road at around 9 o'clock in the morning. Upon returning from the road, her brother-in-law told her that there were disturbances near the Noorani Masjid and that there was assault and a mob had come. He also said that there was vandalism near the road near the masjid. Her brother-in-law came and told her husband that an attack was going on outside, and hence, her husband had gone out. Thereafter, her husband returned home.

208.3 Upon returning home, her husband said that there

was an attack outside and now it was not possible to escape, and told them to come out. Therefore, she took her two sisters-in-law, her six children and her mother-in-law with her and came out on the open ground. She took everyone near the compound wall of the S.R.P. Her husband had come and left them there and he had returned home.

208.4 There were policemen at the S.R.P., whom they had requested to let them go inside the S.R.P. The police told them *"Today, you have to die"*. Thereafter, they had severely beaten them with sticks. Her mother-in-law was severely beaten by the police and she had fallen down. When she went to pick her up, they had also beaten her up with sticks and that even today, her mother-in-law cannot get up and she (the witness) suffers a lot of pain in her leg. Thereafter, they had stayed outside the S.R.P. Quarters. At that time, by the stones which were being pelted from the open ground, her sister-in-law and brother-in-law Abdulsalim were injured. Thereafter, they stayed near the S.R.P. compound wall.

208.5 Jawannagar, Lane No.1 is situated near the S.R.P. There is a gas agency near Jawannagar, Lane No.1. The people in the mob had broken the compound wall situated near the gas company. Upon this wall being broken, the mob entered their chawl. Her house was the first house in Jawannagar, Lane No.1. The people in the mob suddenly entered the houses and started ransacking and burning them. They placed gas cylinders inside her house and burnt it completely. When the mob had entered her house and placed the gas cylinders and set it on fire, her husband was at home. She had seen the mob ransacking her house and set it on fire and has seen her house

being burnt down.

208.6 At this time, her husband, who was on the terrace of their house, fell down from the terrace and fractured both his legs. At this time, there was a stampede amongst the public. The people in the mob were assaulting and were burning whoever came in their hands. Bhavani, Guddu Chhara and Suresh Chhara were in this mob. They told her *“Today, you have to die, so die here!”* In the incident, her family members got separated. Her sister-in-law and her six children were with her. To escape, they had gone to Gangotri Society and hidden in a godown. The people from near Gangotri Society told them to get out of the godown, and hence, they had come out from the godown. Thereafter, they started going towards Naroda, where there were a lot of people. Some people went and started returning and informed them not to go ahead as there was a mob there also. They were trapped there because there were mobs on both the sides. They had felt that they would not escape.

208.7 To save themselves, they had gone on the terrace of Gangotri Society near the S.R.P. compound wall. From the terrace, she saw that the people in the mob were ransacking and were burning and amongst them, she saw Bhavani, Guddu Chhara and Suresh Chhara.

208.8 Thereafter, in the evening time, she saw from the terrace that Guddu Chhara pulled her husband and took him to the last lane of Jawannagar, where Bhavani was there. Guddu pulled her husband and took him and then, Guddu Chhara, Suresh and Bhavani hacked down her husband and put him in

a rickshaw and poured inflammable substance and set him ablaze.

208.9 In this mob, there were people who had tied saffron bands on their foreheads and wearing white undershirts and khakhi shorts. They too, were involved in the incident. She had seen her husband being dragged, hacked down and set ablaze in the rickshaw. On seeing this, her children were terrified and she herself was shocked on account of the incident and remained sitting on the terrace. (At this stage, the court has recorded that the witness is crying a lot and is saying that she and her children have become helpless and have been rendered orphans.).

208.10 Her children were very frightened. Since morning, they were going around here and there, protecting themselves and hence, her children were very hungry and thirsty. She was not in a position to give them anything to eat or drink. On the other hand, her mother-in-law and brother-in-law had gone to see the incident of her husband. Hence, they were in a very difficult situation. While she was on the terrace, several people in police uniform came to call them. There were many people on the terrace, however, since they did not trust the people who had come to call them, they did not go with those people and remained on the terrace. However, some people on the terrace trusted them and went there and in a vehicle full of people, they were taken. There were many other Muslims on the terrace.

208.11 Thereafter, upon another vehicle coming, they mustered the courage and got down from the terrace to go in

the other vehicle. They did not have chappals on their feet. They had gone to the S.T. Workshop road on foot when there were many dead bodies burning on the road. When they reached the road, another vehicle came. The mobs from Krushnanagar and Natraj were pelting stones on this second vehicle, due to which, their children were very frightened and hence, they did not go in the second vehicle also and hid nearby, whereafter in a third vehicle which came there, they sat and reached the Shah Alam camp along with her children and sisters-in-law.

208.12 At the Shah Alam camp, they were given treatment in connection with the injuries which they had sustained. Thereafter, at the Shah Alam camp, they had found her mother-in-law and brothers-in-law, who had got separated during the incident. They too, had taken treatment there. They stayed at the relief camp for around six months. At the relief camp, the police recorded her statement twice. Her statement was also recorded by the SIT at Gandhinagar.

208.13 At the Shah Alam camp, she had met Meblahasan and Maharoo. They told her that they had got the postmortem of her husband's dead body performed at the Civil Hospital and had taken his dead body to Shahibaug Kabrastan and buried him there. She came to know about this fact from them.

208.14 The witness has deposed that Guddu and Bhavani have passed away and that she would try to identify Suresh. The witness has deposed that she had stayed at the relief camp for about six to seven months, whereafter the Islamic Relief Committee had given her a house, where she had gone

to reside. She is residing at Faizalpark with her two children. The witness has deposed that upon seeing their father being burnt alive, her children had suffered very severe fever and they had become very nervous, and hence, she had sent her four children to her brother's house at Bangalore and they are residing there.

208.15 In this incident, her husband had died a homicidal death. Besides, on account of her being beaten, she was suffering very intense pain in her leg. She herself was destroyed physically, mentally as well as socially. On account of the incident, she herself was under great stress. She could not muster courage to venture out of her house. She had mustered a lot of courage and come to the court. Without any fault on their part, she had suffered loss on account of her husband's death as well as household goods. All her household articles and things, rickshaw, etc. were destroyed in the incident and they were totally ruined. She had received very little compensation and today also, she has not regained her health after the incident.

208.16 The witness has deposed that she would try to identify Suresh and has, accordingly, correctly identified Suresh (A-22). The witness has deposed that she is totally illiterate.

208.17 CROSS EXAMINATION: The witness has admitted that before her statement was recorded by the SIT, she had made two applications to the SIT. She has admitted that she has put her thumb impression at the end of both the applications. The witness is cross-examined as to where she

had got the applications made and who had written them down for her. The witness has stated that she knows Maharooof and Mehblahussain and that they are residing at Jawannagar in her lane. The witness has admitted that they were all helping each other. She has stated that Nazir Master resides in her lane and that Nazir Master was helping victims like her. The witness has admitted that that these two persons were writing applications for the affected persons. She has admitted that both these persons used to write applications and complaints for everyone at the camp. The witness is shown a thumb impression below the Mark 644/22 and 644/48 and she has identified it to be hers. The witness has admitted the contents of applications Mark 644/22 and 644/48, which are exhibited as Exhibits-1638 and 1639 respectively.

208.18 The witness has denied that in her statement dated 6.5.2002, she has stated that on 27.2.2002, kar sevaks who were passing in the Sabarmati Express Railway Train, were burnt alive and killed by Muslims of Godhra near the Godhra Railway Station. The witness has admitted that in her statement before the police she has stated that at that time, her brother-in-law Abdulsalim had come and informed them that there are about fifteen thousand to twenty thousand Hindus on the road and that even larger mobs had gathered and all of them had weapons and were coming towards their chawl to kill them.

208.19 The witness has admitted that she has stated that, therefore, they had all hidden in their house and that they were under the impression that the people in the mob would not come up to their chawl, and hence, they were hiding in

their house, and in the meanwhile, they could hear sounds of the mob coming near, and hence, all the members of their house at around 12 o'clock, locked the inside room of their house and went away and were hiding on the rear side of their chawl against the walls and were halting and going.

208.20 The witness has admitted that she has stated that at that time, it was around 5 o'clock in the evening and upon the mob coming there, her husband was around 50 to 60 metres away from them and from the people in the mob, someone struck her husband with a sword and another had inflicted blows with dharias, gupti and at that time, her brother-in-law told her and explained to her that it was more necessary to save her children, and hence, she should flee from there.

208.21 The witness has admitted that upon her brother-in-law saying so, she had taken her children and gone on the terrace of Gangotri Society. She has admitted that in her statement she had stated that she does not know any of the persons who killed her husband and cannot identify them even if they are shown to her.

208.22 The witness has admitted that her statement was also recorded on 7.9.2002. She has admitted that in such statement, she has stated that her husband used to keep a beard. His age was around 40 years. After the death of her husband, till she got this house, she was residing at the Shah Alam camp. Her husband was killed near the compound wall of the S.R.P. police lines and she does not know any of the persons in the riotous mob.

208.23 The contents of paragraph 10 of her examination-in-chief are read over to the witness, who has denied that she has not stated all these facts in both her statements recorded by the police and has voluntarily stated that she had stated so, but how would she know whether or not, they have written them down. The contents of paragraph 10 are once again read over to her and she has denied that in her statement dated 30.5.2008 recorded by the SIT, she had not stated that her husband was put in a rickshaw and set ablaze. The witness has voluntarily stated that she had stated so but they had not written it down.

208.24 The witness has denied that she had not informed anyone at the camp that Guddu, Suresh and Bhawani had hacked down her husband and had poured inflammable substance on him and set him ablaze and has voluntarily stated that she had stated so, however, how would she know that whether or not, they had written it down. The witness has admitted that she did not have any social or any other kind of relations with Suresh and Bhavani. She has admitted that no test identification parade of any accused was carried out through her. She has admitted that her husband was on the terrace of the last house of Gangotri Society, which is near the S.R.P. compound wall and he had fallen down from there. The witness has admitted that this was the same terrace, where she was hiding. She has admitted that where her husband was, Hindu and Muslim mobs were running and coming. She has stated that when her husband fell down, he fell in Jawannagar.

208.25 The witness has stated that the first lane of

Jawannagar comes after leaving one house from her house. She has admitted that the incident took place near the S.R.P. compound wall and not near her house. The witness has admitted that whatever she had seen in the incident, she had seen with her own eyes. The witness has admitted that she had come to depose at the instance of the people of her community.

208.26 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

208.27 PW-292 R. C. Pathak, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 7.9.2002. The contents of paragraph 10 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness has stated that thereafter in the evening, she saw from the terrace that Guddu Chhara pulled her husband and took him to the last lane of Jawannagar, where Bhavani was also present. Guddu Chhara pulled her husband and took him. Guddu Chhara, Suresh and Bhavani hacked down her husband and put him in a rickshaw lying there and poured inflammable substance on him and set him ablaze. The assignee officer has admitted that the witness had stated the facts regarding her husband being burnt, but had not stated as to who had set him ablaze and had also not stated the names of the accused before him.

208.28 PW-307 S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this

witness on 6.5.2002. He has admitted that this witness had stated before him that on 27.2.2002, kar sevaks who were passing through in the Sabarmati Express railway train, were burnt alive by the Muslims at Godhra near Godhra railway station and were killed.

208.29 In the opinion of this court, this part of the statement of the witness in no manner contradicts any part of what is deposed by the witness in her examination-in-chief. As discussed earlier, in view of the proviso to section 162 of the Code, a statement under section 161 of the Code can be used only for the purpose of contradicting a witness. This part of her testimony is, therefore, not admissible in evidence.

208.30 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), has in his cross-examination admitted that he has recorded the statement of this witness on 30.5.2008. The Investigating Officer has admitted that this witness in the statement recorded by him has not stated that her husband was put near a rickshaw and set ablaze and that she has not mentioned the word "rickshaw".

208.31 SUBMISSIONS: The learned counsel for the appellants submitted that as per the version given by this witness in respect of the facts mentioned in paragraph 10 of her deposition with respect to the incident of her husband, she has not named any of the three accused including accused No.22, as she did not know who were the miscreants as admitted by her in paragraphs 34 and 35 of her cross-examination. Therefore, this version of this witness with the name of accused is coming up for the first time before the SIT

and even before the SIT, the fact of her husband being set on fire in a rickshaw was not stated which has been stated by her for the first time before the court.

208.32 Referring to paragraph 4 of her examination-in-chief, it was submitted that all the family members of the witness were first taken to the S.R.P. compound wall by her husband, who then went back home. It was submitted that according to the witness their house is situated in Lane No.1 of Jawannagar. It was submitted that in paragraph 7 of her examination-in-chief, she has stated that her husband fell down from the terrace of their own house and sustained fractures. In paragraph 8 of her examination-in-chief she has stated that they had gone to Gangotri and hidden in a godown and after they were asked to come out of the godown, they had gone to the terrace of Gangotri and while she was on the terrace at Gangotri, she saw from there the incident of Guddu pulling her husband to the last lane in Jawannagar and in that lane she saw Guddu, Suresh and Bhavani killing him in a rickshaw by assaulting and setting him on fire. It was submitted that in contradiction to this version the witness has stated in paragraph 42 of her cross-examination that her husband fell down from the terrace in lane No.2 of Jawannagar and in further contradiction, in paragraph 41 she has stated that her husband fell down from the same terrace in Gangotri where she had hidden herself. It was argued that apart from the above inconsistencies, if the deposition of the witness is taken and read at its face value, the incident of her husband falling down in the afternoon and the incident of killing him had taken place after some time, are definitely not in consecutive sequence. It was submitted that this version of the witness is

in complete contradiction to the version other witnesses of this incident, namely, PW-140, PW-143, PW-149, PW-156, PW-224, PW-226 and PW-213. It was submitted that the testimonies of those witnesses also are *inter se* contradictory in material parts as regards time, place and sequence of events and also inconsistent with respect to the names of accused. It was submitted that according to this witness she was informed by Meblahasan and Maharooof as stated in paragraph 15 that they had taken the dead body of Ayub to the Civil Hospital for postmortem and got buried at Shahibaug Kabrastan. It was submitted that Maharooof is examined as PW-91, but he does not say anything in this regard. It was submitted that Ayub's inquest is shown in inquest panchnama exhibit 662 and as stated in paragraph 15, the dead body of Ayub would have been identified. It was submitted that having regard to this inconsistent and contrary facts coming on record, and when the witness has not named any accused in both of her police statements, this story about her husband coming up before SIT for the first time, creates complete doubt as regards the credibility and reliability of her version. It was submitted that other witnesses have referred to a rickshaw in which the incident of Ayub is stated to have taken place, however, no remnants of a human body are found therein, nor is there any scientific investigation made by the prosecution to prove this fact beyond reasonable doubt.

208.33 Referring to paragraph 43 of her cross-examination, it was submitted that the witness has admitted that she had come to depose at the instance of her community, which indicates that she was brought as a witness after her statement was recorded by the SIT to state something which

she had never stated in either of her police statements. It was submitted that as admitted by the witness in paragraph 40 of her cross-examination, that she had no relation of any kind with Suresh, in the absence of a test identification parade, naming and identifying the accused after so many years, also brings the case in the dock of doubt.

208.34 The learned Special Public Prosecutor submitted that one contradiction about rickshaw qua her statement before SIT that she had not stated about a rickshaw in her police as well as SIT statement has been brought on record. As regards the other facts even in the first and second statements recorded in the year 2002 there is a narration. It was pointed out that in paragraphs 41 and 42 of her cross-examination she has clarified the situation.

208.35 It was submitted that the version given by the witness cannot be considered to be contradictory to other witnesses because PW-156 also says that Ayub was killed in the last lane of Jawannagar, near Abeda's house. PW-231 has also referred to the last lane of Jawannagar. PW-140 has stated that the incident had taken place near Abeda's house, near the S.R.P. Quarter's wall. PW-143 has stated that the incident took place near Gauri Apa's house, whereas PW-149 has stated that the incident took place at Jawannagar. It was submitted that these testimonies of all these witnesses corroborate the version given by this witness in respect of Ayub being killed near the S.R.P. and Jawannagar, and therefore, the evidence of this witness cannot be said to be contradictory to the evidence of other witnesses. Therefore, this witness is a believable and credible witness.

208.36 ANALYSIS: This witness is the wife of Mohammadayub, who is stated to have died in the incident. In respect of the manner in which Ayub died, many versions have come forth in the testimonies of different witnesses. The main version which has come forth is that upon seeing the mob, out of fear, Ayub jumped from the terrace and had fractured his legs and some people from the mob had assaulted him and put him in a rickshaw, poured inflammable substance on him and set him ablaze. This witness is the wife of Ayub. At the relevant time, when her statement was recorded, the witness has stated that in the evening at around 5 o'clock, the mob had come and her husband was at a distance from them and he was assaulted by the mob and, at that time, her brother-in-law told her that it was necessary to save the children and, therefore, they had fled from there. In her deposition before the court, she had stated that they were sitting near the compound wall of the S.R.P. Quarters when the mob broke the wall of Uday Gas Agency and entered inside. Her house was the first house in Lane No.1 of Jawannagar. The mob had set her house ablaze. At that time, her husband was on the terrace of the house, and hence, he fell down from the terrace and fractured both his legs. The public was running helter skelter and the mob was assaulting the people and was setting anyone who came in between, on fire. Bhavani, Guddu Chhara and Suresh Chhara (A-22) were in the mob. They told her that today they were to die, so they should die there. The witness has deposed that her family members got separated in the evening and she together her sister-in-law and children hid in a godown in Gangotri Society. Subsequently, they were driven out from there and were going towards Hussainnagar,

however, they were told by someone not to go ahead as there was a mob. Therefore, they went and took shelter on a terrace of Gangotri Society near the S.R.P. Quarters wall. From the terrace, she saw Bhavani, Guddu Chhara and Suresh committing arson. In the evening at around 6 o'clock, she saw from the terrace that Guddu Chhara had dragged her husband to the last lane of Jawannagar where Bhavani was present and they put him in a rickshaw and Guddu, Suresh and Bhavani sprinkled inflammable substance on her husband and set him ablaze. This entire version given by this witness is contrary to the version given by the other witnesses who have stated that the incident of Ayub falling down from the terrace and being assaulted and put in a rickshaw and burnt, took place sequentially at a time, whereas this witness has referred to her husband having fallen and after a considerable time thereafter, the above three persons having brought him there and put him in a rickshaw and set him ablaze. Moreover, in her cross-examination at paragraph 34, she has admitted that in her police statement she had stated that she does not know the persons who have killed her husband and cannot recognise them even if they are shown to her.

208.37 In paragraph 35 of her examination-in-chief, the witness has admitted that her statement was recorded on 7.9.2002, wherein she has inter alia stated that her husband was killed near the S.R.P. police line compound wall and that she does not know any of the persons in the riotous mob. A contradiction has been brought out that in both her statements recorded at the camp she had not stated any fact regarding Guddu, Suresh and Bhavani having poured inflammable substance on her husband and having set him ablaze. Thus,

the witness did refer to the incident of her husband being killed near the compound wall of the S.R.P. Quarters.

208.38 Insofar as the acquaintance with the accused is concerned, the witness has admitted that she had no social or financial relations with Suresh and Bhavani and has admitted that no test identification parade had been carried out through her to identify the accused. The witness has also admitted that she had come to depose at the instance of the members of her community.

208.39 Considering the nature of the omissions and contradictions brought out in the testimony of the witness as well as the version of the incident given by her, it would be hazardous to place reliance upon the testimony of this witness to prove the charge against the sole living accused named by her, namely, accused No.22 Suresh Chhara.

209. **PW-232 Shahidhussain Abdulgafur Shaikh**, aged 43 years, has been examined at Exhibit-1643. The witness has deposed that he is residing in Gujarat since his birth and he can understand Gujarati to a certain extent. However, he would find it more convenient to depose in Hindi and, therefore, would give his testimony in Hindi.

209.1 The witness has deposed that since the last 35 years, he is residing at *Naroda Patiya* in a rented house. In the year 2002, he, with his wife, his daughter and his elder son, were all residing together in his house. At that time, he used to ply a rickshaw.

209.2 The incident took place on 28.2.2002. On that day, there was a call for Gujarat Bandh.

209.3 On that day, he was sleeping at home. In the morning at around 8:30 to 8:45, there was a lot of commotion. On hearing the commotion, he came on the road at the entrance of the S.T. Workshop, Opposite the Noorani Masjid. He saw the mobs coming from the direction of Krushnanagar and Natraj Hotel. The mob came near the S.T. Workshop. In the mob, he had seen Babu Garagewala (A-33).

209.4 The mob was shouting. He could not understand as to what they were shouting. He stayed there for some time, but a lot of public had gathered there. He was frightened and thereafter, he ran straight home to Hussainnagar. Babu Garagewala was in the front of the mob, and hence, he noticed him. He too was shouting.

209.5 Thereafter, he came home. He took his wife and children and went to the Pinjara's house at Hussainnagar. Out of fear, he together with his wife and children had gone to hide there. At that time, he did not find his elder son at home. He did not know as to where he had gone away. However, lastly, they had met at the camp.

209.6 They stayed at the Pinjara's house till late night. At around 10 or 12 o'clock at night, the police had come. They were taken in a police vehicle to the Shah Alam camp. All three of them were in the camp.

209.7 On the same day at night, he had met his elder

brother at the camp. He had sustained an injury on his eye in the incident and was bleeding. He asked him the reason for the injury and he told him that he was injured by a stone in the incident.

209.8 He stayed at the camp for around six to eight months. The police had recorded his statement. The SIT people had also recorded his statement.

209.9 At that time also, he used to ply a rickshaw. He used to park his rickshaw near his sister's house in Lane No.3, Hussainnagar. In the incident, his household goods, cash, ornaments, etc. everything was damaged and the rickshaw was set on fire in the incident.

209.10 The witness has deposed that he can identify Babubhai. He has stated that of course, since a long time has elapsed, he would try to identify him. Ultimately, the witness has failed to identify Babubhai despite the fact that Babubhai (A-33) was sitting amongst the accused.

209.11 CROSS EXAMINATION: In the cross-examination of this witness, he has denied that in either of his statements, he has not named Babubhai Garagewala was in the forefront of the mob, and hence, he has seen him as well as the fact that the mob had come near the S.T. Workshop from Krushnanagar and Natraj Hotel. In his cross-examination, the witness has denied that he does not know any person by the name of Babubhai and that he has not seen any person and that at the instance of the people in the camp, he was falsely stating so. The witness has stated that he does not know whether

Babubhai's father's name is Motibhai.

209.12 To prove the omissions and contradictions in the testimony of this witness as to his previous statements recorded by the investigating agencies, the defence has cross-examined the concerned assignee officer/Investigating Officer.

209.13 PW-281, Shri D. S. Vaghela, the assignee officer has admitted that he had recorded the statement of this witness on 13.5.2002. He has denied that this witness had not given the name of any person by the name of Babu before him. He has stated that the witness had stated before him that a person whose name is Babu and works as a foreman, whom he knows by his face, was instigating the mob, which he had seen with his own eyes. The assignee officer has admitted that the witness has not stated that Babu Garagewala was in front of the mob. The assignee officer has admitted that the witness has not stated before him that the mobs from Krushnanagar and Natraj Hotel came near the S.T. Workshop. He has stated that the witness had stated before him that the mobs had started gathering in front of Naroda Patiya and the Noorani Masjid.

209.14 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 19.6.2008. The Investigating Officer has admitted that this witness in the statement recorded by him has not stated that Babu Garagewala was in front of the mob. He, however, has stated that he had seen Babu Garagewala in the mob and that mobs had gathered in front of Naroda Patiya as well as the Noorani

Masjid.

209.15 SUBMISSIONS: The learned counsel for the appellants, have submitted that this witness has named only one accused, that is, Babubhai Garagewala (A-33), but could not identify him. It was submitted that the name Garagewala has been stated by the witness for the first time before the SIT. Therefore, when before the police the witness has stated that it was Babubhai who was present, a test identification parade should have been carried out to establish his identity and also to rule out the possibility of false implication at a subsequent stage of a person named Babubhai who may be a different person. It was submitted that this submission is strengthened by the fact that the witness could not identify the accused in the court. The learned counsel further submitted that even if the statement recorded by the SIT and what is stated by the witness in his deposition is taken at face value, then also, the only fact alleged against him is that he was found in the mob in the morning without any specific overt act being alleged.

209.16 ANALYSIS: This witness in his examination-in-chief has only referred to the mob on the highway and has stated that he had seen accused No.33 Babubhai Garagewala in front of the mob which had come from Natraj Hotel to the S.T. Workshop. However, the witness could not identify the sole accused named by him, in the dock. Considering the contradiction brought out in the cross-examination of the witness, to the effect that he had not named Babu Garagewala in either of his two statements, [but had named some Babubhai who was working as a foreman as per the testimony of PW 281], it is evident that the witness had not correctly

named the accused in his police statement. Therefore, when the accused is neither correctly named nor identified before the court, the testimony of this witness would not help the prosecution in proving the charge against the accused.

210. **PW-233 Rajabax alias Rajesh Nabisha Saiyed**, aged 60 years, has been examined at Exhibit-1644. The witness has stated that he can understand Gujarati to a certain extent, but would depose in Hindi because he finds it more convenient to speak in Hindi.

210.1 The witness has deposed that his native place is *Karnataka*. Prior to coming to Ahmedabad, he was residing at *Karnataka*.

210.2 The witness has deposed that since the last twenty years, he is residing at Ahmedabad and right from then, he is residing at *Pandit-Ni-Chali*.

210.3 The witness has deposed that he is illiterate. In the year 2002, he used to do the work of distributing kerosene given by the Government for rationing. He used to sell the kerosene in a cart. He used to park his cart opposite the Noorani Masjid.

210.4 In the year 2002, he and his two sons, their wives and his wife, all were residing together. At the same place where he was carrying on his business, one Usmanbhai also used to distribute kerosene like him and like him, he too used to park his kerosene cart in front of the Noorani Masjid.

210.5 The incident took place on 28.2.2002. On that day, there was a call for bandh. Since everything was closed, he was at home and at that time, at around 8:00 to 8:30, the commotion started. Upon hearing the commotion, he came out of his house and went opposite the Noorani Masjid.

210.6 At this time, the mobs were coming from Kubernagar as well as from Krushnanagar. Pelting stones, the mob had come near the Noorani Masjid and was pelting stones there. The people in the mob entered the Noorani Masjid. The witness's kerosene filled cart was lying in front of the Noorani Masjid along with Usmanbhai's kerosene filled cart. His cart contained 50 litres of kerosene. The people in the mob threw both these kerosene carts in the Noorani Masjid and set them ablaze.

210.7 In the mob which put the kerosene carts in the masjid in this manner, he had seen **Manoj Sindhi Videowala and Bipin Panchal**. Bipin Panchal and Manoj Sindhi had called the people in the mob. In the meanwhile, upon the police releasing tear gas, he had gone home.

210.8 In order to protect themselves, he and his family, went to Masjid-ni-Chali and sat there for the entire day and night. Thereafter, at dawn at around 4 o'clock, a vehicle came and took them to the Shahibaug camp.

210.9 They stayed at the camp for around six months. In the incident, his house was burnt and all his household articles and other things were looted. His kerosene cart was burnt.

210.10 The police had recorded his statement.

210.11 The witness has stated that he would attempt to identify Manoj Videowala and Bipin Panchal. The witness has thereafter identified Manoj Videowala (A-41) correctly, but has stated that he could not identify Bipin Panchal (A-44) from amongst the accused, though the accused was present in the court.

210.12 CROSS EXAMINATION: In the cross-examination of this witness, he has denied the suggestion that he had not stated the fact regarding the mobs having come from the direction of Krushnanagar and Kubernagar in his statement recorded by the SIT. The witness has admitted that in his statement recorded by the SIT, he had stated that on 28.2.2002, as there was a call for Gujarat Bandh, he was present at home and 50 litres of kerosene was lying in the cart in which he carried on his business and the said cart was lying in front of the masjid. At around 9 o'clock in the morning, a mob of Hindus had gathered near the Noorani Masjid and upon the police releasing tear gas towards them, they had gone inside the chawl and their carts were thrown inside the masjid and were set on fire by the mob.

210.13 The witness is cross-examined with regard to the topography of the area. The witness has admitted that from the place where he was standing, he could not see the door of the masjid. In his cross-examination, it has further come out that he has no financial or social relations with Manoj Sindhi and has no occasion of visiting his house or having conversation with him. The witness has further admitted that

during the course of investigation, no test identification parade was carried out for identification of Manoj Sindhi. He, however, has voluntarily stated that he knew Manoj since earlier times. The witness has admitted that arrangements were made for lodging the complaint at the camp and that he has not lodged any complaint. The witness has denied that he has not seen any incident as stated by him in his examination-in-chief and that he has not seen any accused in the incident, and hence, he has not lodged any complaint at the camp and has voluntarily stated that out of fear, he had not lodged any complaint. The witness has admitted that he had not received any threat from any accused and that he had not asked for any police protection.

210.14 In the cross-examination of this witness, it has further come out that he had not made any application to the SIT and that his statement was recorded at a madressa at Naroda. Such madressa is situated in the Jawannagar pit. He has admitted that Nazir Master had come to call him for going to the Jawannagar pit. He, however, has denied that in the year 2008, he had gone to record his statement at the instance of Nazir Master and that he had given a false statement and that today, he was falsely deposing before the court.

210.15 To prove the omissions and contradictions as to the previous statement of this witness, the defence has cross-examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who, in his cross-examination has admitted that he has recorded the statement of this witness on 22.6.2008. He has admitted that the witness in the statement recorded by him had not stated that the mob had come from Krushnanagar

and Kubernagar and that the mob had entered the Noorani Masjid. The Investigating Officer has stated that the witness has stated that a Hindu mob had gathered near the Noorani Masjid.

210.16 SUBMISSIONS: The learned counsel for the appellants submitted that no statement of this witness has been recorded by the police and his sole statement is recorded by the SIT. It was submitted that more than six years after the incident, the witness has given the names of Manoj Videowala (A-41) and Bipin Panchal (A-44). Out of the two named accused, he could not identify Bipin Panchal and in view of the fact and admission made in paragraph 26 of his deposition, that he had no acquaintance of any kind with Bipin Panchal also there is reason to believe that his coming up with the names of the two accused so belatedly, is at somebody's instance, more particularly when he has not made any application to the SIT and as admitted by him in paragraph 31, he was called by Nazir Master and his statement was recorded in the madressa in the Jawannagar pit.

210.17 It was pointed out that the witness has admitted in paragraphs 27 and 28, that from the very next day of the incident, police officers, leaders of Muslim organisations and Muslim social workers were visiting the relief camp and further admitted that in the camp, arrangements were made for giving complaints and he has not given any complaint, which clearly indicates that he was not a witness of any such incident and he has come up with a false story after more than six years. According to the learned counsel even if the statement recorded by the SIT is taken at face value, even then the fact

regarding kerosene carts having been thrown inside the masjid has not been stated by other witnesses, and even otherwise, he could not have seen such incident of throwing kerosene carts from inside the lane where his house is situated. It was urged that this witness, therefore, is not a reliable and truthful witness, even against accused No.41 Manoj Videowala whom he has named and identified.

210.18 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has given one statement before the SIT and there is nothing adverse elicited in the cross-examination. It was submitted that what is stated by the witness in his examination-in-chief is corroborated by what is elicited in his cross-examination as regards the kerosene cart having been parked in front of the masjid and that there is no contradiction or variation from his examination-in-chief, and, therefore, this witness is a believable and credible witness.

210.19 ANALYSIS: The sole statement of this witness was recorded by the SIT in the year 2008, after a period of more than six years from the date of the incident. The witness has named two accused viz. Bipin Panchal (A-44) and Manoj Videowala (A-41), and has claimed to have seen them in a mob throwing his cart along with a cart belonging to one Usmanbhai inside the Noorani Masjid and setting them ablaze. He has also stated that he had seen these accused calling the mob. Out of the two accused named by him, he could not identify Bipin Panchal in the dock. From his cross-examination, it has been elicited that he had seen the incident from the lane of the unfinished building. In this regard it may be pertinent to note

that the lane of the unfinished building is on the same side as the Noorani Masjid, therefore, a person standing in that lane would not be in a position to see what was happening inside the Noorani Masjid. Moreover, from the cross-examination of the witness it has been elicited that complaints were being recorded at the camp, however, at the relevant time he has not disclosed these facts to the police. It has also come on record through the testimony of other witnesses that police were visiting the camps and recording statements; however, at no point of time has this witness come forward for recording of his statement. This witness is not an injured witness nor has any member of his family sustained any injury or loss of life, therefore, it was not as if he would be suffering from severe shock or trauma. In his cross-examination, he has stated that as he was afraid, he had not given his complaint at the relevant time, which does not appear to be a plausible explanation. In these circumstances, it would be very hazardous to place reliance upon the testimony of this witness to prove the charge against the accused.

211. **PW-234 Mahammadyunus Basirahemad Shaikh**, aged 38 years, has been examined at Exhibit-1652. The witness has stated that he can understand Gujarati to a certain extent, and that he can depose in Gujarati.

211.1 The witness has deposed that at present, he is residing at *Ektanagar*. Prior thereto, he was residing at *Kumbhaji-ni-Chali, Opp. Noorani Masjid, Jawannagar*. He was residing at *Kumbhaji-ni-Chali* since around fifteen years prior to the incident. This house was comprised of two rooms. His father and his second wife Zubedabanu used to live in one

room. His mother had passed away many years prior thereto. In the other room, he, his younger brother Mubarakahemad, his wife Samsadbanu and his daughter Namirabanu, all were residing together. His one elder brother was residing behind the Noorani Masjid. He (the witness) has studied up to the 5th standard and knows how to read and write Gujarati. At the relevant time, he used to do tailoring work.

211.2 The incident took place on 28.2.2002. On that day as well as on the next day, that is, on both the days, there was a call for bandh. On the previous day, a train had been burnt at Godhra. They were in all three sisters and three brothers. All of his three sisters were married prior to the incident.

211.3 On that day, in the morning at around 9 o'clock, he was at home when there was commotion in the entire area. Thereafter, he went out to see. He came out to the corner of the S.T. Workshop compound wall, opposite the Noorani Masjid. There, he saw that mobs had gathered near Natraj Hotel. Thereafter, he looked towards Krushnanagar and saw that there was a mob of people there also. He and people from his chawl all had gathered there.

211.4 Two policemen came there and they told the Muslims that nothing would happen; they should stand there peacefully and not worry. They were trying to make them understand. After explaining to them, the police went towards Natraj Hotel.

211.5 Thereafter, the people in the mob kept standing there. The police were standing nearby. Two to three women

belonging to the Muslim community went to the police and asked them as to why the mobs were gathering there. The police were present at the place where the mob was standing. They told them *“run away from here, today not a single person will escape alive”*. Thereafter, the police beat the women with sticks and drove them away, whereupon, the women came back towards them.

211.6 The people in the mob started ransacking the shops and carts near the Noorani Masjid and also pelted stones at them.

211.7 On the road, at this time, the police started firing at the Muslims standing at the entrance of their chawls. As a result, Pirubhai, Abid, Khalidbhai, Mahammadbhai, Mustaqbhai and Masak of their chawls were wounded by bullets. He, and other youths from the chawls, went and lifted Masakbhai who died in the firing, and put him on the platform of a house. Thereafter, he came back to the entrance of the S.T. Workshop.

211.8 When he returned to the corner after leaving Masakbhai, he went to check his brother Mubarakahemad's garage, which was at the corner of Mira Motors at Krushnanagar vegetable market. Upon going there and looking at his brother's garage from a distance, he had seen that the people in the mob had set on fire a Maruti car which had come for repairing to the garage. There were around ten to fifteen thousand people. However, he does not know any of them. Thereafter, he returned and came back to the entrance of his chawl.

211.9 When he was returning to the corner of his chawl, he was standing near Bipin Auto Centre, when he saw Bipin Panchal amidst the people in the mob near his garage. This Bipin Panchal was telling the people in the mob that “*the Muslims do not have any resources, you people enter the chawls from the side of Uday Gas Agency and start beating and hacking, not a single person should remain alive*”. Upon his saying so, the people in the mob started entering the chawls.

211.10 At that time, he had returned to the entrance of his chawl. He saw that a tanker was set on fire and was sent from Bipin Auto towards the Noorani Masjid. This burning tanker halted in a pit on the road outside the Noorani Masjid and got stuck there. At this time, stone pelting and firing was going on. Over and above that, tear gas was also being released. At this time, the people had started running helter skelter to save themselves. Thereafter, he did not find his brother.

211.11 The people in the mob had entered their entire area. At this time, it must have been around 11:00 to 11:30. At this time, he went and stood together with the Muslims in the mob.

211.12 At this time, there was a mob in the direction of Natraj Hotel also. The people in this mob were armed with sticks, tridents, swords, pipes etc. The people in the mob attacked their chawls, opposite the S.T. Workshop and started assaulting, vandalizing and looting. The mob had also ransacked the Noorani Masjid and assaulted people.

211.13 They brought gas cylinders from Uday Gas Agency in an ambulance. They had burst gas cylinders at the Noorani Masjid and set it on fire. He had seen all this.

211.14 The Noorani Masjid had caught fire. At this time, many people in their locality were frightened and started looking for shelter in their own way. He too with other people had gone on the terrace of a house in *Kumbhaji-ni-Chali* and hidden there.

211.15 From the terrace, he had seen the people in the mob setting things on fire with gas cylinders, etc. From the terrace, he saw that the people in the mob had poured kerosene on a person named Mustaq, whom they had put on the platform, and set ablaze.

211.16 Thereafter, upon looking at the other side, the people had pulled out a boy named Moin, who was residing opposite the Fair Price Shop in Hussainnagar out of his house. This person was handicapped. The mob stuffed a cloth in his mouth and tied his hands and legs, poured kerosene on him and set him on fire.

211.17 The people in the mob had tied saffron bands on their heads. They had swords, dharias, tridents, etc. in their hands. He had seen all this. He could not recognize any of them.

211.18 As told by him, the people in the mob had broken the fair price shop. There were around eight to ten barrels

filled with kerosene in the shop which were taken out. Thereafter, kerosene was used to set the area on fire.

211.19 The mob had set the house on the terrace of which he was hiding, on fire on the lower level. At that time also, he was on the terrace. While he was in his chawl, other houses near the terrace were set on fire after placing gas cylinders inside, all of which he had seen with his own eyes. Burning that house as well as the houses nearby was going on. The house in which flames were rising in the lower level, in that very house they had hidden on the terrace for two to three hours. They sat there till around 6:30 to 6:45 in the evening.

211.20 Thereafter, they got down to find out as to what had happened to their family members. After getting down from the terrace, he had gone towards Gangotri Society to look for his family. There, his wife, daughter, sister-in-law and his niece were standing near the first corner of Gangotri Society and they told him that it was a good thing that they had met him because women, children and men were being killed there. Thereafter, he took them and came towards their area.

211.21 While he was returning with his family members from Gangotri Society, in the mob which he saw, he had seen Bhavanisingh with a sword in his hand, and he was shouting "*Not a single bandiya should escape, kill them!*" Thereafter, he brought his family to a three storeyed house towards his chawl near Hussainnagar, Lane No.3. In that house, he sat in the first room itself. Around four hundred to five hundred people were hiding in that house. In the same house, a boy named Khalid who was injured by a bullet was writhing and asking for water.

Other people, who were there, were crying because of the injuries they had sustained on account of getting burnt and were shouting for water.

211.22 In this house, he did not find his father. He had found the rest of them. They stayed in the house at 11:30 to 12:00 at night. At around 12 o'clock, the police came and parked a vehicle at the corner. The police personnel who had come, told them to come with them as they had come to take them, despite which, they had not come out. Thereafter, one person from amongst them went and verified. The person from amongst them, who had gone to look, had learnt that the vehicle was a police vehicle. That person told them that they should all go; nothing would happen to them, if they stayed there till morning, all of them would be killed. Thereafter, slowly they came out of the house.

211.23 After coming out of the house, they went near the S.T. Workshop. They went from near the S.T. Workshop compound wall. At that time, in the brightness of the flames of the burning houses, they could see and they started coming out. At this time, he saw on the road that the dead body of the person named Moin, who was burnt alive, was lying in the middle of the road.

211.24 Thereafter, they sat in the police vehicle and departed. From there, when they reached near Saijpur Tower, the people in the mob stopped the vehicle. After stopping the vehicle, they started pelting stones. At this time, the driver of the police vehicle got down and started telling the people in the mob to move away, otherwise they would start firing.

Thereafter, the people in the mob moved away.

211.25 The vehicle was going to Amdupura. There also, there was a stone pelting. The driver did not stop the vehicle. Thereafter, they reached the Shah Alam camp at around 1:00 to 1:30 at night.

211.26 At the camp, he met his relatives. However, he did not find his father. His father met him at the Shah Alam camp after around one to two months. In the incident, his father was injured by a sword, his brother Mubarak's eyes were also swollen on account of tear gas injuries; he was injured on the shoulder with a brick; his elder brother Mahammadali had also sustained injuries due to tear gas; and his wife had sustained a brick injury on her head. All of them had taken treatment at the Shah Alam camp, where they stayed for around three and a half months.

211.27 In the incident, the people in the mob had set his house on fire, wherein his household articles and other things damaged, which he had seen from the terrace of the house on which he was hiding on the day of the incident. However, even after he came back to the camp, he had heard about it.

211.28 In connection with the incident, the SIT had recorded his statement. The witness has deposed that he can identify Bhavanisingh Chhara and Bipin Panchal, but Bhavanisingh has passed away. The witness has, thereafter, correctly identified Bipin Panchal (A-44).

211.29 CROSS EXAMINATION: The witness has admitted

that he was doing tailoring work at home. He has stated that opposite the entrance of the S.T. Workshop, if one goes inside towards their chawl, Kumbhaji-ni-chali is in the third lane. Upon entering Kumbhaji-ni-chali, his house is the tenth house. The witness is cross-examined with regard to the topography of the area. The witness has admitted that some Hindus were also residing in Kumbhaji-ni-chali. The witness has admitted that at the time when he left his house on the day of the incident, he had not looked at the watch and that he is stating the time on the basis of estimate. He has stated that he was standing on the road going inside the S.T. Workshop compound wall. He has stated that from where he was standing there, he could see Natraj Hotel, Krushnanagar Highway but could not see the crossroads. He has stated that he was standing there for about an hour.

211.30 In his cross-examination, it has come out that when he reached the entrance of the S.T. Workshop, the stone pelting had started. About forty-five minutes after he reached there, the stone pelting had started. He has denied that the stone pelting initially took place to get the shops and cabins closed. He has admitted that like him, people residing nearby had also come outside and were standing there and watching. He has admitted that several people were worried about their carts, cabins and shops. The witness has admitted that the moment the stone pelting commenced, he had immediately gone towards the interior side of his chawl. He has denied that he had gone home. He has denied that as and when people were getting injured by bullets, they had gone to lift those who were injured and bring them inside. He has stated that he does not know that after the firing, who had brought anyone inside

the chawl. He has stated that he had only gone to leave Masakbhai. He had stated that from there he had gone to the second lane of Kumbhaji-ni-chali to leave Masakbhai. The witness is cross-examined with regard to the route which he had taken when he went to see his brother's Mira Motors garage as well as the time it took him to reach there. The witness has stated that he was standing at a distance from where he could see his brother's garage. He has admitted that from the cemetery, he had seen the mob at his brother's garage. He has admitted that out of fear of the mob, he did not have the courage to go any further. He has stated that from the cemetery, he could see Bipin Auto Centre. He has stated that Bipin Auto Centre was not open. He has admitted that the mob at his brother's garage must be comprised of about one hundred to one hundred and fifty people and that the mob near Bipin Auto Centre must be comprised of more people than one hundred to one hundred and fifty people.

211.31 The witness has denied that Bipinbhai had tied a saffron band on his head at that time and that he was wearing khakhi shorts and white undershirt. He has admitted that when he returned from the cemetery to the Noorani Masjid, Bipin Auto Garage was in the way. He has stated that when he went as well as when he returned, he had seen Bipinbhai near Bipin Auto Centre. He has admitted that he had seen him for the first time at Bipin Auto Centre and thereafter, for the entire day, he had not seen Bipinbhai. The witness has admitted that after releasing teargas, the police had resorted to firing and that the police was firing in the direction where they were standing.

211.32 The witness has stated that he had seen the tanker

near Bipin Auto Centre for the first time. The witness has stated that it was set on fire and then sent towards the Noorani Masjid. It was a six wheeler vehicle. He has stated that after the truck was set on fire, the driver was driving it and had brought it straight to the Noorani Masjid and left it there. He had put a brick on the accelerator and driven it. The witness has stated that half way to the masjid, the driver had jumped out the truck. The truck had gone one or two feet ahead, after which the driver had jumped out. The witness has admitted that after the driver jumped down, the vehicle had gone ahead without the driver. He has admitted that thereafter, the vehicle had gone upto the Noorani Masjid without the driver.

211.33 The witness has admitted that Bhavani was residing at Gangotri Society. He has stated that he has not seen him near his house or in his society. The witness has stated that when the gas cylinders were brought in the ambulance, he was standing at the corner of the S.T. Workshop. The witness has stated that the fair-price shop is in the first lane of Hussainnagar and he does not know who the owner of the shop was. He has thereafter, stated that the owner was Basirahmed Shaikh. He is not in a position to say as to how many people were there in the mob which destroyed the shop. The witness has stated that the kerosene barrels which he had seen were steel barrels. These barrels were big in size. He has denied that the people in the mob had lifted these barrels. He has stated that they had rolled the barrels and taken them out of the shop. He has stated that they were taking out the kerosene from the barrels and supplying them. He has stated that he could not see as to in which containers, the kerosene was being supplied. He has stated that there were around

eight to ten barrels.

211.34 The witness has admitted that prior to the SIT recording his statement on 4.6.2008, no prior statement of his was recorded. He has admitted that whatever he knew about the incident, he has stated that for the first time before the SIT.

211.35 To prove the omissions and contradictions in the testimony of this witness as to his statement recorded by the SIT, the defence has cross examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who, in his cross-examination has admitted that he has recorded the statement of this witness on 4.6.2008. He has admitted that this witness had stated before him that, *"... therefore, upon my glancing behind Gangotri Society, Bhavanisingh Chhara was standing with a sword in his hand and was shouting that not a single person should remain alive, kill everyone, burn them...."* (paragraph 50) *"... and from Uday Gas Agency..... kerosene, and petrol were being brought and with that the Noorani Masjid was being set ablaze, which I had seen..."* (paragraph 74).

211.36 SUBMISSIONS: The learned counsel for the appellants submitted that no statement of this witness has been recorded by the police, and that for the first time, his statement was recorded on 4.6.2008 by SIT. It was submitted that this witness has made allegations against the accused in two different incidents. Insofar as accused No.44 Bipin is concerned, the witness says that while he was going to Mira Motors and while coming back, he saw Bipin near his garage

with other people and according to him he had heard Bipin telling the mob to enter the Muslim chawls from Uday Gas Agency and start assaulting them and that not a single person should be left alive. It was submitted that upon accused No.44 saying so, the witness alleges that the people of the mob started entering the chawls. It was argued that this allegation is not believable as it was not possible for the witness in the fact situation to hear Bipin Panchal telling something to the mob.

211.37 It was submitted that the witness had narrated this incident to have taken place in the morning hours, at which time there is no allegation made that the people in the mob had already started entering the chawls.

211.38 It was submitted that the claim which the witness has made that when the people in the mob had entered their area at about 11:00 to 11:30, he was standing with a mob of the Muslim community, which is not possible to believe as in the fact situation he would not have just preferred to stand there with other people of the Muslim community. It was submitted that even if his first statement recorded by the SIT, which he gave after more than six years, is believed and taken at its face value and if accused No.44 is found nearby his garage, his presence there may be natural, particularly, in the light of the evidence which has come on record that his auto centre was set on fire. It was submitted that this witness is even otherwise not believable as he gives an account of some tanker being driven after it was set on fire, from Bipin Auto Centre to the Noorani Masjid which was initially driven by a driver and then a brick was put on the accelerator. It was

submitted that this is an imaginary story and is not even stated by the other witnesses. It was submitted that this witness claims to be an eye witness of two major and serious incidents of setting the body of Masak on fire after he allegedly died in police firing and after his body was placed on a platform of a building by the witness and others, as well as the incident of Moin. It was submitted that this witness has also tried to unjustifiably support the story of gas cylinders being transported in an ambulance from Uday Gas Agency, as deposed by PW-223, the watchman of Uday Gas Agency.

211.39 It was submitted that even in his statement before the SIT, as reflected in paragraph 74 of his cross examination, the witness has claimed that he had seen the Noorani Masjid being set on fire with the help of kerosene and petrol brought from Uday Gas Agency as proved by the Investigating Officer of the SIT in paragraph 629 of his deposition and ultimately, the witness has given a contrary version before the court in paragraph 73, disowning such statement.

211.40 It was submitted that in paragraph 21 of his deposition, the witness has narrated the facts that after 6:30 to 6:45 p.m. he went to the corner of Gangotri Society and found his wife, mother, sister in law (Bhabhi) and niece standing at the corner of Gangotri and had a peaceful conversation with them and brought them back to his area, which is not possible to believe. It was submitted that this witness is not at all believable when he has admitted in paragraph 78 that he has not disclosed anything anywhere prior to his SIT statement. It was submitted that in view of the averments made in paragraph 18 of his deposition, the same

completely rules out the possibility of at least accused No.44 being involved in the incident as narrated in paragraphs 16 and 17 of his deposition.

211.41 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that nothing adverse has been elicited in the cross-examination of this witness qua the statement recorded by the SIT. Therefore, this witness could not be discredited and his version could not be impeached and therefore, this witness is a believable and credible witness.

211.42 ANALYSIS: From the evidence of this witness it emerges that no statement of this witness was recorded by the police at the relevant time when the incident had taken place, and his statement was recorded for the first time 4.6.2008, after a period of more than six years after the incident.

211.43 In his examination-in-chief, the witness refers to violent mobs on the road and firing by the police wherein several persons including one Masak were injured. According to this witness, Masak died in the firing and was taken and put on a platform inside the chawls. As per the version given by this witness, he had seen Bipin near his garage and he was exhorting the mob as referred to hereinabove to beat and hack the Muslims. He also refers to a tanker being set on fire towards the Noorani Masjid which got stuck in a pit on the road. The mobs then entered into their areas. He also speaks about gas cylinders being brought from Uday Gas Agency in an ambulance and being burst in the Noorani Masjid. He says that the people in the locality were frightened and he too went on the terrace of a house in Kumbhaji-ni-Chali and hid there. From

the terrace he saw, Masak being set ablaze after sprinkling kerosene, etc. on him. He also speaks about Moin, a handicapped boy, who used to reside opposite the fair price shop being dragged out of his house and set ablaze. He also saw the mob taking kerosene from the fair price shop and using it to torch their locality. The witness further says that the house in which he was hiding was set on fire on the lower side and with the fire blazing below; they had remained hiding on the terrace till 6:30 to 6:45. Then he came down and went towards Gangotri to ascertain the whereabouts of his family and found his family standing at the corner of Gangotri Society and they told him that it was good that they met him, because women, children and men were being killed there. Thereafter, he took his family and returned to his area. While they were returning from Gangotri, he saw Bhavanisingh with a sword in his hand saying "*Not a single bandiya should remain alive, kill them!*" He then went with his family to a three storeyed house in Hussainnagar Lane No.3 and stayed there till the police came late at night.

211.44 Insofar as the incident of Masak is concerned, from the evidence of all the other witnesses who have referred to the incident of police firing or even private firing, no one has mentioned any Masak having died in the incident. Insofar as the witness having seen Bipin in the mob and exhorting them is concerned, it is difficult to believe that with all the commotion going on he could hear what Bipin was saying. As regards the incident of a tanker being sent towards the Noorani Masjid, the only tanker near the Noorani Masjid has been reversed and rammed into it. Therefore the story about such tanker does not inspire confidence. The witness has also

referred to an incident relating to Moin, a handicapped boy which is also contradictory to what is stated by his mother PW 261. The fact stated by the witness regarding his having gone to Gangotri and found his family members standing at the corner does not appear to be plausible, because when the onslaught was at its peak, it would hardly have been possible for any Muslim to stand anywhere near Gangotri, as there was a situation of turmoil and people were fleeing for their lives. Overall, the version given by the witness does not inspire confidence.

211.45 The statement of this witness has been recorded after a considerable delay of more than six years and no plausible reason has been advanced as to why his statement was not recorded at the relevant time. Having regard to the delay in recording of his statement and considering the evidence of this witness, he does not come across as a credible and truthful witness. No reliance can therefore, be placed upon his testimony to prove the charge against Bipin Panchal (A-44), the sole living accused named by him.

212. **PW-235 Nadeemuddin Sharifuddin Saiyed**, aged 46 years, has been examined at Exhibit-1654. The witness has stated that he can understand Gujarati to a certain extent. However, he is more conversant with Hindi and therefore, would depose in Hindi. The witness has stated that his native place is *Achalpur, Bhusaval, Maharashtra*.

212.1 The witness has deposed that he has studied up till 8th standard in Hindi medium at Maharashtra. In the year 2002, he was residing at *Imambibi-ni-Chali, Naroda Patiya* over a

period of twenty years prior to the incident.

212.2 The incident took place on 28th date in the year 2002. He does not remember the month. At the time of the incident, he was with his wife Reshmabanu and his five children, viz., Mohsin, Venusbanu, Sadiyabanu, Nazamuddin and Mustaquim, all of them were residing together. At the relevant time, he was engaged in the business of furniture making.

212.3 On the date of the incident, there was a call for bandh. On that day, since on account of the bandh, he had kept his business closed, he was at home. He was sleeping at home.

212.4 On that day, in the morning at around 9:30, when his wife woke him up and told him that a huge mob was standing outside towards the side of Krushnanagar, at that time, he did not go outside. His wife told him to take them to some safe place. Thereafter, he took his wife and children and left them inside the S.R.P. Quarters. On that day, his younger son Mustaquim was at his mother's place. His mother's house was behind Noorani Masjid in *Juni Masjid-ni-Chali*. He left his four children and wife at the S.R.P. Quarters.

212.5 After leaving these people at the S.R.P. Quarters, he came on the road towards the Noorani Masjid. At that time, he saw a huge mob of public on the side of Krushnanagar. In the mob, he had seen four persons whom he knew. They were Bipinbhai Panchal (A-44), Rameshbhai Chhara (A-47), Guddu Chhara and Laliya Chhara. The mob was pelting stones and

committing loot. He saw that the mob had started going towards his house at *Imambibi-ni-Chali*. He was standing on the opposite side and had seen that the mob had damaged his house and committed loot. Upon seeing this, he went to his mother's house at *Juni Masjid-ni-Chali*, where he met his son *Mustaquim*. Thereafter, he remained hiding there. It was a month of 28 days. He hid there till the 1st. On the 1st that is, on Friday, in the afternoon at 1 o'clock, they were taken in a police vehicle from *Masjid-ni-Chali* to Shah Alam camp. At Shah Alam camp, after fifteen days, he met his wife and four children whom he had left at the S.R.P. Quarters. When he was at the Shah Alam camp, he had sent a friend to Shahibaug camp and called his wife and children to Shah Alam camp and in this manner, he had met them after fifteen days.

212.6 Thereafter, all of them stayed at the camp for about six months. After two months, he had gone for drawing a panchnama of his house when he found that everything in his house was burnt and no articles remained. The panchnama of his house was drawn. The police had recorded his statement at the camp. Thereafter, he had gone to give his statement at the camp.

212.7 The witness has stated that he can identify Ramesh Chhara, Laliya Chhara, Bipin and Guddu Chhara. The witness has stated that as per his knowledge, Guddu Chhara and Laliya Chhara are dead and he can identify the remaining accused. The witness has correctly identified accused No.47 – Ramesh Chhara. The witness, however, has wrongly identified accused No.17 as accused No.44 Bipin Panchal.

212.8 CROSS EXAMINATION: In his cross-examination, the witness has admitted that from the S.R.P. Quarters he had gone and stood at the corner of the ice factory. The witness has admitted that from the time he left his home till he reached the ice factory he has not seen any incident. The witness has admitted that from there he had gone to his mother at Masjid-ni-chali, but has clarified that he had gone to his mother-in-law's house. He had gone there because his mother was at his mother-in-law's house. In his cross-examination the witness has stated that thereafter he had stayed at his in-law's house for the entire night and has admitted that during this period he did not have any news about his wife and four children.

212.9 The witness has stated that he is not aware as to whether Kausarbanu was his wife's friend. The witness has admitted that he has neither seen nor heard of the incident of Kausarbanu nor had his wife Reshambanu (PW-147) informed him about such incident.

212.10 In his cross-examination it has further come out that he had seen the Krishnanagar mob near Bipinbhai's showroom. He had seen the mob near the ice factory. The mob was comprised of around ten thousand people. The witness has admitted that the accused whom he has identified before the court were in this mob of ten thousand people. The witness has stated that there were old people and young people in the mob. He has not seen as to how many people had mustaches and beards. He has not seen as to how many in mob were bald. He has stated that there were fat people and thin people, but he does not know their numbers. He has admitted that it

was true that there might be five to fifty fat people, some of whom were thin also. This court has referred to this part of the cross-examination to merely to bring on record nature of cross-examination carried out by the defence.

212.11 In his cross-examination it has further come out that he had seen the Krishnanagar mob between 11:30 to 12:00 in the morning and thereafter, he had seen in the mob the persons whom he had named in the court. The witness has admitted that thereafter, for the entire day he had not seen the accused. He had admitted that after the day of the incident, he never had any occasion to see the persons named by him before the court and no test identification parade of such accused had been carried out.

212.12 The contents of paragraph 5 of the examination-in-chief of the witness from third line to ninth line at paragraph 3 are read over to the witness to the effect that he has not stated such facts in either of his two statements. It appears that in his statement dated 13.5.2002 the witness has stated that he had left his wife and children at the S.R.P. Group, and has stated that he and one child had gone towards Masjid-ni-Chali nearby. Under the circumstances, it cannot be said that there is any material omission or contradiction in what is stated by the witness in paragraph 5 of his examination-in-chief inasmuch as more or less the same facts are stated by him, only the manner of expression is different.

212.13 The witness has admitted that in his statement dated 13.5.2002 he had not given Bipinbhai's surname and had not stated that Bipinbhai's surname was 'Panchal'. The

witness has admitted that he is not aware as to how many Bipin Gujaratis are there in the Naroda area and how many Bipin Panchals are there in that area. The last three lines of paragraph 6 of his examination-in-chief are put to the witness wherein he had stated that he had stood on the opposite side and seen that the mob was damaging and looting his house, to the effect that he has not stated these facts in either of his statements recorded by the investigating agency, which the witness has denied.

212.14 The witness has denied that he had done some furniture work for Ramesh Chara. The witness has admitted that Hasibkhan Acchhankhan Pathan is his brother in law. Hasibkhan has come to his house in the morning of the incident. The witness has stated that he does not know as to how many Ramesh Charas are there in Charanagar, but has stated that Ramesh Chara, whom he has identified, resides in a house which is situated in a lane in Mahajaniavas. The witness has denied that when he had gone to Ramesh Chara for furniture work, he had not given him labour charges and hence he has falsely implicated him. The witness has voluntarily stated that Ramesh Chara is a good person and in fact, he had given him more money for his labour work. The witness has denied that he had gone with Hasibkhan to Ramesh Chara's R.K. Fry Centre for a meal and after the meal, Hasibkhan had told Ramesh that he was a '*Dada*' and that he would not pay for the meal; and he and Hasibkhan had a dispute with Ramesh Chara on account of which both of them had threatened him to falsely implicate him in a case and had acted accordingly.

212.15 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

212.16 PW-302 D. A. Rathod, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that no complaint of the witness had been given to him. He has further stated that he has not taken the signature of the witness on the statement recorded by him.

212.17 Certain contents of paragraph 5 of the examination-in-chief are read over to the assignee officer who has denied that all such facts have not been stated by him in the statement recorded by him. The assignee officer has stated that before him, the witness has stated that he had left his wife and children at the S.R.P. group and he and one of his children had gone to Masjid-ni-Chali. To that extent, the facts have been stated before him and the remaining facts have not been stated before him.

212.18 The contents of the last three lines of paragraph 6 of the examination-in-chief are read over to the assignee officer who has admitted that the witness has not stated such facts in the statement recorded by him.

212.19 The assignee officer has admitted that this witness had stated before him that he stays at Shah Alam. Till date, he has not gone to see his house, however, their neighbours had gone from whom he had come to know that his house was

damaged, set on fire and was looted. It appears that the assignee officer has stated that certain words written down in the statement are not legible to him today. He has stated that he cannot decipher the word, but it should be "returned". The assignee officer has voluntarily stated that there was an excess of refugees in the Shah Alam relief camp during May 2002 and the statements were recorded in extreme heat and at that time, they had worked under great difficulties.

212.20 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 22.8.2008. He has admitted that this witness in the statement recorded by him has stated that he has read over the statement dated 13.5.2008 recorded by the Crime Branch police in the context of the communal riots that had taken place in the year 2002 and that such statement is as stated by him and is proper and true. Certain extracts of paragraphs 5 and 6 of the examination-in-chief of the witness are read over to the Investigating Officer who has admitted that these facts have not been stated by the witness in the statement recorded by him.

212.21 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel for the appellants has submitted that this witness has named two accused, viz., Bipin (A-44) and Ramesh Chhara (A-47). It was submitted that two statements of this witness have been recorded, one by the police on 13.5.2002 and the other by the SIT on 22.8.2008. Insofar as the accused Bipin Panchal is concerned, this witness, in his police statement, has merely referred to him as Bipinbhai and in his cross-examination, he

has admitted that there may be other people by the name Bipinbhai, and therefore, for the purpose of establishing his identity, a test identification parade ought to have been held. However, no such test identification parade has been carried out. It was submitted that it is only subsequently before the SIT, that the witness has added his surname Panchal and it is apparent that accused No.44 was then targeted at somebody's instance as even before the court, he could not identify him.

212.22 As regards accused Ramesh Chhara, it was submitted that it is too common a name that even this name has been stated in both the statements, in the absence of a test identification parade, it cannot be said that he is the same person, namely, accused No.47, beyond reasonable doubt.

212.23 The attention of the court was invited to the contents of paragraph 52 of the testimony of this witness where, in his cross-examination, he has stated that Ramesh Chhara is a good person. It was submitted that even if the testimony of this witness is taken at face value, the only allegation made against accused No.47 in paragraph 6 is that when he was coming from the S.R.P. Quarters on the road of the Noorani Masjid at the side of Krushnanagar, he saw a big mob of public and he said that he had seen four persons whom he knew. There is no further allegation or overt act against Ramesh Chhara individually, except to generally say that the crowd or the mob was pelting stones, etc. It was submitted that no weapon is attributed in his hand and even in response to a suggestion made by the defence in paragraph 34, he has categorically stated that they were standing. It was submitted that the accused No.47 Ramesh Chhara has been convicted

with the aid of section 120B of the Indian Penal Code solely based upon the testimony of this witness. The attention of the court was invited to the findings recorded by the trial court in connection with the accused No.47, to point out that there is no proper analysis or discussion for the purpose of convicting him for the alleged offence with the aid of section 120B, IPC.

212.24 Mr. B. B. Naik, learned counsel for the appellants submitted that this witness claims to have seen the Krushnanagar mob at 11:30 to 12:00. It was argued that since the mobs had merged at 9:30 to 10:00 in the morning, the witness could not have seen the mob at 11:30 to 12:00. It was pointed out that the witness had left his family at the S.R.P. was before 10 o'clock, hence, he must have reached the ice factory in ten minutes. If he stayed at the ice factory for half an hour, it cannot be beyond 10:45. It was submitted that reading his testimony as a whole, it clearly transpires that the witness has not seen any mob or the named accused in the mob. According to the learned counsel, considering the evidence of his wife also, it becomes very clear that whatever the witness is saying is not the truth.

212.25 Mr. Prashant Desai, learned Special Public Prosecutor submitted that this witness has named both the accused in his statement dated 13.5.2002 and has also correctly identified accused No.47 Ramesh Chhara in the dock. It was submitted that from the testimony of this witness, it emerges that he is a natural witness and his presence at the scene of offence is established. It was contended that nothing adverse has been elicited in the cross-examination of this witness and from his evidence, it is evident that the witness

had come back to the Noorani Masjid and spotted accused No.44 and 47 and then, he went back to his mother's house at *Juni Masjid-ni-Chali*. It was submitted that this witness is a credible and believable witness and nothing has been elicited by the defence so as to dent the credibility of the witness.

212.26 ANALYSIS: From the testimony of this witness it emerges that on the day of the incident, he had left his wife and children at the S.R.P. Quarters in the morning and had then gone on the road where he had seen the accused in the mob. The witness has been cross-examined at length. However, no material omissions or contradictions have been brought out as to his previous statements dated 13.5.2002 and 22.8.2008. The only material omission which has been brought out is that in the statement recorded by the police, he had not stated that Bipinbhai's surname was Panchal. Before the court the witness has identified Ramesh Chara correctly, but has failed to identify Bipinbhai Panchal correctly, and instead of him he has identified accused No.17. Therefore, there is no proper identification of accused No.44 Bipinbhai Panchal. However, insofar as accused No.47 Ramesh Chara is concerned, the witness is consistent right from the beginning and his acquaintance with the accused is also brought out in his cross-examination as referred to hereinabove. While certain minor discrepancies have been pointed out in the testimony of this witness, such discrepancies are not at all material, and, therefore, would not dent the credibility of the witness who has been consistent insofar as the core of his testimony is concerned. Therefore, the complicity of Ramesh Chara (A-47) in the incident to the extent referred to by this witness is proved through the testimony of this witness. On behalf of the

appellants, it has been submitted that no further allegation or overt act has been attributed to Ramesh Chara individually, except for a general statement that the mob was pelting stones, etc. Insofar as such submission is concerned the same would be considered at the time of considering the charge against each individual accused.

213. **PW-236 Siddiqbhai Allabax Mansuri**, aged 38 years, has been examined at Exhibit-1662. The witness has deposed that he is born in Gujarat and he knows Gujarati. His native place is Rajasthan. He has studied up to the 6th standard in Gujarati medium.

213.1 The witness has deposed that the incident took place on 28.2.2002. At the time of the incident, he used to reside with his wife and his four children. His house was a two storeyed house. He was residing with his family in the ground floor, whereas his younger brother was residing with his mother on the first floor. In the year 2002, he was engaged in the business of mattresses and quilts.

213.2 On the day of the incident, there was a call for bandh. The call for bandh was given in the context of the train incident that had taken place at Godhra.

213.3 On the day of the incident, he was at home because of the call for bandh and hence, he had also kept his shop closed.

213.4 While he was at home, he came to know that a lot of public had gathered on the road outside. At this time, it was

around 8:30 to 9:00 in the morning. Upon coming to know of this, he came out of his house and went near Natraj Hotel. There, there was a mob of around five to ten thousand people. He was present there. In the meanwhile, Mayaben came in a Maruti fronti car. Her P.A./Assistant was present with her in the car. Both of them alighted from the car at the spot where he was standing.

213.5 Upon seeing them, the people standing there in the mob started chanting, "*Jay Shri Ram*". Mayaben gave a provocative speech to the people there and told them that she had gone to Godhra and had seen the dead bodies of the Kar Sevaks and that they, *Rambhaktas* should kill and cut the Miyas. Just like the Babri Masjid had been demolished, they should also demolish the masjid here. She and Narendra Modi were with them and they would not have to face any problems. After saying this, she went away.

213.6 After she went, the public was aroused and they towards their (the Muslim's) area as well as towards Noorani Masjid. The police was with them (the mob). Therefore, their population started going backwards towards Noorani Masjid. The people in the mob started coming towards them. Upon seeing this, he had fled. At this time, the mob which had come near Noorani Masjid, started pelting stones on the Muslims and the police started lobbying tear gas shells at them and also resorted to firing.

213.7 After this went on for around ten to fifteen minutes, the Hindu mob went back towards Natraj. At this time, he went and stood on an incomplete building and was watching

everything.

213.8 At this time, at around 11 o'clock, Mayaben came in a white coloured Maruti fronti car near the S.T. Workshop gate which was followed by a jeep. Both the vehicles came from the direction of Krushnanagar and halted near the S.T. Workshop and were parked facing the S.T. Workshop gate. Mayaben alighted from the Maruti car. After getting down, she gestured towards the mob standing near Natraj. She gestured to the mob and called them to the S.T. Workshop gate. At this time, around a hundred leaders came there, amongst whom, Mayaben's P.A. was also there. Mayaben talked with those people and discussed something. Thereafter, she gestured to her P.A. and gave him instructions.

213.9 At this time, Mayaben's P.A. took out weapons from the tracks jeep. Amongst the weapons, there were swords, spears, tridents and something which looked like a revolver from far. Under Mayaben's instructions, Mayaben's P.A. gave all these to the leaders of the mob. Thereafter, Mayaben's vehicle and the jeep started going towards Krushnanagar and while going, the vehicles turned in the lane of Uday Gas Agency. After Mayaben went away, the people in the mob in which her P.A. was also there, they attacked Noorani Masjid. The mob threw gas cylinders inside the Noorani Masjid and damaged it and also poured the whole kerosene tanker inside the Noorani Masjid.

213.10 At that time, the people in the mob were sitting the shops near the Noorani Masjid on fire. Thereafter, the entire mob entered the road going to Hussainnagar, Jawannagar. The

mob set the houses in Jawannagar and Hussainnagar on fire and burnt the women, men and children alive, which fact he had heard. Other than that, the facts stated by him were actually witnessed by him i.e. the fact till the mobs having entered Jawannagar and Hussainnagar had been seen by him.

213.11 Thereafter, out of fear, he went to his house in *Khemchand-ni Chali* behind Noorani Masjid. From there, he took his family and went to the nearby Masjid-ni Chali. The Muslims had gathered near Masjid-ni Chali.

213.12 On the next day, that is, on 1st of March, a police vehicle came to pick them up at around 12 o'clock in the afternoon. In this police vehicle which had come, they had gone to Shah Alam camp, where they stayed for around four months.

213.13 Thereafter, on 12th March, 2002, he had gone to Naroda Police Station to lodge the complaint in connection with the facts seen by him. The policeman there refused to record his complaint and told him that he does not know Mayaben. He also told him to get the panchnama of his house drawn and not to enter into all these complications, otherwise he would be in difficulty. Thereafter, on 9th May, 2002, he had got the panchnama of his house drawn. They had not recorded his complaint.

213.14 In the incident, he had suffered a loss of Rs.1,25,000/- in respect of different household articles and furniture, etc. from his house.

213.15 In June, 2002, they had gone back to reside at his house at Naroda Patiya. Around forty-five family members had returned to reside in this area together. In the beginning, they had no business or means of employment and hence, they used to obtain grain kits from NGOs and used to discharge service of distributing this to other families. At this time, Sahejad Chhara has told him that, his name had come up in the 2002 riots case and that he was ready to give money and that he should take money and make an affidavit for him. The witness had refused to do so, whereupon Sahejad had told him that this time in the riots, he had escaped; however, next time during the riots, he would kill him.

213.16 The witness has further deposed that the SIT had recorded his statement.

213.17 The witness has deposed that he does not know the name of Mayaben's P.A., but he knows him by his face. The witness has further deposed that he knows the leaders of the mob by their face, but does not know their names. Today also, he can identify them. The witness has thereafter identified Mayaben (A-37) and Mayaben's P.A. (A-62) correctly. The witness has also identified Accused No.24, 20, 17, 2 and 44 correctly. The witness has stated that Sahejad who had threatened him after the incident, is not present before the court.

213.18 Thus, the witness has identified Raju Chomal (A-24), Kishan Korani (A-20), Nandlal alias J.K. Vishnu (A-17), Murli Naran Sindhi (A-2) and Bipin Panchal (A-44) by their faces. Sahejad Chhara (A-26) had filed exemption application and is,

therefore, deemed to have been identified.

213.19 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that the incident of Sahejad threatening him took place in June, 2002. He has denied that after Sahejad incident, he was roaming all over Ahmedabad city. He has stated that he was roaming around Ahmedabad city after 2003. The witness has admitted that he had an occasion of passing through many police chowkys during this period but has voluntarily stated that they did not have faith in the police. The witness has admitted that after 2003, he has not gone to the police and given any complaint with regard to the Sahejad incident. He has admitted that NGOs were coming to them but does not know the name of such NGO.

213.20 He has stated that he had lodged his complaint at the camp. He has voluntarily stated that he had given the name of Maya Kodnani. The witness has admitted that that he had signed the complaint and that the complaint was read over to him. He has stated that he came to know tht his complaint was not taken on record when other people in the Patiya received police protection and he was not given any police protection. At that time, he thought that it appears that his complaint is not taken or that it has not been taken on record. The witness has admitted that prior to 2008, he had not informed any authority that he was an eyewitness of the incident and had also not given any complaint in this regard. The witness has voluntarily stated that since he did not have any faith in the police, he had not lodged any complaint. He has stated that he had faith in the SIT. The witness has admitted that that he did not have faith in the police from

2002 to 2008. He has admitted that did not feel like going to the court and lodging a private complaint. The witness has stated that after recording his statement, the SIT had read it over to him. The witness has denied that he had found the statement which was read over to him to be proper. He had voluntarily stated that he had given several instructions, namely, that he had given the name of Mayaben's P.A., whereas they had written down Mayaben's husband, which he had pointed out to them. He had also stated that he had heard about the Ranjit's incident and had not signed it and told them to correct it. Moreover, he had given the date of his panchnama as 9.5.2002, but they had written down 12, which also he had informed them. He has stated that he does not know whether the SIT had made the corrections, as suggested by him.

213.21 The witness has denied that he has not sustained any damage and that he is not an eyewitness and that no panchnama of his house has been carried out. He has admitted that till his statement was recorded by the SIT, he did not get any police protection. He has denied that he is a leader in his area as well as in his community.

213.22 The witness has denied the suggestion that he has not stated any fact with regard to Mayaben's P.A. before the SIT. The witness has admitted that what is stated by him in the last four lines of paragraph 6 of his examination-in-chief wherein he has stated that in the meanwhile Mayaben came there in a Maruti fronti car and with her in the car her P.A./Assistant was present; both of them got down, where he was standing from the car which he had seen as well as what

has been told by him in the first two lines of paragraph 7 of his examination-in-chief, wherein he has stated that upon seeing her, the people in the mob standing there had raised slogans of "Jai Shri Ram", have not been stated by him in the statement recorded by the SIT. The witness has denied the suggestion that the facts stated by him in paragraph 10 of his examination-in-chief wherein he has stated that a Fronti car and Trax jeep came from the direction of Krushnanagar and were standing facing the S.T. Workshop gate, have not been stated by him before the SIT. That last four lines of paragraph 10 of his examination-in-chief are read over to the witness, wherein the witness has stated that at this time, about one hundred leaders gestured and gave instructions, have not been stated by him in the statement recorded by the SIT, which the witness has denied.

213.23 The contents of the first five line of paragraph 11 of his examination-in-chief are read over to him wherein the witness has stated that at that time, Mayaben's .. had given to the leaders. The witness has denied that he has not stated such facts in the statement recorded by the SIT. The witness has further denied the suggestion that what is stated by him in the sixth, seventh lines of paragraph 11 of his examination-in-chief, namely, that the car turned in the lane of Uday Gas Service, have not been stated by him in the statement recorded by the SIT, which the witness has denied. The last three lines of paragraph 11 of his examination-in-chief are read over to the witness wherein he has stated that the people in the mob had thrown gas cylinders inside the Noorani Masjid and damaged it and had thrust the entire tanker inside the Noorani Masjid. The witness has denied that he has not stated

such facts in the statement recorded by the SIT.

213.24 The contents of first two lines of paragraph 12 of the examination-in-chief are read over to the witness, wherein he has stated that thereafter the shops situated near the Noorani Masjid had been set on fire by the people in the mob. The witness has denied that he has not stated such facts in the statement recorded by the SIT. The witness has denied that he has not stated before the SIT that Mayaben's P.A. was in the Noorani Masjid mob.

213.25 The contents of paragraph 13 of the examination-in-chief are read over to him and he has denied that he has not stated such facts in the statement recorded by the SIT.

213.26 The third line to fifth line of paragraph 15 of the examination-in-chief of the witness are read over to him, wherein it is stated that, "*there the police .. you will be in difficulty*". The witness has denied that such facts have not been stated by him in the statement recorded by the SIT.

213.27 The first three lines of paragraph 19 of the examination-in-chief of the witness are read over to him, wherein it is stated that he does not know the name of Mayaben's P.A but knows him by his face. He knows the leaders of the mob but does not know their names. The witness has denied that he has not stated such facts in the statement recorded by the SIT. The witness has admitted that the SIT people have not carried out any test identification parade of the leaders of the mob or any accused through him. The witness has admitted that he has no relations with

Mayaben's P.A. and that he had no occasion for any work with him. He has no relations of visiting his house or talking with him. The witness has stated that he had met Mayaben's P.A. as Mayaben being the M.L.A. of the area, he had occasion to go and get a certificate from her. The certificate was being given at Mayaben's office. The witness has stated that he does not know whether Mayaben's P.A. or Assistant is serving with Mayaben but he is always there with Mayaben at any public meeting and hence they had thought that he is Mayaben's P.A. He has admitted that Mayaben's office is next to his house. He has admitted that he knows that Mayaben is a doctor by profession. He has denied that he is referring to her hospital as her office and has voluntarily stated that her office is different. He has stated that he knows where her office is and that it is next to Anand Surgical. He has stated that he had gone to Mayaben's office for obtaining certificates on two occasions. The witness has denied the suggestion that her people used to prepare the certificate after which Mayaben used to sign them. He has stated that there were readymade certificates signed by Mayaben and that her people also used to give them blank certificates wherein her people used to fill in the details. He has admitted that they were required to fill in the details in the blank certificates signed by Mayaben.

213.28 The witness has admitted that since Mayaben is the M.L.A. of the area he had seen her and knows her and that he had seen her in many public meetings and had also seen her photographs in the paper and advertisement.

213.29 The witness has admitted that he had no occasion of speaking to any of the leaders whom he has identified and

had no occasion to visit their houses. That he does not know the names and addresses of such leaders. The witness has stated that on the day of the incident, the accused had tied saffron bands on their heads. The witness has admitted that he had made an application dated 1.5.2008 to the SIT. He has denied that prior to making the application to the SIT he had not made any application declaring the above facts. The application Mark 644/38 is read over to the witness. He has stated that he had got it written down by somebody else. The witness has stated that he knows Nazir Master but does not remember as to by whom he had got the application written and does not remember as to whether it was written by Nazir Master. The witness has identified his signature on the application, which is given the Exhibit No.1663.

213.30 The witness has denied that he had lodged any complaint with the Crime Branch. He has voluntarily stated that he does not know whether the police who had come to the Shah Alam camp were from the Crime Branch but has stated that he had lodged the complaint from the Shah Alam camp.

213.31 The witness has denied that at the Shah Alam camp, the complaint was not written down as dictated by him. He has admitted that in his application Exhibit-1663, he has stated that his FIR was not registered. He has stated that he has got it written down because the FIR given by him was not brought on the record. The witness has stated that it has not happened that the FIR given by him was read over to him or that he had got an opportunity to see it.

213.32 The witness has stated that he came to know that

the complaint has not been recorded as stated by him for the first time when other people were granted police protection under orders of the Supreme Court and he was not granted such police protection. He had stated that he had never gone to the Crime Branch to inquire about the investigation into his complaint. The witness has stated that he had inquired from the people who were sitting at the Shah Alam camp and they had informed him that his complaint was written down and hence, he did not worry about it.

213.33 The witness has stated that his complaint was not in a printed form and that his complaint was recorded in his presence. He has admitted that the police had written down the complaint and had taken his signature and thereafter, his complaint was read over to him. The witness has denied that he has not lodged any such complaint with the Crime Branch and that he is stating false facts.

213.34 The witness has admitted that from 2002 to 2008, he had not felt like going and lodging a complaint anywhere. He has voluntarily stated that upon the SIT being constituted in 2008, he had got the courage, otherwise everybody used to say that everything is over and there was no question of lodging any complaint anywhere. He has admitted that in the meanwhile, he had not given any complaint before any higher officer. He has admitted that he had not taken the opinion of any legal expert as regards his complaint not being taken for the reason that he had lost his courage and upon the SIT coming, he had got the courage to do so.

213.35 The witness is cross-examined with regard to the

topography of the area.

213.36 In the cross-examination of the witness, it has further come out that Mayaben was not giving the speech on the mike. The witness has admitted that she was surrounded by the mob. He has stated that he does not know whether there was any Muslim, other than him, in this mob. The witness has admitted that some people in the mob had tied saffron headbands. He has admitted that Mayaben's P.A. has tied a saffron headband. Mayaben had not tied a saffron band on her head. He has denied that Mayaben was wearing a Punjabi dress. He has stated that he knows the colour of the saree which she was wearing and that it was a white saree.

213.37 The witness has admitted that she had given the speech while standing near the car and has voluntarily stated that since the car came, the mob made way for her and thereafter, all the people in the mob came near the car. He has admitted that Mayaben had stayed there for two to three minutes to give the speech. He has denied that Mayaben had got down from the driving seat of the car and had voluntarily stated that she had got down from the back side. She had stayed there for two to three minutes and had thereafter, immediately got into the car. The witness says that he does not know whether the car had returned to Krushnanagar. He has stated that he was near the car. The witness has admitted that till the car went from there, there were no riots near Natraj or the Noorani Masjid. The time when the car left, it must be around 9 o'clock in the morning.

213.38 The witness has denied that after the car went, the

mobs entered Naroda Patiya and has voluntarily stated that the mobs started going towards the Noorani Masjid. The witness has admitted that after coming in this manner, the mobs started pelting stones. He has denied that thereafter upon the police releasing teargas, the mob had gone away. The witness has voluntarily stated that the police was firing and lobbing teargas shells towards Muslims and the Muslims started going inside the chawl, due to which, the mob went behind them.

213.39 The witness has admitted that in his statement dated 26.5.2008 recorded by the SIT he had stated that *"After saying this much, if had left. Thereafter, the mobs had entered towards Naroda Patiya and pelted stones and the police had released teargas due to which the public had gone away"*.

213.40 The witness has stated that after hearing Mayaben's lecture, he has immediately left and gone to the Noorani Masjid. He had remained outside the Noorani Masjid and at that time, there were no Muslim mobs. He has stated that when he came to the Noorani Masjid in this manner, he had stayed on the building nearby for about one to two hours. He has admitted that after returning, he had immediately gone to the building next to the Noorani Masjid. He has denied that the building belongs to Hasibkhan Achchhankhan Pathan.

213.41 The witness has stated that he knows Hasibkhan Achchhankhan Pathan. He has denied that the building was in a dilapidated condition. He has stated that the building could be said to be of incomplete construction, wherein there was a terrace on the first floor on pillars and there were no walls on

all four sides. The witness has stated that while he stayed in this incomplete building for about two hours, he had not seen any Muslim mobs. He has admitted that when he stood there, it must have been around 11 o'clock in the morning.

213.42 The witness has denied that after the teargas was released, the public had gone and in the meanwhile, he came to know that one Ranjit Rickshawwala had been murdered in Jawannagar. The witness has admitted that in his statement, he had stated that the police had released teargas, therefore the public had gone. In the meanwhile, Ranjit Rickshawwala had been murdered in the Jawannagar pit and at this time, he had hidden in a broken down building next to the Noorani Masjid and it must have been around 11 o'clock. The witness has stated that all these events had happened after Mayaben's second visit.

213.43 It may be noted that the witness has been confronted with his previous statement recorded by the SIT not with a view to contradict any assertion made by him in his examination-in-chief, but a suggestion is put to the witness in his cross-examination and he is sought to be contradicted in respect of the answer given by him in such cross-examination. Therefore, this part of the deposition is not admissible in evidence. The attention of the witness is drawn to the words, "had fired" in paragraph 8 of his examination-in-chief and he has denied that he has not stated before the SIT that the police had fired on them.

213.44 The witness is confronted with his previous statement recorded by the SIT to the effect that the words

stated by him in paragraph 10 of his examination-in-chief wherein he had mentioned "Maruti Franti Car" were not stated by him before the SIT. The witness has denied that he had only mentioned white coloured car and had not mentioned the words, "Maruti Franti Car".

213.45 The witness has admitted that when the Maruti Franti Car, namely, the white car came, at that time, he was on the first floor of the building next to the Noorani Masjid. He has admitted that at that time, other people were also there. The witness has admitted that from this place, he had seen the police firing in the front yard of the Noorani Masjid. The witness has admitted that when he went to Natraj and returned near the Noorani Masjid, the police had not stopped him anywhere.

213.46 The witness has stated that when he saw the Fronti car near Natraj he had also seen there. The witness has stated that the PI's vehicle was there and other police staff was with him. The witness has admitted that he has declared this fact for the first time before the court and has voluntarily stated that the reason is because he has been asked about such fact today and prior thereto nobody has asked him about these facts.

213.47 The witness has stated that he does not remember whether there was a vehicle of the P.I. and the vehicle of Mayaben, namely, whether there were two vehicles. He has stated that while he was there he had not seen any ambulance.

213.48 The witness has stated that he is not specifically

aware as to whether when Mayaben came near the S.T. Workshop, she had tied a saffron band on her head. He has denied that she was wearing a Punjabi dress and has stated that she was wearing a white saree. He has stated that on the day of the incident, her hair was cut short. The witness has admitted that when she came to the Workshop, he could see her hair. The witness has admitted that when he saw her get down near the car from the S.T. Workshop, he saw her along with her hair. He has admitted that she got down from the car and called the mob by gesturing.

213.49 The witness has denied that in his statement dated 26.5.2008, he had stated that *"..... near the S.T Workshop gate. Mayaben was wearing a helmet on her head which she took off and gestured to the mob and called it near her"*. It may be noted that this part of the statement dated 26.5.2008 has been put to the witness to confront something which is elicited in the cross-examination and not to contradict any assertion made by the witness in his examination-in-chief. This part of the deposition of the witness is, therefore, not admissible in evidence.

213.50 In the cross-examination of the witness, he has stated that there was a Trax jeep vehicle there. He has stated that except for these two vehicles, he had not seen any other vehicle standing near the S.T. Workshop. He has stated that at that time except for the two vehicles, he had not seen anyone take out weapons and distribute them. The witness has admitted that after the vehicles went towards Krushnanagar, the masjid was attacked. The witness has admitted that after the masjid was attacked, the mob entered Hussainnagar and

Jawannagar and damages the houses, looted them and set them on fire. The witness has voluntarily stated that after looting, damaging and burning the shops and houses near Noorani Masjid, the mob had come inside Hussainnagar and Jawannagar and were damaging, looting and setting them ablaze. The witness has admitted that the mobs which went inside Hussainnagar were large in numbers and some of the people in the mob had tied saffron bands on their heads.

213.51 The witness has denied that he had seen the incident of the mob entering Hussainnagar and Jawannagar and damaging, looting and burning the houses of the Muslims while hiding in the incomplete constructed building. The witness has voluntarily stated that he had heard about this at night whereas he had seen the mob entering with his own eyes. The witness says he does not remember as to whether he had filled in any loss/damage analysis form and had voluntarily stated that many forms were being filled in at the camp. He has further stated that he does not remember whether he had given any complaint in printed form regarding the damage caused to his residential house and the incident seen by him.

213.52 The witness has denied that the accused whom he has identified and mentioned before the court were not present on the day of the incident and that he has implicated these people as late as in the year 2008 at the instance of the leaders of the Muslim community and the SIT Officers. The witness has stated that he is residing at Khemchand-ni-chali since his childhood and has few friends in this area because he goes to Odhav for business from 8:00 in the morning and

returns at around 9 to 10 o'clock at night.

213.53 The witness has admitted that from 9 to 11 o'clock, he had seen stone pelting on one side. This stone pelting had started after Mayaben had instigated and gone.

213.54 To bring out the omissions and contradictions in the testimony of this witness as to his statement recorded by the SIT, the prosecution has cross examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who in his cross-examination has admitted that he has recorded the statement of this witness on 26.5.2008. The Investigating Officer has admitted that this witness has stated before him that since was a leader of that area, he used to bring relief kits to the Muslims from the organisations and used to help in carrying out the survey by the Collector and Sahejad Chhara used to tell him to persuade the Muslim witnesses. However, the Investigating Officer has admitted that the witness in the statement recorded by him has not stated that the public had come towards their area and towards the Noorani Masjid and the police was also with them; the cars turned into the lane of Uday Gas service; the people in the mob threw gas cylinders into the Noorani Masjid and a whole kerosene tanker was thrust inside the Noorani Masjid; thereafter the people in the mob set the shops near the Noorani Masjid on fire; thereafter he was afraid and had gone to his house in Khemchand-ni-chali behind the Noorani Masjid; from there he took his family and went to Masjid-ni-chali; the Muslim people gathered nearby Masjid-ni-chali; thereafter Mayaben's car and that jeep.

213.55 Certain extracts of paragraph 10 of the

examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that a Franti car and a Trax jeep came from the direction of Krushnanagar and were standing facing towards the S.T. Workshop gate. The Investigating Officer has denied that this witness has not stated such facts in the statement recorded by him. He has stated that the witness has stated that both the vehicles had come and that the other facts have not been stated by him.

213.56 Certain extracts of paragraph 10 of the examination-in-chief of the witness are read over to the Investigating Officer wherein he has stated that at that time Mayaben's P.A. was amongst the around one hundred leaders who there; Mayaben spoke about something to these people which appeared to be a discussion; thereafter, she gestured to her P.A. and gave instructions. The Investigating Officer has denied that the witness has not stated such facts in the statement recorded by him. He has stated that the witness had stated before him that Mayaben had come, she had gestured and called the mob, the leaders of the mob had come wherein there were around one hundred to one hundred and fifty persons and there was some conversation. The Investigating Officer has stated that except for reference to the P.A., all the other facts are stated in the statement recorded by him.

213.57 Certain extracts of paragraph 11 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that at this time, Mayaben's P.A. took out the weapons from the Trax jeep. Amongst the weapons there were swords, spears, trishuls and

something which appeared like a revolver from far. Under the instructions of Mayaben, Mayaben's P.A. gave all these to the leaders of the mob. The Investigating Officer has denied that all these facts have not been stated by the witness in the stated recorded by him. He has stated that except for stating that the P.A. had given the weapons to the leaders, the rest of the facts have been stated by him.

213.58 The contents of last four lines of paragraph 6 of the examination-in-chief of this witness are read over to the Investigating Officer wherein he has stated that in the meanwhile, Mayaben came there in a Maruti Franti car and her P.A./Assistant was present with her in the car and both of them had got down from the car at the place where he was standing which he had seen. The contents of first two lines of paragraph 7 of the examination-in-chief of this witness are read over to the Investigating Officer wherein he has stated that upon seeing her, the people in the mob standing there had chanted "Jai Shri Ram". The Investigating Officer has denied that all these facts have not been stated by the witness in the statement recorded by him. He has stated that the witness had stated that he was standing there when Mayaben Kodnani together with her husband had come in a white coloured Maruti Franti. However, the above contents of paragraph 7 of the examination-in-chief have not been stated by him in the statement recorded by him.

213.59 Certain extracts of paragraph 15 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that the police were refusing to record his complaint and had told him

that he does not know Mayaben. The police had told him to go and get the panchnama of his house drawn and not to enter into all this headache or else he would be in difficulty. The Investigating Officer has denied that the witness has not stated all these facts before him. He has stated that the witness had stated that he had gone to file complaint at the Naroda Police Station but they had not taken his complaint; that he had gone to lodge his complaint on 12.3.2002. The rest of the facts have not been stated by the witness.

213.60 The Investigating Officer has admitted that this witness in the statement recorded by him has not stated that there the police had refused to record his complaint and told him that he does not know Mayaben. The police had told him to get the panchnama of his house drawn and not to enter into this entire headache, else he would be in difficulty; he does not know the name of Mayaben's P.A. but can identify him, if he sees him. He knows the leaders of the mob by fact but does not know by name; they had fired. The Investigating Officer has admitted that the above facts have not been stated by the witness in the statement recorded by him.

213.61 The Investigating Officer has admitted that the words, "Maruti Franti car" mentioned in paragraph 10 of the examination-in-chief have not been mentioned by this witness in the statement recorded by him but that the witness had stated that a white coloured Maruti Franti but had not used the word "car". The Investigating Officer has admitted that this witness in the statement recorded by him had stated that near the S.T. Workshop, Mayaben had worn a helmet on her head which she took off and gestured to the mob and called them

near her.

213.62 SUBMISSIONS: The learned counsel for the appellants submitted that this witness has named two accused, namely, Mayaben Kodnani accused No.37 and her PA accused No.62. However, before the court he has identified eight accused, namely, (i) Accused No.24 Rajkumar Alias Raju Chomal, (ii) Accused No.20 Kishan Korani, (iii) Accused No.17 Nandlal Alias Jaiki Vishnubhai Chara, (iv) Accused No.2 Murlibhai Sindhi, (v) Accused No.44 Bipin Alias Bipin Autowala Panchal, (vi) Accused No.26 Suresh Alias Sehjad Chara, (vii) Accused No.37 Mayaben Kodnani, and (viii) Accused No.62 Kirpalsingh Chabda (PA to Mayaben Kodnani). It was submitted that this witness' statement was recorded on 26.5.2008 by the SIT. Prior thereto, no statement of the witness was recorded. It was submitted that this witness had never filed his complaint at any earlier point of time and has not disclosed any such facts before anybody and the grievance he has made in paragraph 15 has not been made by him before any authority whatsoever. Referring to the contents of paragraph 15 read with paragraph 24 of his examination-in-chief it was submitted that the witness has stated that he went to the Naroda Police Station and thereafter he says that he had also given an F.I.R. at the camp. However, none of these facts have been stated by him before the SIT. It was submitted that there is no evidence whatsoever of a TRAX car and distribution of weapons to the leaders. No registration particulars of such TRAX car have come on record during the course of investigation. No TRAX car has been seized, nor have any particulars been brought on record including of the driver or owner.

213.63 It was submitted that the story about two vehicles taking a turn into the lane of Uday Gas Agency is also a fact, which is not stated by any of the witnesses. It was submitted that no complaint has been made by the witnesses against Sehjad for trying to influence him. Out of the persons named by the witness, he has identified five persons in the court, namely, accused No.24, 20, 17, 2 and 44. However, none of these persons have been named in his only available statement before the SIT or before the court and as coming out from paragraphs 43, 50 and 54 of his cross-examination, he had no acquaintance with any such persons prior in point of time, nor does he recollect any identification marks of any such persons and in view thereof, in the absence of any test identification parade, as admitted in paragraph 43 by the SIT, only identification in the court cannot be relied upon.

213.64 It was submitted that the witness has not made any complaint about Sahejad at the relevant time and by way of an afterthought, the witness has sought to implicate as many accused as possible. It was submitted that this witness cannot be relied upon for convicting Sahejad as he does not attribute any criminal complicity to him.

213.65 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness had spotted accused No.37 at around 9:00 in the morning with accused No.62. It was submitted that the discrepancy with regard to the PA cannot be considered to be a major contradiction. It was submitted that the omission brought out in paragraph 10 read with paragraph 33 of the cross-examination as regards from

which direction the vehicle had come, may not be treated as a material omission. Referring to paragraph 10 read with paragraph 34 of his deposition, it was submitted that as regards the statement made before the SIT, whereas as a matter of fact, PW 327_in paragraph 698 of his deposition, has stated that the witness has stated that the mob was called by making gestures, and, therefore, it cannot be said that there is a material omission. It was submitted that as regards the omission in paragraph 11 of his examination-in-chief as brought out in paragraph 35 of his cross-examination, the PA had taken out weapons from TRAX jeep which appears to be from a distance.

213.66 ANALYSIS: From the evidence of this witness it emerges that no statement of this witness was recorded at the relevant time when the incident took place, and it is only after more than six years of the incident that his statement came to be recorded by the SIT. According to the witness, on 12th March, 2002, had gone to the Naroda Police Station to lodge his complaint, but the policemen there refused to register his complaint as Mayaben was a very influential person. The witness has admitted that he had not approached any authority to lodge his complaint saying that he was an eye witness. He has stated that as he did not have faith in the police he had not lodged a complaint.

213.67 In his examination-in-chief, the witness has deposed that he had come out of his house at around 8:30 to 9:00 in the morning and had gone near Natraj Hotel where there was a mob of around five to ten thousand people. Mayaben came there in a Maruti Franti car and her P.A./assistant was also

present with her in the car. Mayaben gave a provocative speech to them and left. After she went the public was aroused and started coming towards their locality and the Noorani Masjid. He fled from there and then the police resorted to bursting tear gas shells and firing. He then went and stood on an unfinished building adjoining the Noorani Masjid.

213.68 At around 11 o'clock in the morning, Mayaben came in a white Maruti Franti car which was followed by a TRAX jeep. They came from the side of Krushnanagar and stopped near the S.T. Workshop. Mayaben alighted and gestured to the mob whereupon about a hundred leaders came there and Mayaben spoke to them, which appeared to be a discussion. She then gestured to her PA and gave him instructions. Mayaben's P.A. took out weapons from the Jeep and under her instructions distributed the weapons to all the leaders of the mob. Her car and the jeep then went towards Krushnanagar and turned towards Uday Gas Agency. After Mayaben left, the mob including her P.A. attacked the Noorani Masjid.

213.69 The witness has stated that he does not know the name of Mayaben's P.A. but can identify him by his face and further that he also knows the leaders of the mob by their faces and can identify them.

213.70 From the cross-examination of the witness it is disclosed that in the statement recorded by the SIT, he had stated that Mayaben was accompanied by her pati (husband). From the cross-examination of the witness it further emerges that while he had stated the facts stated by him in the last four lines of paragraph 10 of his examination-in-chief regarding

Mayaben having spoken to the leaders of the mob and the entire facts stated in paragraph 11 regarding the weapons being brought in the TRAX jeep and being distributed to the leader of the mob, he had not made any reference to Mayaben's P.A. Therefore, it appears that apart from the fact that the witness's statement was recorded at a highly belated stage, even before the SIT he had not made any reference to Mayaben's P.A. and at one place had referred to her pati (husband). Therefore, insofar as Mayaben's P.A. is concerned, he has been implicated for the first time before the court. Another aspect of the matter is that there is no material on record to indicate that accused No.62 Kirpalsingh is Mayaben's P.A. In these circumstances, it would be risky to place reliance upon the testimony of this witness to prove the charge against accused No.62.

213.71 Insofar as accused No.37 Mayaben Kodnani is concerned, the witness has stated that he had seen her on two occasions on the day of the incident. On one occasion he had seen her between 8:30 to 9:00 near Natraj Hotel. Insofar as the presence of Mayaben at Natraj Hotel between 8:30 to 9:00 is concerned, there is material on record to show that she being an MLA was present at the Vidhan Sabha at Gandhinagar and was present there till around 8:45 p.m. and left thereafter. In these circumstances, even if she had come to the spot straight from Gandhinagar, she could not have reached there before or at 9:00 a.m. Insofar as the second incident is concerned, it may be noted that there is ample evidence on record in the nature of testimonies of police officers which indicates the presence of high ranking officers near the S.T. Workshop gate between 10:30 to 12:00. Therefore, it is highly doubtful that in

the presence of all these officers who have deposed that they were making all efforts to quell the riots, Mayaben would have been able to distribute weapons to the mob. Moreover, none of the officers have mentioned the presence of Mayaben at the S.T. Workshop gate at that time. It cannot be gainsaid that Mayaben being the MLA of the area was a public figure and hence, her presence at the spot would not have gone unnoticed by the police. It is highly unfortunate that on the one hand the prosecution seeks to implicate Mayaben Kodnani in the offence in question, but none of the police officers support the prosecution case. Moreover, several witnesses who were at the corner of the S.T. Workshop in the morning on that day have been examined by the prosecution. However, none of the witnesses have referred to Mayaben having come twice, and more particularly to the facts regarding the TRAX Jeep and distribution of weapons. Thus, the prosecution has led two sets of evidence, one which shows the presence of this accused at the scene of offence and another which negates her presence. It is settled legal position that when two sets of evidence are led by the prosecution, one against and one favouring the accused, the view in favour of the accused has to be adopted.

213.72 While the witness has named only two accused in his examination-in-chief, namely Mayaben Kodnani (A-37) and her P.A./Assistant, he has identified Raju Chomal (A-24), Kishan Korani (A-20), Nandlal alias J.K. Vishnu (A-17), Murli Naran Sindhi (A-2) and Bipin Panchal (A-44) by their faces as being the leaders of the mobs. Sahejad Chhara (A-26) had filed exemption application and is, therefore, deemed to have been identified. Thus, while the witness has not named these accused in any of his statements or before the court, and no

test identification parade had been carried out to identify them, the witness has identified them for the first time before the court. In the opinion of this court, it would be highly risky to accept such identification after a period of eight years from the date of the incident without having first fixed the identity of the accused. Therefore, the testimony of this witness would not help the prosecution in establishing the charge against the accused where their implication in the offence is based merely on such identification.

213.73 Insofar as Sahejad Chhara (A-26) is concerned, the witness has alleged that after the incident he had tried to influence him and asked him to make an affidavit in his favour as his name had cropped up in the case. Thus, this allegation is in respect of influencing witnesses and would constitute a different offence, in respect of which a separate complaint would be required to be lodged. In the present case Sahejad Chhara (A-26) is not charged with any such offence, and hence, the testimony of this witness insofar as this accused is concerned would not help the prosecution to prove such charge against him.

213.74 Thus, the testimony of this witness will not come to the aid of the prosecution in proving the charge against any of the accused, viz. those named and identified and those who are only identified by him.

214. **PW-238 Nasreen Mahammadrafik Shaikh**, aged 28 years, has been examined at Exhibit-1673. The witness has deposed that she can understand Gujarati, but would find it more convenient to speak in Hindi and hence, will depose in

Hindi. The witness has stated that her native place is *Lucknow, U.P. State.*

214.1 The witness has deposed that when the riots took place, at that time in the year 2002, she was residing with her sister Ishratjahan (PW-177) in *Lane No.4, Hussainnagar.* When the SIT people recorded her statement, she was residing at *Pandit-ni Chali, Next to ST Workshop, Naroda Patiya.*

214.2 The incident took place on 28.2.2002. During that period, she was residing with her sister Ishratjahan at *Lane No.4, Hussainnagar* and at that time, over and above the two of them, her sister Ishratjahan's husband Parvezhussain, her sister Kausarparveen, her brother Sabbirhussain, were also residing together.

214.3 Her marriage was solemnised after the riots in the year 2002 when they were at the Shah Alam camp. She has studied up till the 3rd standard. She does not remember as to in which medium they used to teach her, as to whether it was in Hindi medium or Gujarati medium.

214.4 On the day of the incident, she was at home in the morning. At that time, the people nearby started shouting. Hence, she came out of the house to see. Everyone was saying that there is stone pelting. She came out on the road near the S.T. Workshop and saw that the mobs had started coming from the direction of Krushnanagar and Natraj Hotel. It was a Bajrang Dal mob and there were Gujaratis, Sindhis and Chharas.

214.5 The people in the Bajrang Dal mob had tied saffron bands on their heads with "Jay Shri Ram" written on them. In the mob which had gathered on the road, she had seen Munna Shetty (deceased) and Sahejad Chhara (A-26) pelting stones and at that time, Suresh Langda (A-22) had a sword in his hand. Thereafter, there was intense stone pelting and the police had resorted to firing at the Muslims.

214.6 When she came out, it was approximately 9:30 in the morning and at that time, the situation was as she has narrated and hence, she returned home at about 10:30. Her brother-in-law Parvezhussain had come to fetch her and he was injured on the head with a stone. Both of them had gone home and all the members of the family had also come home.

214.7 Thereafter, at around 12 o'clock, they heard commotion and upon such commotion taking place, they came out. Upon coming out, they saw that the mob was ransacking the houses and burning people alive. She was very frightened. She did not know any person in the mob and she had seen all this from far.

214.8 Everyone in the house was frightened, and hence, she and her family members went to a house which was a bungalow opposite their house in Lane No.4, Hussainnagar for shelter and they had gone to the top most floor of the bungalow. They had gone on the terrace. From the terrace, she had seen incidents that were taking place. In the evening at around 5:00 to 5:30, though she is not aware about the exact time, but it was evening, she saw that people in the mob were ransacking the chawls and were burning the houses. She had

seen four people in the mob.

214.9 At that time, she had seen Munna Shetty, Sahejad Chhara, Suresh Langdo and Ganpat Chhara. Munna Shetty and Sahejad were in the mob. Suresh had a sword and Ganpat Chhara was gesturing with his hands. She stayed on the terrace till 10 o'clock at night. Thereafter, upon a vehicle coming from the Shah Alam camp, they had gone to the Shah Alam camp.

214.10 In the incident, her brother-in-law Parvez had sustained an injury on the head in the stone pelting, whereas she had sustained a slight injury on her hand.

214.11 In the very near future after the incident, her marriage was to take place. For the purpose of her marriage, her dowry items were collected and were kept in the house where she was residing. In the incident, their house was also looted and all her dowry items were looted.

214.12 She had stayed at the Shah Alam camp for around six months. During this period, she had made an application from the camp. There after, in the year 2008, her statement was recorded at Gandhinagar.

214.13 The witness has stated that she has learnt that Munna Shetty had died a short time prior thereto and that she can identify all the four persons whom she has named. The witness has thereafter identified Ganpat Chhara (A-4), Suresh Langdo (A-22) and Sahejad Chhara (A-26) correctly.

214.14 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that the SIT had examined her in Hindi. She has stated that she had informed the SIT people that she could understand a little Gujarati, but cannot speak in Gujarati. She has stated that the SIT had read over her statement to her. The witness has stated that she has studied up to the second standard and that she remembers a song which she was taught at that time. She has stated that when she first came out of her house on the day of the incident, she does not remember as to whether anyone of her family members was with her. She has stated that on that day, there were many people running around in the chawl. She has stated that she had reached near the S.T. Workshop at around 9:30 in the morning and was there on the road for about one hour. She has said that she means that she was going here and there on the road. She has further stated that she had seen the mob from a distance of about ten to twelve feet. She has stated that she was standing with the women from the mohalla, however, they were moving around near the S.T. Workshop. She has stated that where she was standing, there were only women and that there must be around ten to fifteen women. She has stated that she can identify these women as she was residing in the mohalla since her childhood and she remembers that amongst the women were Gugu Khala, Khatun Apa and Noora Apa.

214.15 In the cross-examination of the witness, it has further come out that when she came out, she was standing near the flour mill on the road. She has admitted that from the flour mill, one cannot see the S.T. Workshop gate. The witness has explained that the flour mill is on the interior road from

where, one comes out of Hussainnagar. The witness is cross-examined with regard to the topography of the area and more particularly, the flour mill. The witness has admitted that when one comes out of the flour mill, after crossing two houses, the Naroda Patiya road is situated. She has explained that from this place, on one side, there is a road going towards the S.R.P. Quarters, that is, Krushnanagar and on the other side, the road goes towards Naroda Patiya which is in the direction of the S.T. Workshop. The witness has admitted that for the one hour that she was standing there, during that period, she had not seen any person in the mob entering their chawls. She has voluntarily stated that at that time, the mob was pelting stones and there was police firing. She has stated that during the entire period when she was there, stone pelting was continuing, however, she does not know exactly as to when the firing started. She has stated that when the stone pelting started, there were many men and women from their mohalla and that everyone from their mohalla had come out to watch. The witness has admitted that the people from the mohalla were standing near them. She has stated that while she was standing there, she has seen the people being injured on account of stone pelting and that she can give the name of one person, namely, the Maulana of the masjid who was profusely bleeding on account of being injured by a stone.

214.16 The witness has stated that her brother-in-law Parvez had come to fetch her from where she was standing and she does not remember whether at that time, she had seen her family members there. She has stated that she had not talked to any family members while she was standing there and that it had not happened that her sister Ishratjahan

had come out of the house with her.

214.17 The witness has stated that while she was standing near the lane and was moving around here and there, at that time, she had not seen twenty-five to fifty or one hundred to two hundred people fleeing and running. She had seen somebody being picked up and taken and has voluntarily stated that those Muslims who were injured in the firing were being lifted and taken away.

214.18 The witness has admitted that while she was on the road for an hour, her main attention was on the road. She has stated that she does not know the name of any of the Muslims who were injured in the firing on the day of the incident and that as on date, she knows the name of only one person who was injured in the firing whose name is Mohammadbhai. She has admitted that she does not know on what part of his body Mohammadbhai was injured by the bullet.

214.19 The witness has stated that her brother-in-law had come to fetch her at 10:30 and that till they reached home, no person in the mob had stopped them or caused any damage to them. She has stated that everyone in the mob was pelting stones. There were about one and half to two thousand people. At that time, the stones were coming up to the flour mill. The witness has voluntarily stated that, that is why she was injured in the stone pelting. The witness has admitted that she has not disclosed that she was injured by a stone till date for the reason that the injury sustained by her was very minor.

214.20 The witness has admitted that when they were at

home till 12 o'clock, the people in the mob had entered, and hence, everybody had started shouting. The witness has stated that she cannot say as to whether or not the mob that was comprised of one thousand five hundred to two thousand people which she had seen outside, was the same mob which had come into their mohalla. She has stated that the people in the mob had not entered her house.

214.21 The witness has admitted that till 12 o'clock, the mob had not entered the lane in which she was residing. She has stated that the place where they went for protection was Pinjarabhai's house which is in the line opposite their lane. She has stated that she had sat in that building till 12 o'clock at night.

214.22 The witness has admitted that the people in the mob did not come to Pinjarabhai's house. The witness has voluntarily stated that they had put a lock below. The people in the mob used to knock on the door and go away. The witness has stated that there were other people from their mohalla in Pinjarabhai's house, but she cannot say as to how many people were there. Her family members had got separated in this house. Some of her family members were on the ground floor, whereas some were on the terrace. The witness has admitted that her house is situated opposite Pinjarabhai's house and there is only one road in between both the houses. She has admitted that all the members of her family were in this house. She has admitted that all her family members had met at the relief camp.

214.23 The witness has stated that she does not know

anything about the Bajrang Dal, but had heard from others on that day that those who have tied saffron bands on their heads are all Bajrang Dal people, and hence, she had believed it. She has stated that she does not know whether the words “Jay Shri Ram” were written on the bands in Gujarati or Hindi.

214.24 The witness has stated that she does not know anything about the Vishwa Hindu Parishad, but had heard about it from people. The witness has admitted that she cannot say as to which member of the mob was from the Bajrang Dal and who was from the Vishwa Hindu Parishad.

214.25 The witness has stated that her brother-in-law Parvezhussain and her brother Sabbir were with her on the terrace. She had also given the names of three to four other people who were with them on the terrace.

214.26 The witness has stated that merely by looking at someone, it is not possible to say as to which person is a Sindhi or is a Chhara and has voluntarily stated that as she used to visit Kubernagar, she knows the language of Chharas and Sindhis and from what she heard, she could make out as to whether they are Sindhis or Chharas. Prior to her going on the terrace, she had heard them talking.

214.27 The witness has admitted that when she was on the terrace from 12 o'clock in the afternoon till 12 o'clock at night, she had not heard them speaking and that she had heard them speaking when she was in the mob. The witness has stated that she had slept on the terrace and after a little while, she was sitting, but she was not standing. She has further stated

that they were sitting on the terrace in a manner whereby nobody could see them. The witness has voluntarily stated that there was a lattice on the terrace from which, they could see, but nobody could see them. This lattice was made of cement.

214.28 In the cross-examination of the witness, it has further come out that from the lattice, they could see the Noorani Masjid road. The witness has stated that the houses in Hussainnagar are comprised of two rooms. She has admitted that from the terrace of the house on which she was, she could see all the huts in Hussainnagar. The witness has voluntarily stated that the huts could be seen from the cement lattice and if one stands on the terrace, the entire area can be seen. The witness has denied that if the mob enters this area, they can only see the black hair on the head of the people and cannot see anything. The witness has voluntarily stated that one can also see the faces of the people in the mob.

214.29 The witness has admitted that the people in the mob did not know that they were hiding in Pinjarabhai's house and has voluntarily stated that if they knew about it, they would have hacked them. The witness has stated that she has not seen any person banging on the door of Pinjarabhai's house or banging the locks of Pinjarabhai's house. The witness has voluntarily stated that such sounds were coming from upstairs. She has stated that the entrance door of the house was made of iron and nothing could be seen through the door. The witness has stated that she has seen the looting and burning of houses. She has stated that only Muslims reside in this area. The witness has stated that she cannot say as to whether the mob which was damaging and the mob which was

assaulting were different. The witness has admitted that she cannot say so because she had not seen the incident from near and has voluntarily stated that she had seen the incident from far.

214.30 The witness has admitted that from 12 o'clock in the afternoon till 12 o'clock at night, she had not gone out of Pinjarabhai's house even once. She has stated that wherever she had gone and seen was between 9:30 to 10:30, when she was on the road and the rest was seen from Pinjarabhai's terrace.

214.31 The witness has admitted that in her statement dated 21.5.2008 recorded by the SIT, she had stated that they had left their house at 12 o'clock and had gone to a big house in their society where other Muslims were hiding and from the top of this house, they had seen that Hindu people, Sindhis and Chharas were damaging and looting in the society.

214.32 The witness has denied that on the day of the incident, she had not seen any accused with weapons, and hence, prior to 21.5.2008, she had not stated any such facts. The witness has voluntarily stated that in the year 2002, about eight days after the incident, she had given an application about the incident at the camp and had stated these facts. The witness has denied that she has not given any such application or complaint. The witness has stated that she does not know as to who had written the application, but everybody at the camp was giving such applications, and hence, she also had done so.

214.33 The witness has admitted that while she was at the camp, no police had come to her and she had also not gone to the police to give her statement.

214.34 The witness has stated that in her house, her elder sister Ishrat is the elder one and that since the time she was very young, her mother had passed away and her father, three months prior to the incident had gone to Lucknow where he had remarried. The witness has admitted that while they were at the camp, they would discuss as to what damage had been caused to each other. She, however, has denied that at the camp, it was decided as to which accused should be involved in which offence.

214.35 The attention of the witness is drawn to the words "near the S.T. Workshop" in paragraph 5 of her examination-in-chief and she has denied that she has not stated these words in her statement. The attention of the witness is drawn to paragraph 7 of her examination-in-chief wherein she has stated that her brother-in-law Parvezhussain had come to fetch her. The witness has denied that she had not stated such words in her statement.

214.36 The witness has stated that she had an ordinary relation of talking with Suresh Langda and Sahejad Chhara. She has admitted that Sahejad Chhara resides at Hussainnagar. She has admitted that there is a Devi Mata's temple in Sahejad Chhara's house and in the morning and evening, Devi Mata's puja is being performed in his house. The witness has denied that during the puja, they play the drums and nagaras and that during the puja, they play the tape

loudly. The witness has denied that the Muslims did not like the tape being played. The witness has admitted that at this time, the people from Mahajaniyavas used to come. The witness has denied that because they used to play the tape in this manner and the people from Mahajaniyavas used to come, the Muslims had a dispute with Sahejad. She has denied that at the instance of the people from her community, she had wrongly given the name of Sahejad. The witness has stated that while she was on the terrace, she has not seen any person being lifted and brought there. The witness has denied the suggestion that she had not seen the incident and is deposing falsely.

214.37 To prove the omissions and contradictions in the testimony of the witness as to her statement recorded by the SIT, the defence has cross examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who in his cross-examination has admitted that he has recorded the statement of this witness on 21.5.2008. He has admitted that this witness in the statement recorded by him had stated that the SIT people had asked questions to her in Hindi. She had told the SIT people that she can understand Gujarati a little but cannot talk in Gujarati. The SIT people had read over the statement to her. She does not remember as to whether at the time of reading her statement, the SIT had recorded that she knows both Hindi and Gujarati languages well and understand it.

214.38 The Investigating Officer has admitted that the extracts of paragraph 7 of the examination in chief wherein the witness has stated that her brother-in-law Parvezhussain had come to take her, have not been stated by her in the

statement recorded by him. Certain extracts of paragraph 9 of the examination-in-chief of the witness, wherein she has stated that at around 5:00 to 5:30 in the evening, she does not know the exact time but it was evening at that time, are read over to the Investigating Officer, who has admitted that this witness has not employed such words in the statement recorded by him. The words "near the S.T. Workshop" are read over to the Investigating Officer from paragraph 5 of the examination-in-chief and he has admitted that the witness has not stated such words in the statement recorded by him but the witness had stated that she had come out and seen.

214.39 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is the sister of PW-177 Ishratjahan Parvezhussain Saiyed. It was pointed out that the witness has named three accused, namely, accused No.26 Suresh alias Sehjad Chhara, accused No.22 Suresh Chhara and accused No.4 Ganpat Chhara; and she has identified all three of them. It was submitted that the statement of this witness was recorded for the first time on 21.4.2008 by SIT and no statement was recorded by the police at the relevant time.

214.40 It was submitted that this witness has deposed regarding two incidents, namely, the first incident which took place at 9:30 in the morning, wherein she has seen three accused in the mob, and the second incident in the evening hours, where she had seen four accused committing loot and setting the houses on fire. It was submitted that insofar as the first incident is concerned, during the one hour when she was standing there, except for what she has stated in paragraph 6 of her examination-in-chief, no further participation has been

alleged. It was submitted that the witness does not refer to any other incident that had taken place in that hour, therefore, at best even if the SIT statement is taken at its face value, accused No.26 and accused No.22 were seen as part of the mob in the morning.

214.41 In the second incident, the time stated by the witness was evening time. She has stated that from the terrace she had seen the mob committing loot and setting houses on fire and in that mob she could see and identify four persons. It was contended that even if this part of her deposition is taken at face value as the first time version given before the SIT, then also insofar as Manubhai and Sehjadbhai are concerned, all she says is that they were present there, without attributing anything to them. It was submitted that so far as accused No.22 is concerned, even in the morning incident he is stated to be holding a sword. In the evening also he is said to be holding sword without any overt act being attributed to him. As regards accused No.4 Ganpat Chhara, the allegation against him is that he was making some gestures with his hand. It was contended that this allegation will not lead to any specific inference indicating any criminal complicity on the part of the accused. It was submitted that if paragraphs 36 and 39 of the cross-examination of the witness are read together, it becomes doubtful whether she could have seen anything happening down on the road. Therefore, when the witness has remained silent for about six and a half years, it is very difficult to believe her version, when it is given for the first time before the SIT and before the court. Therefore, she is not a believable and reliable witness.

214.42 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that presence of this witness at the place of incident is not doubted. She had spotted accused No.26 and accused No.22 with a sword in his hand, in the morning mob. Even in the evening when she went to another place, she saw the mob looting and ransacking houses and the truthfulness of the witness is demonstrated by the fact that she says that she could not identify anybody in the mob. It was submitted that therefore, when the witness could identify the accused, she had given their names and when she could not identify them, she has not given any names wrongly implicating anyone.

214.43 It was submitted that in the evening between 5:30 to 6:00, once again she saw houses being looted and damaged in which she could identify accused No.22, accused No.26 and accused No.4, wherein accused No.22 had a sword in his hand and she has deposed accordingly. It was submitted that only one contradiction is tried to be brought out in paragraph 50 of her cross-examination, namely that the witness has stated the place to be near the S.T. Workshop, while in her statement recorded by the SIT she had stated that she spotted them after coming out. It was submitted that such a contradiction is not a significant one and, therefore, there is no material deviation from her previous statement. It was pointed out that this witness has given printed application on 7.3.2002, and in that application, names of three persons were indicated and on the basis of that application, the SIT had recorded her statement on 21.5.2008. It was, accordingly, urged that his witness is a truthful and believable witness qua accused No.4, 12 and 26 and through the testimony of this witness the presence of all

the three accused, one with weapon, has been proved beyond reasonable doubt.

214.44 ANALYSIS: From the evidence of this witness it emerges that at the relevant time her statement was not recorded by the police and for the first time her statement was recorded by the SIT on 21.5.2008, more than six years after the incident. As per the testimony of this witness, she came out on the road in the morning and saw the three accused viz. Munna Shetty (deceased), Sahejad Chhara (A-26) and Suresh Langda (A-22) in the mobs which had gathered on the road. The witness only refers to their presence on the road, without attributing any overt act to any of them. The witness says that at around 10:30 she returned home as her brother-in-law had come to fetch her. At about 12:00 in the afternoon, they heard commotion outside and came out and saw mobs looting houses and burning people alive. She had seen this incident from far and could not identify any accused. Out of fear all the family members went to a bungalow in Hussainnagar lane no.4 and went to the terrace from where she was looking at the events that unfolded. At around 5:00 to 5:30, she saw mobs looting the houses in their chawls and setting them ablaze and in this mob she saw Munna Shetty and Sahejad Chhara, Suresh Langdo and Ganpat Chhara. Munna Shetty and Sahejad Chhara were in the mob and Suresh had a sword and Ganpat was gesturing with his hands. Thus, the witness refers to the presence of three of the accused in the mob in the morning as well as in the evening, and refers to the presence of Ganpat Chhara in the mob in the evening.

214.45 As noted hereinabove, the witness has for the first

time come forward and disclosed the participation of the above accused in the offences in question in the year 2008 after a period of more than six years of the incident. After the incident, the witness had stayed at the Shah Alam camp for about six months. It is a matter of record that the police had visited the camp on umpteen occasions to record the statements of witnesses. In the case of this witness, no member in her family has been injured or suffered loss of life. It is not the case of the witness that she was in a state of shock and trauma after the incident and, therefore, could not get her statement recorded. Besides, it has come on record that the statements of most of the witnesses were recorded in the month of May, 2002. Therefore, when the witness has not thought it fit to state anything before the police at the relevant time, it would be hazardous to rely upon the testimony of the witness when she has disclosed the names of the accused after such a long period of time. Considering the intervention of several external influencing factors in the interregnum between the time of the incident and the recording of statements by the SIT, false implication of the accused also cannot be ruled out. The testimony of this witness, therefore, would not come to the aid of the prosecution to prove the charge against the accused.

215. **PW-239 Gulamyaasinbhai Noorbhai Kureshi**, aged 50 years, has been examined at Exhibit-1674. The witness has deposed that he knows Gujarati and has studied in Gujarati upto the 5th standard. He runs a mutton shop and the name of his shop is "Ajmeri Mutton, Chicken Centre". His shop is situated in *Pandit-ni-Chali*. He is a partner in a shop, viz., "Anjuman Grahak Sahakari Bhandar", which is situated in *Lane*

No.3, Hussainnagar. He was a partner in the shop from 1997 to 2007. Amongst the other partners of the shop were Basirbhai Ismailbhai Shaikh, Rahemtulla Khwajahussain Shaikh and Kadar Nannumiya Saiyed.

215.1 Basirbhai used to manage the affairs of their Sahakari Bhandar. Rahemtulla Khwajahussain used to weigh the items in the shop. Their partner Kadarhussain used to settle the accounts and he (the witness) used to do the work of bringing goods from outside.

215.2 In this shop, they used to sell kerosene, wheat, rice, sugar, oil etc. at Government rates, that is, fair prices.

215.3 The incident took place on 28.2.2002. On that day, their shop was open. On that day, even his Ajmeri Mutton Centre was also open.

215.4 In the morning, at about 7:30 to 8:00, he had gone to Ajmeri Mutton Centre. He opened the shop and started his business. On that day, there was a call for bandh. In the morning, at around 9 o'clock, Gujarati mobs started coming from the direction of Natraj Hotel and Krushnanagar. The people in the mob came near the Noorani Masjid. They started pelting stones on the chawls near the Noorani Masjid and started burning the houses in the chawls as well as stalls and shops etc. near the Noorani Masjid. In the meanwhile, the police arrived.

215.5 The mobs attacked the Noorani Masjid and the people in the mobs also attacked the Muslims.

215.6 In the meanwhile, the police started firing at the Muslim mob. In the firing, a boy named Abid was injured and two to three other persons were also injured in the firing. Upon all this happening, out of fear, he closed his Ajmeri Mutton Centre and went towards his chawl. They had shut their house and remained at home during the entire day.

215.7 Prior to going home, he had stopped near his shop Ajmeri Mutton Centre for a little while. In the open space, opposite his shop, he had forty five goats. At this time, the mob came there and the people in the mob took away all his forty five goats. Suresh Langdo was in the mob.

215.8 Suresh Langdo was leading the mob and was taking away the goats. The witness was himself watching all this; however, he did not have the courage to stop them.

215.9 On that day, there was a stock of approximately 1,000 litres of kerosene in their shop "Anjuman Grahak Sahakari Bhandar". The wheat, rice, sugar etc. were sold off; however, 1,000 litres of kerosene was lying in stock. He had learnt that everything was being burnt in Hussainnagar and all the kerosene from his shop was looted. Their Anjuman Grahak Sahakari Bhandar was also burnt and was destroyed in the incident. On the day of the incident, his 1,000 litres of kerosene was also looted. They were maintaining a stock register in their shop. However, everything was burnt in the incident.

215.10 Late at night, the police took them to the Juhapura

camp. They stayed there for two days. After two days, they had gone to his sister-in-law Sugarabibi's house, where they stayed for about one year. After one year, they returned to their house at Naroda Patiya.

215.11 The SIT had recorded his statement in connection with the incident. The witness has stated that he knows Suresh who was in the mob and was taking away his goats, even today and can identify him. The witness has thereafter identified Suresh Chhara (A-22) correctly.

215.12 CROSS EXAMINATION: In his cross-examination, the witness has stated that his Ajmeri Mutton Shop is situated in Pandit-ni-Chali. Pandit-ni-Chali is situated next to the Noorani Masjid. The witness has admitted that if he wants to go to Anjuman Grahak Sahakari Mandali, he has to cross the national highway. The witness has admitted that if he is sitting at the Ajmeri Mutton Centre, he cannot see Natraj Hotel or Naroda Patiya Circle. He has voluntarily stated that due to the commotion, he came out to watch, and hence, he had seen what had happened. He has admitted that on hearing the commotion, when he went out to watch, the spot where he went was at a distance of about one or two minutes from his shop. The witness has admitted that if one wants to go from his house to Ajmeri Mutton Centre, then Naroda Narol Highway does not come on the way. The witness has stated that he had opened his shop at around 7:30 in the morning and after about one and half hours, he had heard the commotion. The witness has denied that the commotion which he heard was for shutting down the shops due to the bandh call. The witness has voluntarily stated that the commotion was because the

mobs had come from both the sides and had started pelting stones and resorted to vandalism.

215.13 The witness has admitted that when he first saw the mobs, the stone pelting was continuing. The witness has admitted that at this time, a Muslim mob had gathered to protect the Noorani Masjid. He has denied that for protecting the Noorani Masjid, there was cross stone pelting between Hindus and Muslims. The witness has denied that in his statement dated 27.6.2008 recorded by the SIT, he had stated that *“Therefore, Muslims had also gathered and since there was stone pelting at the masjid, to protect the masjid, the Muslims mob had also pelted stones at the Hindu mob. At this time, the Hindu and Muslim community mobs came opposite each other”*. It may be noted that here the witness is sought to be contradicted by his previous statement recorded under section 161 of the Code in respect of an answer elicited in his cross-examination, which is hit by the bar contained in section 162 of the Code, and therefore, is not admissible in evidence.

215.14 The witness has denied that since there was cross stone pelting, the police had lobbed tear gas shells at those who were pelting stones and had resorted to firing. He has stated that he does not know whether before firing the police had lobbed tear gas shells. He has admitted that the police firing was from the direction of Natraj Hotel. The witness has admitted that police had fired towards Muslims who had gathered to protect the Noorani Masjid, and in this firing, Abid was injured by a police bullet. He has stated that since Abid was residing in his mohalla, he knew him.

215.15 The witness has admitted that on that day, he had gone home at around 10:00 to 10:30. He has admitted that after he went home, till the time he went to the camp, he had not gone out of his house. The witness has admitted that he had stated whatever he had seen near the Noorani Masjid and near Naroda Patiya Circle. He has admitted that his Anjuman Grahak Sahakari Bhandar was administered by Basirbhai Ismailbhai Shaikh. The witness has denied that he did not have any personal knowledge about the stock in his shop.

215.16 The witness has admitted that in his statement before the SIT, he had stated that as far as he remembers, on 28.2.2002, there was a stock of around one thousand litres of kerosene in his shop. The witness has stated that he had specifically stated one thousand litres kerosene in his statement before the SIT because they were required to maintain daily accounts of the goods which they sold at fair prices through the Government. The witness has admitted that he has not produced his daily stock register before the SIT authorities, and has voluntarily stated that it was burnt in the incident. The witness has stated that there was no tank for keeping kerosene in the Anjuman Grahak Sahakari Bhandar and has voluntarily stated that there was a barrel. The witness has admitted that they had not lodged any complaint regarding the damage caused to their Anjuman shop. He has admitted that he himself has not produced any evidence before the officers at the Collector's office and the Civil Supply Department. The witness has voluntarily stated that all the evidence was burnt; hence, it was not possible to produce it. The witness has denied the suggestion that one thousand litres of kerosene was not there in his shop and that whatever

kerosene was there, was given by him to the Muslims to attack the Hindus, to damage their properties and burn them. The witness has voluntarily stated that their mohalla was comprised of Muslims, and hence, there was no question of doing so. The witness has admitted that the Hindus are also residing at Hussainnagar and has voluntarily stated that they reside on the other side towards Gangotri Society. Various questions are put to the witness with regard to maintenance of accounts of the fair price shop, etc. The witness is also cross-examined with regard to the topography of the area. The witness has denied that sufficient space is not available for keeping forty give goats in front of his shop. He has stated that when he saw his goats being taken away, it was at a distance of about a hundred feet from his shop. He has admitted that the mob which came to take the goats was comprised of around one thousand to one thousand five hundred people. He has admitted that this mob had directly entered the chawls and has voluntarily stated that after entering, the mob was burning shops and houses. The witness has admitted that he does not know as to from where the mob had come, but had subsequently stated that the mob had come from the direction of Natraj.

215.17 The witness has admitted that when the mob was committing arson and advancing, he was at home. He has denied that after he went away, the goats were taken away. The witness has voluntarily stated that he was standing there when they took his goats away. He has stated that while taking away the goats, some of them pulled the goats by their ears while some lifted them and took them away.

215.18 The witness has denied that since five years prior to the incident Suresh Langda was doing the work of cutting mutton in his shop and that his one year's pay was outstanding, and time and again he was asking for his pay, and hence, with a view to see that he does not have to pay him such amount, he had given his name in this case in the year 2008. The witness has voluntarily stated that Suresh was never serving with him and that he never had any need for employing anyone.

215.19 The witness has stated that he had not made any application to the SIT for recording his statement and that he had not received any summons from the SIT. The witness has voluntarily stated that Basirbhai of Anjuman Grahak Sahakari Bhandar may have made an application and hence, his statement may have been recorded. The witness has admitted that his statement was recorded at a madressa in Jawannagar.

215.20 The witness is re-examined to bring on record the fact that Basirbhai who is the Secretary of Anjuman Grahak Sahakari Bhandar had passed away.

215.21 To prove the omissions and contradictions in the witness's statement dated 27.6.2008, the defence has cross-examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who, in his cross-examination has admitted that he has recorded the statement of this witness on 27.6.2008. The contents of paragraph 18 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that, therefore Muslims had also gathered and since stones were being pelted at the masjid, to

protect the masjid, the Muslim mob had also pelted stones at the Hindu mob. At this time, the mobs belonging to the Hindi and Muslim communities came against each other. The Investigating Officer has admitted that the witness has not stated such facts in the statement recorded by him. The contents of paragraph 9 of the examination-in-chief are read over to the Investigating Officer, wherein the witness has stated that Suresh Langdo was leading the mob and was taking away the goats. He was himself watching but he did not have the courage to stop him. The Investigating Officer has denied that the witness has not stated such facts in the statement recorded by him. He has stated that the witness has stated before him that forty five goats had been looted. Moreover, after stating this, the witness had stated that on the day of the incident in the Hindu mob, which had resorted to vandalism and arson, Suresh Langdo Chhara had played a leading role.

215.22 SUBMISSIONS: The learned counsel for the appellants submitted that no statement of this witness was recorded by the police. It was submitted that this witness in paragraphs 8 and 9 of his deposition has named Suresh Chhara (A-22); however no criminal complicity in taking away any goat, out of forty five goats can be attributed to Suresh. It was pointed out that the facts stated in paragraph 9 of his examination-in-chief, have not been stated by the witness in his sole statement before the SIT.

215.23 Referring to paragraph 35 of his cross-examination, it was submitted that even according to this witness different people had taken away different goods. It was submitted that

the evidence of this witness is therefore, not credible and trustworthy and it does not come to the aid of the prosecution to support the charge against the accused.

215.24 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has deposed that Abid had sustained bullet injury and thereafter he went to his house and stayed there. No contradiction has been brought out in respect of the version given by the witness. It was submitted that no major contradiction has been brought out in the cross examination of this witness and there is no omission in respect of taking away goats and the only omission is qua Suresh Langdo, however, he has been identified. Therefore, the offence under sections 379 and 380 of the Penal Code is clearly made out against the accused.

215.25 ANALYSIS: The statement of this witness came to be recorded for the first time in the year 2008 by the SIT, more than six years after the incident. As per the testimony of this witness, forty five goats belonging to him were there in the open space in front of his shop and the mob took away his goats and that Suresh Langdo (A-22) was leading the mob which was taking away his goats. In his statement recorded by the SIT, the witness had attributed a different role to Suresh Langdo than that attributed in his testimony before the court. Considering the fact that the statement of this witness has been recorded for the first time after a period of more than six years after the incident, and in this testimony before the court, there are contradictions and discrepancies even qua such statement, it would be hazardous to place reliance upon the testimony of this witness for proving the charge against the

accused. It may be pertinent to note that the learned Special Public Prosecutor has submitted that the offence under sections 379 and 380 of the Penal Code which relate to punishment for theft and theft from dwelling house etc., has been clearly made out against the accused. It appears that the learned Special Public Prosecutor has lost sight of the fact that there is no charge under sections 379 and 380 of the Penal Code against any accused.

216. PW-240 Mahammadkhurshid Mahammadnasim Shaikh, aged 30 years, has been examined at Exhibit-1679. The witness has deposed that he knows Gujarati to a certain extent, but is more conversant with Hindi and hence, will give his deposition in Hindi.

216.1 The witness has deposed that he has studied in Hindi medium till the 8th standard. His native place is *Faizabad District, Uttar Pradesh*.

216.2 The incident took place on 28.2.2002. He was residing in *Lane No.2, Jawannagar* in the year 2002. He did not have any house number or room number and they used to simply write *Lane No.2, Jawannagar*.

216.3 During the period of incident, he used to reside with his wife Shabnam as a tenant, on a monthly rent of Rs.600/-. At the relevant time, he used to do embroidery work at Bapunagar.

216.4 At the time of the incident, his father used to reside at Hukamsing-ni-Chali. Eight months prior to the incident, he

had got married. His service hours were from 8:00 in the morning to 8:00 in the evening.

216.5 On the day of the incident, there was a call for Gujarat bandh. He and his wife were at home on that day. On account of the bandh call, he was not required to go for his job on that day. In the morning at around 8:30 to 9:00, from the open ground as well as Hussainnagar, the mobs started coming. At this time, they were at home and they remained at home. The mobs were shouting, however, they stayed hidden in their house.

216.6 There is a wall of Jawannagar behind which there is an open ground. At around 2:30 in the afternoon, the people in the mob who were Hindus started breaking that wall. The mob broke the wall and thereafter, the people in the mob started entering inside their houses. They were damaging their houses and setting them on fire. Out of fear that the people in the mob would also enter their house, with a view to save their lives, he and his wife locked their house and went away. Both of them went from one lane to other and kept on roaming around to safeguard their lives.

216.7 At around 5 to 6 o'clock, they had gone towards Gangotri Society. The mob was after them. The people in the mob had swords, pipes, sticks, kerosene cans, etc., in their hands. Upon trying to flee, the people in the mob had caught hold of his wife Shabnambanu. He was nearby. He saw that the people in the mob had inflicted blows with swords on his wife and wounded her. Thereafter, they had sprinkled kerosene or petrol on his wife and set her ablaze. He was terrified.

216.8 In the incident, he was injured on the back with a stone and on the heel of his left leg with a glass. Due to all this, out of fear he escaped with his life and reached a terrace of Gangotri Society. His wife died on the spot in the incident.

216.9 He stayed on the terrace till 11:30 to 12:00 at night, whereafter, upon the arrival of the police vehicle he sat in the vehicle and went to the Shah Alam camp. He stayed at the camp for three to four months. From the camp, the police had taken him to draw a panchnama of his house. In the incident, his house was damaged and all the household articles and goods were looted. He had sustained a loss of around fifteen to twenty thousand rupees. He had availed of treatment for the injuries sustained by him at Shah Alam camp.

216.10 The police had recorded his statement regarding the incident. The witness has stated that he does not know the people who had injured his wife with swords and set her on fire. However, he can identify them if they come in front of him.

216.11 CROSS-EXAMINATION: In the cross-examination of this witness, he has admitted that when the Jawannagar wall broke, it must have been around 2:30 to 3:00 in the afternoon and not prior thereto. The witness has admitted that till the Jawannagar wall broke, the people in the mob had not come to Jawannagar. He has stated that at the time when Shabnam was killed, it must have been around 6:00 to 6:30 in the evening. The witness has admitted that she must not have been killed prior thereto.

216.12 The witness has stated that his wife Shabnam was killed in a lane of Gangotri Society. He has admitted that at that time, he was in a lane of Gangotri Society. He has denied that at the time of the incident, he was not residing at Jawannagar. He has stated that there are three lanes in Jawannagar and that he knows the people residing in his lane. The witness has denied that no attack had taken place in the lane of Jawannagar till 3:30. The witness has denied that till he was in the Jawannagar lane, no attack had taken place. The witness has clarified that stone pelting was going on.

216.13 The witness has denied that from his lane in Jawannagar, one can see the Jawannagar pit. He has stated that this compound wall is behind his house. The witness has admitted that at the relevant time, one could not see what was happening behind the compound wall from his house. The witness has denied that at the time of the incident, he was residing in Hukamsing-ni-Chali. The witness has admitted that his father's name is Mahammadnasim Shaikh Buddhu Shaikh and his mother's name is Aminabibi and his brother's name is Gulamhussain and his sisters' names are Rabiya and Raziya. At the relevant time, they were residing at Hukamsing-ni-Chali. The witness has admitted that four months prior to the incident, he had gone to reside at Jawannagar.

216.14 The witness has admitted that in his statement dated 10.5.2002, he has stated that he was residing in the above house with his wife since the last four months and was paying rent of Rs.600/-, and prior thereto, he was residing with his father in Hukamsing-ni-Chali near Teesra Kuva. In the

opinion of this court, this part of the statement of the witness only corroborates what is stated by him in paragraph 15 of his cross-examination. Therefore, the same could not have been brought on record inasmuch as a statement under section 161 of the Code can only be used for the purpose of contradicting a witness and not for corroborating anything stated by him.

216.15 The witness has admitted that there is an open ground of Jawannagar behind his chawl and that there is other ground. He has admitted that from where he was staying, one can reach Gopinathnagar Society on foot in two to three minutes. He has stated that the mobs were at both the places, namely in the Jawannagar pit as well as in Hussainnagar.

216.16 The witness has denied that on that day, he had locked his house and straightaway started running towards Gangotri and Gopinath Society. The witness has admitted that while he was fleeing, his wife was with him.

216.17 The witness has stated that on that day when he reached there, there was no mob at the corner of Gangotri Society. The mob was near Gangotri Society. The witness has admitted that he had gone from Gangotri Society towards Gopinath Society and the mob which was coming behind them, was comprised of people who were at different places like Gangotri Society, Gopinath Society, Jawannagar and Jawannagar pit and had gathered together.

216.18 The witness has stated that on that day, while going towards Gangotri Society, no one had stopped him, but they were running to save their lives from the mob and were hiding

and had reached the terrace of Gangotri Society, therefore, the question of the mob stopping them did not arise.

216.19 The witness has stated that one can go straight from Jawannagar to Gangotri and on that day also, he had directly gone there. He had gone straight from Jawannagar to the terrace of Gangotri. The witness has admitted that thereafter, it was only after the police came at night that he had climbed down. The witness has admitted that thereafter, he had not gone towards Teesra Kuva and had remained hiding on the terrace of Gangotri.

216.20 In his cross-examination, it has further come out that while he was going, there was a mob in the direction of Gopinathnagar and hence, he had turned back. He had returned and come to Gangotri Society. The witness has admitted that he had returned to Gangotri Society from the same road on which he had gone to Gopinath Society.

216.21 The witness has stated that Shabnam was with him till they reached Gangotri Society. He has denied that Shabnam had reached behind Gangotri Society and the mob had caught her there and killed her. He has admitted that he had gone ahead and Shabnam was left behind and the mob caught hold of her and killed her. The witness has admitted that when all this happened, he was further ahead. He has denied that after ten to fifteen minutes, he had come back.

216.22 The witness has stated that he has not gone further from Gopinath Society. He has admitted that from where he returned to Gopinath, there is a road going towards Teesra

Kuva. He has denied that he has not seen his wife being caught and killed. He has stated that when he was returning from Gopinath Society, at that time the mob had caught hold of his wife which he had seen. The witness has voluntarily stated that she was injured with a sword and thereafter, was burnt, which incident he had seen. However, thereafter, out of fear, he had escaped from that place. He has stated that he had not seen the mob killing anyone else at that time.

216.23 The witness has denied that he had stated that his wife was killed by a mob behind Gopinath Society and that in his sole statement dated 10.5.2002, he has stated that they were running towards Gangotri Society near their house and his wife Shabnam was also with him and he had seen that there was a mob of Hindus near Gangotri Society due to which, they were going from near Gangotri Society towards Gopinath Society and the people in the mob behind his wife Shabnam could not run together him and he had gone ahead and his wife had reached behind Gopinath Society where the people of the Hindu mob caught her and injured her with a sword, sprinkled petrol and kerosene and lit a match stick and burnt her and he was ahead. However, since the mob of people was behind him, hence he kept running further forward and his wife Shabnam was killed on the spot and he had gone on a terrace of Gangotri Society.

216.24 The witness has admitted that he himself had gone on the road from where one can go to the lane behind Gopinath Society. He has admitted that at the time when Shabnam's incident took place, it had started becoming dark. The witness has stated that after going to the terrace of

Gangotri, he was quietly sitting there. He does not know whose terrace it was. There were several other people on the terrace. The people from Gangotri Society had not come to make them get down from the terrace or to kill them. The witness has voluntarily stated that they were sitting very quietly so that no one would know.

216.25 The witness has stated that there were few Muslims on the terrace where he was and that there was no place for getting down from this terrace from Gangotri Society to Jawannagar.

216.26 The witness has stated that at the Shah Alam camp, he had narrated the facts regarding Shabnam's incident to the police. The witness has admitted that the Shah Alam police had recorded his complaint about his wife Shabnam having died. The witness has admitted that he had not shown the place where Shabnam's incident had taken place. The witness has voluntarily stated that the police had not taken them there, and hence, he had not shown the place. The witness has stated that there is no other witness with him regarding Shabnam's incident. The witness has denied that he had not seen the incident and was falsely deposing before the court.

216.27 To bring out the omissions and contradictions in the testimony of this witness as to his statement dated 10.5.2002, the defence has cross-examined PW-278 Shri R.B. Joshi, the assignee officer, who, in his cross-examination has admitted that he had recorded the statement of this witness on 10.5.2002. The assignee officer has admitted that this witness in the statement recorded by him has stated that they were

running towards Gangotri Society, which is situated near their house and his wife Shabnambanu was also with him and they saw that a mob of Hindus was near Gangotri Society, due to which, they were going to Gopinath Society near Gangotri Society and the people in the mob behind themhis wife Shabnambanu could not run with him and he had gone further ahead and when his wife reached behind Gopinath Society, the Hindu mob caught her there and assaulted his wife with sword and injured her and sprinkled kerosene / petrol and set her ablaze and that he was ahead but the people in the mob were behind him, and hence, he went on running and his wife Shabnambanu was killed on the spot and he had gone on the terrace of Gangotri Society.

216.28 Once again from the cross-examination of the Investigating Officer, it is evident that through the process of cross-examination, it is only the contents of statement under section 161 of the Code recorded by him that are brought on record, without seeking to contradict any part of his examination-in-chief.

216.29 ANALYSIS: This witness has deposed that at round 2:30 in the afternoon the mobs had broken the Jawannagar wall and had started entering the chawls and ransacking them and setting them ablaze and fearing that the mob would also enter his house, he had his wife locked their house and fled to save their lives. They went around in the lanes fleeing for their lives. At around 5:00 to 6:00 in the evening, they went towards Gangotri Society and the mob chased them. The people in the mob were armed with weapons and had cans of kerosene, etc. While they were fleeing, the mob caught hold of his wife and

inflicted blows on her with a sword and caused injuries to her and then sprinkled either kerosene or petrol on her and set her ablaze. He was terrified and escaped with his life to a terrace of Gangotri Society. His wife died in the incident. This witness has specifically stated that he does not know any of the people who injured his wife and set her ablaze but can identify them if he sees them. The testimony of this witness is not challenged in his cross-examination and hence, the version given by him in his examination-in-chief is required to be accepted.

217. **PW-241 Bipin Jayantilal Mehta**, aged 57 years, has been examined at Exhibit-1681. The witness has deposed that on 28.2.2002, he was discharging duties at the police table of V.S. Hospital. Constable Bhikhaji Maknaji, ASI was also discharging duties at V.S. Hospital in the next shift. Bhikhaji being his co-employee, he is conversant with his handwritings.

217.1 The witness has deposed that at the police table at the V.S. Hospital, the main work which they are required to do is to write the vardhies of the injured. These vardhies are written under instructions of the doctors and they inform the concerned police station about the facts of the vardhies. At the police table, they maintain a register of the action taken by them. All the details of the vardhies are written in the register.

217.2 The witness has deposed that he has brought with him the Vardhi Register of the V.S. Hospital which starts from 9.1.2002 to 1.3.2002.

217.3 The witness has deposed that Bhikhaji is dead at present. The witness has proved the vardhy recorded by

Bhikhaji at internal page 128, which is in relation to one Mahammadkhalid Saiyadali, resident of Saijpur Bodha Patiya, Noorani Masjid, who has stated that on 28.2.2002, the riotous mob, when he was at home, he was injured on the stomach with a bullet and had been brought for treatment. This vardhy was received at night at 1:40 hours.

217.4 The witness has also proved the other vardhies recorded in the register relating to one Shakina Babubhai Bhatti, Razak Babubhai Bhatti, Mahammadhussain Kaiyumhammad Shaikh, Zarinabanu Naeemuddin, Shabinabanu Maheboobbhai, which are all in the handwritings of ASI Bhikhaji. The witness has thereafter proved the vardhies in relation to the patients being Maheboob Khurshid, Yasin Abdulmajid, Ahemad Badshah, Pirmahammad Allabax, Madina Arifbhai, Kulsum Ibrahimbhai, Farhinbanu Salambhai, Babul Maheboobbhai. The vardhies have been exhibited as Exhibits-1682, 1683 and 1684.

218. **PW-242 Mahammadsalim Ahemadbhai Shaikh**, aged 35 years, has been examined at Exhibit-1690. The witness has deposed that he can understand Gujarati. However, he will depose in Hindi as he finds it more convenient. He has studied in Gujarati up to the 5th standard.

218.1 He had come to reside at Hussainnagar only one year prior to the incident. The incident took place on 28.2.2002. At that time, there were riots. At the time of the incident, he, his wife Samirabanu, his son Aliabbas, all three of them were residing together. At that time, he used to do tailoring work. His wife was pregnant at that time.

218.2 On the day of the incident, there was a call for Gujarat Bandh, he was at home.

218.3 In the morning at around 9:00 to 9:30, he was at home when sounds came from outside. People were saying that the mobs have come outside. Therefore, he came out of his house and went to the entrance of *Kumbhaji-ni-Chali*. *Kumbhaji-ni-Chali* is situated opposite the S.T. Workshop compound wall near the neem tree. He went there and stood there.

218.4 He saw that there was a mob near the S.T. Workshop. There was a mob on the side of Krushnanagar also. The mob from the S.T. Workshop went towards the Noorani Masjid and started damaging the masjid and setting it on fire. Thereafter, the riots escalated. Thereafter, the police released tear gas at the Muslims and resorted to firing at them. In the firing, his paternal uncle Abidali was injured on his private parts with a bullet. Upon the bullet injuring him, around four boys from the chawl lifted his uncle and took him near Jadikhala's house. His uncle died on the spot.

218.5 Thereafter, after leaving his uncle, he went to Jawannagar to search for his family members. He found his family members at Jawannagar and all of them sat there for two to three hours.

218.6 Thereafter, at around 4 o'clock in the evening, he went towards his house. He was going back to *Khumbhaji-ni-Chali* with his entire family. At that time, a mob was standing

in the Jawannagar pit. In the mob, there were many people. Suresh Langdo (A-22), Haresh Chhara (A-10) and Guddu Chhara were in the mob. These three persons had weapons like rods and swords in their hands. However, he does not know exactly as to who was holding which weapon.

218.7 While he and his family were going towards *Kumbhaji-ni-Chali*, two youths from this mob came after them with swords in their hands. He took his wife and ran towards Jawannagar. At this time, his wife fell down and sustained a slight injury on her stomach. From there, he went straight to Gangotri Society.

218.8 At Gangotri Society, he had stayed on a terrace. His wife and his son were also with him. He was injured by a stone thrown by the mob in the Jawannagar pit. The injury was not serious, but he was injured. While they were on the terrace of Gangotri Society, at around 12 o'clock at night, a police vehicle had come to take them to the Shah Alam camp.

218.9 They stayed at the Shah Alam camp for about three months. He and his wife had taken treatment in connection with the injuries sustained by them at the camp. His wife had gone for her delivery to his in-law's house. His in-law's used stay at Solapur, Maharashtra. His native place is Ratnagiri, Maharashtra. After staying at the camp for about three months, he had gone to Solapur.

218.10 After three months, he came to know that his house was looted. Nothing was left in his house. He had sustained loss of approximately rupees two to two and a half lakh in the

incident.

218.11 In connection with the incident, the SIT had recorded his statement in the year 2008.

218.12 The witness has deposed that he had seen Guddu Chhara, Suresh Langda and Haresh Chhara in the mob in the Jawannagar pit and that he can identify all of them. He has learnt that Guddu Chhara has passed away. Thereafter, the witness has identified Suresh Langda (A-22) correctly. The witness has stated that he cannot see Haresh Chhara in the court, though Haresh Chhara (A-10) was present before the court. Therefore, the witness has failed to identify the said accused.

218.13 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that when he came to the corner of Kumbhaji-ni-Chali, there was no mob on the road. The mob was on the outer side. When he came out, the people had informed him that there were disturbances outside. When he came to the corner of Kumbhaji-ni-Chali, at that time he came to know about the mob. The witness has stated that after coming to the corner of Kumbhaji-ni-Chali, he has not stated as to whether he himself had seen the mob or whether somebody had told him that there was a mob. The witness has admitted that when he was at home, he had not informed anyone about the mob.

218.14 In the cross-examination of this witness, it has come out that when he left his house and came out, at that time, the Muslims from the lane had not gathered outside. At that time,

he did not meet any Muslim from his lane. The witness has voluntarily stated that the people were running helter skelter and therefore, there was no question of meeting each other. The witness has stated that he had not asked the people who were running as to why they were running. The people in the chawl were shouting that "the mobs are coming, mobs are coming". The witness has denied that when he reached, there was cross stone pelting and has voluntarily stated that the stones were being pelted only from the opposite side. The stones were being pelted from the side of the S.T. Workshop and the Noorani Masjid. The witness has admitted that he cannot say as to how long he had stayed there. He has stated that he had moved away from Kumbhaji-ni-Chali at around 12:00 to 12:30. When he was standing at the corner of Kumbhaji-ni-Chali, nobody had pelted any stones at him.

218.15 The witness has stated that he had not seen any movement of vehicles on the national highway on the day of the incident and has voluntarily stated that the road was packed with the mob. The witness has stated that while he was standing at the corner of Kumbhaji-ni-Chali, from 9:00 to 9:30 in the morning till 12:00 to 12:30 in the afternoon, he had not seen anybody causing any damage to any vehicle or any property. The witness has voluntarily stated that he had seen the masjid being destroyed.

218.16 The witness has stated that while he was standing there, he had not seen Hindu mobs entering their chawls. They were standing outside. The witness has stated that he does not remember as to with how many stones he was hit while he was standing there. He was injured by stones on his hand and leg.

Where he was standing, there were around fifty to sixty people belonging to the Muslim community.

218.17 The witness has stated that when his uncle was injured by a bullet, at that time it must have been around 12:30 in the afternoon. When he was injured by a bullet, his uncle was on the road. He was slightly behind him at the corner of Kumbhaji-ni-Chali.

218.18 The witness has stated that Jadikhala's house is in Hussainnagar Lane No.3. He knows Jadikhala. She was his grandmother. Jadikhala's house was in Lane No.3 of Hussainnagar after leaving approximately ten houses. The witness has denied that after leaving his uncle at Jadikhala's house, he had gone home. He had not gone home for the reason that his family members were not at home. When he came home, everyone's house was vacant, and hence, he came to know that his family is also not at home. Nobody had informed him as to where his wife and child were. He had gone to stay at Hussainnagar one year prior to the incident and his parents were residing in Hukamsing-ni-Chali and his grandparents were also residing there. The witness has stated that since he had separated, he was residing with his wife and child at Hussainnagar. The witness has stated that he does not know anyone at Jawannagar and that his wife and child were standing with others at one corner in Jawannagar.

218.19 The witness is cross-examined with regard to the topography of the area and the nature of population of Jawannagar, etc. In the cross-examination of the witness, it has come out that he started going home at about 4:00 to 4:30 in

the evening. When he set off to go home, no one was with him. The witness has stated that while he was trying to return home, he had not seen any mob on the road. The mob was in the Jawannagar pit. He had seen the mob in the Jawannagar pit from the place behind the toilets. At that time, there were many people in the pit. He has admitted that there were so many people there and that there was no space in the pit.

218.20 The contents of paragraph 7 of the examination-in-chief of the witness from the third line to the fourth, wherein the witness has stated that at that time, there was also a mob in the Jawannagar pit, are read over to the witness and he has denied that he has not stated these facts in the statement recorded by the SIT. The witness has denied that in his examination-in-chief, he has stated that the S.T. Workshop mob had gone towards the Noorani Masjid, wherein he has stated that the entire S.T. Workshop mob had gone to the Noorani Masjid. The witness has voluntarily stated that half the mob had gone and the other half of the mob had remained near the S.T. Workshop.

218.21 The witness has admitted that in his statement dated 2.7.2008 recorded by the SIT, he had stated that the Hindu mob had pelted stones due to which the Muslims had also pelted stones. The witness has voluntarily stated that what he means to say is that when there was stone pelting at the Noorani Masjid, to protect it, several Muslims had pelted stones. The witness has denied that on the day of the incident, he was not at the site of the incident, he was not at the corner of Jawannagar and was not in the mob, and hence, he could not give anyone's name and therefore, he has given his

statement in the year 2008, wherein he has falsely named the three accused at the instance of somebody else.

218.22 To bring out the omissions and contradictions in the testimony of this witness, the defence has cross examined PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), who, in his cross-examination, has admitted that he has recorded the statement of this witness on 2.7.2008. Certain extracts of paragraph 7 of the examination-in-chief are read over to the Investigating Officer, wherein the witness has stated that at this time a mob was standing in the Jawannagar pit. The Investigating Officer has admitted that the witness has not stated these facts in those words, but had stated that he had seen these three persons in the mob.

218.23 SUBMISSIONS: The learned counsel for the appellants submitted that no statement of this witness has been recorded by the police and for the first time, he has come up with those allegations in the statement recorded by the SIT on 2.7.2008. It was submitted that this witness in paragraph 7 of his deposition, says that at about 4:00 p.m., while he was taking his family back to Kumbhaji-ni-Chali after he found his family members at Jawannagar, he saw a mob in Jawannagar khada, in which he could notice the presence of accused No.10, accused No.22 and Guddu with some weapons. It was submitted that this is not possible for two reasons. Firstly, if at 4:00 p.m. after he found his family members in Jawannagar and if he was coming back home to Kumbhaji-ni-Chali, he would not have to pass through the Jawannagar pit at all; and secondly, if such a big crowd had gathered in the Jawannagar pit, which according to him was a huge crowd, if they were

seen by the mob, they would have been chased and would not have escaped without any injury.

218.24 Referring to paragraph 9 of his examination-in-chief, it was submitted that the witness has created a story to give a natural colour to the incident. It was submitted that the witness had no reason to go to Kumbhaji-ni-Chali as he was residing in Hussainnagar. As regards having seen the mob in the khada, the witness says this for the first time before the court, which omission has been brought on record through the testimony of the Investigating Officer. It was submitted that the very fact that the witness could not identify accused No.10 whom he has named while he was so hurriedly looking at the mob and identifying him, is a clear indication that he has come up with a false story, taking advantage of the further investigation made by the SIT to come forward after six and a half years and implicate somebody. It was submitted that therefore, in paragraph 46 of his cross-examination, the witness has very cleverly stated that while he was in the camp for three months, he had not seen any police having come there, which is completely contrary to the evidence on record. It was submitted that moreover, this witness has referred to Abid having sustained injury at 12 o'clock in the afternoon. It was submitted that this witness is not a credible and trustworthy witness and cannot be relied upon.

218.25 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is a truthful witness who has stuck to his stand and is believable. Referring to paragraph 7 of his deposition, it was submitted that the witness has seen accused No.22 and accused No.10 at the

Jawannagar khada at 4:00 p.m. It was submitted that this witness is a truthful witness who has stated whatever he had seen. There is no other contradiction proved in the testimony of this witness and therefore, the presence of accused No.22 is proved beyond reasonable doubt.

218.26 ANALYSIS: From the testimony of this witness, it emerges that his statement was not recorded at the relevant time when the incident took place and for the first time after more than six years, his statement came to be recorded by the SIT, wherein he has implicated accused No.22 Suresh Chhara, accused N0.10 Hareh Chhara and Guddu Chhara (deceased). As per the version given by this witness, he was residing at Hussainnagar. At 9:00 to 9:30 he heard sounds from outside and went to the corner of Kumbhaji-ni-Chali to see what was going on. He stood there and saw mobs coming and the riots escalating and the police releasing tear gas at the Muslims and resorting to firing wherein his uncle Abidali was injured on his private parts by a bullet. The witness says that he and four to five other youths lifted him and took him to Jadikhala's house. Thereafter he went to Jawannagar, in search of his family members and he found them there. He took his entire family and started coming towards Kumbhaji-ni-Chali at around 4 o'clock. It may be noted that Kumbhaji-ni-Chali is the first chawl when one enters from the national highway. The houses in the chawls towards the highway had been damaged first in point, and hence, there would be no question of anyone coming from Jawannagar to Kumbhaji-ni-Chali. While all the other witnesses say that upon the mobs coming, they fled towards the rear side towards Jawannagar and Gangotri, this witness says that he was coming with his family towards the

front side. The witness claims that at this time he saw a mob in the Jawannagar pit wherein he saw the three accused who were armed with weapons. According to this witness while they were going to Kumbhaji-ni-Chali, two youths chased them with swords in their hands, due to which he and his wife fled towards Jawannagar and at that time his wife fell down and sustained minor injuries. In the opinion of this court, if two youths were chasing the witness and his pregnant wife and his wife had fallen down, she could not have escaped from the persons who were chasing them. The witness says that thereafter, they went to a terrace of Gangotri Society. Considering the version given by the witness, the court finds force in the submission advanced by the learned counsel for the appellants that the witness had no reason to go to Kumbhaji-ni-Chali at that time, inasmuch as he was a resident of Hussainnagar and considering the situation on that day, there would be no reason for him to go to Kumbhaji-ni-Chali at that time of the day.

218.27 There are several other material discrepancies in the testimony of this witness, inasmuch as he says that the incident of Abid took place at around 12:30 in the afternoon, which is contrary to the version given by a majority of the witnesses. Considering the overall testimony of this witness, he does not come across as a credible and trustworthy witness. Besides, the version given by the witness has come for the first time after a period of six years from the date of the incident. Therefore, also it would be very risky to rely upon such evidence. The evidence of this witness, therefore, would not assist the prosecution in establishing the charge against the named accused.

219. **PW-243 Sabbirali Niwasali Ansari**, aged 38 years, has been examined at Exhibit-1694. The witness has deposed that he can understand Gujarati to a limited extent. He has studied in Gujarati up to the 4th standard, but he finds it more convenient to speak in Hindi and will, therefore, depose in Hindi. His native place is Basti, District: Uttar Pradesh.

219.1 In the year 2002, he was residing at *Jigarhasan-ni-Chali, Behind Noorani Masjid, Naroda Patiya* and has been residing there since the last thirty five years.

219.2 The incident took place on 28.2.2002. At the time of the incident, his two brothers, his mother, his wife and three sons, were all residing together. In the year 2002, he used to ply a rickshaw of his ownership.

219.3 On 27.2.2002, in the evening, while he was driving his rickshaw, he came to know that a train had been set on fire at Godhra. He continued to ply his rickshaw and had returned home via Ashok Mill and Krushnanagar.

219.4 At this time, on 27.2.2002, at around 9:00 to 9:30 at night he had seen a mob at Krushnanagar. The situation was bad. Thereafter, he came home and went to sleep.

219.5 On 28.2.2002, in the morning, he woke up and came to Milan Hotel, near the Noorani Masjid to have tea. Upon going there, he came to know that there was a call for Gujarat Bandh. There were four to five other people from their mohalla who had come to have tea at the tea hotel.

219.6 In the morning, at about 7:00 to 7:15, Shri Mysorewala, who was the Police Inspector of Naroda Police Station, had come to the Noorani Masjid. At this time, other persons had gone to show Juni Masjid which is situated behind the Noorani Masjid, to Shri Mysorewala because Shri Mysorewala had asked them about Juni Masjid. Shri Mysorewala saw Juni Masjid and then returned.

219.7 After coming back, Shri Mysorewala went towards Natraj Hotel. A mob started slowly gathering near Natraj Hotel. The mob was comprised of Hindus. The people in the mob started slowly advancing towards their Noorani Masjid. The people in the mob had weapons like sticks, swords, dharias, etc., in their hands, and were shouting slogans of Jay Shri Ram and were committing loot and causing damage.

219.8 In this mob, he had seen Suresh Langda, Jaybhavani and Guddu Chhara. Moreover, there was another mob coming from Krushnanagar. In this mob, he had seen Bipin Panchal. At this time, Bipin Panchal had something like a revolver with him. The police was with the mob. The mob from Krushnanagar also came towards the Noorani Masjid. The people in the mob were pelting stones at the Muslims.

219.9 Thereafter, the police released tear gas and resorted to firing against their community. In this firing, a person named Abid was killed. Abid who was injured with a bullet, was on the side of the S.T. Workshop. At this time, the police also had resorted to firing from the direction of Krushnanagar, wherein a boy belonging to the Muslim

community had died.

219.10 He saw all this. Thereafter, upon all this happening, at around 11 o'clock in the morning, they returned to their mohalla. With a view to see that the mob does not enter their chawls behind the Noorani Masjid, they put wood and plastic, etc., in the lanes and set them on fire and created obstacles to prevent the mob from entering inside. Thereafter, they went to their mohalla. On the next day, upon the police vehicle coming, they sat in that vehicle and came to the Shah Alam camp. They had stayed at the Shah Alam camp for six months.

219.11 He had parked his rickshaw where there was a parking place next to Bipin Auto Centre.

219.12 During this incident, his house had been set on fire. They learnt about this fact at the camp. When he was at the camp, the police had recorded his statement.

219.13 In 2008, the SIT had recorded his statement regarding the incident.

219.14 The witness has deposed that he knows that Suresh Langdo, Bipin Panchal, Guddu and Bhavani, who were in the mob. At present, Guddu and Bhavani are dead. The witness has thereafter identified Suresh Langdo (A-22) correctly. However, he has identified accused No.17 as accused No.44 Bipin Panchal. Thus, the witness has not been able to identify accused No.44 Bipin Panchal correctly. The court has made a note below that accused No.44 Bipin Panchal is present in the court and that he had removed the spectacles which he

routinely wears and after the witness had identified the wrong accused, he was laughing a lot.

219.15 CROSS-EXAMINATION: In his cross-examination, the witness is sought to be confronted with his statement dated 13.5.2002 to the effect that he had stated therein that he had gone to have tea near the Noorani Masjid at around 9:30 in the morning and then it appeared that a mob of people were coming towards their chawl from the direction of Naroda Patiya, and hence, he went from there to his chawl and they had tried to put up obstacles to see that the mobs do not enter into their chawls. The witness is further confronted with his statement dated 13.5.2002 recorded by the police to the effect that he had stated that he does not know any person in the mob. The witness has denied that he had not given the names of the accused whom he has referred to in his examination-chief and identified before the court, in his statement recorded at the camp and has ultimately, stated that they used to give the names but the police were not writing them down.

219.16 In his cross-examination, it has further come out that he came to know that the police had not recorded the facts, as stated by him, when he went to get a copy of the panchnama that he needed, as the people who were sitting at the camp had asked for it as his house had been burnt. In his cross-examination, it has further come out that he was not read over his statement which was recorded at the camp. He, however, has admitted that he got a copy of his statement and he had taken it and gone to meet the people at the camp, who told him that the names of the accused were not written down in the statement. From the note below the statement of the

witness, it appears that the witness was replying the questions put to him in his cross-examination without understanding the same and hence, the court had impressed upon him to first understand the question and then give a reply.

219.17 The witness has admitted that the police had recorded two statements of his, one at the time of carrying out survey and the second in the camp. In his cross-examination, it has further come out that he had made an application to the SIT on his own and that the facts stated therein are correct and that he is aware of the facts stated therein. The application is exhibited as Exhibit-1695. The witness has stated that in his examination-in-chief he had stated that his statement was recorded by the police at the Shah Alam camp, whereas in his application Exhibit-1695, he had stated that the police had not recorded his statement, that upon being asked which fact is correct, he has stated that the police has not recorded his statement at the camp.

219.18 In his cross-examination, the witness was confronted with his statement recorded by the SIT to the effect that he had stated before the SIT that he had gone to the hotel at 11 o'clock in the morning. The witness, however, has stated that the SIT has committed a mistake in recording the time and that while he had stated that he had gone to the hotel at 7 o'clock in the morning, the SIT had wrongly recorded the same as 11 o'clock. The witness has admitted that from 7 o'clock to 9 o'clock in the morning, he was at Milan Hotel.

219.19 The witness has been cross-examined with regard to the topography of the area. The witness has admitted that

in his statement before the SIT he has not stated that after returning, Shri Mysorewala had gone towards Natraj Hotel. The witness has admitted that when they put obstacles, the mob had started pelting stones at the Noorani Masjid. He has further admitted that both sides of the road were jam-packed and there was no space to walk. The witness has admitted that he did not have any relations with the accused whom he has named in his examination-in-chief and identified before the court. He, however, has denied that he was falsely deposing before the court at the instance of his community.

219.20 To prove the omissions and contradictions as to his previous statement recorded by the investigating agencies brought out in the testimony of this witness, the defence has cross-examined the concerned assignee officer and or Investigating Officer who had recorded such statement.

219.21 PW-292 R. C. Pathak, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 13.5.2002. The assignee officer has admitted that this witness had stated that he had gone near the Noorani Masjid to have tea at around 9:30 in the morning. At that time, it appeared that a mob of people was coming from Naroda Patiya towards their chawl, due to which, he went away from there to his chawls and to prevent the mob from entering inside, created obstacles in their chawls and the mobs tried to come inside the chawls, but could not come in. Thereafter, on 18.3.2002, the police from Shah Alam came and said that there is a police point there, whoever wants to go and see their house, should go, and hence, he had gone. Certain parts of the statement of the witness were put to the assignee

officer, wherein the witness has referred to the damage sustained by him and has stated that he does not know any person in the mob and could not identify anyone and he does not want to say anything more. The assignee officer has admitted that the witness had not given the name of any accused before him. The assignee officer has admitted that when he went to record the statement of this witness, the Investigating Officer had not given him any complaint which the witness had made.

219.22 The contents of paragraphs 4, 5 as well as 7 to 10 and 12 of the examination-in-chief are read over to the assignee officer, who has admitted that such facts are not stated by the witness in the statement recorded by him. The contents of paragraph 6 of his examination-in-chief, wherein the witness has stated that four to five other people from their mohalla had also come to have tea; as well as the contents of paragraph 11 of the examination-in-chief of the witness have been read over to the assignee officer, wherein the witness has stated that he saw all this and thereafter, at around 11 o'clock, upon all this happening, he returned to his mohalla. The assignee officer has admitted that this witness has not stated such facts in the statement recorded by him.

219.23 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 4.6.2008. Certain extracts of the statement of the witness have been read over to him, and he has admitted that this witness had stated such facts before him.

219.24 SUBMISSIONS: Mr. Y.S. Lakhani, learned counsel for the appellants submitted that this witness has involved four persons, out of whom, Jaybhavani and Guddu have passed away. It was submitted that the witness claims to have seen accused No.22 Suresh in the morning mob at Natraj Hotel, but he has not named him in his police statement dated 13.5.2002. He is named for the first time on 4.6.2008 before the SIT. It was submitted that as regards accused No.44 Bipin, the witness has stated that he saw him in the mob coming from Krushnanagar and has alleged that he was having something like a revolver with him. It was submitted that the name of the accused and the weapon held by him has not been mentioned in his statement dated 13.5.2002, and for the first time before the SIT, he has named him. It was submitted that this accused has not even been identified before the court and instead accused No.17 has been identified in his place. It was submitted that in paragraph 13 of his deposition, the witness has stated that his statement was recorded by the police at the camp; however, he says that the contents of his application where he has stated that his statement was not recorded by the police are correct. Therefore, out of the two versions, he was specifically asked as to which fact is correct and he stated that his statement was not recorded by the police and what he had stated in the application was correct. Therefore, in paragraph 61 a specific suggestion is made. On a conjoint reading of paragraphs 13 and 35 of his deposition, it is very clear that he made such averments to the SIT in his application Exhibit-1695 that his statement is not recorded so that he can give a statement before the SIT and bring in these four accused persons for the first time.

219.25 Referring to the contents of paragraph 62 of his deposition, it was submitted that the witness has no relations with the accused and yet he has named accused No.22 and 44 before the SIT, though he had no acquaintance with them.

219.26 Referring to the contents of paragraph 10 of his deposition, it was submitted that the witness could not have identified the accused from across the road and that no witness has stated that any one at the Noorani Masjid received bullet injuries and died. It was submitted that considering the contents of paragraph 11 read with paragraph 40 of his deposition, it is evident that this witness could not have seen anything that was happening and he could not have seen any accused as he was with them only from 7:00 to 9:00 a.m.

219.27 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the fact that this witness has not named Suresh in his police statement is no ground to discard his evidence qua the said accused. It was submitted that from the testimony of this witness, he comes across as a credible and trustworthy witness and hence, there is no reason to disbelieve the evidence of the said witness qua the named accused.

219.28 ANALYSIS: From the testimony of this witness it emerges that his statement was recorded at the relevant time on 13.5.2002, wherein he had not named any accused. Subsequently, before the SIT in the year 2008, he has disclosed the names of four accused, two of whom are dead. In his cross-examination, on the one hand he has admitted that his statement was recorded at the camp and on the other

hand, when he was confronted with his application made to the SIT wherein he had stated that his statement was not recorded by the police, he has chosen to stick to the contents of the application and stated that in that case his statement was not recorded by the police. As to the manner in which the applications came to be made and their evidentiary value has been discussed separately.

219.29 Having regard to the fact that the witness in his first available statement had not named the accused, it would be hazardous to rely upon his testimony to prove the charge against the named accused. However, one fact that is established from the testimony of this witness, in respect of which he has been consistent throughout, is that with a view to prevent the mobs from entering the chawls behind the Noorani Masjid, the witness and others had put obstacles in the lanes. Probably that is one of the reasons why hardly any casualties have been reported insofar as the chawls situated behind the Noorani Masjid are concerned.

220. **PW-244 Maiyuddin Imamuddin Shaikh**, aged 42 years, has been examined at Exhibit-1703. The witness has deposed that his native place is District Mehsana, Gujarat and he knows Gujarati well. He has done his S.S.C. in Gujarati medium.

220.1 At present, he is residing at Citizennagar with his family. The incident took place on 28.2.2002. On that day, there was a call for bandh. In the year 2002, he was residing in *Lane No.3, Hussainnagar, Naroda Patiya* with his wife and three children. The house was a rented one. The witness has

stated that he has an 8th standard pass certificate, but has studied thereafter till the 10th standard.

220.2 On the day of the incident, he was at home and had not gone to ferry passengers in his auto rickshaw. While he was at home, he could hear the sounds of commotion by the mob and the people in the chawls were running helter skelter. His wife informed him that something had happened on the road. He went on the road to look. He was standing next to the S.T. Workshop. He saw that two huge different mobs were coming from the direction of Natraj Hotel as well as Krushnanagar. The people in the mob had attacked the Noorani Masjid and were damaging it and were shouting slogans of "Jay Shri Ram".

220.3 The people in the mob had tied saffron bands on their heads and they had sharp edged weapons in their hands. They had swords, trishuls, spears, iron pipes, etc. and the people in the mob were damaging the masjid. Some of the people in the mob started pelting stones directly at them. At that time, it was around 10:15 to 10:30 in the morning.

220.4 Upon the mob pelting stones at them, his son Nasruddin, aged 7 years, was injured by a stone on his forehead and was bleeding. He was taking him towards his house, in the meanwhile, a tear gas shell struck him on the left side of his chest, and hence, he too was injured. During this period, other tear gas shells were also released which injured him on the palm of his right hand. Thereafter, he went straight home and put bandages on himself and his son.

220.5 After a little while, the mob which had pelted stones at them entered Hussainnagar. The people in the mob commenced vandalism and loot at Hussainnagar. With a view to save their families, they went towards Jawannagar. A part of the S.R.P. Quarters compound wall near Jawannagar, was broken, from which the children of their mohalla used to go to school. He requested the S.R.P. jawans at the S.R.P. Quarters to let them go inside as otherwise these people would kill them; however, they had refused to do so.

220.6 There is an open plot near the S.R.P. compound wall at Jawannagar, where several Muslims were sitting with their family members. He, with his family, went and sat there. At this time, it was around 2:00 to 2:30 in the afternoon. In the meanwhile, a huge mob rushed towards them from Uday Gas Agency.

220.7 Babu Bajrangi was leading this mob. He gestured the mob with his fingers and pointed towards them (the Muslims) due to which the mob attacked them.

220.8 At that very moment, he took his family and went to a terrace of Gangotri Society, where they hid themselves.

220.9 Before going to the terrace in this manner, when Babu Bajrangi was in the mob, some Muslim people were saying "Woh khada Babu Bajrangi" [Babu Bajrangi is standing there]. He was wearing a white kurta and a white pyjama and has tied a saffron scarf around his neck. The witness had never seen him prior to the day of the incident; however, on that day, because of the people saying so, he could recognize him.

Thereafter, they had gone to the terrace of Gangotri Society.

220.10 While they were on the terrace, they could hear the shouts of “bachao bachao” [help help] and sounds of the mob shouting “maro, kapo, looto” [kill, hack, loot]. At this time, it was around 6:30 in the evening. He stayed on the terrace of Gangotri Society till 10:30 to 11:00 at night. After 10:30 at night, they could hear sounds of bands playing on the road and people bursting fire crackers. Thereafter, the police arrived and took them in a vehicle to Shah Alam relief camp.

220.11 At the relief camp, he and his son availed of treatment for the injuries sustained by them.

220.12 At the time of the incident, he used to run a rickshaw on hire which was burnt down and all the household articles and other things in his house were looted in the incident. He had sustained loss with respect to his household goods.

220.13 He stayed at the relief camp for around six months. His statement was recorded at the relief camp. The statement was not read over to him. Thereafter, he had given an application to the SIT and his statement was also recorded there. The witness is shown his signature at the bottom of the application, mark 644/43 and he has identified his signature. He has stated that the application is in his own handwriting. The witness has stated that he knows how to read Gujarat and after reading the application, he has admitted the contents thereof. The application is exhibited as Exhibit-1704.

220.14 The witness has stated that he knows Babu Bajrangi and though a long time has elapsed, he may be able to identify him. The witness has thereafter identified accused No.47 Ramesh Keshavlal Didavala as Babu Bajrangi (A-18). Thus, the witness has not been able to correctly identify accused No.18.

220.15 CROSS-EXAMINATION: In his cross-examination, the witness has denied that he knows how to speak, read and write English properly. The witness has stated that he knows how to sign in English and read a little. Other than that, he does not know English. The witness has admitted that he has written the facts in his application Exhibit-1704 to the SIT after thoughtful consideration. The witness has stated that prior to his making the application Exhibit-1704, his complaint and statements recorded at the camp were not read over to him. The witness does not remember as to whether he has filled in any loss damage form. The witness is shown his signature on certain documents and he has admitted that such signature. The document is given Exhibit-1705. The witness has stated that he does not know whether the persons who wrote down the documents were policemen and has voluntarily stated that they were not wearing uniforms. He has stated that none of the persons who wrote down the complaints were from amongst the managers of the camp. The witness has admitted that complaints of other affected persons were also being recorded at the camp.

220.16 The witness has denied that the police had explained to him that his complaint is included in Crime Register No.176/02. The witness has stated that he does not know the person who had recorded his complaint and who had

filled in his loss damage form. The witness has denied that in his printed complaint application Exhibit-1705, against the column of names of people in the mob, he had stated Chharas and given the address Chharanagar. The witness has admitted that in the loss and damage form (Exhibit-1705), he had stated that Chharas from Chharanagar and Sindhis were involved in the looting and the Bajrang Dal people were also involved in looting. The witness has stated that he had no dispute or enmity with the officer of the SIT, who recorded his statement. He has stated that after his statement was recorded it was read over to him. The witness has voluntarily stated that he had told the SIT people that in his statement recorded at the camp in the year 2002, the police who recorded his statement had not written down what was dictated by him and that he has not stated that the statement was correct and proper and that to that extent there is a mistake in the statement recorded by the SIT. Moreover, he had stated that he had seen Babubhai Bajrangi in the open ground of Jawaharnagar and had informed the SIT about it. However, by mistake, they have not written it down.

220.17 The witness has admitted that his statement was recorded at the camp on 13.5.2002 and that his statement was not read over to him. The witness is confronted with his statement dated 13.5.2002 to the effect that his wife had woken him up at quarter to ten and told him that there was commotion outside and that he should go out. The witness has stated that the police had made a mistake in writing it down. The witness has denied that in his statement dated 13.5.2002, he has stated that there was a mob of around seven to eight thousand Hindus. The witness has stated that he has not given

the number of people in the mob, but had only stated that it was a huge mob. The witness has denied that in his statement dated 13.5.2002, he has stated that the police was releasing teargas shells at the mob and had also resorted to firing. The witness has denied that he has not stated that they had locked their house and fled and that the S.R.P. people had made them sit there. It may be noted that the witness has been confronted with his police statement without seeking to contradict any part of his evidence, which is not permissible in law.

220.18 The witness has admitted that they had stayed on the terrace where they had gone, till 10:30 at night. The witness has denied that in this very statement he has stated that while he was climbing on the terrace, he was injured by a police teargas shell on the palm of his right hand and on his chest by the another shell. The witness has denied that the police was releasing teargas and was firing to disperse the Hindu mob. He has admitted that in his statement dated 13.5.2002; he had stated that he does not know any person in this riotous Hindu mob. The witness has voluntarily stated that he knows the leader of the mob Babu Bajrangi, for the reason that people had acquainted him with such fact.

220.19 The witness is confronted with his statement dated 26.6.2002 to the effect that he had stated therein that on 28.2.2002 there was a bandh call in the context of Godhra train incident and that on that day, at around 9:30 to 10:00, a mob of around ten to fifteen thousand Hindus came shouting "kill" "cut" due to which, out of fear, they locked their house and went and hide on the terrace of Gangotri Society, which is situated on the rear side. On 1.3.2002 at about 1:30 at night,

upon the police vans coming... The witness has voluntarily stated that he had stated the facts stated by him in his examination-in-chief.

220.20 The witness is confronted with his statement dated 26.6.2002, to the effect that he has stated therein that no person in his family had sustained any loss of life and that he does not know any person in the Hindu mob and does not know their addresses. The witness has voluntarily stated he had clearly stated that he knew Babu Bajrangi, who was leading the mob, on account of people saying so.

220.21 The witness is confronted with his statements dated 13.5.2002 and 26.6.2002 to the effect that, in both the statements, he has not stated the facts stated by him in paragraph 4 to 13 of his examination-in-chief. The witness has further denied that he has not stated such facts in his printed complaint Exhibit-1705. The witness has admitted that when he reached the S.R.P. camp compound wall it must have been around 2:30 in the afternoon. They had remained in the Jawannagar open ground. The witness has stated that they were sitting at a place where on one side there is the S.T. Workshop compound wall and on the other side there is the compound wall of the S.R.P. Quarters and that they were sitting in the open ground in between them. The witness has denied that between the two, there is no wall of the pit. The witness is stated that he does not know as to whether the open ground where he was, is called the Jawannagar Khada. The witness has stated that he had newly come to reside in that area. The witness has admitted that from where he was sitting he could clearly see that Uday Gas Agency road. The witness

has voluntarily stated that there is wall across Jawannagar and that they were sitting behind such wall and from there they cannot see the road. The witness has admitted that from where they were sitting, they could not see Uday Gas Agency road. The witness has admitted that while they were sitting near the wall after some time another mob of Hindus came from the Uday Gas Agency road. The witness has admitted that prior thereto, he had not seen any mob coming from the Uday Gas Agency road. He has additionally stated that the mob which came from the side of Uday Gas Agency broke the Jawannagar compound wall, after which he has seen the mob. Babu Bajrangi was instigating the mob, and upon seeing this, the Muslims were pointing and saying "look Babu Bajrangi is standing there". In this manner, the people in the mob demolished the Jawannagar compound wall. This wall, which the mob had broken on that day, was between the road coming from Uday Gas Agency and the road for entering into the Jawannagar. The witness has admitted that till the mob broke the wall, it was complete and he could not see anything behind the wall. The witness has denied that after the mob came and Babu Bajrangi pointing his fingers, he has gone to Gangotri Society. The witness has voluntarily stated that he had climbed on the terrace of Jawannagar and from there had gone directly to Gangotri Society and had not gone through S.R.P. Quarters. The witness has stated that he does not know as to on whose terrace they had gone to in Gangotri Society and has voluntarily stated he remembers that there was a temple in that lane.

220.22 The witness has denied that he had not seen the wall breaking and the mob coming and that he had directly

gone to the terrace of Gangotri Society. The witness has denied that in his statement dated 3.6.2008 he had stated before the SIT that at this time the Muslims from the chawl who were standing on the terrace stated that look Babu Bajrangi is standing there wearing white pyjama and kurta and has tied saffron scarf around the neck. The witness has admitted that from the terrace where he was, the road below or any other thing could not be seen. The witness has admitted that if they stand behind the wall, they cannot see anything from the terrace.

220.23 The witness has admitted that from the terrace they had gone on foot till the police vehicle and that the police vehicle which had come to pick them up was parked at the entrance of their chawl. The witness has admitted that while they had gone walking on the road, there was scrap like glass, stones etc. The witness has admitted that while they were going to the camp, the mob had stopped their vehicle near Natraj Hotel and the police had to release teargas.

220.24 The witness has admitted that he does not have any kind of social or other relations with the accused whom he has named and whom he has identified before the court and that he had never met him prior to the incident. The witness has admitted that in connection with the mistakes that took place in the SIT statement, he had not made any application to any authority. The witness has stated that he does not know any person by the name of Rameshbhai Keshavlal Didawala.

220.25 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-

examined the concerned Investigating Officer/assignee officer who recorded such statement.

220.26 PW-281 Shri D. S. Vaghela, the assignee officer has admitted that he has recorded the statement of this witness on 13.5.2002. He has admitted that this witness had stated before him that at around 9:45 in the morning, his wife had woken him up and told him that there was commotion outside and he should go out and see; that there was a mob of around seven to eight thousand Hindus; that the police was releasing tear gas against this mob and was firing; that they had locked their houses and fled; that the S.R.P. people had made them to sit; that when he was climbing on the terrace, at that time, he was injured on the palm of his right hand as well as on his chest with a police tear gas shell.

220.27 The contents of paragraph 4 of the examination-in-chief of the witness are read over to the assignee officer. He has admitted that the witness has not stated such facts in the statement recorded by him. He, however, has clarified that what was stated by the witness before him, meant the same. In this regard, if what was deposed by the witness and what was stated before the police is more or less the same, except for the different manner of expression, then there is no contradiction and the trial court should not have permitted the witness to be contradicted in that regard.

220.28 Certain extracts of paragraph 5 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in his statement recorded by him, but has stated that

the witness had stated before him that the people in the mob were attacking the chawl and similar fact regarding the people in the mob were pelting stones, is also there.

220.29 The contents of paragraph 6, 7, 8 to 11 and certain extracts of paragraphs 12 and 13 of the examination-in-chief of this witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

220.30 PW-291 M. B. Raj, the assignee officer has, in his cross-examination, admitted that he had recorded the statement of this witness on 26.6.2002. The contents of paragraphs 39 and 40 of the deposition of the witness which is in inverted commas, are read over to the assignee officer, wherein it is stated that on 28.2.2002, there was a call for Gujarat Bandh in the context of Godhra train incident. On that day, at around 9:30 to 10:00 in the morning, a mob of ten to fifteen thousand Hindus had come, shouting "kill, cut", and out of fear, they had locked their houses and had gone to the terrace of Gangotri Society situated on the rear side and had hidden there. On 1.3.2002 at around 1:30, upon the police vehicles coming they were taken to the relief camp. No member in his family had sustained any loss of life and that he could not recognize any person in the Hindu mob and does not know their address. The assignee officer has admitted that the witness had stated that the above facts in the statement recorded by him.

220.31 The contents of paragraphs 4 to 13 of the examination-in-chief of the witness are read over to the

assignee officer who has admitted that the contents of paragraphs 5, 6, 7, 8, 9 and 11 have not been stated by the witness before him. In the context of paragraph 4, the assignee officer has stated that the words "sounds of ho..ha" as stated in the examination-in-chief have not been stated by the witness, but he had stated that a mob had come shouting "kill, kill, cut, cut". The assignee officer has denied that all the facts stated in paragraph 10 of his examination-in-chief have not been stated by the witness and that the witness had stated that they had gone to the terrace of Gangotri Society and that he had not used the words "his family", but has stated "they", the meaning of which is the same. The assignee officer has denied that this witness had not stated the facts stated by him in paragraphs 12 and 13 of his examination-in-chief and that he had stated that they were on the terrace. Other than that, the contents of paragraph 12 have not been stated by him. Insofar as the contents of paragraph 13 are concerned, the assignee officer has stated that the witness had only stated before him that they were taken in the police vehicle to the Shah Alam camp.

220.32 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 3.6.2008. He has admitted that this witness had stated before him that at this time, the Muslims from the chawl from the terrace started saying that, "*Woh khada re Babu Bajrangi, safed lengha jhabbha pehna hai. Galama kesri rumal chhe!*" The statement dated 13.5.2002 recorded by the police has been read over to him and the same is proper and correct. It may be noted that the contradiction sought to be proved through the testimony of

the Investigating Officer is not as to any omission or contradiction in the primary statement of the witness, but what has been elicited in his cross-examination. Therefore, it was not permissible for the defence to confront the witness with his previous statement and consequently, such contradiction could not have been proved though the testimony of the Investigating Officer. It is rather disturbing to note that throughout the recording of the evidence, the provisions of section 162 of the Code read with section 145 of the Evidence Act and the principles enunciated by the Supreme Court in the case of Tahsildar Singh (supra) have been ignored.

220.33 SUBMISSIONS: The learned counsel for the appellants submitted that this witness in both his police statements dated 13.5.2002 and 26.6.2002 has not named accused No.18 Babubhai Bajrangi. He has admitted that he did not know either the person named by him or the person identified by him, prior thereto. Even as per his first statement before the SIT, for the first time he has named accused No.18 Babubhai and that too, on Babubhai being identified by others on the terrace and more so, he has been identified with a specific dress of white kurta and pyjama and saffron scarf on his neck, which means that he did not know him and upon someone on the terrace saying so, he has said that it was Babubhai. It was submitted that no test identification parade has been held and the very fact that the witness could not identify Babubhai in the court and instead has identified accused No.47, when he is nowhere named and whose physique, appearance and height are completely different from accused No.18 as noted by the court below, clearly indicates that with the sole purpose to implicate accused No.18 falsely

at the instance of somebody for extraneous reasons, he has named accused No.18 for the first time before the SIT. It was submitted that if the statement recorded by the SIT is taken at face value, he has stated that upon some other people on the terrace informing him, he could know that somebody in a particular dress is accused No.18 as proved by the Investigating Officer (SIT). It was pointed out that in paragraph 11 of his examination-in-chief, the witness has stated on oath regarding such conversation that other Muslims had with him before going up to the terrace. It was submitted that such discrepancies and contradictions have apparently surfaced, as he had never witnessed such facts, but has stated them only with a view to implicate accused No.18 falsely.

220.34 It was submitted that no witness has stated that in the afternoon hours at about 2:00 to 2:30 in the mob coming from Uday Gas Agency accused No.18 was seen by anybody, much less in the typical dress as stated by this witness.

220.35 There are no submissions on behalf of the prosecution as he has wrongly identified the sole accused named by him.

220.36 ANALYSIS: This witness's statements came to be recorded by the police on 13.5.2002 as well as on 26.6.2002. At the relevant time he did not name any accused and in fact had stated that does not know any person in the mob. However, in the year 2008, before the SIT he has named accused No.18 Babubhai Bajrangi and had stated that he had seen him in the mob, and though he did not know him, some of the other Muslims pointed out to the accused and said "who

raha Babu Bajrangi". The witness has also failed to identify the accused in the dock. Thus, from testimony of this witness, it emerges that at the relevant time he had not named any accused, but before the SIT after a period of more than six years, he has named the accused and that too, on the basis of other persons having said that such person is Babu Bajrangi. The witness has admitted that he had no prior acquaintance with the said accused and that he had never seen him prior to the incident. It is an admitted position that no test identification parade had been carried out to identify the accused. Under these circumstances, apart from the fact that at the relevant time the witness had not named the accused when his statement came to be recorded, when the witness had no acquaintance with the accused and has not been able to identify him in the dock, no reliance can be placed upon the testimony of this witness to prove the charge against the accused.

221. **PW-246 Noorjahan Abdulkadir Shaikh**, aged 48 years, has been examined at Exhibit-1713. The witness has deposed that if somebody speaks Gujarati, she can understand it to a limited extent, but she does not know how to speak in Gujarati and hence, will depose in Hindi.

221.1 The witness has deposed that after the communal riots of 2002, she is residing at Faizal Park. In the year 2002, she was residing in the last lane of Jawannagar which is near Gangotri society at Naroda Patiya.

221.2 The incident took place on 28.2.2002. At the time of the incident, she, her mother-in-law, her husband and her

three children, all of them were residing together. At the relevant time, she was serving in a factory and her husband used to ply a rickshaw on hire.

221.3 Her working hours were from 8:00 in the morning to 6:00 in the evening.

221.4 The day of incident was a Thursday. On that day, there was a call for bandh. She did not know that there was a call for bandh and hence, as per her routine, she had set off to go for her job at 8 o'clock in the morning with her son Salim. She reached her place of service at Memco. Except for her and her son, all her family members, including her husband were at home.

221.5 After they reached her place of service, her employer Arjunbhai had told them that there is a call for bandh and the situation is bad and considering the atmosphere, since they were Muslims, they should go back. After saying so, Arjunbhai himself dropped her and two to three other women near the excise chowky.

221.6 When she reached the excise chowky, there was quite a big mob. On account of the mob, she went from Navi Masjid to Juni (Old) Masjid and in this manner she was able to come out and reach her house. On that day, she was wearing a saree and she held her son's hand and went through the lanes and reached her house. She saw that there were many people in the mob and they were pelting stones at the Noorani Masjid and were throwing kerosene and setting it and everything else on fire and were also pelting stones on people. She had seen

all this.

221.7 When she reached home, all her family members were present at home. On account of the bandh call, her husband had taken a holiday from plying his rickshaw on that day. When she reached home, she heard a lot of commotion on all four sides. They have never seen or heard any such thing, and hence, they were very frightened.

221.8 Near the last lane of Jawannagar, there was a compound wall. The people in the mob had broken the wall. They had broken the wall and had come inside Jawannagar and had come near the municipal toilet. Her husband was at home when the mob came. However, thereafter, he went to the toilet. At that time, they did not have toilet at home. Her husband was very frightened and hence, he had gone to relieve himself at the municipal toilet. She was at home with her mother-in-law and children, when somebody came and told her that someone had set her husband on fire and had killed him and that he was killed near the toilet. She did not believe this to be true, but she come out to see what had happened when her husband had something like a towel tied on his hand and with that, he gestured to her not to come there. Hence, she went back to her house. Thereafter, her husband was burnt alive at that place. She saw that the people in the mob had burnt her husband. However, she did not know any person in the mob.

221.9 When she came to know about the fact of her husband being burnt alive in this manner, she went home and told her mother-in-law and children about it, whereupon she

and her mother-in-law and her children, all started crying.

221.10 Upon hearing this, her mother-in-law took her son Salim and immediately went out towards the S.R.P. Thereafter, she met her mother-in-law and her son Salim after eleven days at the Shahibaug camp.

221.11 She and her daughter stayed at home till 6 o'clock in the evening. Thereafter, from the rear side, they could hear sounds of killing and cutting and a great deal of commotion and upon the day coming to an end, they were terrified and they came out of their house and went to a terrace of Gangotri Society. They went from the terrace of their own house in Jawannagar to somebody else's terrace and went on the terrace of Gangotri Society. They stayed on the terrace of Gangotri Society till 12 o'clock at night, after which upon a police vehicle coming, they came down from the terrace and went to the Shah Alam camp in the police vehicle.

221.12 When they climbed down from the terrace of Gangotri Society and went to the police vehicle, on the way, she had seen half burnt dead bodies. Out of which, one burnt dead body was of a youth who used to sell the shaved ice-balls.

221.13 When she was at the relief camp, the police had recorded her statement.

221.14 All the household articles, furniture, etc. in her house were looted and taken away on the day of the incident. Nothing remained in her house. They had damaged the house

and gone away.

221.15 CROSS-EXAMINATION: Nothing much turns upon the testimony of this witness and hence, it is not necessary to dilate upon the same.

221.16 PW-278 Shri R.B. Joshi, the assignee officer in his cross-examination has admitted that he had recorded the statement of this witness on 11.5.2002. The assignee officer has admitted that this witness in the statement recorded by him has stated that there was cross stone pelting between the people in the mob and the people from their chawls.

221.17 SUBMISSIONS: The learned counsel for the appellants submitted that this witness in paragraph 14 of her deposition has referred to the dead body of a person selling ice-cream balls which creates a doubt in Hussainabanu's evidence regarding her brother having been set ablaze in the house of Jadikhala.

221.18 ANALYSIS: This witness is the wife of Abdulkadir. In terms of the testimony of this witness, her husband had gone to relieve himself at the municipal toilet. While she was at home someone came and told her that her husband had been set ablaze near the toilet and had been killed. Thereafter, she came out of her house to see and saw her husband, who had gestured to her not to come there, and hence, she had returned. Thereafter, her husband was burnt alive at that place and she had seen the mob setting him ablaze. This version of the witness is self contradictory, inasmuch as the person, who came to tell her about her husband, informed her that he had

been set ablaze and killed; however, according to the witness her husband was set ablaze after she came out and he gestured to her not to come there. In the opinion of the court if the mob had not harmed her husband till she came out, there was no reason for anyone to come and inform her that he was set ablaze. Besides, in such a situation, it is hardly likely that her husband would notice her coming out of the house and gesture to her. Thus, the witness does not come across as a credible witness. Moreover, she has not named any accused involved in the incident, and hence, her testimony does not in any manner assist the prosecution in proving the charge against the accused.

222. **PW-247 Afrozbanu Mahammadrazak Ansari**, aged 65 years, has been examined at Exhibit-1717. The witness has deposed that she can understand Gujarati to a certain extent. However, she will depose in Hindi as she finds it more convenient to speak in Hindi.

222.1 The witness has deposed that in the year 2002, she was residing at *Pandit-ni-Chali, Near S.T. Workshop, at Naroda Patiya*, with her family. She is absolutely illiterate, but she has obtained religious Islamic Education, that is, study of Quran-e-Sharif. Right from the beginning, they have been residing in Ahmedabad.

222.2 At present that she does only household work. In the year 2002 and even thereafter, she used to do tailoring work. However, now, as her eyesight has become weak, she stopped doing tailoring work.

222.3 Her husband passed away in the year 1988. The incident took place in the year 2002. In the year 2002, she was residing at *Pandit-ni-Chali* together with her elder son Mahammadyunus, his wife Maheboobbibi, her granddaughter Gazala. Her other two children were married and were residing at Juhapura.

222.4 On the day of the incident, there was a call for Gujarat bandh. On that day, her daughter-in-law and her granddaughter had gone for a wedding at Dani Limda. She and her son Mahammadyunus were at home.

222.5 In the morning time, she and her son were having tea when they heard a lot of commotion, whereupon, she came out. The road is just outside her house. She came on the road and stood there. She saw that on both the sides, there were huge mobs. She could hear sounds of "kill, cut" and hence, out of fear, they started walking slowly along the boundary of the S.T. Workshop compound wall towards the interior side. Her son was also with her at that time.

222.6 They went to Hussainnagar, Lane No.3, where her son Mahammadyunus's in-laws live. They went to their house. His brother-in-law whose name is Naeemuddin, his brother-in-law's wife's whose name is Zarinabanu, Naeemuddin's sister-in-law and Naeemuddin's children and his mother, etc., were all at home, but out of fear, they started fleeing from there. They all firstly went towards the S.R.P. Quarters. When they reached near the S.R.P. Quarters, it must have been around 10 o'clock in the morning.

222.7 There is a small gate for going inside the S.R.P. Quarters and they went there. The S.R.P. policemen were there. They did not let them go inside the S.R.P. Quarters. The policemen at the S.R.P. Quarters told them that they had to die today and that they would not let them go inside. One of the S.R.P. personally forcefully butted her with a gun below her neck and on her chest due to which, she had sustained injuries.

222.8 The witness has further deposed that upon being hit by the butt of a gun, they all had gone towards Gopinath Gangotri Society so as to save their lives. After they went there, from there, they saw that another mob was also coming. She does not know from which area the mob was coming and that it was possibly from the direction of Teesra Kuva. However, the mob was coming and therefore, they were terrified.

222.9 When they reached Gopinath Gangotri Society, the mob surrounded them. They were all in the middle. At this time, it was around 5:00 to 6:00 in the evening. She knows two of the persons in the mob that had surrounded them at that time. They are Bhavani, who at present is dead, and the other is Suresh Langdo. The witness has stated that, however, since many years have passed, she does not know whether she would be in a position to identify him.

222.10 The witness has further deposed that the people in the mob initially pelted stones at her son and he was injured below his right ear and thereafter, a blow was inflicted on his leg and he was felled and thereafter, he was burnt alive. Her

son died on the spot. She had seen this incident of her son.

222.11 During this incident, she had seen Salim and Wasim, two children of her son Mahammadyunus's brother-in-law Aziz, being thrown alive in the fire. Both the children also died.

222.12 She had also seen four people catch hold of Mahammadyunus's brother-in-law Naeemuddin's wife and pull her into the lane. Her name was Zarinabanu.

222.13 After all this, it started becoming night time and they all escaped and went on a terrace of Gangotri Society and hid there. At around 9 o'clock at night, when they got down from the terrace, they had seen Zarina in a naked condition. Her hand was cut and there were injuries on her head. They could not do anything, but someone from amongst them took out a dupatta and covered her. Thereafter, upon the police vehicle coming, Zarina was taken in the same condition and they had gone in the police vehicle to the Shah Alam relief camp. From the Shah Alam relief camp, the camp people had sent Zarina to the V.S. Hospital. She was so anguished on account of the death of her son Mahammadyunus that she did not even remember that she was injured with the butt of the gun. She had not availed of any treatment and she had let the wound heal on its own.

222.14 She had stayed at the Shah Alam relief camp for five months. The police had recorded her statement there. Thereafter, the SIT had recorded her statement.

222.15 At the time of the incident, she knew Bhavani and Suresh Langdo. Both of them were residing in her area and used to pass through their area. At present, Bhavani is dead and she is not sure whether at this age she can identify Suresh Langdo. The witness has thereafter tried to identify Suresh Langado, but could not muster up the courage to do so and she quickly returned to the witness box.

222.16 The witness has stated that she is not afraid, but she is not confident that she can identify accused Suresh Langdo now and hence, she has returned because a long time has elapsed since the incident took place.

222.17 CROSS-EXAMINATION: In the cross-examination of this witness it has come out that in the year 2002, she used to do tailoring work at home. The witness has stated that she rarely had occasion to go out of her house. The witness has admitted that she does not know all the people residing in and around her chawl by their names. She has stated that she knows some of the people. The witness has admitted that she knows the people residing nearby by their names. The witness has admitted that Suresh Langda and Bhavani do not reside near her.

222.18 The witness has admitted that a lot of people were going from near her house on the day of the incident. The witness has voluntarily stated that there is a road. The witness has admitted that there was movement of people belonging to the Chhara community and other people on this road. The witness has admitted that she does not know the names of the people, who pass from near her house.

222.19 The witness has admitted that she has no relations of talking with Suresh Langda or Bhavani, nor does she have any social or monetary relations with them. The witness has voluntarily stated that they used to frequently pass through the S.T. Workshop road and that therefore, she has seen them many times and hence she knew them. However, she did not have any occasion to talk with them.

222.20 The witness has admitted that Naimuddin and his family were with them from the afternoon. The witness has admitted that even at the camp they were together. The witness has stated that she had talked with Naimuddin regarding whatever she had seen in the evening on the day of incident. The witness has admitted that Naimuddin has also told her about whatever he has seen. The witness has admitted that Naimuddin had not told her as to whom he has recognized regarding Zarina's incident.

222.21 The witness has admitted that when she was at the camp, leaders of the Muslim community used to come to the camp. The witness has admitted that there were arrangements for registering complaints at the Shah Alam Camp. The witness has admitted that such arrangements were made inside the madressa. She has admitted that she had also lodged complaint.

222.22 The witness has stated that she had given a complaint at the camp to the police. The witness has admitted that whatever she knew she had stated in the complaint. The witness has admitted that after writing whatever she has

stated, her thumb impression was taken on the complaint. The witness has admitted that when her thumb impression was taken, the complaint was read over to her. She has admitted that when the complaint was read over to her, she thought that the facts stated therein are correct and are in terms of what she has stated. The witness has admitted that she has also received a copy of the complaint.

222.23 The witness has admitted that at the time when SIT recorded her statement in the year 2008, the complaint was read over to her. The witness has admitted that the SIT people has taken out a copy from their possession and read it over to her. The SIT had shown her the thumb impression on the complaint.

222.24 The witness has denied that even before the SIT she had not given the names of any of the accused, nor had she attributed any role to them.

222.25 The witness has admitted that the people in the mob whom she did not know had inflicted pipe blows on her son's head. The witness has admitted that after being injured by the pipe, her son fell on the ground. The witness has voluntarily stated that he was injured on his head by a stone and a pipe blow was inflicted on his leg. The witness has stated that at the time of the incident she was with her son and there was very short distance between them. The witness has stated that she cannot say whether the mob which assaulted her son was comprised of one thousand people. The witness has stated that it had not happened that the mob had first surrounded her son and thereafter attacked him. She has stated that first he

was injured with a stone on his head and thereafter was inflicted pipe blows on his leg, and after he fell down, petrol was sprinkled upon him and he was set ablaze. The witness has admitted that after injuring him on his head with stones and inflicting pipe blows on his leg and after he fell down, the mob had surrounded and set him ablaze. The witness has stated that she does not know as to how many people were there in the mob which surrounded her son.

222.26 The witness has admitted that she does not know as to who had inflicted the blow on his leg. The witness has admitted that she had seen the mob setting her son ablaze, however, she had not seen as to which person had set him ablaze. The witness has admitted that at the time when her son was attacked, other Muslim women and men nearby were also being attacked. She has admitted that no person in the mob had injured her at that time and nobody had attacked her. The witness has denied that she has not seen any incident as stated by her in her examination-in-chief and that she was falsely deposing before the court.

222.27 The contents of paragraphs 7 and 8 of her examination-in-chief are read over to the witness, who has denied that she has not stated such facts in her statement recorded by the police.

222.28 The contents of paragraphs 7 and 8 of her examination-in-chief are once again read over to the witness to the effect that she has not stated certain facts stated therein in the statement recorded by the SIT.

222.29 The contents of paragraph 12 of her examination-in-chief are read over to the witness, who has denied that she has not stated such facts in both of her statements recorded in the year 2002.

222.30 The contents of paragraph 13 as well as the contents of paragraph 14 from the third line to the last line are read over to the witness, to the effect that she has not stated such facts in her statement recorded by the police, which the witness has denied.

222.31 To prove the omissions and contradictions as to her previous statement recorded by the police as brought out in her cross-examination, the defence has cross-examined the concerned Investigating Officer/assignee officer who recorded such statement.

222.32 PW-291 Shri M. B. Raj, the assignee officer has, in his cross-examination, admitted that he had recorded the statement of this witness on 17.7.2002. The contents of paragraphs 12 and 13 and the contents of paragraph 14, from the third line to the last line, of the examination-in-chief of this witness, are read over to the assignee officer, wherein the witness has deposed that, at that time, she had seen that two children of her son Mahammad Yunus's brother-in-law Aziz, namely, Salim and Wasim were thrown alive in the fire. That she had also seen that her son Mahammad Yunus's brother-in-law Naeemuddin's wife was caught and was pulled and taken away by four members of the mob. Her name was Zarina. At around 9 o'clock at night, when they came down from the terrace, she had seen Zarina in a naked condition. Her hand

was cut and there were injuries on her head. They could not do anything and someone from amongst them had taken off a dupatta and covered her. Thereafter, upon the police vehicle coming, they had taken Zarina in this condition and had gone to the Shah Alam relief camp in the police vehicle. The assignee officer has admitted that the witness has not stated such facts in the statement recorded by him. The assignee officer has admitted that at the time of recording the statement of this witness, Shri Chudasama had not given him any complaint of the witness.

222.33 PW-302 Shri D. A. Rathod, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that the witness had not given any complaint before him and that at the time when he went to record the statement, the Investigating Officer had not given him any complaint registered as Naroda Police Station I-C.R. No.210/2002 of this witness. (In the FIR Exhibit-315, this witness is shown as a witness in the complaint). (At page-55, I-C.R. No.210/02, there is a printed complaint of Afrozbanu Ansari).

222.34 The contents of paragraphs 7, 8, 12 and 13 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated all such facts in the statement recorded by him. The contents of paragraph 14 of the examination-in-chief are read over to the assignee officer who has admitted that except for stating that the witness had gone to the Shah Alam camp in a police vehicle, none of the other facts have been stated before

him.

222.35 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 6.7.2008. Certain extracts of paragraph 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the witness had not stated all these facts in the statement recorded by him. The contents of paragraphs 7 and 8 of the examination-in-chief of the witness are read over to the Investigating Officer, who has stated that except that the facts stated in paragraph 7 that, "*We had gone to their house at Hussainnagar Lane No.3.*", "*It must have been around 10 o'clock in the morning*" all the other facts stated in paragraphs 7 and 8 of her deposition have been stated by the witness.

222.36 The Investigating Officer has admitted that the witness in her statement dated 6.7.2008 has not given the name of Bhavani and Suresh or any role played by them. He, however, has stated that the witness upon her statements dated 12.5.2002 and 17.7.2002 being read over to her, had stated that they are correct and thereafter her further statement had been recorded. In the statement dated 12.5.2002, the witness has stated regarding the entire incident, the names of Bhavani and Suresh, the manner in which the witness's children were killed and had given the names of both the accused amongst the people who killed them there, their role, had all been clearly stated by her. The statement recorded by him is in the nature of a further statement and hence, what was stated by the witness in her earlier statement have not been reiterated by her.

222.37 SUBMISSIONS: The learned counsel for the appellants pointed out that this witness has named two accused, namely, Bhavani and Suresh Langdo. The witness has failed to identify accused Suresh Langdo before the court. Referring to the contents of paragraph 7 of the examination-in-chief of the witness, it was submitted that the witness has stated that at around 10:00 to 10:15 they were prevented from going to the S.R.P. Quarters, whereas the other witness have stated that in the morning time they were permitted to go to the S.R.P. Quarters. It was submitted that as to what had happened during the period from 5:00 to 6:00 in the evening is not coming on record. It was submitted that having regard to the omissions in the police statements, the fact regarding her having witnessed her son being killed also becomes doubtful. It was submitted that on a combined reading of paragraphs 32, 35 and 36 of her cross-examination, it appears that it is doubtful whether the witness has seen such an incident and was present there. It was submitted that even if the witness has named Suresh, in view of the averments made in paragraphs 32, 35 and 36, the participation of the named accused is not alleged with any specific role.

222.38 ANALYSIS: From the evidence of this witness, after considering the omissions and contradictions brought on record and proved through the Investigating Officer/assignee officers, it emerges that the witness had gone on the road in the morning and had seen huge mobs on both the sides shouting 'kill, cut'. Out of fear she and her son who was with her slowly went towards the interior side of the chawls. The SRP people hit her with the butt of a gun and they all went

towards Gopinath Gangotri Society to save their lives. When they reached there, they saw another mob and hence, they were terrified. When they reached Gopinath Gangotri Society, the mob encircled them and they were in the middle. It was around five to six in the evening. In the mob which encircled them, she could recognise two persons Bhavani and Suresh Langdo. The mob firstly pelted stones at her son which wounded him below his right ear and then inflicted a pipe blow on his leg and felled him and then burnt him alive. Her son died on the spot. She had seen the incident. After all this, night time started and all of those who had escaped went to a terrace of Gangotri Society and hid there. Thus, while the witness appears to have improved upon her original version by narrating incidents of the two children being thrown in the fire and Zarina being pulled by four people and taken into a lane nearby, insofar as the core of her testimony regarding the killing of her son and her having seen the two named accused in the mob which encircled them is concerned, she is consistent right from the beginning. Under the circumstances, there is no reason to disbelieve the narration of the incident given by the witness. Though the witness has named Suresh Langdo in her examination-in-chief, she has failed to identify him in the dock. Therefore, the testimony of this witness would not help the prosecution in proving the charge against the sole living accused named by her.

223. **PW-248 Mahammadyunus Abdulhai Chaudhary**, aged 45 years, has been examined at Exhibit-1722. The witness has deposed that he can understand Gujarati, but he is not able to speak Gujarati properly and hence, will depose in Hindi.

223.1 The witness has deposed that he was residing at *Pandit-ni-Chali, Next to S.T. Workshop, Naroda Patiya* since about thirty to thirty five years prior to the incident.

223.2 In the year 2002, he used to do tailoring work at home. In the year 2002, his mother Amirbibi, his wife Suraiyabanu, his three daughters, viz., Samreen, Saheen and Afreen, were all residing with him.

223.3 The incident took place on 28.2.2002. On that day, he woke up at around 7 o'clock in the morning and went to the Noorani Masjid to offer namaz. After namaz, he returned home and after reading Quran Sharif, at around 9 o'clock in the morning, he sat down to have his breakfast. At this time, there was commotion in the chawl and shouts were heard in the chawl that mobs of the Vishwa Hindu Parishad have come. Upon hearing this, he went to near the S.T. Workshop outside his house.

223.4 He saw that mobs were coming from Natraj Hotel as well as from Krushnanagar. The mobs came and started damaging the carts, stalls, houses, rickshaws, etc. near the Noorani Masjid. Those people had weapons like swords, trishuls, hockey sticks, etc. in their hands. The people of the mob had gone inside the masjid and were burning the Quran Sharif as well as the rugs which were spread on the floor, etc.

223.5 In the mob which was coming from the direction of Natraj, he had seen Bhavanisingh, who was a driver in the AMTS. He had seen him with a sword in his hand. In this mob,

he had also seen Guddu Chhara with a sword in his hand. This mob had gone inside the masjid and burnt the sheets, etc. They were vandalising the masjid. At this time, the residents of the chawls came out to protect the masjid. At this time, the mob which was a Vishwa Hindu Parishad mob, pelted stones at them.

223.6 The police, which was placed for bandobust at the masjid, joined the mob and connived with them. Thereafter, the mob attacked them. Thereafter, there was firing at the Muslims from the mob. In the firing, a boy named Abid died. Moreover, two to three other Muslim youths also fell down on the spot in the firing. While watching all this, he had stayed outside till 12 o'clock.

223.7 In the afternoon, at around 12 o'clock, the incidents increased and hence, to protect his life, he went towards their chawl. He went to his house at Pandit-ni-Chali to see his family. When he reached home, he saw that his house was locked. Thereafter, he was searching for his family members in the Muslim chawls. Subsequently, on that very day, while he was searching, he could find his family members at the Jawannagar pit at around 4 o'clock in the afternoon. When he met his family members in this manner, he saw that his wife Suraiyabanu was injured on her head. Upon asking her as to how she got injured, she had told him that she was hurt by a stone from the S.T. Workshop. She was bleeding from the wound.

223.8 They came to know thereafter that a Hindu mob had come in the Jawannagar pit, hence, they, that is, he and

his family went towards the S.R.P. Quarters and wanted to go inside. However, the S.R.P. police standing there lathi-charged them and drove them away. He was injured in the right leg in the lathi-charge. His daughter Afreenbanu was about two years old at that time. She was also injured on her back on account of the lathi-charge by the S.R.P. people. They were lathi-charging them and were chasing them towards the well on the rear side, however, they had not gone there.

223.9 Thereafter, they climbed on the terrace of a closed house in Gangotri Society. At this time, it was around 5 o'clock in the evening. From the terrace, he saw that the S.R.P. people were beating the Muslims and sending them towards the well on the rear side and out of those people who went towards the well in this manner, a Hindu mob came in front of them and the people in the mob had petrol, kerosene, swords etc. in their hands and they were killing and hacking those people and setting them on fire. While they were on the terrace, there was screaming from the side of the water tank in the society and they had heard people screaming for help. At this time, it was around 5:00 to 6:00 in the evening. At the time when he heard these screams, it was the time for Maghreb Namaaz.

223.10 He had stayed at the terrace of Gangotri Society till 12 o'clock at night with his family. Upon a police vehicle coming to take them, they got down from the terrace of Gangotri Society. While they were going to the vehicle from the terrace of Gangotri Society, there were many dead bodies lying on the road. The hands and legs of the dead bodies were cut and broken. Some of the dead bodies were in a burnt condition and only the skeletons could be seen. He saw that

their houses were set on fire and the household goods and articles were also looted.

223.11 The police took them in the vehicle to the Shah Alam camp. They had stayed at the Shah Alam camp for four to five months. While they were at the camp, the police had recorded his statement. Thereafter, the SIT had also recorded his statement.

223.12 The witness has deposed that they had availed treatment for the injuries sustained by him, his daughter and his wife, at the Shah Alam camp. His house was damaged and set on fire in the incident. All the household goods and articles were looted in the incident. The witness has deposed that he can identify Bhavanisingh and Guddu whom he had seen in the incident. However, both of them are dead.

223.13 CROSS-EXAMINATION: The witness in his cross-examination has admitted that his statements were recorded at the camp on 12.5.2002 and 17.5.2002. The witness has denied that in his statement dated 12.5.2002 he had not stated the name of Bhavani and the role played by him. The witness has denied that on the day of incident there was stone pelting on Hindus from the chawls also. The witness has admitted that as the number of Muslims was lesser and the mob on the opposite was huge they had returned to their houses. He has admitted that the people in the riotous mob had entered the houses of Muslims.

223.14 The witness has denied that in his statement he has stated that the riotous mob had entered his house. The witness

has voluntarily stated that he had not seen as to whether the mob had entered his own house, but he knew the mob had entered their chawl. The witness has denied that he had seen the mob which came from the front of the gas agency at 4:00 in the evening. The witness has stated that he had heard about it.

223.15 The witness has admitted that on the day of the incident, the mobs on the side of Krushnanagar and Natraj Hotel which he had seen, were comprised of ten thousand to fifteen thousand people. He has admitted that some of the people in the mob near the Noorani Masjid had tied saffron bands on their heads. He has admitted that he had not seen any one in the mob wearing *khaki* shorts and undershirts. The witness has denied that in his statement dated 12.5.2002 he had not stated any fact regarding firing. The witness has denied that he has not stated the facts regarding Quran-e-Sharif and rugs in his statement dated 12.5.2002 recorded by the police. The witness has denied that he has not stated the facts regarding Gangotri Society, the well on the rear side and the Muslim boys having fallen in the firing and having died, in his statement dated 12.5.2002.

223.16 The witness has admitted that prior to his statement being recorded by the SIT he had made an application. The witness is shown the application Mark 644/1 and he has identified his signature thereon. The contents of the application are read over to him and he has admitted the contents thereof. The application is given Exhibit No.1724. The witness has stated that FIR means what he states before the police and that when he went to the SIT his FIR was read over

to him. The contents of the witness' statement recorded by the SIT are read over to him; however, since no part of his evidence is sought to be contradicted, the same is not admissible in evidence.

223.17 In his cross-examination, it has come out that he did not have any occasion to visit the homes of Guddu and Bhavani and did not have any talking relations with them. They did not have any relations of visiting each other's houses or any other social relation. The witness has denied that he has not seen the incident and that he had gone to his house in Jawannagar chawl and was hiding there.

223.18 In his cross-examination, it has further come out that he knew that Bhavani was a driver in the AMTS and he has seen him driving an AMTS bus. He has stated that he has seen Guddu from a distance of fifty to sixty feet and has also seen Bhavani from the same distance.

223.19 To prove the omissions and contradictions as to his previous statements brought out in his cross-examination, the defence has cross examined the concerned Investigating Officer/assignee officer who recorded such statement.

223.20 PW-279 Shri B. J. Sadavrati, the assignee officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that this witness has not given the name of accused Bhavanisingh before him, nor has he mentioned any act committed by him. The assignee officer has admitted that the witness had stated before him that they had hidden at Jawannagar-ni-Chali and late at night, upon the

police vehicle coming, they had come to the Shah Alam camp in the vehicle. The assignee officer has admitted that the witness had not stated any fact regarding any kind of firing. He has also admitted that the witness has not stated anything regarding Quran-e-Sharif or rugs. He has also admitted that the witness has not stated any facts regarding Gangotri Society, the well on the rear side as well as a Muslim youth having fallen in the firing and having died, in the statement recorded by him.

223.21 PW-282 Shri K. S. Desai, the assignee officer has admitted that he has recorded the statement of this witness on 15.5.2002. The assignee officer has denied that this witness had not named Bhavanisingh or that he had not attributed any role to him in the statement recorded by him.

223.22 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 2.6.2008 wherein the witness has stated that his statement dated 12/17.5.2002 was recorded at the Shah Alam camp, Ahmedabad, which is proper and correct; the Muslim mob had also pelted stones and upon both the mobs coming against each other; a police point people were present near the Noorani Masjid ... there was firing on the mob belonging to the Muslim community wherein a Muslim youth was injured by a bullet, whose name was Abid. It may be noted that while trying to bring out the contradiction even the explanation given by the witness when such a contradiction had been put to him, is reproduced in the cross-examination of the Investigating Officer.

223.23 SUBMISSIONS: The learned counsel for the appellants referred to the contents of paragraph 5 of the examination-in-chief of the witness, wherein the witness has stated that the people in the mob went inside the masjid and had burnt Quaran-e-Sharif and rugs in the masjid, to submit that the witness could not have seen what is going on inside masjid. It was submitted that the version given by the witness that they were driven out of the S.R.P. to Teesra Kuva is a presumption and not a question of fact. Referring to the contents of paragraph 11 of his examination-in-chief wherein the witness has stated that from his terrace he has seen S.R.P. Police beating Muslims and driving them away towards the wall, it was submitted that if the witness could see the S.R.P. Quarters, he could not have seen the other side. Referring to paragraph 12 of his examination-in-chief, it was submitted that the witness has stated that when they were going towards the police vehicle, he has seen many corpses on the road. It was submitted that only Moinuddin and Kadir Rana were killed on the road and, therefore, there is no question of having seen many dead bodies lying on the road. It was submitted that the witness could not have seen all the incidents as stated by him and that he has narrated all the facts only after coming to know about them later on.

223.24 ANALYSIS: From the evidence of this witness, it is apparent that he witness has merely been confronted him with his police statement, without pointing out to him as to in respect of which part of his testimony he is sought to be contradicted. In view of the provisions of section 162 of the Code read with section 145 of the Evidence Act, in case where

omission amounts to contradiction or where there is a contradiction, the omission or the contradiction in the police statement of the witness is required to be put to him in his cross-examination under section 145 (second part) of the Evidence Act read with section 162 of the Code and the Explanation to section 162, by drawing his attention to the fact that what he is now stating at the trial was not stated by him in the police statement. In case of an omission, this process necessarily entails the reading of the entire police statement and in case of a contradiction, that part of his police statement which contradicts any part of what he has stated before the court. If the omission or contradiction brought to the attention of the witness is admitted, then it stands proved, otherwise, it will have to be proved in the evidence of the investigation agency, where again the process of referring and reading the police statement takes place. In case of this witness, while reference is made to the police statement, his attention has not been drawn to the part of his evidence in relation to which the omission or contradiction is sought to be proved. Therefore, unless the proper procedure is followed, the question of proving the omission/contradiction through the testimony of the Investigating Officer would not arise.

223.25 This witness has deposed regarding the Quran-e-Sharif and rugs in the Noorani Masjid being set on fire. Considering the fact that the witness was watching the incident from near the S.T. Workshop, it is highly improbable that he could have seen what was going on inside the masjid from such a distance.

223.26 This witness has named only two accused in the

mob on the road in the morning on the day of the incident, both of whom are dead. Therefore, the testimony of this witness would not help the prosecution prove the charge against the accused.

224. **PW-249 Salauddin Sarifuddin Saiyed**, aged 41 years, has been examined at Exhibit-1725. The witness has deposed that he can understand Gujarati, but he finds it more convenient to depose in Hindi. The witness has deposed that he has studied up till the 1st standard in Urdu medium. His native place is District Amravati, Maharashtra State.

224.1 In the year 2002, he was residing at *Pandit-ni Chali, Naroda Patiya*. Pandit-ni-Chali is situated near the S.T. Workshop. He was residing at Pandit-ni-Chali since around ten to fifteen years prior to the incident. His house at Pandit-ni-Chali was a rented house.

224.2 The incident took place on 28.2.2002. At the time of incident, he was residing with his wife and four children. At the relevant time, he used to drive a tanker which belonged to one Nirmalkumar Gupta. Prior thereto, he used to drive a tanker of Shivcharan, brother of Nirmalkumar. He used to do the work of bringing crude oil from Vadodara Refinery in the tankers. He used to park the tanker on the road, near Pandit-ni-Chali at night.

224.3 Upon coming out on the road at 7 o'clock on the previous evening of the incident, he came to know about the details of the Godhra Train Murder incident. Upon hearing this, they did not sleep the entire night. They had stayed at home.

224.4 On the day of the incident, he had come on the road at around 8:00 to 8:30 in the morning. At that time, a lot of public had gathered near the S.R.P. Quarters. A lot of public had gathered near Natraj also. The mob had gathered on both sides. They had started burning the carts and stalls belonging to Muslims near the S.R.P. Quarters.

224.5 They all gathered together at around 9:00 to 9:30 on the road near Pandit-ni-Chali. Out of the people who had gathered there, ten to fifteen had gone near Bipinbhai's Auto Show Room. They had reasoned with Bipinbhai, Auto Centrewala that there was a population of poor people residing there and they were not the people who were raising any disputes. Bipinbhai told them that they should go and nothing would happen there.

224.6 At the time of the incident, his mother used to live in Kashiram Mama-ni-Chali, near the Noorani Masjid. After talking with Bipinbhai, he took his family and crossed the road and went to his mother's house. At this time, he saw that there were many people from the public on both the sides of the road and destruction had commenced. He took his children and ran very fast. In the riots, his daughter Navazunisha was injured on her thigh by a glass bottle thrown on her.

224.7 After they talked with Bipinbhai and returned, the mobs came opposite Bipinbhai's Auto Centre and burnt the STD Booth. He was also one of the ten to fifteen persons who had gone to talk to Bipinbhai Auto Centrewala. When they went to Bipinbhai, Babu Vanzara was also there. This Babu

Vanzara does the work of foreman of four wheeler vehicles.

224.8 From his mother's house, they went to Jigarhasan-ni-Chali, behind the Noorani Masjid. They stayed at Jigarhasan-ni-Chali throughout the night. On 1.3.2002, in the afternoon at 1 o'clock, they were brought to the Shah Alam camp, where they had stayed for six months. In the incident, his tanker was set on fire. The tanker was empty.

224.9 When he was at the camp, the police had examined him orally. The police had also examined him orally in connection with the incident. His daughter had availed of treatment at the camp in connection with the injury sustained by her. At the camp, they had come to draw a panchnama of his house. At that time, he had seen that his house was burnt.

224.10 The witness has stated that he can identify Babu Vanzara and Bipin Auto Centrewala whom he had seen on that day. The witness has thereafter stated that he cannot identify either of the two accused.

224.11 CROSS EXAMINATION: This witness has been cross-examined as regards the topography of the area and the location of his house. In his cross-examination, the witness is confronted with his police statement dated 12.5.2002, to the effect that he had not stated that fifteen of them had gone to Bipinbhai and talked to him and that he had given them an assurance. In his cross-examination, it has come out that the witness had not made any application to the SIT and he does not know as to whether when he went for recording his statement to the SIT, his statement was recorded. The witness

has admitted that in his statement dated 12.5.2002, he had stated that a Hindu mob wherein there were people belonging to the Chhara community damaged his house and looted the articles and took them away. He cannot say as to who were the people from the Chhara community in the mob and that he cannot identify them even by their names.

224.12 In his cross-examination, it has come out that he had parked his tanker on the road going from Naroda to Krushnanagar near Pandit-ni-Chali. He had parked the tanker on the service road near the highway and had also informed his employer that the tanker had been set on fire; his employer may have lodged a complaint in connection with the burning of the tanker. The witness has denied the suggestion that on the day of the incident, no empty tanker had been set on fire.

224.13 To prove the omissions and contradictions as to the previous statements of this witness as brought out in the cross-examination, the defence has cross-examined the concerned Investigating Officer/assignee officer who recorded such statement.

224.14 PW-284 Shri Tarun Barot, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that the witness had stated before him that no member in his family had sustained any loss of life or had sustained any minor or major injury. The assignee officer has admitted that this witness had not stated before him that they fifteen people had gone near Bipinbhai and had talked to him and Bipinbhai had assured him. The assignee officer has admitted that the

witness had not given the name of Bipinbhai before him.

224.15 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 21.5.2008. He has admitted that this witness in the statement recorded by him has stated that he is shown the printed form application dated 6.3.2002 .. upon showing the signature thereon, it is the signature of his wife Husna Ara .. all the facts stated therein are true; the statement dated 12.5.2002 recorded by the Police Inspector, DCB, Ahmedabad city in connection with the incident is read over to him and it is as stated by him and is correct and proper.

224.16 SUBMISSIONS: Mr. Yogesh Lakhani, learned counsel for the appellants submitted that no criminal complicity has been alleged by this witness against either Bipinbhai Panchal (A-44) or accused No.33 and neither of the two accused has been identified before the court.

224.17 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness is a natural witness who is residing in the area. No suggestions were put to the witness in his cross-examination that he did not have a tanker. The only omission brought out is in respect of the talk with accused No.44. There is no omission regarding the presence of a mob on the road in both the statements and the only omission regarding Bipinbhai is in the statement of 12.5.2002. It was further submitted that the contradictions brought on record are not proved in accordance with law. It was submitted that in the cross-examination of this witness, the facts

regarding the presence of a mob on the road which was ransacking the properties of Muslims, has gone unchallenged.

224.17 ANALYSIS: As per the testimony of this witness, he and ten to fifteen persons went to meet Bipinbhai at around 9:00 to 9:30 in the morning and he had told them that nothing would happen there. He has further deposed that when they went to meet Bipinbhai, Babubhai Vanzara was also present there. The witness has not made any other allegation against either of the accused. Therefore, no criminality has been attributed to either of the accused by this witness. Moreover, the witness has also failed to identify the accused in the dock. The testimony of this witness, in no manner helps the prosecution in proving the charge against both the named accused. The only fact that emerges from the testimony of this witness is that he used to park his tanker near the road in front of Pandit-ni-Chali and this tanker was burnt in the incident.

225. **PW-250 Naseembanu Khwajahussein Shaikh**, aged 50 years, has been examined at Exhibit-1729. The witness has deposed that she can understand a little Gujarati, but will depose in Hindi as she is more conversant with it.

225.1 The witness has deposed that she is totally illiterate. She resides in *Pandit-ni-Chali, Opposite Noorani Masjid*. At the time of the incident and presently also, she is residing at Pandit-ni-Chali with her family. Her husband died of cancer three months prior to the incident of 2002. She has two daughters and one son. Her elder daughter is Shabana, then younger daughter Shahin and then son Wahab. Her son Wahab is doing tailoring work.

225.2 She does not remember the date of the incident, but it took place around nine years prior thereto. It was Bakra Eid, one or two days prior to the incident and on the day of the incident, there was a call for bandh in the entire Gujarat State.

225.3 On the day of the incident, at around 9 o'clock, she was at home. She and her children were having breakfast when the people of their mohalla started saying that mobs of Hindus have come outside and were saying "come out, the mobs have come". While having breakfast, they came out. When they came out on the road near Noorani Masjid, there was a mob on the road. In the mob, she saw Ashok Chhara and Raju Chhara, both of whom were pelting stones.

225.4 Upon seeing the mobs, her children were afraid and started crying. As her children were afraid, she went to the Gangotri Society. When they went to Gangotri Society, at that time also, the people in the mob were pelting stones at their chawls, wherein she had seen Raju Chhara and Ashok Chhara. She stayed at Gangotri Society. In the meanwhile, upon the police vehicle coming to take them at around 8 o'clock at night, they sat in the vehicle and had gone away. They were taken to the Shah Alam camp, where she stayed for about nine months.

225.5 At the camp, the police had recorded her statement in connection with the incident. She or her children were not injured in the incident. Her house was damaged in the incident.

225.6 The witness has stated that on account of lapse of

many years, she would not be able to identify Raju Chhara and Ashok Chhara even if she tries to do so.

225.7 CROSS EXAMINATION: This witness has been cross-examined as regards her acquaintance with the accused. The witness has admitted that it has not happened that prior to the incident Ashok Chhara and Raju Chhara had visited her house or that she had gone to their houses or that she had any social relations with either Ashok Chhara or Raju Chhara and that she had seen them both for the first time on the day of the incident.

225.8 The witness has admitted that when the incident was taking place, there were cross stone pelting between the two communities. The witness has admitted that in her sole police statement dated 13.5.2002, she had not stated that she had gone to Gangotri Society with her children. The witness has admitted that for nine months after the incident, she had not gone home. In her cross-examination, it has further come out that she had seen both the accused in the mob outside the Noorani Masjid. She has admitted that there were around ten to fifteen thousand people in the mob near Noorani Masjid. The witness has denied that though she does not know either of the two accused, she is falsely implicating them at the instance of the people of her community. The witness is sought to be contradicted as to her police statement to the effect that she had not stated certain facts narrated in paragraphs 5 and 6 of her deposition in her police statement. However, the contradiction is not very material in nature inasmuch as in her police statement, the witness had stated that the Hindu mob was pelting stones at the chawls and she had seen Ashok

Chhara and Raju Chhara in the mob.

225.9 To prove the omissions and contradictions as to her previous statements brought out in her cross-examination, the defence has cross-examined the concerned Investigating Officer who recorded such statement.

225.10 PW-307 S. S. Chudasama, the Investigating Officer has admitted that the statement of this witness was recorded by Shri A. A. Chauhan (now deceased) on 13.5.2002. The contents of paragraph 5 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein she has stated that she and her children were sitting and having snacks. At that time, a mob of Hindus had come from outside and the people of their mohalla had said that they should come out as the mobs had come. In this mob, she had seen Ashok Chhara and Raju Chhara both pelting stones.

225.11 The contents of paragraph 6 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein she has stated that in the mob which was pelting stones, Raju Chhara and Ashok Chhara were also there at Gangotri Society. The Investigating Officer has denied that the witness has not stated all these facts in her statement. He has stated that the witness had stated that the Hindu mobs had gathered on the road and were pelting stones at their chawls and in this mob, Ashok Chhara and Raju Chhara were present. There was cross stone pelting.

225.12 SUBMISSIONS: The learned counsel for the appellants have submitted that in the cross-examination of the

witness, the witness has admitted that she had seen the accused for the first time on the day of the incident and that she has not stated as to how she had come to know their names. It was submitted that one of the two accused named by this witness is dead, whereas the other one has not been identified before the court. It was submitted that in view of the contents of paragraph 9 of her testimony, the witness could not have named them in her first available statement in the absence of any test identification parade. It was submitted that the witness has not identified the accused before the court, which gives reason to believe that she has implicated them at the instance of someone else.

225.13 ANALYSIS: This witness has named two accused viz., Ashok Chhara and Raju Chhara, in her statement dated 13.5.2002 as well as in her testimony before the court. Out of the two named accused, one is dead. Though the witness is consistent insofar as the involvement of both the accused in the offence in question is concerned, she has failed to identify the sole living accused named by her. Considering the narration of events given by the witness, nothing much turns upon the testimony of this witness. No part of the testimony of this witness would assist the prosecution in any manner in proving the charge against the accused.

226. **PW-251 Inayat Abdulrahim Saiyed**, aged 44 years, has been examined at Exhibit-1730. The witness has deposed that he knows Gujarati and is residing at *Hussainnagar, Naroda Patiya* since many years. In the year 2002, he was residing in *Lane No.4, Hussainnagar*.

226.1 The witness has deposed that the incident took place on 28.2.2002. At that time, he used to serve in Ruby Coach Builders and his working hours were from 8:30 in the morning to 5:00 in the evening.

226.2 At the relevant time, his mother Hajrabanu, who is also known as Jadikhala in this area because she was obese, his wife Sufiyabanu, his sons Farhan, Irfab and Salman were all residing together.

226.3 He was the eldest in his family and he had two brothers and two sisters also. Their native place is Maharashtra. His father has died around four years prior to the incident.

226.4 On the date of the incident, there was a call for bandh in connection with the Godhra incident. However, the place where he was serving was open, and hence, he had gone for his job. His family members were at home. When he went for his job, his employer Pankajbhai told him that there was a call for bandh and hence, he should go back. Around twenty to twenty-five Muslims who were serving there like him, were sent back home on the day of the incident. Upon being relieved from his job, he went home to Naroda Patiya.

226.5 When he was returning home from his service, at that time, when he reached Patiya, he had seen mobs of Hindus on the road. The people in the mob were burning stalls and shops etc. The mob was comprised of people from the Bajrang Dal, the Vishwa Hindu Parishad, Shiv Sena, etc.

226.6 On account of the riots which were taking place, it was not possible for him to go home, and hence, he went to Masjid-ni-Chali, which is situated behind the Noorani Masjid and stayed at the chali itself. Till around 6 to 7 in the evening, he stayed at the Masjid-ni-Chali.

226.7 Thereafter, in the evening at around 6:00 to 7:00, he took his cycle and went to Ranavav Village at Suresh Darbar's house and stayed there at night. From there, on the next day, he and Suresh Darbar went to their company, that is, his place of service. There, his brother Abdul had called and through the telephonic message given by him, it was learnt that on the day of the incident, his mother and two children were burnt and killed. His two children, namely, his sons Salman and Irfan as well as his mother Hajrabibi died in the incident. His brother told him on the phone that his wife Sufiyabanu was injured on the head and her left hand was burnt and hence, she was admitted in the Civil Hospital.

226.8 Since the disturbances were still going on, he had gone to the Shah Alam camp after three to four days, where he met his family members. Thereafter, he had stayed at the Shah Alam camp.

226.9 His wife was discharged from the hospital after being treated for a week, whereupon she had also come to the camp. Thereafter, he had sent his family members to his native place in Maharashtra. After going to her native place, his wife has not returned till date and she is not going to return any more. The witness has deposed that on account of conflict between them, he and his wife are not residing together and at

present, she is residing at her parental home. The witness has deposed that his wife will not come to depose before the court at his instance and she will not come to Ahmedabad.

226.10 The witness has stated that he could not go to identify the dead body of his mother Hajrabibi and his two sons Irfan and Salman because at that time, disturbances were going on in Ahmedabad city and hence, it was not possible to go to identify the dead bodies. He does not know as to who performed the last rites of all the three. He has learnt that his mother's dead body had been identified by Badruddin. However, he does not know who had identified the dead bodies of his children.

226.11 In the incident, all the household articles from his house had been looted by the people in the mob.

226.12 He had stayed at the camp for around seven to eight months and had thereafter returned to Naroda Patiya. The police had orally examined him twice in connection with the incident while he was at the camp. Prior to the incident as well as presently also, he was residing at Lane No.4, Hussainnagar.

226.13 The witness has been cross-examined by the learned advocates for the defence, however, nothing substantial has been elicited in his cross-examination.

226.14 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer

who had recorded such statement.

226.15 PW-178 Shri P. N. Barot, the Investigating Officer has admitted that he has recorded the statement of this witness on 11.4.2002. Certain extracts of the police statement of the witness are sought to be put to the Investigating Officer, however, since the facts recorded in the extracted portion are not in the nature of omissions in the nature of contradiction, the same could not have been put to the Investigating Officer and hence, are not admissible in evidence.

226.16 ANALYSIS: From the testimony of this witness, it is apparent that he is not a witness to the incident. He is the son of Jadikhala alias Hajrabibi and his mother Jadikhala and two sons, namely, Irfan and Salman were killed in the incident. Another notable fact which comes from the evidence of this witness is that on the day of the incident, at around 6 to 7 in the evening, he had gone on his bicycle to Ranasar through Chiloda, which gives reason to believe that at around 6 to 7 in the evening, there was no disturbance on the highway.

227. **PW-254 Mahammad Azharuddin Mahammadyunus Shaikh**, aged 35 years has been examined at Exhibit-1742. The witness has stated that he can understand Gujarati. However, he would find it more convenient to depose in Hindi and will, therefore, depose in Hindi. His native place is West Bengal and he has studied up till B.A. in Urdu. He is a teacher in a madressa and he teaches Muslim religious literature.

227.1 The witness has deposed that on 28.2.2002, on the

day of the incident, communal riots had taken place. In the year 2002, he was residing at the Noorani Masjid at Naroda Patiya with his wife and children and used to teach religious literature to children.

227.2 As per the Muslim religion, his status is considered to be that of a maulavi. At that time, there was one more maulavi at the Noorani Masjid who used to do the work of Pesh Imam in the masjid. The Pesh Imam does the work of making people read namaaz. His name was Abdul Salam. Both of them used to reside in the rooms situated on the first floor of the Noorani Masjid.

227.3 The incident took place on 28.2.2002. He was at the Noorani Masjid. Since at 8 o'clock the madressa would start, he was preparing for it. On that day, the children had also come to study at the madressa and he was teaching them.

227.4 Whenever any Muslim ceremony is to be performed, they go to such person's place to read Quran-e-Sharif. On the day of the incident also, there was a ceremony in the mohalla. On that day, they had gone to Hussainnagar for performing the ceremony of inauguration of a shop. Together with him, around fifteen to twenty children who had come to study at the madressa had also come for the ceremony of the said shop at Hussainnagar.

227.5 After completing such ceremony of the shop at Hussainnagar, they set off from there, when in the nearby mohalla, there was commotion as something had happened on the road, as a result thereof, the children who were

accompanying him, got separated. He does not know as to where the children who got separated from him had gone.

227.6 He came out of Hussainnagar and went to the road alone. He came to the corner of S.T. Workshop, and from there, he saw that on both the sides of the road, there were mobs from the direction of Krushnanagar and Kubernagar. There were around fifty thousand people in the mobs. The entire road was full. At that time, he saw that the Noorani Masjid was being attacked. The people in the mob were pelting stones at the Muslim mohallas.

227.7 He thought of going to save the Noorani Masjid, however, as the mobs were in between, he could not do so. He had secured a lock on the bottom door of the masjid. He had put a lock on the gate on the side of the road.

227.8 As the gate of the Noorani Masjid was locked, the people in the mob brought a tanker. The people in the mob rammed the tanker on the gate of the Noorani Masjid and broke the wall and entered the Noorani Masjid. There were rugs in the masjid for reading namaaz, fans, Quran Sharif etc., all of which were set on fire by the people in the mob. The fire spread in the masjid and the smoke started emanating from all four sides.

227.9 The witness has deposed that he saw that the people in the mob had started breaking the minaras of the masjid and they had insulted the house of God. The people in the mob broke the loud speakers, etc. at the Noorani Masjid and several persons took them and went away. The Noorani

Masjid had become black on account of smoke and fire, all of which he had seen with his own eyes. The people in the mob then put a saffron flag on the Noorani Masjid. They found it very difficult to save their lives, hence, with a view to escape, he went towards Hussainnagar.

227.10 He does not know as to what happened to his family at that time, however, thereafter, he found his family at the Shah Alam camp.

227.11 Upon he and other Muslims starting to go towards Hussainnagar, the police started firing. Due to firing, there was chaos in which certain Muslims were injured by bullets and several people fell down. They had stayed at a house in Hussainnagar for safety and they had remained hidden there. In this house at Hussainnagar also, he realised that the mobs had surrounded them from all four sides and stones were being pelted from the S.T. Workshop.

227.12 Thereafter, when he came out of that house, the assault was going on. He went near the S.R.P. Quarters compound wall, however, the S.R.P. people did not let him go inside the compound wall and they told him that' *"Just like the kar sevaks have been burnt at Godhra, in the same manner, we will kill you here"*.

227.13 In the evening, he went to a terrace opposite the S.R.P. Quarters and hid there. On the terrace a lot of sounds could be heard. It was time for Maghreb Namaz. He had heard shouts and screams coming from all the directions. People were shouting *"Bachao! Bachao!"* He had seen that houses of

Muslims had been set ablaze and the goods were being taken away. The people in the mob had burnt people alive and he could hear those persons who were burning in the houses screaming "*Bachao, Bachao.*"

227.14 At that time, the voices of women being raped were also heard. In the mob comprised of thousands of people, he did not recognize anyone because his work was to teach at the madressa in the masjid. But the people in the mob were wearing black undershirts and shorts and had black bands around their heads.

227.15 All the household goods, articles etc. in the house in which he was residing at the madressa in the Noorani Masjid were burnt. He had sustained loss of the cash lying in his house, household goods and the Muslim religious books.

227.16 Everyone in his family had remained safe, however, he had sustained injury on his waist during the incident and somebody had also assaulted him on his right hand with some weapon. The people in the mob had weapons in their hands.

227.17 When he went in the police vehicle to the camp at night, at that time also, the mobs at the Patiya were shouting slogans "Drive away the Pakistanis". Since on the road it was difficult for their vehicle to reach the camp, the police had taken them on a circuitous route and they could reach the Shah Alam camp from the Patiya after three hours.

227.18 He stayed at the camp for six months. He found his family members on the second or third day at the camp.

227.19 The police had recorded his statement in connection with the incident. However, the police were also continuously abusing them and were not recording the statements as stated by them.

227.20 CROSS-EXAMINATION: In the cross-examination of this witness, he has denied that the masjid and the madressa are both separate. He has stated that the masjid is on the lower level and the madressa is on the first floor. He has admitted that he does not reside in any chawl in the masjid and has voluntarily stated that there is one madressa in the chawl also. Other than the madressa situated in the Noorani Masjid, there is another madressa opposite the S.T. Workshop on the road after leaving two – three Muslim chawls.

227.21 The witness has stated that he had left the Noorani Masjid at around 8:30 in the morning on the day of the incident. He has admitted that he does not know as to whose shop he had gone for the purpose of the ceremony, but he had gone to a Muslim mohalla. It took him around half an hour to perform the ceremony. Thereafter, he heard the sounds and the children went away. He denied that till the children went away, he was at the shop after he performed the ceremony. He has stated that he had gone on the road. He does not know the name of the owner of the shop and has stated that it was a new shop which was a paan-galla. He has stated that thereafter, he went and stood near the S.T. Workshop gate.

227.22 He has admitted that upon seeing the mobs, from where he was standing he had gone inside the chawls. The

witness has voluntarily stated that when there was police firing, he had gone inside. He has admitted that till the police firing commenced, he was at the S.T. Workshop gate. He has admitted that thereafter, he went straight towards Hussainnagar side, but has stated that at that time, there was pandemonium and chaos on all four sides and he had protected himself and reached there. He does not remember as to in which house in Hussainnagar he was hiding and has stated that it was near the S.R.P. compound wall. He does not remember as to when he had reached the compound wall, but the assault had started.

227.23 He does not remember as to how long he had stayed near the S.R.P. compound wall. He has admitted that while he was standing near the S.R.P. compound wall, he had seen smoke on all four sides.

227.24 The witness has admitted that thereafter, he went to the terrace. He was alone on the terrace on which he went and there was no other Muslim. On the terrace on which he was sitting, there were parapets on all four sides. He has admitted that in the line of the terrace in which he was sitting, there were several other terraces. He has admitted that from the sounds which were coming, he could make out that the Muslims were hiding on the other terraces. The witness has admitted that when he reached the terrace, it had become dark. He has admitted that from the terrace, one could not see what was happening on the lower part on the ground. The witness has denied that he has not seen any incident of the Noorani Masjid and that he is falsely deposing before the court. The attention of the witness is drawn to the contents of

paragraphs 3, 5, 6 and the first three lines of paragraph 7, the contents of paragraph 8, the first four lines of paragraph 9, the contents of paragraphs 10, 12 and 13 and the first four lines of paragraph 14 as well as the last three lines of paragraph 15, the last two lines of paragraph 17, the second to the last line of paragraph 18, to the effect that he has not stated such facts in his sole statement dated 12.5.2002, which he has denied.

227.25 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer who had recorded such statement.

227.26 PW-301 Devendragiri Himmatgiri Goswami, the assignee officer has, in his cross-examination, admitted that he has recorded the statement of this witness on 12.5.2002. The assignee officer has admitted that this witness has not named any accused before him. The assignee officer has admitted that before him, this witness had stated that he was residing with his entire family in the madressa in this chawl. The contents of paragraphs 6, 8, 12 and 13 of the examination-in-chief of the witness are read over to the assignee officer who has admitted that all the facts stated therein have not been stated by him in the statement recorded by him.

227.27 The contents of paragraph 10 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness had not stated these facts verbatim, but has stated before him that the witness had stated that he had fled towards the chawls in the east and that upon reaching the end of the Muslim area, he had gone and

hidden in Gangotri Society. The rest of the facts are not stated by the witness in the statement recorded by him.

227.28 Parts of the contents of paragraphs 7, 9, 14, 15, 17 and 18 of the examination-in-chief of the witness are read over to the assignee officer, wherein the witness had *inter alia* stated that there were around fifty thousand people in the mob and the entire road was full and at that time, he had seen; since there was a lock on the gate of the Noorani Masjid, the people in the mob had brought a tanker; the people in the mob rammed the tanker against the door of the Noorani Masjid and had broken the wall of the Noorani Masjid and entered inside; in the evening time, he had gone on a terrace, opposite the S.R.P. Quarters and had hidden there; they could hear many voices from the terrace; it was time for Maghreb Namaz; who has stated that such facts have not been stated by the witness in the statement recorded by him.

227.29 ANALYSIS: On a perusal of the testimony of this witness, it is apparent that most part of what has been deposed by him is in the nature of improvements. The witness has not named any accused and no part of his evidence, would help the prosecution in proving the charge against the accused.

228. **PW-255 Mahammadkhalid Saiyadali Saiyed**, aged 38 years, has been examined at Exhibit-1743. The witness has deposed that he can understand Gujarati as he has studied up till the 6th standard in Gujarati and he can also speak in Gujarati.

228.1 The witness has deposed that in the year 2002, he was residing *opposite Noorani Masjid, Next to S.T. Workshop in Hussainnagar, Lane No.2*. At the relevant time, his family was residing with him and at that time also, he was working as an electrician.

228.2 The incident took place on 28.2.2002. On the day of the incident, he had gone for his job as an electrician to Pooja Electronics, Opposite Anuradha Medical Stores in the Chharanagar area.

228.3 Since there was a call for bandh on that day, their employer had told them to work by keeping the shutter of the shop closed, and hence, they had continued with their work. Thereafter, upon the crowd near their shop swelling, their employer decided that they should shut the shop and go away, and hence, at around 9:00 to 9:30, after closing the shop, he walked amidst the public which standing there and went and stood in the chawl near his house. He had stood near the S.T. Workshop. When he went and stood near the S.T. Workshop, a large number of people from the public had gathered on both the sides of the road. The people in the mob were shouting "Jay Shri Ram" and "cut, kill". He went and stood there and immediately, he was injured by a bullet in the firing. The bullet hit him on the vertebrae of his waist. Upon he being injured, the youth from their mohalla lifted him and took him inside. His elder brother Saiyed Badshah was also amongst them.

228.3 They took him to the verandah of his elder paternal aunt Hajrabibi's [Jadikhala's] house. After staying there for about five to ten minutes, somebody said that an ambulance

has come, and hence, he was lifted and taken to the corner of Hussainnagar, when the mob had come inside in large numbers. Thereafter, they lifted him and hid him in someone's house. At this time, his wife Nasimbanu was also with him. They must have stayed in that house for around five minutes, when the owner of the house came there and told them to vacate the house as the mob was coming there also. Hence, they came out from there. His wife and brother had lifted him and taken him out. They were in the Jawannagar Khada when from inside the Pinjara's house which was on the way, they were told to come inside, and hence, they went inside the Pinjara's house. At this time, stones that were being pelted from the S.T. Workshop, were breaking the roof and falling inside the Pinjara's house. Hence, they hid in another corner of the house. They hid in that house till around 6 o'clock in the evening.

228.4 So far as he remembers, there were around twenty five to thirty people in the Pinjara's house. At around 6 o'clock in the evening, four persons who appeared to be policemen came in plain clothes, but they had guns. They told them that a vehicle had come to take them, and hence, they should go with them. Therefore, his wife and brother lifted him and came out and they were going towards the road, when these four persons told them that the vehicle is going to come towards the well, and hence, they should go on the rear side as the road on the front side is closed. Hence, believing what they had said, they followed them. At that time the four persons had gone towards the road. Other people had also come out with them from the Pinjara's house. When they started going towards Jawannagar, at that time, someone from the public

who was standing there, told them not to come towards that side and said that killing and hacking was going on there. Thereafter, they returned and went to the house of another Pinjara and hid there. This second Pinjara's house was a three storeyed house. The Pinjara's house in which they had stayed only had a ground floor and a tin sheet roof. When they went towards Jawannagar and returned back, at that time, there were people in the mob armed with weapons, which he had seen.

228.5 Several Muslims were hiding in the Pinjara's house that had three floors. The number of people might be about five hundred. They hid in this house till around 11 o'clock at night. When they were inside the house, some people started saying that they had come to take them; however, they could not trust them. They told them that they had come from Shah Alam to take them and hence, they believed them and came out and there were vehicles on the road to take them. They sat in the vehicle and went to Shah Alam. His wife and his brother had lifted him and taken him till the bus and thereafter, they had gone in the bus to the camp. After they got down at the camp, he was taken to the V.S. Hospital in an ambulance.

228.6 At the V.S. Hospital, he was given treatment. He stayed there for twenty five days. Thereafter, they stayed in the Shah Alam camp. After staying for about one month at the Shah Alam camp, he was taken to CMC Hospital, at Vellur for further treatment. He was given treatment at Vellur for one month and twenty five days. Thereafter, they stayed in a hut at Chandola. Thereafter, he came to reside in his mother-in-law's house at Juhapura. Later on, they got a house from the

Relief Committee and at present, he is residing in that house.

228.7 The witness has deposed that in the incident, his elder paternal aunt Hajrabibi has died and two sons of his elder brother Inayat Saiyed who is the son of Hajrabibi, have died in the incident. His brother-in-law Abidali has also died in the incident. His younger brother Abdul Majid was also injured on his leg by a bullet in the incident.

228.8 The witness has deposed that he was not at all handicapped by birth. He was totally healthy. However, in the incident, on account of being injured by a bullet on the vertebrae of his waist, he has been permanently handicapped from below his waist, due to which, he had to undertake a long treatment and that his treatment still going on. On account of such handicap, he needs to use crutches for walking and without them, he cannot even stand up. On account of his handicap, he cannot relieve himself and cannot routinely pass urine or stool. All these things have to be done by him artificially. Despite all the treatment which he has taken, the physical difficulties faced by him, especially while passing of urine and stool, are extreme difficulties which have not been alleviated and because of all this, these problems have become lifetime problems. The doctors have told him that he will have to suffer such problems throughout his life.

228.9 The witness has deposed that on account of the bullet injury, immense injury has been caused to the lower part of his body below his legs due to which, his left leg has become totally lifeless and in his right foot also, there is only slight movement. On the lower part of his body below the waist, if

one touches certain parts, there is no sensation and in some other parts, the sensation is not more than 10 to 15%.

228.10 On account of the injuries sustained by him during the incident, for at least three years, he could not do any work or business and he was given treatment with the aid of some organization.

228.11 At present, on account of the injuries, he can sit for a maximum for thirty minutes. He has to keep a hole in the chair on which he sits and because of the hole, the injured part of his body stays outside. He has deposed that he cannot sit for long, and hence, has to suffer a lot of difficulties in working as an electrician. On account of the handicap, he can only perform such tasks for earning his livelihood, which he can do while sitting.

228.12 The police had recorded his statement in connection with the incident. While he was at the hospital, the police had recorded his statement twice. The SIT had also recorded his statements twice.

228.13 The witness has deposed that he had sustained loss in connection with the household articles and furniture, etc. in his house in the incident, which was on account of the looting that took place in his house.

228.14 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he can read Gujarati. An application Mark 644/15 is shown to the witness who has read it and he has stated that he does not know whether all the

facts stated in the application are true, but he has identified his signature thereon. The application to the extent of the signature is exhibited as Exhibit-1744.

228.15 The witness is cross-examined with regard to the application as to where it was written. The witness has admitted that because of the application, the SIT had recorded his statement at Gandhinagar. He does not remember whether the SIT had read over his statement to him.

228.16 The witness has admitted that the police had recorded his statement at the hospital on 7.3.2002. He does not remember as to whether his statement dated 7.3.2002 was read over to him by the SIT. The witness is confronted with his statement dated 29.5.2008 recorded by the SIT wherein he has, inter alia, stated that his statement dated 7.3.2002 is read over to him which is as stated by him and is correct and proper. In the opinion of this court, this part of the statement of the witness is brought on record to corroborate the stand of the defence in the cross-examination. A statement under section 161 of the Code can only be used to contradict a witness and through the process of cross-examination, what is stated in such statement cannot be brought on record. The contents of paragraph 23 of the deposition of this witness are, therefore, not admissible in evidence.

228.17 In the cross-examination of this witness, it has come out that he is residing at Naroda Patiya area since his birth. He has admitted that on the day of the incident, Pirubhai was firstly injured by a bullet in the firing and thereafter, immediately he was injured by a bullet. The witness is cross-

examined with regard to the topography of the area. The witness has denied that at the time of the incident, the Hindus and Muslims were pelting stones against each other.

228.18 In his cross-examination, it has come out that he has not seen Abid being struck by a bullet. He does not know as to whether he was injured by a bullet in the police firing. The witness has stated that he does not know that at that time, it had happened that a mob was coming from the direction of Saijpur Patiya and that the police had fired at the mob and in the firing, while he was going at home, he was injured in the police firing. The witness has admitted that when the police had recorded his statement on 7.3.2002, he was able to speak and was conscious. The witness has admitted that in his statement dated 7.3.2002, he had stated that in the context of the incident that took place at Godhra, on 28.2.2002, there was a call for Gujarat Bandh. In the opinion of this court, since this part of his statement has not been put to the witness to contradict any part of his evidence, it is not admissible in evidence and ought not to have been permitted to be brought on record.

228.19 The witness has denied that in his statement, he has also stated that upon going to his shop, since it was closed, he was returning home. He has admitted that in his statement, he has stated that there was a huge mob of people at Saijpur Patiya which had started shouting and pelting stones due to which, the police had released tear gas and carried out firing and he was injured on his thigh as well as on the right side of his abdomen. The witness has voluntarily stated that in his statement, he has not stated that he was injured by a bullet

in the police firing and has only stated that he was injured by a bullet. The witness has denied that in his statement, he has stated that therefore, he had fled to the chawl and had hidden himself. The witness has stated that he was not in a position to run.

228.20 The witness has admitted that in his statement dated 29.5.2008 before the SIT, he had stated that his employer Vijay Sharma had told him that mobs of people had gathered and there was a call for Gujarat Bandh on that day, hence, they should close the shop and go to the respective homes, and hence, he had immediately set off to go home and he had just come out from the mob and reached where the new police chowky has been constructed and was standing there and the mob of people belonging to the Hindu community had started pelting stones at their people as well as the chawls near the Noorani Masjid. There was a police point near the Noorani Masjid and he does not know as to how many police were there. When the stone pelting started, they had gone from the point towards the Hindu mob and there was a police gypsy and there was cross stone pelting when the police firstly released tear gas at them and thereafter, started firing at the people of their community. Therefore, the people of their community started running helter skelter and came towards their chawls. Thereafter, he was injured by a police bullet on the left side of his abdomen. Upon he being injured, some youth from their community had pulled him and taken him inside the chawls. The witness has voluntarily stated that since there was police firing, he had felt that he might have been injured by a police bullet; therefore, he must have stated so. The witness has admitted that in his statement recorded by

the SIT, he has stated that he was injured in the police firing in the incident that took place on 28.2.2002 and he had also availed of treatment. During the treatment, he was totally physically handicapped.

228.21 The witness has stated that he does not remember as to whether he has stated so, but he remembers that he had stated that investigation should be carried out to the extent of the police who had fired bullets at him and they should be punished. The witness has admitted that in the context of his injury, he has received compensation of Rs.1,25,000/-.

228.22 The witness has denied that he has not sustained serious injuries as stated by him in his deposition. He has denied that he has not been seriously injured and that he is falsely deposing at the instance of people of his community.

228.23 (The trial court has noted that when the witness came out of the witness box and was going out of the court, his physical problems could be clearly seen and he could walk with great difficulty, and in both his hands, he had crutches with grip and with their support, he could walk. Even when he got up from the chair, it could be seen that he had a lot of difficulty.).

228.24 To prove the omissions and contradictions in the testimony of this witness as to the statements recorded by the assignee officer and the Investigating Officer (SIT), the defence has cross-examined them.

228.25 PW-276 Shri P.U. Solanki, in his cross-examination

has admitted that he had recorded the statement of this witness on 7.3.2002 at the V.S. Hospital. He has admitted that this witness in his statement dated 7.3.2002 had stated before him that upon going to the shop, as the shop was closed, he was returning home and at this time, it was around 11:00 to 11:30 in the morning. The assignee officer has admitted that the witness has further stated before him that therefore, he ran and hid in the chawls. Considering the physical condition of the witness and the injuries sustained by him, it appears that the witness is telling the truth that he has not stated before the assignee officer that he had run and hidden in the chawls. The assignee officer, therefore, does not appear to have recorded the statement of this witness accurately.

228.26 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), in his cross-examination has admitted that he has recorded the statements of this witness on 29.5.2008 and 4.7.2008. He has stated that in his statement dated 29.5.2008, the witness had stated that upon being shown the application addressed to the Chairman and Convener Shri, SIT, Gandhinagar, he has written the details stated therein and has signed the application and that the signature is his. The statement dated 7.3.2002 is read over to him and is, as dictated by him and is correct and proper ; upon remembering presently, he is also stating that at least to the extent of the police who had fired the bullet at him, there should be investigation and he too should be punished. The entire part of the testimony of the Investigating Officer referred to hereinabove, is not admissible in evidence inasmuch as the same has not been used to contradict any part of the primary statement of the witness.

228.27 SUBMISSIONS: The learned counsel for the appellants submitted that this witness is the elder brother of Saiyed Badshah. This witness does not implicate any accused. Moreover, there are inconsistencies between the testimony of this witness and his wife PW-68 Naseembanu Mohammad Khalid Saiyad. It was submitted that while according to this witness he was taken to Hajrabibi's (Jadikhala) verandah and that he took shelter at the Pinjara's house, his wife PW-68 does not say that her husband was taken to Jadikhala's house or that they took shelter in the Pinjara's house.

228.28 ANALYSIS: This witness has sustained bullet injury in the morning, immediately after he went and stood near the S.T. Workshop. The witness was carried by youths from their mohalla, including his brother Saiyed Badshah to the verandah of Hajrabibi @ Jadikhala. After ten to fifteen minutes they were informed that an ambulance has arrived and taken to the corner of Hussainnagar but by that time the mobs had entered the chawls in large numbers and hence, they hid in someone's house. However, in a short while they were asked to leave the house as the mobs were coming there also. His brother and his wife lifted him and took him to a Pinjara's house and they hid in the house till 6 o'clock in the evening. At around six in the evening, four persons in plain clothes but with guns, who appeared to be policemen, came there and told them that a vehicle had come for them and asked them to come along. Following them, they started going towards Jawannagar, but the public standing there told them not to go as there was violence there. Thereafter, they went to another Pinjara's house and stayed there till about 11 o'clock at night when

people came with vehicles from Shah Alam and took them to the camp. From the camp, he was taken to the hospital in an ambulance. The witness has been severely injured by the bullet and has been rendered physically handicapped for life.

228.29 In his cross-examination it has been elicited that the first person to be injured by a bullet was Pirubhai and immediately thereafter, a bullet struck him. The witness has not seen Abid being wounded by a bullet and is not aware as to whether he (the witness) was injured in police firing. In the entire cross-examination, no omission or contradiction has been brought out as to his statements recorded by the police. Therefore, the version given by the witness deserves to be accepted. This, witness has not named any accused and his testimony is relevant only to the extent he has deposed as above. From the testimony of this witness, it emerges that after he was wounded, he was taken to Jadikhala's house, which supports the testimony of PW 135 Hussainabanu who has deposed that the mattress on which this witness was made to lie down was blood stained and this blood stained mattress was placed upon her brother Hasanali and he was set ablaze.

229. **PW-257 Mahammadriyaz Fasiyuddin Shaikh**, aged 38 years, has been examined at Exhibit 1754. This witness has deposed that he can understand Gujarati; however, he finds it more convenient to speak in Hindi and will, therefore, depose in Hindi. His native place is District Gulbarga, Karnataka State.

229.1 The witness has deposed that he is illiterate and is residing at Jawannagar since the last twenty years and since

the last fifteen years, he is in the business of grocery and vegetables. He carries on his business from his residence.

229.2 The incident took place on 28.2.2002. At the time of the incident, his mother, father and his brother, sisters, his wife and children, were all residing together.

229.3 On the day of the incident, he was at home. At that time in the morning at around 9 o'clock, the mobs had gathered opposite S.T. Workshop. The people came near their house and were saying that the mobs have gathered outside. Upon hearing this, he also came out of his chawl and went and stood at the corner of S.T. Workshop.

229.4 When he went there, he saw that the people in the mob had gathered. The mobs were coming from Krushnanagar, Mahajanivas and Patiya. The people in the mob were shouting slogans of Jay Shri Ram and were pelting stones. They were pelting stones at the masjid and were damaging the masjid. He saw that the mobs had come in front of the masjid and after coming there, they were pelting stones and damaging it.

229.5 The people in the mob had dharias, swords and other weapons in their hands. The people in the mob had assaulted the Imam Saheb of the masjid. Upon seeing all this, he was frightened. As he was frightened, he went back home. He stayed with his family members at home till 1 o'clock in the evening.

229.6 Thereafter, the mobs started breaking the wall of the Jawannagar pit and started coming inside. Hence, out of

fear, he and his family left their house and went towards the S.R.P. compound wall.

229.7 Amongst the people in the mob which broke the compound wall of Jawannagar, and entered their chawls, he had seen Guddu Chhara. He had tied a black band on his head and he had a sword in his hand. He had also seen Suresh Langda in the mob with a dagger in his hand. He had seen Guddu Chhara assaulting a woman. Guddu Chhara first assaulted the woman with a sword and thereafter, sprinkled kerosene on her and set her on fire. Suresh Langda was inflicting blows with gupti on women. He had also seen Bhavanisingh in the mob. Bhavanisingh Chhara was gesturing to the people in the mob and calling them and all the people in the mob were coming to the chawls and upon his so gesturing, the people in the mob were entering the chawls and were looting.

229.8 They tried to go inside the S.R.P. Quarters, but the S.R.P. people who were standing there did not let them enter and hence, they stood outside the compound wall of the S.R.P. Quarters. They stayed there till 5 o'clock in the evening. Upon the mobs increasing, thereafter they went to a terrace of Gangotri Society and sat there. At this time, his younger brother Mohammad Afzal got separated from him. He left his family on the terrace and went to search for him towards Jawannagar. In Jawannagar, the people in the mob were killing any person from the Muslim community who fell in their hands. Four youths in the mob had stripped a woman naked and raped her. At that time, it was around 6:30 to 7:00 in the evening. He does not know the names of these four youths.

229.9 Thereafter, he went on another terrace of Gangotri Society. From the terrace, he had seen that another woman was also assaulted and her hands and legs were broken by the people in the mob. From the terrace, he had seen his maternal aunt's son Zakirhussain's son, who was aged 5 years, being thrown alive in the fire by the mob. Thereafter, the mob went away. All this he had seen while hiding on the terrace.

229.10 The people in the mob were the members of the Vishwa Hindu Parishad, Bajrang Dal and Shiv Sena. He stayed at the terrace till around 12:30 at night. Thereafter, upon the police vehicle coming, they were taken to the Shah Alam camp. They had stayed at the camp for around six months. Thereafter, they had returned to Naroda Patiya.

229.11 Most of the business items as well as household articles from his house were looted by the people in the mob. The SIT had recorded his statement in connection with the incident.

229.12 Out of the persons whom he had named, Guddu Chhara and Bhavanisingh are dead. The witness has stated that he can identify Suresh Langda and has correctly identified accused No.22 – Suresh Langda.

229.13 CROSS EXAMINATION: In the cross-examination, the witness has admitted that for the purpose of panchnama and survey of his house, he himself had gone with the police. He has denied that on the day when the police went to draw the panchnama, his statement was also recorded. The

witness has denied that in his statement dated 6.5.2002, he has stated that on 27.2.2002, at the Godhra Railway Station, people belonging to the Muslim community sprinkled kerosene on a coach of the Sabarmati Express Train in which the Kar Sevaks were travelling and set it on fire and had burnt them alive, due to which, the Vishwa Hindu Parishad had given a call for Gujarat Bandh. The witness has voluntarily stated that his statement was recorded only by the SIT. Apart from the fact as to whether any statement of the witness was recorded on 6.5.2002, the part of the statement which is put to the witness has not been put to contradict any part of what is stated by the witness in his evidence. Under the circumstances, this part of his statement under section 161 of the Code could not have been brought on record and is inadmissible in evidence.

229.14 The witness has denied that in his statement dated 6.5.2002, he had stated that on 28.2.2002, he woke up in the morning and after drinking tea, he was present in his shop and at 9 o'clock in the morning, there was commotion and unrest outside, and hence, he was going out on the road to look. However, outsiders were coming inside, hence, at around 12 o'clock, he also came out with his children and went and sat near the S.R.P. camp, where everyone were sitting and at this time, about fifteen to seventeen thousand Hindus, with weapons, came there and started setting the houses on the front side of the road on fire. In this mob, one Guddu Chhara was there who had a sword and whose full name he does not know, but whom he knows by his face. Thereafter, they had gone to a terrace of Gangotri Society and at 11 o'clock at night, upon the police vehicle coming, they were directly taken to the Shah Alam camp and at present, they are at the camp.

The witness has voluntarily stated that he did not have any shop and that he used to do his business from his house and was not required to go to his shop.

229.15 The witness has denied that in his statement, he had stated that on 28.2.2002, the Hindu mobs had taken away. He does not know who had taken away the good; regarding who had which weapons in the riots, he is stating that when this mob of Hindus came, out of fear, they had hidden against the S.R.P. compound wall, and thereafter, had gone to Gangotri Society and at 12 o'clock at night, they had gone to the Shah Alam camp. The witness has stated that no such statement of his was recorded and the police had only drawn a panchnama. The witness has denied that he had stated about the damage caused to his house in the statement and has voluntarily stated that he had stated about the damage in the panchnama.

229.16 The contents of the first three lines of his examination-in-chief are read over to the witness who has denied that he had not stated these facts in the statement recorded by the SIT. The contents of last two lines of paragraph 4 of his examination-in-chief are read over to the witness, wherein he has stated that upon hearing this, he too came out of his chawl and stood at the corner of the S.T. Workshop, to the effect that he had not stated such facts in his statement. The contents of paragraph 5 from the second to third lines of the examination-in-chief of the witness are read over to the witness to the effect that he had not stated such facts in his statement.

229.17 The contents of paragraph 8 of his examination-in-chief are read over to the witness, wherein he has stated that the mob broke the Jawannagar wall and entered their chawl, wherein he had seen Guddu Chhara and Suresh Langda in the mob. The witness has stated that he does not remember whether he has stated these facts to the SIT.

229.18 The attention of the witness is drawn to the contents of the third line at page 4 of paragraph 8 of his examination-in-chief, wherein the witness has stated that Suresh Langda was inflicting blows with a gupti on women. The witness has stated that he does not remember whether he had stated such facts before the SIT.

229.19 The witness is cross-examined with regard to the topography of the area. He has denied that he does not know as to from which directions the mobs came and has voluntarily stated that the mobs had come from three directions. The witness has denied that he had seen Guddu, Bhavani and Suresh in the mob in the morning near Noorani Masjid and has voluntarily stated that he had seen them in the afternoon. The witness has admitted that while he was at the camp, he had made an application to the Police Commissioner. He does not remember as to whether in the application he had named any accused other than Pappu Chhara. He has stated that he had seen four youth raping a woman from the terrace of Gangotri. He has denied that he has not stated before the SIT officer as to where this incident had taken place. The witness has voluntarily stated that he had seen the incident taking place at Jawannagar. The witness has denied the suggestion that on the day of the incident, he had not gone to the corner of the S.T.

Workshop, he had not seen Guddu and Bhavani, and therefore, in his statement dated 6.5.2002, as well as the application made to the Police Commissioner, he has not given these three names. The witness has admitted that he has no social relations with Suresh Langda. He had no occasion to visit his house and has no talking relations. The witness has admitted that after the incident took place, he had never met Suresh. The witness has denied that under the pressure from the people of his community, he was falsely deposing to implicate the accused.

229.20 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has been cross-examined by the defence to prove the omissions and contradictions in the testimony of this witness. The Investigating Officer, in his cross-examination, has admitted that he has recorded the statement of this witness on 23.5.2008. The words, "the mobs opposite S.T. Workshop" are read over from paragraph 4 of the examination-in-chief of the witness. The Investigating Officer has admitted that the witness has not mentioned these words in the statement recorded by him but had stated that they had gathered at the Naroda Patiya area.

229.21 A sentence from paragraph 4 of the examination-in-chief of the witness is read over to the Investigating Officer, wherein he has stated that upon hearing this, he too went out of his chawl to the corner of the S.T. Workshop and stood there. The Investigating Officer has denied that this witness has not stated these facts before him and that the witness had stated before him that he had gone out and was standing there. Therefore, whether the witness says that he went and

stood outside the chawl or outside at the corner of the S.T. Workshop, the meaning is the same.

229.22 The contents of paragraph 5 of the examination-in-chief of the witness wherein the witness had stated that the mobs were coming from the side of Krushnanagar, Mahajaniyavas and Patiya are read over to the Investigating Officer, who has denied that the witness has not stated such facts in the statement recorded by him. He has stated that the witness had stated before him that these mobs had come from two to three directions to the Naroda Patiya area.

229.23 Extracts of paragraph 8 of the examination-in-chief of this witness are read over to the Investigating Officer, wherein the witness has stated that in the mob which had broken the Jawannagar compound wall and entered their chawl, he had seen Guddu Chhara as well as Suresh Langdo. The Investigating Officer has denied that the witness has not stated these facts in the statement recorded by him but has stated that the witness had stated before him that Muslim mobs entered the chawl and the people in the mob had weapons with them and they were assaulting the people belonging to the Muslim community and burning them with kerosene and in that mob he had seen Guddu Chhara, Suresh Langdo and Bhavanisingh Chhara.

229.24 The contents of paragraph 8 of the examination-in-chief of the witness are read over to the Investigating Officer wherein the witness has stated that in the mob Suresh Langdo was inflicting blows with a gupti on women. The Investigating Officer has admitted that all these facts have not been stated

by the witness and that the witness has stated that Suresh Langdo had a gupti and he was assaulting with it, however, he has not stated that he was inflicting blows on women with a gupti.

229.25 SUBMISSIONS: The learned counsel for the appellants submitted that no police statement of this witness regarding the incident has been recorded and the only statement which has been recorded is by the SIT on 23.5.2008. It was submitted that while Shri S.S. Chudasma has recorded the statement of this witness on 6.5.2002, the witness has denied any such statement having been recorded.

229.26 It was submitted that the witness has admitted that from the camp he had made an application to the Police Commissioner and he has also admitted the name which was being discussed in the camp of one person, he had given his name and he says that he does not remember having given any name other than Pappu Chara. It was submitted that in such circumstances when there is an omission before the SIT as regards the place from where the witness has seen the mob in the afternoon, his naming the accused for the first time before the SIT may not be relied upon. The learned counsel for the appellants further invited the attention of the court to the contents of paragraphs 8 and 9 of his examination-in-chief to submit that no witness has stated about any such incident having occurred at Jawannagar.

229.27 The learned Special Public Prosecutor has submitted that this witness has specifically given the names of the accused with weapons and when a question was asked as to

whether accused No.22 was near the Noorani Masjid, he has clarified that he had seen him in the afternoon. It was submitted that the witness has denied his first statement recorded by the police on 6.5.2002 and that the statement recorded on 6.5.2002 is a panchnama of his house and no specific question has been put in respect of the statement to the Investigating Officer to bring out the contradictions. It was submitted that this witness is, therefore, credible as well as dependable.

229.28 ANALYSIS: As per the version given by this witness, in the morning on the day of the incident he had seen mobs coming from three directions. The people in the mobs were armed with weapons. In the afternoon, the Jawannagar compound wall was being broken by the mob and amongst the people in that mob he had seen Guddu Chhara and Suresh Langda assaulting women with sword and gupti respectively, and Bhavanisingh Chhara gesturing to the mob and calling them. The witness went to the S.R.P. Quarters but they were not permitted to go inside, and hence, they stood outside the compound wall till 5:00 p.m. Thereafter they went to a terrace of Gangotri. Since his brother Mohammad Afzal had got separated from them, he went in search of his brother and at around 6:30 to 7:00, he saw four youths stripping and raping a girl and further saw a woman being assaulted by the mob and her hands and legs being broken and he also saw Zakirhussain being thrown in the fire by the mob. While the record shows that the witness's statement was recorded on 6.5.2002, he has denied that his statement was so recorded. Therefore, according to him his statement was recorded for the first time by the SIT in the year 2008. From the testimony of the witness

it is evident that a panchnama of his house came to be drawn by the police at the relevant time, however, at that time he has not disclosed the names of the accused. This witness has named three accused persons, out of whom two are dead. Insofar as accused No.22 Suresh Langda is concerned, he has been named by the witness for the first time in the year 2008, and hence, it would be hazardous to rely upon such evidence to prove the charge against the accused. Insofar as the incidents which the witness claims to have seen, the chances of the witness having been tutored cannot be ruled out as such facts appear to have been stated only with a view to corroborate the version given by some of the other witnesses. Considering the quality of the evidence of this witness, he does not come across as a credible and reliable witness and his testimony cannot be relied upon.

230. **PW-258 Mahammadusman Mahemoodbhai Shaikh**, aged 45 years, has been examined at Exhibit-1755. The witness has deposed that he knows Gujarati, but would find it more convenient to depose in Hindi. He has stated that he has studied up till the 5th standard in Karnataka State.

230.1 The witness has deposed that since the last thirty years, he is residing at *Pandit-ni-Chali, Behind Noorani Masjid, Naroda Patiya* and has a licence to sell kerosene and is engaged in the business of distribution of kerosene. He has a licence in his name since the last sixteen years and is carrying on business.

230.2 In the year 2002, he used to park his cart outside Girishkumar Jayantilal Shah's shop at Krushnanagar and carry

on his business. After his business was done, he would park his kerosene cart opposite Noorani Masjid, near a railing. Like him, three to four other persons also used to park their kerosene carts there.

230.3 On 27.2.2002, the incident of burning Kar Sevaks at the Godhra Railway Station had taken place and hence, the situation was volatile, due to which, he had returned home on that day.

230.4 On 27.2.2002, in the evening, at around 6 o'clock, he wound up his business and parked his cart opposite Noorani Masjid as per his routine. At that time, no sale had taken place and he had forty litres of kerosene in his cart. He used to serve in Girishkumar's shop in the morning and evening, and in the afternoon, he used to keep his cart outside the shop and deal in kerosene.

230.5 The incident took place on 28.2.2002. On that day, there was a call for bandh. He was at home. At around 9:00 to 9:30 in the morning, upon the public gathering, his wife woke him up. After waking up, he went near Noorani Masjid. The people residing in the neighbourhood were standing there. At that time, he saw that mobs of people had gathered towards Natraj Hotel. He had also seen the mobs gathering at Krushnanagar. The mobs were slowly coming towards Noorani Masjid.

230.6 The people in the mob were Hindus. The people in the mob were pelting stones at Muslims and were throwing burning rags. The police were also there. The police was

releasing tear gas against them. Upon seeing all this, they were frightened and went and hid in the lanes. At that time, the people in the mob took the kerosene from their carts and threw it on the masjid and set it ablaze. The people in the mob had also entered the masjid.

230.7 At this time, in the Krushnanagar mob, he had seen Bipin Panchal (A-44). In the mob which was coming from the Natraj side, he had also seen a youth who used to drive a rickshaw, whose name was Manoj Sindhi (A-41). In these riots, they, the Muslims, were very worried. His family members had gone to *Jigarhasan-ni-Chali*.

230.8 In the mob, Bipinbhai Panchal and Manoj Sindhi were instigating the people in the mob. Thereafter, with a view to save himself from the mob, he had gone to his family near *Jigarhasan-ni-Chali*. They stayed at *Jigarhasan-ni-Chali* till night. At around 11:00 to 11:30 at night, he and two to three persons of their community came out. At that time, there was a police vehicle which was parked in front of the S.T. Workshop gate, in which a police officer was sitting. He had requested that police officer to make arrangements to drop them at the camp, whereupon he had told him that it could not be done as it was very late. However, they would make arrangements in the morning.

230.9 Thereafter, on 1.3.2002, in the afternoon at 5 o'clock, a police vehicle came and they took them to Juhapura camp. They stayed there for around eight months. In the riots, immense loss had been caused to him in connection with his kerosene cart and his household goods. His kerosene cart was

destroyed in the incident.

230.10 The SIT had recorded his statement in connection with the incident.

230.11 As stated by him, he had seen Bipinbhai Panchal and Manoj Sindhi in the incident and he can identify them. The witness has thereafter identified accused No.44 – Bipinbhai Panchal correctly. He, however, could not identify Manoj Sindhi (A-41) though he was present in the court.

230.12 CROSS EXAMINATION: This witness in his cross-examination has admitted that he used to make bills while selling kerosene. He used to distribute kerosene on ration cards. The witness has admitted that he used to maintain an incoming and outgoing register in respect of kerosene as per the Government rules. The witness has stated that on 27.2.2002, he had sold 160 litres of kerosene and had made the entry in the stock register. He has voluntarily stated that amongst the things that had burnt on the day of the incident, the mob had burnt everything. The witness has admitted that he has not lodged any complaint in connection with the kerosene that was destroyed on the day of the incident for the reason that he was in the camp for eight months. The witness has further deposed that he had lodged a complaint with the Civil Supplies Department of the Government and that when he started the business after the incident, the Government had given him fresh registers. The witness has been cross-examined with regard to the topography of the area. He has denied that he had not got forty litres of kerosene in his handcart and that whatever kerosene remained was for his

personal consumption. The witness is confronted with the statement recorded by the SIT to the effect that he had stated therein that on 28.2.2002, he had decided not to sell kerosene from his cart and that his kerosene cart was lying as it is in front of the Noorani Masjid and there was approximately forty litres of kerosene in it. On 27.2.2002, the situation in the Ahmedabad city was volatile and there were chances of riots and hence, he had kept the kerosene himself. The witness has voluntarily explained that what he means to say is that he had not sold the kerosene and had kept it in the cart.

230.13 In his cross-examination, it has further come out that when he reached near the Noorani Masjid after around half an hour to a quarter to an hour, the police had released teargas and has started firing. The witness has admitted that he had seen what the mob was doing while hiding in the lanes. The witness has denied that there was smoke on all sides on account of the teargas but has stated that there was some smoke. The witness has admitted that after the teargas was released, out of fear, he had gone inside and thereafter he had not seen the incidents taking place outside. The witness has admitted that he was aware of the fact that Manoj Sindhi used to drive a rickshaw and has stated that he had seen him earlier driving a rickshaw in the Patiya area. The witness has admitted that after the incident, he has no relations of visiting Bipin Panchal at his house, meeting him or having tea or sitting with him. The witness has denied that he had not seen the incident narrated by him in his examination-in-chief and that he was falsely deposing merely at the instance of the people of his community and that he did not know either of the accused in the mob.

230.14 The witness is confronted with the statement recorded by the SIT to the effect that he had not stated that Bipin Panchal and Manoj Sindhi were instigating the mob. The witness has admitted that in his statement he had not stated as to where Bipin Panchal is residing and what business he carried on. The witness has stated that he knew him very well and that he knows his place of business and that he is known as Bipin Autowala, and therefore, it was not necessary to state his business. The witness has stated that he does not know where he resides and hence, he has not stated such fact, but he is aware that Bipin has an auto centre opposite S.R.P. camp. In his cross-examination, it has come out that he does not know that Bipin Auto Centre was burnt in the incident and till date, he is not aware of such fact.

230.15 The witness has admitted that the Islamic Committee has got his house repaired. The witness has denied that while he was in the camp in the year 2002, he was informed about certain names which were decided and on that basis, he has named such accused in his statement recorded by the SIT in the year 2008 and has falsely deposed before the court. The witness has denied that Bipinbhai was not present at the scene of the incident on the date of the incident.

230.16 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT), has been examined to prove the omissions and contradictions as to the previous statement of the witness recorded by him. In his cross-examination, the Investigating Officer has admitted that he has recorded the statement of this witness on 22.6.2008. Certain extracts of paragraphs 7 and 8

of the examination in chief of the witness are read over to the Investigating Officer wherein he has stated that the people in the mob entered Noorani Masjid. At that time, he had seen Bipin Panchal in the Krushnanagar mob. The Investigating Officer has denied that this witness has not stated such facts in the statement recorded by him. He has deposed that the witness had stated before him that on 28.2.2002 at around 9:00 to 9:30, a huge mob of Hindus had gathered on the side of Natraj Hotel as well as Krushnanagar and opposite the Noorani Masjid. He does not know as to what they were wearing and that the Hindu mob first pelted stones at the Noorani Masjid as well as the surrounding chawls and damaged carts as well as houses on the road. On 28.2.2002, about 40 litres of kerosene which was in the cart, the people in the mob must have poured it somewhere and used it for burning. His cart and his measures were set on fire by the mob and the people in the mob had thrown the kerosene in the masjid and set the masjid on fire, which he had seen with his own eyes.

230.17 An extract of paragraph 9 of the examination-in-chief of the witness is read over to the Investigating Officer wherein he has stated that Bipin Panchal and Manoj Sindhi were instigating the people in the mob. The Investigating Officer has admitted that the witness has not mentioned the fact regarding instigation only; however, the witness has clearly stated that both the accused were leading the mob.

230.18 SUBMISSIONS: Mr. Y.S. Lakhani, learned counsel for the appellants, submitted that this witness has named two accused, namely, Bipin Panchal and Manoj Sindhi. He, however, could not identify Manoj Sindhi, though he was

present before the court. It was submitted that insofar as accused No.41 Manoj Sindhi is concerned, this witness has stated that he was driving a rickshaw and, ultimately, he has not identified him in the court. Therefore, even if he has referred to Manoj Sindhi in his only statement dated 22.6.2008 recorded by the SIT; it is not referable to accused No.41.

230.19 As regards accused No.44 Bipin Panchal, the learned counsel submitted that in his only statement before the SIT, the witness has stated that he was seen in the mob in the morning and beyond that, no overt act has been attributed nor has any participation been alleged and, therefore, the evidence against accused No.44 is not reliable and cannot be used against him. Referring to contents of paragraph 22 of the deposition of the witness, it was submitted that the evidence of the witness is vague as against his claim of seeing the accused in the mob.

230.20 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the witness is a natural witness and his presence at the scene of offence is established, and hence, there is no reason to disbelieve this witness, who is a credible and trustworthy witness.

230.21 ANALYSIS: The record reveals that only one statement of this witness as recorded in the year 2008 by the SIT. No statement of the witness was recorded at the relevant time and no plausible explanation has come forth as to why his statement could not be recorded at that time. The witness has named two accused, viz. Bipin Panchal and Manoj Sindhi in the incident and has attributed specific roles to them. However,

out of the two accused, he could not identify Manoj Sindhi (A-41). Besides, in his sole statement recorded by the SIT he has attributed a different role to the accused than that stated before the court. Considering the quality of the evidence of this witness, together with the fact that the statement of the witness was recorded at a highly belated stage, only in the year 2008, it would be very risky to rely upon the testimony of this witness to prove the charge against the accused.

231. **PW-259 Hajrabibi Abdulsamad Shaikh**, aged 42 years, has been examined at Exhibit-1761. The witness has deposed that she can understand Gujarati, but cannot speak in Gujarati and hence, she will depose in Hindi.

231.1 The witness has stated that she is totally illiterate. She is residing in *Lane No.1, Jawannagar, Naroda Patiya* since around 25 years with her family. She does only household work. Her husband has passed away around five years prior thereto.

231.2 On 28.2.2002, the incident took place. There was a call for Gujarat Bandh on that day.

231.2 In the year 2002, her mother, her husband and her children were residing with her. Her mother's name was Tarkasbibi.

231.3 Since she was her mother's only child, she used to live with her. Her mother was handicapped and she was bent from the waist.

231.4 On the day of the incident, she was at home in the morning. She was making breakfast for her family members. At that time, since there was a call for Gujarat Bandh, her husband went outside to see. He came back home and told her that the situation was very volatile on that day and that she should not let the children go out anywhere. The Noorani Masjid was being attacked and the shops nearby were being set on fire. Therefore, they had stayed at home.

231.5 On the day of the incident, at around 12 to 1 o'clock in the afternoon, a Hindu mob broke the Uday Gas Agency compound wall and entered into their chawls. Upon the people of the mob coming in, they thought that they should leave their houses and go away, and hence, she told her mother that they would lift her and they would leave that house and go. At that time, her mother asked her as to where they would go around with a handicapped person and said, instead they should make her sit in the toilet. Thereafter they lifted her mother and placed her in the toilet of their neighbour which was on the first floor, which has a room on the ground floor. They had latched the chain of the toilet from outside and left their home. Thereafter, they went from one lane to another in the chawls and went to the terrace of a house in Gangotri Society. From the terrace of Gangotri Society on which they were, they saw that the people in the mob had come in the house near the toilet where they had kept her mother, opened the door of the toilet and lifted her handicapped mother and thrown her down. Upon the people in the mob throwing her down, the mob below had thrown her alive in a burning rickshaw. She had seen this incident herself. Two rickshaws were also burning there. The people in the mob had thrown her

handicapped mother who was thrown down in both the burning rickshaws.

231.6 The people in the mob were also gesturing to them and calling them and saying that “Now, it is time to kill you also, come here”.

231.7 In the incident, her house was damaged and the household goods and other things etc. were set on fire. They had kept sitting on the terrace. At 12:00 to 12:30 at night, upon the police vehicle coming, they were taken to the Shah Alam camp, where they stayed for around six months. Her mother was burnt and died in the incident.

231.8 Upon seeing this incident, her (the witness's) health had deteriorated. She has not even lodged a complaint.

231.9 Five days after the incident, she was called to identify her mother's dead body. However, since she was not well, she had not gone. She had sent her elder son-in-law to identify her mother's dead body. Her son-in-law had come and said that he had identified her mother's body and that she had been buried at Kalandar Kabrastan. Her son-in-law had also obtained burial receipt.

231.10 The witness has deposed that since she had seen the incident, for four to five months, she was very disturbed and her health was not good. She used to remain very tense. They had not received the post mortem report of her mother and they did not have anything other than her burial receipt.

231.11 Since she was not well, the police had not recorded her statement at the camp. The SIT people had recorded her statement at Naroda Patiya. Her father's name was Abdulgani Ibrahimhai Shaikh and he had died prior to the incident.

231.12 CROSS-EXAMINATION: In the cross-examination of this witness, she has admitted that her husband died in the year 2006. She has admitted that her mother used to have meals with them, but was residing separately in a house next door. She has stated that she knows Chandbhai, who lives next door and they had a common wall. Her husband used to do tailoring work at home. On the day of the incident, he had gone out to watch. Her husband was matric pass. She has admitted that through out the day of the incident, except when her husband went out, her husband and children were with her. She has denied that till 12 o'clock to 1 o'clock in the afternoon on the day of the incident, there was total peace in their chawl. She has admitted that the people in the mob had not resorted to rioting near her house till 1 o'clock in the afternoon. The witness has admitted that Chandbhai's house has a terrace and has voluntarily stated that she had made her mother sit in the toilet on the first floor of Chandbhai's house. This was after 1 o'clock in the afternoon. The witness has admitted that while going to the terrace of Gangotri Society, they had tried to take shelter inside the chawls. However, lastly they had gone to the terrace of Gangotri Society. She has stated that first they went to Chandbhai's terrace and thereafter, upon the mob coming there, they hid in the lanes and went to the terrace of Gangotri Society. The witness has stated that they must have been inside the chawls for one and a half hours. She has admitted that the people on Chandbhai's

terrace were from their mohalla and that Chandbhai's house was near the wall from where the mob which came from the direction of Uday Gas Agency broke the compound wall and upon the mob coming there, everyone fled. The witness has stated that the place where the two rickshaws were burning is opposite their house, where at that time there was an open ground. The rickshaw which was set ablaze was their neighbour's rickshaw. Both the rickshaws belonged to them. One rickshaw belonged to Iqbalbhai and the other rickshaw belonged to his son. The witness has admitted that both of them are residing in Jawannagar. She has admitted that till the time she went to Shah Alam camp, she had not met Iqbalbhai and Chandbhai. The witness is cross-examined with regard to the topography of the area. She has admitted that at that time, when her mother's incident took place, her husband was with her on the terrace and he too had seen the incident. That her entire family had seen her mother's incident. The witness has admitted that she has not shown the toilet on the first floor of Chandbhai's house, where her mother was and the terrace of Gangotri Society where they had hidden, for the reason that the SIT people had not asked her.

231.13 The attention of the witness is drawn to paragraph 8 of her examination-in-chief and she has denied that in her statement recorded by the police, she had not stated that the people in the mob had lifted her mother and thrown her down and the mob had thereafter taken her and put her alive in a burning rickshaw. The witness has voluntarily stated that her statement was recorded only by the SIT. The witness has admitted that she has not identified her mother's dead body. She has denied that under pressure from the leaders of their

community and social organizations, she was falsely deposing before the court. The witness has admitted that she has been given a house at Faizal Park by the Islamic Relief Committee.

231.14 To prove the omissions and contradictions as to her previous statement as brought out in her cross-examination, the defence has cross-examined the concerned Investigating Officer/assignee officer who recorded such statement.

231.15 PW-278 Shri R.B. Joshi, the assignee officer, in his cross-examination, has admitted that he had recorded the statement of this witness on 11.5.2002. The assignee officer has admitted that this witness had not named any accused in the statement recorded by him. The assignee officer has stated that he does not remember as to where he had recorded the statement dated 11.5.2002 and that probably he may have recorded it at Patiya. There is no note in this regard. The assignee officer has admitted that majority of the statements have been recorded by him at Patiya. He has further admitted that they used to call the witness from the camp for drawing panchnamas and used to take them to Naroda Patiya and used to record their statements there. He has further stated that he cannot say with certainty that he had drawn the panchnamas of all the witnesses and at present, does not remember as to where he had drawn panchnamas in all cases where he had recorded the statements of the witnesses. He has admitted that whatever work was entrusted to him, the corresponding documents had been handed over by him to the Investigating Officer. He has denied that in every case where he was drawing the panchnama, he was also recording the statements. He has

admitted that he has recorded the statements of all the witnesses in the context of the incident and that the facts recorded regarding damage and other facts are as stated by the witnesses. The assignee officer has admitted that this witness had not stated before him that they had made her mother sit in the toilet on the first floor, but has clarified that the witness has stated that they had taken her mother to the terrace of Chandbhai Shaikh's house. The assignee officer has admitted that this witness had not stated any facts regarding the people in the mob lifting her mother and throwing her and the mob putting her in a burning rickshaw and burnt her alive, have not been stated by her in the statement recorded by him. He, however, has stated that the witness has stated before him that her mother had been burnt.

231.16 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 17.6.2008. He has admitted that the witness has verbatim not stated the facts stated in paragraph 7 of her examination-in-chief wherein the witness has stated that her mother was made to sit in the toilet at the first floor. He has stated that the witness had stated that her mother was not ready to go with them and hence, they had shut her inside a toilet and latched the chain from outside. In the statement, there is no reference to the toilet being on the first floor.

231.17 SUBMISSIONS: The learned counsel for the appellants submitted that no statement of this witness has been recorded by the police and her only statement has been recorded by the SIT. It was submitted that this witness in

paragraph 8 of her examination-in-chief has stated that her mother was thrown down and was put into burning rickshaws. It was submitted that the said rickshaws belonged to one Iqbalbhai and his son. However, in neither of the rickshaws, any dead body or remnants thereof were found. It was submitted that once the witness has gone to Gangotri Society, it is highly improbable that she could have seen anything happening on the ground in the chawls of Jawannagar. It was submitted that the claim of this witness of seeing her mother being burnt in rickshaws is therefore, highly improbable. It was submitted that this witness is not a credible witness.

231.18 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that there is no occasion for this witness to tell an untrue story since her mother had died and she has not implicated any accused and therefore, it cannot be said that she is not a truthful witness.

231.19 ANALYSIS: This witness has not named any accused. She has only narrated the incident regarding her mother being burnt to death by a mob. But the witness is not consistent in her version as regards the place where her mother was, at the time of such incident and the manner in which her mother was done to death. Having regard to the overall testimony of this witness, all that emerges from her testimony is that her mother was burnt to death in the incident.

232. **PW-260 Rasulbibi Azmuddin Shaikh**, aged 60 years, has been examined at Exhibit-1762. The witness has deposed that she can understand a little Gujarati, but finds it

convenient to depose in Hindi and will, therefore, depose in Hindi. Her native place is Karnataka and she is totally illiterate.

232.1 Since the last twenty five years, she is residing in *Dhanushdhari Mata-ni Chali*. She is doing tailoring work at home. She resides with her family. She has four children, namely, her daughter Mahemuda, second daughter Kankarbanu, third daughter Faridabibi and her son Abdulkarim. Her daughters Mahemuda and Faridabibi are married. Her mother-in-law Kankarbi also used to reside with them. Her husband died 26 years ago. She did tailoring work and used to earn a livelihood for her family.

232.2 The incident took place on Thursday, 28.2.2002. On that day, there was a call for Gujarat Bandh. During the communal riots, she, her mother-in-law, her son and her daughter Kankarbanu, were all residing together.

232.3 On the date of the incident, at around 8 o'clock in the morning, she had gone near the public tap. This public tap, at the relevant time, was on the road near the S.T. Workshop. At that time, she had seen that cabins were being burnt towards Krushnanagar. Hence, they decided that they should not go out anywhere. There were mobs on the road; they had weapons in their hands. They had tied saffron bands on their foreheads. The people in the mob were coming from the direction of Krushnanagar and Patiya. The people in the mob were asking them to come near; however, they had not gone near them. Thereafter, the mob rushed towards them and they went away to their chawls. The people in the mob had started pelting stones and setting things ablaze.

232.3 In the stone pelting by the mob, she was injured on the head with a stone and her daughter Mahemuda was also injured on the forehead with a stone. Her daughter Mahemuda's son Taufik also sustained a stone injury on his legs. Upon them having been injured in the stone pelting in this manner, they, that is, she and her children went two chawls after her house, to the house of the Bakerywala and hid there. They were hiding in the Bakerywala's house to save their lives, where there were other Muslims also. They were sitting on the top of Bakerywala's house and the house was locked below.

232.4 From the top of Bakerywala's house, she had seen that the mob was coming. The mob entered their chawls. Bipinbhai was present in the mob. He was leading the mob. Sureshbhai was also there in the mob. Guddu Chharo and Bhavani were also in the mob. However, they have died. The people in the mob were burning everything. They were also burning the tyres and throwing them on their huts. The people in the mob had also set her house on fire. She had stealthily gone to extinguish the fire on her house, however, the fire could not be extinguished and everything in her house was burnt.

232.5 Her house was burnt by the mob in which Bipinbhai was there. She had come protect her house and had returned and gone to terrace of the Bakerywala to save her life.

232.6 Late at night, the police vehicle came and she went in the vehicle to the Shah Alam camp. When she got down

from the terrace to go to the police vehicle, on the way, she bumped into a dead body and she told others to walk carefully as there were there are dead bodies on the road. They stayed at the relief camp for around six months.

232.7 At the relief camp, she had given an application. Everything in her house was burnt in the incident. They only had the clothes which they were wearing. The police had recorded her statement at the camp. Later on, the SIT had also recorded her statement at Gandhinagar.

232.8 The witness has stated that she knows Guddu, Bhavani, Suresh and Bipinbhai. She has stated that on account of lapse of time, the physical features of Bipinbhai and Suresh must have changed, but she would try to identify them. The witness has, thereafter, identified Bipinbhai Panchal (A-44) and Suresh Langda (A-22) correctly.

232.9 CROSS-EXAMINATION: In the cross-examination of this witness, she has admitted that at 8 o'clock in the morning when she went to fetch water from the public taps, other people had also come to fill water. In her cross-examination, it has been elicited that the mob was setting things ablaze beyond Bipin Auto Centre and that the people in the mob were setting things ablaze near the cemetery near Bipin Auto Centre. The witness has admitted that the cemetery and the S.T. stand are opposite each other. The witness has admitted that from the newly constructed S.T. bus stand, if one comes towards their chawls, the S.R.P. Quarters come in between first and thereafter there are shops and thereafter, there is a road which goes towards the Jawannagar pit. Thereafter, at the

relevant time, there was a hall and her house was behind the hall. The witness has admitted that there was a small road from near the hall from which one could go to her house. The witness is further cross-examined with regard to the topography of the area. The witness has stated that floor of the Bakerywala's house was filled with people and that there were many people.

232.10 From her evidence, it has come out that they were standing near the public tap for about one to two hours and that the mob had gone towards Noorani Masjid and from the rear side of the hall entered into the chawl and were pelting stones at their houses. The witness has admitted that many people from the chawl were standing near the tap. The witness has denied the suggestion that while she was standing at the public tap, there was cross stone pelting. The witness is confronted with her earlier statement recorded in the year 2002, to the effect that she has not named the four accused referred to in her examination in chief in her statement before the police. The witness has admitted that at the time when the SIT recorded her statement, her previous statement dated 5.5.2002 was read over to her and she had stated that the facts stated therein were correct. The witness has denied the suggestion that she had not seen the accused named by her in her examination in chief on the day of the incident and that under pressure from the people of their community she was giving false testimony and that she had named these persons for the first time subsequently in the year 2008 in the presence of the SIT.

232.11 The witness has admitted that if she stands in the

Bakerywala's house of the Bakerywala, she cannot see her house in the chawl. The witness has denied that when her house was set on fire, she was in the Bakerywala's house and has stated that after her house was set on fire, she had gone to the Bakerywala's house. The witness has stated that it has not happened that she had first gone to the Bakerywala's house and thereafter, upon her house being set on fire, she had returned to extinguish it.

232.12 The witness has admitted that the internal roads of their chawl are about three feet wide and has further admitted that her house is on the interior side of the chawl. She has admitted that after her house there is the wall of the Uday Gas Agency and that just like her house had been set on fire, other houses in the chawl were also set on fire.

232.13 The witness has stated that at the time when her house was being set on fire, she was hiding in the lanes. The witness has been confronted with her statement recorded by the police in the year 2002 to the effect that she had not stated the facts stated by her in the paragraphs 6 and 7 of her examination-in-chief before the police. The witness is further confronted with certain parts of paragraphs 6 and 7 of her examination-in-chief to the effect that she had not stated such facts in her statement recorded by the SIT. The witness has admitted that she has not stated as to where the accused referred to by her in her examination-in-chief were residing and as to what was their occupation as well as their full names in her statement.

232.14 To prove the omissions and contradictions as to her

previous statement as brought out in her cross-examination, the defence has cross-examined the concerned Investigating Officer who recorded her statement.

232.15 PW-307 S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 5.5.2002. He has admitted that this witness had stated before him that people came from all four sides and started pelting stones and that, they too in their defence, pelted stones. They were sitting and hiding and upon calling the police on phone, the police vehicles came. The Investigating Officer has admitted that this witness, in the statement recorded by him, has not named Bipinbhai (A-44), Suresh (A-22) and Guddu and Bhavani (deceased), nor has she attributed any roles to them.

232.16 The contents of paragraphs 6 and 7 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that the facts stated in paragraph 7 of her examination-in-chief have not been stated by the witness in the statement recorded by him. However, he has denied that all the contents of paragraph 6 have not been stated by the witness and that the witness had stated before him that the people from outside had come to their chawls, whereas the other facts have not been stated by her.

232.17 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 21.5.2008. Certain extracts of paragraphs 6 and 7 of the examination-in-chief are read over to the Investigating Officer wherein she has

stated that she had seen from the top of the Bakerywala's house that a mob was coming; she had come to protect her house and had returned back and gone to the terrace of the Bakerywala's house and was sitting there to protect her life. The Investigating Officer has denied that these facts have not been stated by the witness in the statement recorded by him. and has stated that the witness has stated that she was hiding in the house of the Bakerywala which has two storeys. An extract of paragraph 6 of the examination-in-chief of the witness was read over to the Investigating Officer wherein the witness has stated that they were burning the tyres and throwing them on their huts. The Investigating Officer has denied that such facts have not been stated before him and has clarified that the witness has stated that in the mob Suresh Langdo, Guddu Chhara, Jaybhawani and other Sindhi and Chharas were there and these persons were damaging and looting their house and setting them ablaze.

232.18 Insofar as the above extract of paragraph 6 is concerned, all that is put to the Investigating Officer is as to whether the witness had stated that tyres were thrown on their hut, whereas the Investigating Officer has sought to bring on record such part of her statement wherein she has implicated certain accused and has referred to damaging and looting and burning their houses. This part of the evidence of the Investigating Officer wherein he has referred to the accused and Sindhi and Chhara people is not admissible in evidence and the only part admissible is that these people were setting their houses ablaze.

232.19 SUBMISSIONS: Mr. Y. S. Lakhani, learned counsel

for the appellants submitted that two statements of this witness have been recorded firstly by the police on 5.5.2002 and thereafter by the SIT on 21.5.2008. It was submitted that as far as the police statement is concerned, the witness has not named any of the four accused named in her examination-in-chief and that out of the four names mentioned by her, two have died. It was submitted that before the SIT also, she has not given the full names of the accused, their addresses and occupation, which means that in paragraph 6 of her examination-in-chief, the witness refers to Bipinbhai and Sureshbhai without their father's name, nickname, surname etc. Therefore, before the SIT when only the first names are referred to, after about six and a half years, for the purpose of establishing their identity beyond doubt, their test identification parade ought to have been held. In absence thereof, it cannot be said that these two accused who were identified in the court were the same who were referred to in the statement recorded by the SIT.

232.20 Referring to the contents of paragraph 22 of her deposition, it was submitted that the witness has admitted before the SIT that her earlier statement dated 5.5.2002 was correct, which would destroy her case qua the named accused and therefore, naming the four accused in paragraphs 6 and 7 of her deposition is a clear afterthought. Inviting the attention of the court to the contents of paragraph 27 of her testimony, it was submitted that the witness has stated that she cannot see her house from the Bakerywala's house, which is enough to destroy the assertions made in paragraphs 6 and 7 of her examination-in-chief. Referring to the contents of paragraph 30 of her cross-examination, it was submitted that it is clear that

the witness has no relationship whatsoever with the two accused and, therefore, it is very doubtful as to when she refers to Bipinbhai and Suresh before the SIT, they were named at the instance of someone else.

232.21 Mr. B. B. Naik, learned counsel for the appellants invited the attention of the court to the contents of paragraphs 5 and 6 read with paragraphs 27 and 29 of the testimony of the witness to submit that there are serious contradictions in the evidence of this witness and, therefore, her allegations against the accused of burning her house cannot be accepted.

232.22 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the witness has identified both the accused named by her, namely, accused No.22 Suresh and accused No.44 Bipin. It was submitted that considering the overall evidence of this witness, her version is believable because her presence at the scene of offence is established. It was submitted that a suggestion was made to the witness that there was stone pelting from both the sides, which would also establish her presence at the scene of offence.

232.23 ANALYSIS: This witness's statement came to be recorded at the relevant time on 5.5.2002. Subsequently, her statement also came to be recorded on 21.5.2008 by the SIT. In her first available statement dated 5.5.2002, the witness has not named any accused and for the first time, after more than six years, before the SIT she has implicated four persons viz. Bipinbhai (A-44), Sureshbhai (A-22), Guddu Chharo (deceased) and Bhavani (deceased) stating that she had seen them in the mob which was committing arson. The witness was a resident

of Dhanushdharimata-ni-Chali which is situated at a slight distance from the Noorani Masjid and is on the same side of the highway as the Noorani Masjid. The witness has deposed that when she came on the road near the S.T. Workshop, she saw cabins being set ablaze on the side of Krushnanagar. Considering the overall evidence that has come on record, no such incidents took place before 9:00 a.m. in the morning. Whereas several witness have deposed about the presence of these accused on the road near the Noorani Masjid or the S.T. Workshop, this witness has alleged that the accused had set their chawls, which are situated at a distance from the Noorani Masjid, on fire. Since, the accused could not have been at two places at the same time, it would be safer to rely upon the version given by majority of the witnesses than to rely upon the version of this witness, which has come on record only in the year 2008, to prove the charge against the accused. However, insofar as the version of the incident narrated by the witness is concerned, to the extent the same is consistent with her original version and the evidence on record, the same can be taken into consideration. The testimony of this witness, therefore, cannot be relied upon to prove the charge against the named accused.

233. **PW-261 Mariyambibi Hasanbhai Saiyed** has been examined at Exhibit-1766. The witness has deposed that she can understand Gujarati to a certain extent. She also does not know how to speak in Hindi properly, but she would try to speak in Hindi. She only knows Malayalam language. Her native place is Kerala.

233.1 She is illiterate. She was married in the year 1969

and since then, she is residing in Ahmedabad city. She is residing in *Naroda Patiya* area since her marriage.

233.2 Her husband has passed away. Earlier, she used to reside with her husband and her children.

233.3 In the year 2002, she used to reside in *Lane No.2, Hussainnagar* with her husband and her children. In the year 2002, her younger son Maiyuddin also used to reside with her. He died in the incident. In the year 2002, one of her sons had gone to Kuwait, however, his wife and his son and her husband and her three sons, including Maiyuddin and her daughter, were all residing with her. Three of her other daughters were married and were residing at their matrimonial homes.

233.4 On the day of the incident, her family members were at home in the morning and she was making breakfast. On that day, in the morning at around 8:00 to 8:30, while she was going to Hiralal's shop to buy milk, she had reached corner of the S.T. Workshop. There, she saw that Hindu mobs had come from the direction of Kubernagar and Natraj Hotel and had started pelting stones. She was standing near ST Workshop and there was stone pelting there and the mob had also pelted stones near the Noorani Masjid. The mob was comprised of Hindus.

233.5 Thereafter, the police came there and released tear gas and resorted to firing wherein four to five persons were injured. Out of them, Abidbhai was injured by a bullet and he died on the spot, whereupon she returned home. She had seen Abidbhai's incident. They sat at home for a considerably long

time, whereafter they took the children and went to Abdulbhai's house at Gangotri Society.

233.6 She has taken all her children and gone; however, her handicapped son Maiyuddin who was on the terrace of madressa refused to come and was watching the incidents taking place during the riots.

233.7 Since her son Maiyuddin had not come with her, she had taken her other family members and gone to Abdulbhai Ghadiyali's house. By the time she left her family members there and returned to the madressa to fetch Maiyuddin, the Hindu mob came, whereupon Maiyuddin told her to hide in the madressa as the mob of Hindus had come. After saying this to her, Maiyuddin went inside her house. Thereafter, she sat on the staircase of the madressa. Two to three other boys were also there.

233.8 At this time, the Hindu mob started wrecking and plundering their houses. This mob of Hindus broke the door of her house and brought her son outside. The persons, who broke the door of her house and took her son Maiyuddin out of the house, were Murli Sindhi (A-2), Suresh Langda (A-22), Suresh Mama (A-26) and Guddu Chhara, whom she had seen. They told her son to say "Shri Ram" and when her son Maiyuddin said that he would not say "Shri Ram", they assaulted him with swords, sticks, pipes, etc. and poured kerosene or petrol over him and burnt him alive, which she had seen. She had seen all this from the window of the madressa.

233.9 She does not know what the time was; however, it

was evening. The two to three boys, who were with her, took her to Gangotri Society.

233.10 She went near the S.R.P. Quarters and requested that they be permitted to go inside; however, they did not let them enter and told them that they had to die that day, there were orders from above.

233.11 Thereafter, they went to a godown like place towards Gangotri Society. A policeman came there and showed them the way to go towards Naroda. They were going in that direction when Hindu mobs came from two sides. Out of which, one mob came from the opposite side and they turned back and came from there, whereupon Jay Bhavani met them and showed them a room. There were many of them in the room. At this place also, somebody said that there was a danger there. Upon hearing this, they left that place also.

233.12 Thereafter, she and several other people took shelter at a temple. At this place, out of her family members, she, her daughter-in-law and her grandson were together but the rest of the family members had got separated in the incident. They were hiding in the temple in this manner, when a woman gestured towards them to point out that they were hiding there.

233.13 At this time, a man who was present there told the woman to move from the cot and called them down from the temple and after seating them inside the temple and fastened the door from outside and saved their lives. Thereafter, this person sat outside the temple with a sword. After fastening,

that man switched off the lights of the temple. She sat for a considerable long time in the temple which was locked from outside. Thereafter he opened the temple door and took them out and left them on the terrace of the Gangotri Society, where other Muslims were sitting.

233.14 After she reached Gangotri Society in this manner, for a quite long time, she had stayed there. Thereafter, at around 2 o'clock at night, a police vehicle arrived to take them and two lads told them that a police vehicle had arrived; however, she could not trust them. Thereafter, upon believing them, she climbed down and went outside and sat in the police vehicle and reached the Shah Alam camp. They reached Shah Alam camp at 4 o'clock in the morning, but by then her family members had already reached Shah Alam camp.

233.15 In the stone pelting during the incident, she had been injured by stones on her leg and head. She had got herself treated at the Shah Alam camp. She stayed at the Shah Alam camp for six months. While she was at the camp, the police had orally examined her.

233.16 In the incident, all her household goods, two rickshaws, two scooters, refrigerator, T.V., etc., all were looted, burnt and destroyed. Her daughter's marriage was to take place for which she had purchased 25 tolas of gold which was also looted in the incident. Her goats, gold ornaments, cash, everything was looted.

233.17 The witness has stated that she knows Guddu Chhara, Suresh Langda, Murli Sindhi and Suresh Mama.

However, on account of being injured with a stone on her head during the incident, her eye sight has become very weak. The witness has stated that she has heard that Guddu Chhara is dead and that she would be in a position to identify the other three. The witness has thereafter correctly identified Murli Sindhvi (A-2), Suresh Langda (A-22) and Suresh Mama (A-26).

233.18 CROSS-EXAMINATION: In the cross-examination of this witness, she has admitted that there were many families from Kerala in their area. In the year 2002, there was a madressa in Hussainnagar. She has denied that the madressa was opposite the Noorani Masjid. She has stated that the madressa was opposite her house. Because of the riots, Maiyuddin had gone to the madressa to see the incident. She has admitted that when she went to fetch milk, Maiyuddin was at home. He had not asked her before going to madressa, but had told her that other children had gone to watch the riots. The witness has admitted that when he went to see the riots, she had not stopped him from going. She has stated that he was 18 years old at that time. The witness has stated that she does not know at what time she had gone to fetch Maiyuddin. She has admitted that her family members were at the house of Abdul Ghadiyali. She has stated that except for her daughter-in-law and her son's sib, all her family members had got separated from her near the S.R.P. Quarters wall. She has admitted that the woman who was near the temple, had not called the mob and shown them the temple where she was hiding. She has admitted that when she was in the temple, the people from the mob had not come there. The witness has admitted that till 12.5.2002, she had not lodged any complaint. The witness has admitted that prior to 12.5.2002, she has not

mentioned the names of the accused she has referred to in the examination-in-chief to anyone. The witness is confronted with her statement dated 12.5.2002 recorded by the police to the effect that she had stated therein that in the meanwhile, at around 11 o'clock, a Hindu mob comprising of ten to fifteen thousand people with swords, pipes, dharias and sticks in their hands, came screaming and shouting "kill, cut" and one mob came towards the front side of their chawl and were assaulting people with weapons and were setting the houses ablaze. They were looting the goods and articles in the houses and were catching the people and throwing them in the fire. Upon her family members seeing such incidents, all of them left their house open and went on the rear side of their chawl and hid there. The witness has voluntarily stated that the sequence of the incidents was as narrated by her in her examination-in-chief.

233.19 The contents of last line of paragraph 6 of her examination-in-chief except for the words "there were Hindus in the mob", the contents of paragraphs 7 to 9 and paragraphs 11 to 16 are read over to the witness to the effect that she had not stated such facts in the statement recorded by the police at the camp. The witness has stated that the police had not read over her statement to her.

233.20 The contents of paragraph 12 of her examination-in-chief of the witness are read over to her, wherein she has stated that she was in the madressa and she had seen her son Maiyuddin's incident from the window of the madressa. She has denied that she had not stated such facts in her statement.

233.21 The witness is further confronted with her statement dated 12.5.2002 to the effect that she had stated therein that thereafter till date, she had not gone to her house, but people from the relief camp had gone there and they had informed her that her house had been burnt down and through them, she came to know that her house was indeed burnt. The witness has voluntarily stated that her house was set on fire in front of her eyes and she had not stated any such facts. The witness is further confronted with her above statement to the effect that she had stated therein that her son Maiyuddin, aged 18 years was burnt by the people in the mob, whose names are (1) Suresh Langdo, (2) Murli Sindhi, (3) Guddu Chhara and (4) Suresh Mama and that she knows all of them. The witness has voluntarily stated that she had seen the incident herself.

233.22 The contents of paragraph 10 of the examination-in-chief of the witness are read over to her to the effect that she has not stated these facts in the statement recorded by the police.

233.23 In her cross-examination, it has come out that the four accused had taken Maiyuddin out of her house on the verandah and killed him. She has admitted that her house is not in Jawannagar. She has stated that it has not happened that her son Maiyuddin was killed by someone at Jawannagar. The witness has stated that all the four accused had assaulted her son with different weapons. The witness has admitted that she cannot say as to which person had assaulted him on which part of the body. She does not remember as to from where the blood was oozing out of her son's body. She had not seen as to

which part of his body was cut and broken.

233.24 The witness has stated that she does not know as to whether any blood had spilled on the verandah on which her son was killed. She has stated that the veranda to which she refers is the open ground of the pan-cabin near her house, which is an open space. She has stated that she does not understand as to whether the place of incident can be said to be at a distance of three feet from the door of her house, but has stated that it was near the door of her house. She has admitted that petrol and kerosene were sprinkled on her son and he was set ablaze. She has admitted that she herself had seen her son being burnt. The witness has voluntarily stated that out of fear, she had stuffed her saree in her mouth and was sitting there. The witness has admitted that after her son was completely burnt, she had left the madressa. The witness has stated that she came out after the mobs had gone. The witness has denied that her son was made to drink kerosene and was tied to a cot and burnt and that she had seen all this while she was sitting in the kitchen. She has denied that when the incident of her son was taking place, she had gone to save neighbour's daughter. The witness has voluntarily stated that she could not even protect her son, how could she go to save other people's children. The witness has denied that she had in fact not seen any such incident. The witness has voluntarily stated that she had not given any interview to any magazine.

233.25 The witness has stated that she does not know where the houses of the four accused named by her are. She does not know their occupation and the place of their business. The witness has voluntarily stated that Suresh Mama, that is,

Sahejad Chhara used to live in their lane and she had not seen his house. She did not have any occasion to have any economic or social relations with the four accused.

233.26 The witness has stated that when Abid was coming from the Noorani Masjid towards their side, he was injured by a bullet. When the bullet struck him, he was on the road. Abid was injured by the bullet near the Noorani Masjid. She does not know what the time was. She has stated that the time must be around 9:30 in the morning. The witness has denied that Maiyuddin's incident happened immediately after she returned after seeing Abid's incident and has stated that Maiyuddin's incident took place in the evening at around 5:30 to 6:00. She has denied that she has not seen the incident stated by her in her examination-in-chief and that on 12.5.2002, at the instance of the camp people and the people of her community, she had given a false statement and despite the fact that she did not know the accused, she had implicated them and her statement was not true.

233.27 The witness has stated that her son Maiyuddin was suffering from polio. He had fever and at that time, he was given an injection due to which, he had become handicapped. On the day of the incident, he was wearing boots in his legs. He was wearing boots meant for handicapped people. After the incident, she had never seen her son Maiyuddin. She has stated that she has still kept the boot with her at home.

233.28 Certain suggestions are made to the witness that accused Sahejad's sister Purniben was the owner of a hotel in which her husband was carrying on business. There was a

dispute between Purniben and her husband and under the belief that the accused were helping Purniben, she was falsely implicating them. The witness has admitted that her house and the madressa are exactly opposite each other and there is a road in between. The witness has denied that the door of the masjid is exactly opposite the door of her house. The witness has admitted that the other door of the madressa falls towards the S.T. Workshop road. She has admitted that one window of the madressa is towards the S.T. Workshop gate. The witness has voluntarily stated that when she saw the incident, there was another window which was a small one. After the incident, a bigger window has been made. In the year 2002, the madressa had only one floor.

233.29 The contents of third line of paragraph 6 of her examination-in-chief and the last two lines of paragraph 9 of her examination-in-chief are read over to the witness, who has denied that she has not stated such facts in her statement recorded by the SIT.

233.30 To prove the omissions and contradictions as to the previous statement of this witness as brought out in her cross-examination, the defence has cross-examined the concerned assignee officer/Investigating Officer.

233.31 PW-281, Shri D. S. Vaghela, the assignee officer has admitted that he has recorded the statement of this witness on 12.5.2002. He has admitted that this witness had stated before him that at that time, at around 11 o'clock in the morning, a mob of ten to fifteen thousand Hindus armed with swords, pipes, dharias and sticks in their hands, shouting "kill, cut" and

screaming came towards their chawl on the front side and started assaulting people with weapons and were setting the houses on fire and were looting the articles in the houses and some were catching the people and were throwing them alive in the fire and upon the members of their house seeing such incidents, all the members of their house left the house and fled towards the rear side of their chawl and hid themselves. Thereafter, till date, she has not gone to her house and from the people at the relief camp, she had come to know that their house was burnt.

233.32 The contents of paragraph 6 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. The contents of paragraphs 7 to 9 and 11 to 15 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him. Certain parts of paragraph-16 of the examination-in-chief of the witness are read over to the assignee officer, who has admitted that the witness has not stated such facts before him. The assignee officer has admitted that the witness had not stated before him that she was in the madressa and that she had seen the incident of her son Maiyuddin from the window of the madressa. The assignee officer has admitted that this witness has not stated before him that the mob of Hindus had broken the door of her house and had taken her son out. He has also admitted that the witness had not stated regarding her son Maiyuddin refusing to say "Shri Ram".

233.33 PW-327 Shri V.V. Chaudhari, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statement of this witness on 12.6.2008. He has admitted that this witness has stated before him that there was cross stone pelting; that her statement dated 12.5.2002 is read over to her, which is as stated by her and is correct and proper. This part of the evidence is not admissible in evidence as to part of the witness's primary statement is sought to be contradicted.

233.34 Certain extracts of paragraphs 6 and 9 of the examination-in-chief of the witness are read over to the Investigating Officer wherein she has stated that she was going to Hiralal's shop; was standing near S.T. Workshop; thereafter she sat on the staircase of the madressa; there were two – three other boys also. The Investigating Officer has denied that these facts have not been stated by the witness in the statement recorded by him. He has clarified that the witness has stated before him that she was going to purchase milk and was standing at the entrance of the chawl opposite the Noorani Masjid. The remaining facts have not been stated by her.

233.35 SUBMISSIONS: The learned counsel for the appellants submitted that two statements of this witness have been recorded; one by PW-281 Dhananjaysinh Surendrasinh Vaghela on 12.5.2002 and second statement by PW-327 Vinaybhai Vanarbhai Chaudhari on 12.6.2008. It was submitted that this witness claims to be the witness of her son being killed. According to her, she had seen the incident from the window of a madressa. It was submitted that according to this

witness the incident of Mayuddin occurred either on the verandah of her house or just outside, during the evening hours, which may be around 5:00 to 6:00 p.m. It was submitted that this claim raises serious doubt about her being a witness of any such incident for the reason that firstly, as admitted by her, while she was in the camp the police used to come and complaints were being recorded and the people taking shelter in the camp used to give their complaints. However, till 12.5.2002, the witness has neither filed any complaint nor has she informed anybody about the names of the accused or the incident. Secondly, according to her, firstly she had gone to Gangotri and then come back to her house to fetch Maiyuddin. In the process, during number of conversations between her and Maiyuddin, Maiyuddin asked her to hide herself in the madressa. At that point of time the incident occurred which she claims to have witnessed. It was submitted that considering the time at which the witness says the incident had taken place, it is not possible to believe that in the fact situation she could have come from Gangotri back to her home in the evening hours between 5:00 to 6:00 p.m. Thirdly, as per the deposition of the Investigating Officers PW-178 as well as PW-327, with reference to the photograph produced on record, there seems to be no madressa opposite the house of this witness and none of the other witnesses residing in that area have referred to any such madressa and therefore, it is doubtful whether her version is believable or not. Fourthly, having regard to the incident of few other witnesses, who say that body of Mayuddin was burning on the road at different points of time commencing from 1:30 in the afternoon till 4:00 to 5:00 p.m. again raises doubt whether the incident as narrated by this witness, as an incident occurring in

the afternoon between 5:00 to 6:00 can be believed. Fifthly, other witnesses who referred to the incident of Mayuddin, at whatever time, are referring to the presence of tricycle, while this witness does not refer to presence of tricycle being found nearby. Sixthly, at one place in her examination in chief the witness has stated that she was sitting on the stairs of madressa and at another place she claims that she saw the incident from the window of madressa, which runs contrary to each other. Lastly, as stated in paragraphs 45 and 46 of her deposition regarding no acquaintance with at least accused No.2 and 22, in the absence of disclosure of facts regarding the incident and names of accused for 72 days also creates a doubt as to how she named those accused for the first time on 12.5.2002, when she has not stated anywhere in her examination-in-chief as to how she knew the names of accused. Thus, the witness is not believable. It was submitted that moreover, the dead body of Maiyuddin was not found at the place where he is stated to have been burnt.

233.36 The learned counsel further invited the attention of the court to the discrepancies in the testimonies of different witnesses regarding Maiyuddin. It was pointed out that PW-149 Faridabibi Abdulkadar Khalifa has stated that she saw Mullaji's son's body burning in front of her house at about 2 o'clock in the afternoon. Reference was made to the testimony of PW-234 Mohammed Shaikh Yunus Basir Ahemad (Exhibit 652), and more particularly paragraph 17 thereof, to contend that this incident had taken place in the afternoon. There is no evidence or inquest panchnama that his body was found in his house at Hussainnagar. Reference was made to the testimony of PW-229 Sairabanu Khwaja Hussain Shaikh, who has stated that she

saw his dead body in lane no.1. It was submitted that looking to the discrepancies in the testimonies of the witnesses, it is not clear whether the incident took place in the evening or in the afternoon and the discrepancies in the statements of witnesses suggest that this witness has not seen the incident, but is a got up witness, who has stated facts which she heard while she was at the camp. It was submitted that in her examination-in-chief the witness has stated that she saw the incident from the window. However, there is nothing on record to show the height of the window; whether the window was on the staircase, because she does not say she went from the staircase to the window. It is submitted that no panchnama of the scene of offence is drawn to show that there was a window abutting the house from where she could have seen the incident. Therefore, her evidence does not inspire any confidence and cannot be said to be unimpeachable evidence on the basis of which the accused can be convicted of such a serious offence.

233.37 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness had witnessed the killing of her son Maiyuddin. The witness has narrated the sequence of events about the mobs from Krushnanagar and Natraj Hotel, then Abid being killed. Thereafter the witness went home. Maiyuddin was in the madressa. It was submitted that what the witness has graphically narrated the morning incident, the evening incident, the incident of Abid being killed and the Maiyuddin incident. There is no major contradiction in respect of the happening of the incident. It was submitted that while drawing the attention of the witness with respect to her statement dated 12.5.2002, the defence has not referred to

the statement of her further investigation. It was submitted that as regards the contradictions brought out in paragraphs 33 and 34, with regard to paragraphs 6, 7, 9, 10, 11 and 16 of her examination-in-chief, the witness has clearly explained that she had already disclosed everything before the police, but the police had not recorded it.

233.38 It was submitted that this witness has minutely narrated the incident of her son being killed and even in the cross-examination she has stuck to her version which shows that she was present when the incident had happened and she had seen it. It was submitted that there is nothing contrary or contradictory brought out in her cross-examination to the version of the incident narrated in her statement dated 12.5.2002 as well as in her further statement and also as regards involvement of other accused persons in her further statement. It was submitted that therefore, this witness is a credible witness and as regards the four named accused, their involvement in killing of Maiyuddin is proved beyond doubt and she can be considered to be a sterling witness.

233.39 ANALYSIS: This witness is the mother of Maiyuddin, a handicapped boy who was burnt to death by the mob. Several witnesses have deposed either to having seen the incident or having seen Maiyuddin's corpse lying in a burning condition.

233.40 This witness has named all the four accused viz. Murli Sindhi (A-2), Suresh Langda (A-22), Suresh Mama (A-26) and Guddu Chhara (deceased) in her first available police statement dated 12.5.2002. This witness's house is situated in

the second lane of Hussainnagar. The witness in her examination-in-chief has not stated any specific time when the incident took place, but in response to a suggestion made by the defence in her cross-examination has said that it may be 5 to 6 o'clock in the evening. This appears to be the basis for the submission that it would not have been possible for the witness to come back from Gangotri to her house at this time. In the opinion of this court, too much emphasis cannot be laid upon the time of 5 to 6 o'clock brought out in the cross-examination of the witness. Firstly, the witness has not said so with certainty and has only said it may be 5 to 6 o'clock. Therefore, the time stated by the witness is only an approximate time and not the exact time. What she is sure about is that it was around evening time.

233.41 According to the witness, after leaving her family members at a safe place at Gangotri Society, she returned to fetch her son Maiyuddin who had stayed back. By the time she reached the madressa where her son was, the mob had reached there and her son told her to hide in the madressa and he himself went to their house. The mob was ransacking and looting houses and broke open the door of her house and pulled her handicapped son out of the house and assaulted him and sprinkled petrol or kerosene on him and set him ablaze. The witness claims to have seen all this from the window the madressa. From the narration of incidents, viz. after the incident, the witness went to the S.R.P. Quarters and then to the godown and thereafter she took shelter in the temple, it appears that the incident must have taken place before 5 o'clock in the evening. Insofar as the submissions regarding the exact location from where the witness saw the

incident not having been proved is concerned, at the cost of reiteration it may be stated that in this case, neither of the investigating agencies seem to be really interested in bringing the culprits to book. Consequently, either the statements of the witnesses have not been recorded properly or no efforts have been made to bring on record evidence to corroborate what the witness has stated. If the evidence of the witnesses were to be discarded on this ground alone, it would amount to playing into the hands of the investigating agencies.

233.42 In the case of this witness, at the first opportunity she has named the above four accused. The statement recorded by the assignee officer is not very coherent, but it is clear that the witness has implicated the four accused in the murder of her son. Thus, insofar as the accused and their involvement in the killing of her son is concerned, the witness is consistent right from the beginning. Therefore, the witness is consistent insofar as the core of her testimony is concerned and there is no reason to disbelieve her claim of having seen the incident in question and the named accused.

234. **PW-324 Naseembanu Kalimuddin Qureshi** has been examined at Exhibit-2279. This witness has deposed that she has studied up to the ninth standard and knows how to speak in Gujarati.

234.1 The witness has deposed that in the year 2002 she was residing at Pandit-ni-chali behind Noorani Masjid at Naroda Patiya with her mother, her maternal uncle, grandfather, her two children, namely, her son and her daughter and her husband Kalimuddin. She earns a living out of tailoring work

and when her husband was alive, both of them used to do tailoring work.

234.2 The incident took place on 28.2.2002. Prior thereto on 27.2.2002, at 6 o'clock in the evening, two youths had come to her house. Both these youths had come to their house and had asked questions about how many people are residing in their house, their names, their surnames, whether they have light, gas etc. At that time, she had asked them as to why they were asking these questions and they had told her that they were carrying out a survey. Thereafter, both the boys had gone in the neighbourhood and thereafter, they had their meal and had gone to sleep on the night of 27.2.2002.

234.3 The house in which they were residing belonged to her maternal uncle and her maternal uncle had asked them to vacate it. The house was a bit small for them. On 28.2.2002, she woke up in the morning and she and her husband had tea, where after her husband had stated that he wanted to look for a house at Jawannagar and she had gone to buy vegetables from her maternal uncle Yasin's shop on the road. At this time, it was around 9:30.

234.4 While she was at the vegetable shop, she heard from somebody that on that day, that is, 28.2.2002, the Vishwa Hindu Parishad had, in the context of the incident that took place at Godhra on the previous day, given a call for Gujarat Bandh. At her maternal uncle Yasin's shop, she had also read the newspaper. At that time, she had seen that a mob shouting "kill" "cut" was coming from the direction of Natraj Hotel. The mob came near the Noorani Masjid where it resorted to

vandalism and was attacking the Noorani Masjid and their houses. She was frightened because of all this, and hence, though she had gone to buy vegetables from her maternal uncle's shop, without taking anything, she went home and she took her children, her mother and her maternal grandfather and went to Juni Masjid, which is near Zikarhasan-ni-chali. Till then, her husband had not returned.

234.5 At this time, a boy, who was burnt, came to the place where they were. The boy told her that he had come from Chharanagar and that his mother and father had been burnt. For their treatment, Babubhai had also made a phone call.

234.6 Upon her husband not being found, the people had told her that no one had survived in Jawannagar and that almost every one was killed. Thereafter, they had gone to the Shah Alam camp, where after the Relief Committee had given them a house.

234.7 The witness has deposed that she has no information about her husband Kalimuddin Ahmedbhai Qureshi, aged 30 years and that till date, she has not found him. He had gone from her house to Jawannagar on 28.2.2002 to look for another house for them and has not returned till date and there is no news about his whereabouts. Till date, his dead body has not been found.

234.8 The witness has deposed that on the day of the incident, her house was looted and her house was also burnt down. Since her husband was not found, the SIT had recorded

her statement in that regard.

234.9 The witness has deposed that as her house was burnt, she does not have a photograph of her husband.

234.10 CROSS-EXAMINATION: In the cross-examination of this witness, nothing has been elicited to support the case of the defence or the prosecution.

234.11 ANALYSIS: From the testimony of this witness, there is nothing whatsoever to establish the charge against the accused. The witness has not seen the incident and hence, nothing really turns upon the testimony of this witness. One wonders why the prosecution has examined such a witness, while dropping important witnesses whose testimonies were necessary for proving the charge against the accused.

235. **PW-325 Sairabibi Abdulkadar Shaikh** has been examined at Exhibit-2280. The witness has deposed that she can understand Gujarati to a certain extent but would find it more convenient to depose in Hindi.

235.1 The witness has deposed that in the year 2002, she was residing at Pandit-ni-chali next to the Noorani Masjid with her daughter Shabana, her husband Abdulkadar Gulamrasul Aanori Shaikh. Her other two daughters were at their matrimonial homes.

235.2 The incident took place on 28.2.2002. On that day, there was a call for bandh. They were all at home. In the morning at about 10 o'clock on that day, stone pelting started

and all three of them, with a view to save their lives, went to her other daughter Shehnazbanu's matrimonial home at Jawannagar. Till 5 o'clock in the evening, they stayed at her house at Jawannagar. In the evening, the mobs came to Jawannagar also and they had fled from there also. The people in the mob had caught her husband and assaulted him. She, her daughter Shabana, Shehnaz and her family members as well as her other daughter Mumtaz, who was residing at Jawannagar and her daughter's husband all went and sat on Gauri Apa's terrace. Thereafter, at 2 o'clock at night, the police came and took them to Shah Alam. They stayed at the relief camp for six months.

235.3 The people in the chawl had told her and, therefore, she came to know that on that day in the evening, the people in the mob had killed her husband and burnt him. The witness has deposed that she has not found her husband's dead body. She has also not received her husband's P.M. notes. Since her husband had died, the Committee people had buried his dead body and had given her a receipt of the Kabrastan. The witness has deposed that she has given a photograph of her husband as well as zerox copy of burial receipt of the Kabrastan to Shri Chudasama.

235.4 The witness has deposed that the police had recorded her statement in connection with the incident.

235.5 CROSS-EXAMINATION: In her cross-examination, the witness is confronted with her statement dated 6.9.2002, however, by putting such part of the statement of the witness to her, no contradiction is sought to

be brought out, and hence, the same is not admissible in evidence.

235.6 ANALYSIS: This witness has not implicated any accused in the offences in question. Considering the facts deposed by this witness, nothing really turns upon her testimony except that the mobs came to Jawannagar at about 5:00 p.m. and while fleeing, the mob caught her husband and assaulted him.

236. **PW-326 Zubedabanu Abdulla Shaikh** has been examined at Exhibit-2283. The witness has deposed that she can understand Gujarati to a certain extent and would find it more convenient to depose in Hindi.

236.1 The witness has deposed that in the year 2002, she was residing in Lane No.1, Jawannagar, behind S.T. Workshop at Naroda with her brother Maheboob. In the house, she, her husband Abdulla and her brother as well as his family were all residing together.

236.2 The incident had taken place on 28.2.2002. On that day there was a call for bandh and they were all at home.

236.3 On the day of the incident, they were damaging the masjid outside and were committing arson. Her nephew Ahmed had gone to see all this. There, the police had resorted to firing. In the firing, her nephew Ahmed Maheboobbhai was also injured by a bullet. He was injured at around 11 o'clock in the morning and he was brought home. The witness has deposed that she had herself done the dressing. Four of his

friends had brought him from the rear side of their chawl. Ahmed had thereafter sustained burn injuries in the incident and his friends had brought him and made him lie down in the house.

236.4 Her sister-in-law also resides in their mohalla and her name is Saira. She (her sister-in-law) had three children, and hence, her husband had asked her as to how she would run with the three children and told her to give one child to him. Therefore, she had given her son Shahrukh, who was four years old at that time, to her husband and, therefore Shahrukh was with her husband.

236.5 The witness has deposed that her husband had gone with his sister and she had stayed at home. Thereafter, she had gone to search for her husband. She saw that at Gangotri Society, the mob had encircled her husband. At that time, Shahrukh was with him and he too was encircled. Bhavanisingh and Guddu Chhara were in the mob which had assaulted her husband. Both of them are dead. The people had lifted her nephew Shahrukh and thrown him in the fire and killed her husband with a sword. The witness has deposed that Shahrukh and her husband had died in her presence.

236.6 The witness has deposed that upon seeing this, she was frightened and had gone and stayed at Gauri Apa's terrace where they had stayed till 3 o'clock at night. Thereafter, the police came to take them and they went to the Shah Alam camp with the police, where they stayed for about six months. The witness has deposed that they have not found her husband's dead body. Shahrukh's dead body is also not found.

236.7 The witness has deposed that the police have recorded her statement in connection with the incident in 2002 and the SIT has recorded her statement in the year 2008.

236.8 The witness has stated that her house was ransacked, damaged and set on fire. That she knew Guddu and Bhavanisingh.

236.9 CROSS-EXAMINATION: This witness in her cross-examination has stated that she knows Majidbhai Usmanbhai and that he was residing near them. The witness has stated that he used to reside in the first lane of Jawannagar. The witness has admitted that her house and Majidbhai's house are situated in the central part of the first lane of Jawannagar.

236.10 The witness is confronted with her statement dated 12.5.2002, to the effect that before the police she had stated that thereafter, after five days, Majidbhai Usmanbhai who used to reside next to their house, told her at the Shah Alam relief camp that a mob of Hindu people had killed her husband and her son. The witness is also confronted with her statement recorded by the SIT to the effect that she has stated that Abdulmajid Mohammadusmanbhai had also told her that her husband and her sister-in-law's son Shahrukh aged four had been killed.

236.11 The contents of paragraph 4 of her examination-in-chief from the second line to the last line are read over to the witness to the effect that she has not stated such facts in her statement dated 12.5.2002, which the witness has denied.

236.12 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has been cross-examined by the defence to prove the omissions and contradictions as to the previous statement of this witness recorded by him. In his cross-examination the Investigating Officer has admitted that he has recorded the statement of this witness on 12.5.2002. The Investigating Officer has admitted that this witness has in her statement recorded by him stated the facts referred to in paragraph 734 of his deposition. It may be noted that the statement of this witness was recorded on 12.5.2002, much before the SIT came to be constituted. Evidently, therefore, the statement dated 12.5.2002 was not recorded by this witness. Under the circumstances, the question of this witness proving any contradiction in the evidence of this witness would not arise. It appears that this witness was not examined along with the other witnesses and in the meanwhile, the concerned Investigating Officer had already been examined and, therefore, the contradictions are sought to be proved through the testimony of the Investigating Officer (SIT). Be that as it may, if the contradictions were sought to be proved, the concerned Investigating Officer ought to have been recalled to prove such contradictions. The Investigating Officer (SIT) was not competent to prove the contradictions in the statement dated 12.5.2002 recorded by some other officer. Therefore, the contradictions brought out in the testimony of the Investigating Officer (SIT) are not admissible in evidence.

236.13 It appears that the statement dated 12.5.2002 was recorded by Shri A.A. Chauhan, who had passed away prior to the recording of the evidence.

236.14 Certain extracts of paragraph 4 as well as the contents of paragraphs 5 and 6 of the examination-in-chief of the witness are read over to the Investigating Officer. The Investigating Officer (SIT) has stated that the statement of this witness was recorded on 12.5.2002 by Shri A.A. Chauhan, who at present is dead and that he has found his statement in the investigation papers. The Investigating Officer (SIT) has denied that the contents of paragraphs 4, 5 and 6 put to him, have not been recorded in the statement recorded by Shri A.A. Chauhan. He has stated that the witness had stated that Shahrukh was with her husband and a huge mob of Hindus had come wherein she had seen Bhavani and Guddu Chhara and that this mob had attacked her, and her husband had taken Shahrukh and fled on the rear side of Gangotri Society and the witness too had escaped with her life and had gone and hidden on a terrace behind their house. The rest of the facts are not found in the statement.

236.15 ANALYSIS: The overall testimony of this witness is rather vague. In any case, she has named only Guddu Chhara and Bhavani, both of whom are dead. Therefore, the testimony of this witness would in no manner help the prosecution prove the charge against any of the other accused.

XVII WITNESSES OF THE MOBILE CALL DETAILS:

Another set of witnesses has been examined to prove the details of the phone calls of the accused; they are PWs 308,

316 and 321:

237. **PW-308 Rahul Nanheshwar Sharma** has been examined at Exhibit-2181. The witness has deposed that, at present, he is working as a Deputy Inspector General of Police (Arms Unit), Rajkot.

237.1 From 16.2.2002 to 26.3.2002 he was discharging his duties as a Superintendent of Police, Bhavnagar. On 26.3.2002, he was transferred from Bhavnagar and has thereafter has reported as D.C.P. Control Room at the Ahmedabad City Control Room on 8.4.2002. In this manner, he was discharging duties as D.C.P. Control Room, Ahmedabad till 5.7.2002. On 6.7.2002, upon his transfer he had reported as Senapati, S.R.P. Group No.11, Surat District at Vav.

237.2 During this period, on 7.5.2002, the then Police Commissioner of Ahmedabad city Shri P.C. Pande had instructed him orally on intercom that he should go to the Additional Commissioner of Police, Ahmedabad City Crime Branch and assist him in the investigation of the offences relating to communal riots of Ahmedabad city. Hence, he had gone there. He had a discussion with the then Additional Commissioner of Police, Crime Branch, Shri Surelia in connection with the investigation.

237.3 At the relevant time, a joint investigation was being carried out in relation to nine cases relating to communal riots which had taken place in Gujarat.

237.4 During the course of such discussion, facts

were revealed to the effect that the accused of the communal riots had made considerable use of mobile telephones. In the year 2002, two mobile operators were providing services in the Gujarat State, namely, AT & T and Celforce.

237.5 The witness has deposed that he had prepared a draft letter for calling for the data regarding use of mobile phones by the accused during the period of the incident from both the mobile companies. He had got the draft letter approved by the Additional Commissioner of Police of Crime Branch, Shri Surelia. He had thereafter, sent the draft letter on 7.5.2002 with the signature of the then A.C.P. Shri S.S. Chudasama to both the mobile telephone operator companies. Vide the said letter, they had called for the data with regard to all the mobile telephones being operated from Ahmedabad city.

237.6 He had called for such data for the period between 25.2.2002 to 4.3.2002. The details included names and addresses of the mobile phone holders as well as the time when outgoing calls were made, the time when incoming calls were received, how long the mobile holder had talked, from which number he had talked and the location of the caller and the receiver.

237.7 About three to four days after he had written the letter, information was received from the mobile operator company named AT & T. He, together with P.S.I. Shri J.K. Chandna, who was discharging duties at the Control Room had personally gone and brought the information. The information received from AT & T was in terms of the information they had

called for. The information was also given on CD. Such information was in MMX Format and Texted Format. He (the witness) had taken the CD home and had saved the data on his personal computer at home and had thereafter, returned the CD to the Crime Branch.

237.8 At the relevant time, no information was received from Celforce Company, and hence, he had reminded Shri Sureliya to call for such information. Thereafter, Shri Sureliya had talked with the officers of Celforce and two to four days thereafter, information was received from Celforce. This information was in MMX Format. At the relevant time, he himself did not have any knowledge of MMX. Hence, he had taken assistance of Shri Chandna and had perused the information. The information was not the information which was called for. Hence, he had talked to Shri Dhiren Lariya, who was discharging duties in Celforce Company and he had informed him that the information sent by them was incomplete and to send the necessary details.

237.9 Thereafter, upon Shri Surelia being transferred in the month of May, Shri P.P. Pande reported as Joint Police Commissioner, Crime Branch. Thereafter, after about ten days, Shri Lariya made a phone call to him from Celforce and informed him that the information is ready and he should send some person to fetch it. Prior thereto, he had returned the CD with incomplete information received from Celforce to the Celforce Company through Chandna.

237.10 Thereafter, he had sent P.S.I. Shri Chandna from the Control Room to Celforce Company and had obtained the

information called for. This information was also incomplete.

237.11 Thereafter, in the last week of May, another CD containing information was sent by Celforce to the Crime Branch, which information was sent to him by Shri P.P. Pande, by a D.O. letter and, accordingly, he had received the CD sent by Celforce. Shri P.P. Pande had vide the D.O. letter instructed him to analyse the information in the CD given by Celforce Company and to inform his accordingly. The CDs sent by the Celforce were two in number. He had taken the two CDs also to his house and had saved the information on his personal computer at home. In fact, they had called for information from Celforce only regarding Ahmedabad city; however, by mistake, they had sent the information about Godhra, which information also he had received. The witness does not remember as to of which period, the information regarding Godhra pertained to. The witness has further deposed that, as stated by him earlier, he had copied both the CDs in his computer at home and had saved them and had returned both the CDs with instruction to PSI Shri Chandna that he should personally go and hand over the same to Shri P.P. Pande at the Crime Branch.

237.12 In the first week of July 2002, he was transferred to S.R.P. Group-11. Upon his transfer, one or two days prior thereto, he had inquired from Shri Chandna as to whether he had delivered the CDs to Shri Pande, whereupon he had told him that he had taken the CDs and had visited the Crime Branch three or four times but he could not meet Shri Pande and that he had given both the CDs to his rider and told him to deliver the same to Shri Pande. The witness has deposed that he had ascertained this fact from the rider, namely, the

messenger and he had informed him that both the CDs had been delivered to Shri Pande. The witness does not remember as to who the rider or messenger was.

237.13 The witness has deposed that the purpose for copying and saving the information in his personal computer is for the purpose of maintaining confidentiality. Since, it was necessary to analyse the information, it was necessary to save the information in some computer.

237.14 The witness has further deposed that there is a practice prevailing in the Gujarat State Police Department that every Police Officer should keep the important documents and the action taken by him when he is at a particular place, with him. In view of this practice, he had retained the important information with him. This information was of 1.8 Gigabytes (GB), which could not be included in one CD and hence, he had zipped it and had kept the information in another CD. The witness has deposed that he had written the information from his computer in the CD with the help of a CD writer.

237.15 The witness has deposed that he had written all the information of both the companies on one CD, wherein he had made different files of the information, namely, the information from Celforce in one file and the information from AT & T in another file. The witness has deposed that whenever any information is zipped, the details of such information do not change and furthermore when it is unzipped, the original file can be obtained.

237.16 The witness has deposed that two copies of the CD

prepared by him in this manner were submitted by him before the Hon'ble Justice Nanavati and Justice Shah Commission. Moreover, he had also submitted a copy of the CD before the Hon'ble Justice Banerjee Commission at Delhi.

237.17 The first CD prepared by him was given by him to Shri Mal, Investigating Officer of the Naroda Gam case. His personal computer had been seized by Shri Mal, the Investigating Officer during the course of investigation of the Naroda Gam case.

237.18 The witness has deposed that Shri Mal and Shri Chaudhary, as Investigating Officers, have recorded his statements in the Naroda Gam as well as Naroda Patiya case respectively.

237.19 CROSS-EXAMINATION: In the cross-examination of the witness, he has stated that he had written the facts as to what data was necessary from both the Mobile Operators and in the letter addressed to them and he had also stated therein his expectations. Prior to his writing the letter, he had a basic knowledge of how mobile telephones work and how the signals are transmitted. Hence, he had not discussed the draft letter with anyone.

237.20 The witness has admitted that Chandna was an employee in his division and he knew him. The witness has stated that when he took the assistance of Shri Chandna for reading the CD, he had not informed his higher Officer as he did not know how to read a CD; he had taken the assistance of Shri Chandna. The witness has stated that he has not issued

any written order to Shri Chandna, and he did not deem it necessary to see that Shri Chandna's statement is recorded during the course of investigation.

237.21 The witness has stated that when the AT&T CD was received for the first time, he was an Officer assisting the Crime Branch in the ongoing investigation. He had personally gone to pick up the CD. The witness has stated that he did not find it necessary to issue a receipt and deposit the CD as muddamal because the CD is not considered to be a muddamal. It is considered to be an electronic document. The witness has stated that when he obtained the CD from AT&T Company, he did not deem it necessary to draw any panchnama in that regard. The witness has stated that there was no personal marking of his, on the AT&T CD received by him.

237.22 The witness has further stated that at the relevant time, the AT&T Office was at Gandhinagar. He had met the then Chief of AT&T. The witness has admitted that upon going there and disclosing his identity, he had given him the CD and he had taken the CD and gone to his office. The witness has stated that, at present, he does not remember whether any signatures or stamping were made while obtaining the CD from the AT&T Company. The witness has stated that at the time when he received the CD, the service provider had not given him any instructions or letter. The witness has stated that after receiving the CD, he had not thought it proper to open it in his office or Shri Surela's computer. The witness has stated that he is not aware as to whether, at the relevant time, the Crime Branch had a computer. The witness has stated that he did not

deem it proper to go to the Crime Branch and open the CD in the computer there.

237.23 The witness has admitted that at the relevant time, he did not deem it fit to see the CD in the presence of then Investigating Officer Shri Chudasama. The witness has voluntarily stated that he was entrusted with the responsibility of obtaining the CD and analysing it, and in the initial procedure without obtaining any specific information or direction, he did not deem it fit to call the Investigating Officer in connection with the CD. The witness has admitted that in the draft letter, he has not asked for the data of any individual accused. The witness has voluntarily stated that they had asked for general information.

237.24 The witness has stated that after copying the CD which he had received in his home computer, he had not read it. The witness has denied that for the purpose of copying a CD, he was required to take the assistance of Shri Chandna. The witness has stated that at the relevant time, he had not read the CD and he had read it after a considerable time. The witness has stated that the CD contained only the information requested for and nothing else.

237.25 The witness has admitted that the service providers had not given any certificate that the CDs of both the Mobile Companies were authorised or certified. The witness has stated that he had not read any certificate with the CD. The witness has admitted that as he had not received the information called for from Celforce at the first instance, the CD was returned and a new CD with the requisite data was

obtained. The witness has admitted that as the data was not what he had asked for, he was required to return the CD. The witness has stated that he has not put any note in his office regarding his having taken the CDs home. The witness has admitted that in his statement before the SIT, he has not stated as to on which date, he had taken the CD home. The witness has admitted that he had zipped the information in both the CDs. He had taken them in one CD in one sitting.

237.26 The witness has admitted that the AT&T CD, which he had given to Shri Surela and the Celforce CD which he had given to Shri Pande had thereafter never come to him. The witness has admitted that the first CD which he had prepared by copying from his computer was given by him to Shri Mal and copies thereof had been given to the Hon'ble Shri Nanavati and Shah Commission as well as Hon'ble Shri Banerjee Committee. The witness has admitted that he is not aware as to what Shri Surela and Shri Pande had done with the CDs which had come from AT&T and Celforce Companies.

237.27 The witness has denied that when he had handed over the CDs to Shri Mal, he had prepared a muddamal receipt. The witness has stated that Shri Mal had himself done it. The witness has voluntarily stated that the CDs of this kind are not required to be taken as muddamal which is mentioned in the Police Manual. The witness has stated that he has not received any receipt regarding presentation of the CDs before the Hon'ble Justice Nanavati and Hon'ble Justice Shah Commission and Banerjee Committee. However, he has mentioned the same in his statement.

237.28 The witness has admitted that there are devices whereby any information stored in a computer can be changed or tampered with. The witness has stated that wherever he has submitted the CDs, he has not given any certificate that the CDs' are not tampered. However, he has mentioned it in his statement.

237.29 The witness has denied that when he obtained the CDs he was aware that the CDs are to be used as evidence. The witness has stated that after analysing the available data in the CD, it was required to be decided as to whether the same can be considered to be evidence. The witness has stated that in his statement dated 31.5.2008, he has not stated that he had given the CD to his Joint CP Shri Surela, however, he has stated that the original CD was returned to the office. The witness has admitted that he has not obtained any receipt from Shri Surela regarding his having received the CD. The witness has voluntarily stated that at the relevant time, he was an Officer of a rank higher than his, he was of the level of DIG, whereas the witness was of the level of SP.

238. **PW-316 Dhiren Jayantilal Lariya** has been examined at Exhibit-2226. This witness has deposed that he was working as an Assistant Manager in the Legal Department of Vodafone Essar Gujarat Limited Company since the last fourteen years.

238.1 The witness has, inter-alia, deposed that on 8.5.2002 Shri S. S. Chudasama, ACP in the Crime Branch had vide letter called for complete call details of the postpaid and prepaid sim cards of Ahmedabad city from 00:00 hours of

25.2.2002 to 24:00 hours of 4.3.2002 and had asked their IT Department to prepare such details. Upon such details being prepared, two CDs containing the details called for by Shri Chudasama were handed over to the Police Constable of Crime Branch on 14.5.2002. After providing such information, they had obtained a signature of Police Constable Shri Gohil.

238.2 Thereafter, Police Officer Shri Rahul Sharma had made a phone call wherein he had informed that the details in the CD were not in the format stated in the letter, and hence, such information be prepared afresh. On 25.5.2002, Shri Chandna had come to their office on behalf of Shri Sharma and they had given him two CDs of the call details and Shri Chandna had put his signature as acknowledgement of receipt of the CDs.

238.3 Thereafter, Shri Sharma had once again made a phone call. He had informed them that the CD is not as per the format. Thereafter, they had once again prepared a fresh CD and the said information in the form of two CDs was handed over to Police Sub-Inspector Shri Chandna on 25.6.2002 in connection with the information requested for by Shri Chudasama.

238.4 The witness has stated that SIT had recorded his statement on 18.12.2009.

238.5 CROSS-EXAMINATION: This witness in his cross-examination has admitted that the information regarding call details is confidential. The witness has admitted that Police Constable Harisingh and Shri Chandna did not have any

authority letter from Shri Chudasama. The witness has stated that as far as he remembers, two CDs which he had given to Police Constable Harisingh had not been returned back. The witness has stated that after having a talk with Shri Rahul Sharma, he had, in all, given CDs twice. At both times, he had given two CDs to the person who had come. The witness does not remember as to whether the two CDs which were given on the first occasion had been received back.

XVIII POLICE WITNESSES:

239. The next set of witnesses is the police witnesses. They are either witnesses of the incident or Investigating Officers or their assignee officers or both.

240. **PW-178 Pravinkumar Naththubhai Barot**, aged 64 years, has been examined at Exhibit-1227. This witness has deposed that in the year 2002, he was working as an Assistant Commissioner of Police in the A.C.P., "B" Division, Ahmedabad City. At that time, Navrangpura, Naranpura, Ghatlodia and Sola Police Stations were under the jurisdiction of "B" Division.

240.1 In the year 2002, in the month of January, he was also in-charge of the "A" Division, which included the Satellite Police Station, the Vejalpur Police Station and the Ellisbridge Police Station.

240.2 Pursuant to an order dated 7.3.2002 of the Police Commissioner, Ahmedabad city, he had investigated into the offence (Naroda Police Station I – C.R. No.100/2002) from

8.3.2002.

240.3 During the course of investigation, on 11.3.2002, he had called a videographer Ashok Hemrajbhai and the panchas for the purpose of videography of the scene of offence and on that day, the videography of the scene of offence was carried out.

240.4 After the video recording was done, the photographer handed over the cassettes to him in the presence of the panchas and the same were sealed by drawing a panchnama and included with the investigation papers. A detailed panchnama was drawn in the presence of the panchas taking over the custody of the video cassettes. The witness has been shown the handwritings of the panchnama. The witness has deposed that this panchnama was drawn by him starting from Noorani Masjid, Naroda Patiya to Hussainnagar-ni-Chali and thereafter, going towards the interior side of this area to other chawls to the rear side and returning to the highway through the Timber Mart.

240.5 The panchnama Mark 134/69 is shown to the witness who has read the same and has admitted the contents thereof and has stated that the same was signed in his presence by both the panchas. He panchnama was drawn on 11.3.2002 between 17:30 to 18:30 hours. The panchnama is exhibited at Exhibit-1228.

240.6 The witness has deposed that the cassette of the video recording had been taken from the videographer under a panchnama and was sealed and included in the muddamal. In

this regard the muddamal receipt was made through the PSO, Naroda Police Station.

240.7 The witness has thereafter been shown muddamal article No.6 which is a sealed cassette of the video recording. The witness has stated that the muddamal cassette which is shown to him is the same cassette which he had obtained from the videographer under a panchnama and had been sealed.

240.8 The witness has deposed with regard to the procedure carried out in connection with the cassette wherein the scene of offence panchnama has been recorded. The witness has proved his signature on the panch slips Exhibit-1230 and has stated that both the panch slips had been prepared in the routine course while seizing the video cassette. The witness has stated that the video cassette which he has seized vide panchnama Exhibit-1228 from Videographer Ashok Hemrajbhai is the same video cassette, which has been kept in the muddamal of the investigation.

240.9 It has come out that pursuant to the order received by him from the Police Commissioner, Ahmedabad city he had taken over the charge of investigation of Naroda Police Station I-C.R. No.98/02, I-C.R. No.100/02 and Meghaninagar Police Station I-C.R. No.67/02 from the previous Investigating Officer on 8.3.2002 and the investigation remained with him till 30.4.2002 and thereafter he had handed over the investigation to Crime Branch ACP Shri Chudasama. On 9.3.2002, he drew the panchnama of the scene of offence in the presence of two panchas. He has read over the panchnama to them and got their signatures in his presence. The witness is shown the

panchnama Exhibit-1556, which is comprised of four pages and is a handwritten panchnama and he has admitted that the same bears the signatures of the panchas as well as his signature. The witness has stated that under orders of the Police Commissioner, P.I. R.C. Pathak, who at the relevant time was in the Crime Branch, Police Constable Vikramsinh Udesinh, P.S.I. Shri Karoliya, etc. were placed under him for assisting him with the investigation.

240.10 On 11.3.2002, he recorded the statement of Videographer Ashokbhai Hemrajbhai (PW-215). On 13.3.2002, he prepared a draft map of the scene of the offence. At the relevant time, sometimes under written instructions and sometimes under oral instructions from him, P.S.I. Shri R.C. Pathak had recorded statements of important witnesses of this case, who were residing near the scene of offence. Accordingly, he had recorded statements of the witnesses who were found to be present and had handed over their statements to him which he has seen and examined and kept with the case papers.

240.11 On 6.4.2002, he had received statements of victims, dying declarations recorded by the Executive Magistrate, cause of death slips as well as record of documents together with the forwarding letter of the Senior Police Inspector, which he had kept with the investigation papers.

240.12 On 10.4.2002, he had recorded the statements of Basirkhan Nanhekhan Pathan (PW-136), on 11.4.2002, he had recorded the statement of Salimbhai Roshanali Shaikh (PW-37) and Inayat Abdulrahim Saiyed (PW-251) as well as other

Muslim witnesses.

240.13 On 13.4.2002, he had recorded statements of Mohammadsafi Allabax Mansuri (PW-157), Lalabhai Nizambhai Luhar (PW-116), Ibrahimbhai Chhotubhai Shaikh (PW-115) and other Muslim witnesses.

240.14 The witness has thereafter deposed with regard to the arrest of nineteen accused and the steps taken for obtaining remand, etc. The witness has further deposed that, under his instructions issued on 18.4.2002, Shri R.C. Pathak had drawn house to house panchnamas of about thirteen houses from 11.4.2002 to 16.4.2002 and such panchnamas had been kept with the case papers. On 19.4.2002, he had recorded statements of Nazirkhan Rahimkhan Pathan (PW-208), Jainulabedin Mohammadkhwaja Shaikh (PW-113), Fatimabibi wife of Mohammadyusufbhai (PW-112), Naemuddin Ibrahimbhai Shaikh (PW-158) and other Muslim witnesses.

240.15 On 29.4.2002, P.I. Shri Khunti had together with a report forwarded several complaints to him, which he had kept with the investigation papers. Under orders of the Police Commissioner, Naroda Police Station I-C.R. No.238/02 was included in I-C.R. No.100/02 and upon the orders being passed to hand over the investigation papers and case diary to him with a view to connect that offence with the present offence, A.C.P. Shri M.T. Rana handed over the case papers and the case diary of the investigation to him on 30.4.2002.

240.16 The witness is shown Mark 1732/1, which is the order of the Police Commissioner. Upon perusing the same, the

witness has stated that this was the order which was received by him and he has kept with the investigation papers. The order is given Exhibit No.2004, which is an administrative order passed by the Police Commissioner in the routine course. As per the order, Shri Rana was directed to include I-C.R. No.238/02 with the investigation of I-C.R. No.100/02.

240.17 On 27.4.2002, pursuant to the order of the Police Commissioner, the investigation of I-C.R. No.100/02 was sent to Crime Branch A.C.P. Shri S.S. Chudasama together with a report as well as along with the papers of I-C.R.No.238/02.

240.18 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that together with this offence, he had taken charge of two offences on 8.3.2002 and since then, he was actively investigating into all the offences. The witness has admitted that the offence registered vide I-C.R. No.98/02 relating to Naroda Gam as well as the present offence viz. I-C.R. No.100/02 are offences registered with the Naroda Police Station and I-C.R. No.77/02 is registered with the Meghaninagar Police Station and all of them relate to communal offences.

240.19 The witness has admitted that on 9.3.2002, he had personally gone to all the places in connection with which the additional scene of offence panchnama was drawn. He has admitted that when he went to draw the additional panchnama Exhibit-1556, at that time, the earlier panchnama Exhibit-1749 (Part-1 to Part-3) was included in the investigation papers and he has received the complaint Exhibit-1773 of P.S.I. Shri Solanki. The witness has admitted that he has read over the

investigation papers received by from prior thereto.

240.20 The witness has admitted that the panchnama Exhibit-1749 Part-1 to Part-3 was drawn in the presence of P.S.I. Shri Surela, which he is stating on the basis of the record. The witness has stated that to eliminate the deficiencies in the panchnama Exhibit-1749, Part-1 to 3, he had drawn the additional panchnama Exhibit-1553. He has stated that he had not seen the site position in the panchnama drawn by Shri Surela. The witness has stated that video recording which was got down by him does not include all the spots, but after taking over the investigation, he felt that the number of places which have been included in this offence are many and that the video recording was limited to only certain spots. The witness has stated that in this offence many places have been shown as the scene of offence, however, he has carried out the video recording of only those places which, as an Investigating Officer, he felt was the scene of offence.

240.21 The panchnama Exhibit-1556 is shown to the witness, who has stated that there is a description of Hussainnagar-ni-Chali in the panchnama. The witness has admitted that in this panchnama, there is no reference to any madressa or masjid in Hussainnagar. The witness has admitted that in the panchnama, there is no description of any masjid or madressa even in Jawannagar. The witness has admitted that while drawing the panchnama, the complainant Shri V.K. Solanki was present with him. The witness has admitted that the distance shown in the panchnama were measured with a measure tape and in a similar manner, the height of the S.T. Workshop compound wall and the wire fencing, etc. was also

measured and written down in the panchnama.

240.22 In the cross-examination of the witness, it has come out that the Exhibit-1556 panchnama has been drawn mostly for the purpose of clearly identifying the chawls opposite the S.T. Workshop. The witness has admitted that during the course of investigation of the scene of offence, it is necessary to take note of evidence connected with the offence. The witness has admitted that at the time when he drew the panchnama Exhibit-1556, he had not found any evidence worth sending to the F.S.L. and, therefore, he had not made any such note.

240.23 The witness has stated that the video cassette given by him to the videographer Shri Ashok Hemraj, was totally blank. He has stated that the area of which video recording was carried out is mentioned in the panchnama Exhibit-1228. He has admitted that he has carried out the video recording of the lanes of Hussainnagar and Jawannagar and has admitted that there is no mention of any madressa or masjid in the panchnama Exhibit 1228. The witness has stated that without looking at the video cassette, he cannot say whether any masjid or madressa can be seen in Hussainnagar or Jawannagar. He has stated that the draft map prepared by him of the scene of offence has been handed over by him to Investigating Officer Shri Chudasama.

240.24 The witness has admitted that he has not particularly studied the complaint application given to him by Shri Khunti for the reason that thereafter he was required to hand over the investigation. The witness has stated that he

does not remember the exact number of persons who had given such complaints. He cannot say exactly as to whether all the applications were in printed forms or in writing but has stated that many of the complaints were in printed forms. The witness has admitted that many of these complaints were addressed to the Police Commissioner, Ahmedabad.

240.25 In the cross-examination of this witness, it has come out that during the course of his investigation, he had no occasion to visit the Sola Civil Hospital. The witness has admitted that he has recorded the statements of Gaurav Jairambhai and Dhirajbhai Lakhabhai on 16.5.2002 but has stated that the investigation of the offence was with him only till 30.4.2002 and that as far as he remembers, these statements were recorded in connection with the offence registered vide I-C.R. No.98/02. The witness has stated that the investigation of that offence was with him till 18.5.2002 and he might have recorded these statements in that offence, however, in connection with the Naroda Patiya incident, he has certainly not recorded such statements.

240.26 The witness is cross-examined as to his statement recorded by the SIT, however, reference to such statement has not been made to contradict any part of the evidence of the witness but to bring on record certain facts stated by him before the SIT. In this regard, it may be noted that the statements recorded by the SIT are statements under section 161 of the Code and, therefore, can be used only for the purpose of contradicting the witness. Under the circumstances, reference to the statement of this witness as recorded by the SIT without seeking to contradict the witness is inadmissible in

evidence. Therefore, the court does not deem it fit to refer to the same.

240.27 The witness has admitted that he has recorded the statements of the witnesses referred to in paragraph 64 of his deposition. The witness has stated that he has recorded the statements of all those witnesses, as stated by them, and it has not happened that the witness has said something, which he has not written down or that the witness has not said something which he has written down. The witness has admitted that majority of the people residing at Naroda Patiya were Muslims from outside Ahmedabad city.

240.28 In the cross-examination of the witness, it has come out that Shri Mysorewala had shown him all the places where the offence had taken place. The witness has admitted that the places shown in Exhibit-292 had been shown to him by Shri Mysorewala. The witness has denied that he was required to draw a panchnama of these places. The witness has admitted that a panchnama of all the places referred to in the complaint has not been drawn.

240.29 The witness has thereafter been cross-examined to prove the contradictions in the statements of the witnesses recorded by him, reference to which shall be made while considering the depositions of those witnesses.

240.30 In the cross-examination of this witness, it has further come out that he had read the FIR in this case. He has admitted that he had also taken charge of Naroda Police Station I-C.R. No.98/02 and that the SIT has recorded his

statement in connection with both the offences.

240.31 BY COURT: This witness has also been examined by the court, and has stated that he is aware of the fact that the investigation of this case was with a P.I. and it was taken over and handed over to him as he was an A.C.P., which is a senior position and that the investigation was handed over to him so that it is carried out very efficiently.

240.32 The witness has further stated that Shri R.C. Pathak, had helped him with the investigation from 9.3.2002 to 30.4.2002 and that during this period, he had recorded around 150 statements and had drawn panchnamas of about 513 properties. The witness has admitted that during this period, Shri R.C. Pathak was also entrusted with the work relating to the Crime Branch and that he was also required to visit the Crime Branch. Amongst the statements recorded by Shri R.C. Pathak were also statements of family members of those who had died and of those persons who were injured. The witness has admitted that he had felt that in case of those persons whose family members had died and those persons who had been injured, it would have been more advisable if he himself had recorded their statements instead of Shri R.C. Pathak and that it would have subserved the purpose for which he has been appointed as an Investigating Officer. The witness has stated that, however, the position after February, 2002 was very extraordinary. As stated by him, he was in-charge of three serious cases of Gulbarg, Naroda Gam and Naroda Patiya at a time. Moreover, as A.C.P. he had the responsibilities of four police stations, due to which, he himself could not perform the task.

240.33 The witness has admitted that he himself has not gone to the relief camp and has not met the victims. The witness has stated that he cannot remember that certain statements recorded by Shri Pathak were not in consonance with this complaint and, therefore, cannot be considered to be statements in connection with this investigation.

240.34 The witness has stated that during the course of investigation he had not taken any steps to take PW-158 Naemuddin to Gopinath Society and get the accused identified, for the reason that before he could do so, the investigation was taken away from him. The witness does not remember as to the period during which the investigation was with him, any person in the mob had been injured on the day of the incident and as to whether the statement of such injured persons or the statement of such person or the doctor who had treated such person has been recorded. The witness has stated that he had not made any attempts to recover the immovable properties of the victims which are mentioned in the statements of such victims for the reason that there was too much pressure of work. The witness has stated that he had made attempts to recover the weapons used by the riotous mob on the day of the incident, but could not make any such recovery.

240.35 The witness has admitted that he is in agreement with the suggestion that on 9.3.2002 when he had drawn an additional panchnama of the scene of offence, he had believed that there was no necessity of calling the FSL. However, if on that day, he had called the FSL and had obtained such additional report, it would have been additional evidence in the

investigation procedure.

240.36 ANALYSIS: This witness is the second Investigating Officer in this case. From his testimony it emerges that he had drawn a second panchnama of the scene of offence as the first panchnama was deficient, which is one of the sensible tasks performed by this officer, as this panchnama gives a better picture of the area starting from the entrance of the road adjoining the S.T. Workshop compound wall till the end. He had also got the video recording of the scene of offence done through a videographer. A perusal of the video recording of the scene of offence makes it manifest that the same was done in a hurried manner without bringing on record material parts of the scene of offence which would have helped the court to appreciate the evidence in proper perspective. Moreover, the video recording was started quite late and hence, they had to hurry as it was likely to become dark, resulting in the recording not being up to the mark. One fails to understand the rationale behind starting the recording late and finishing it hurriedly merely because it was becoming dark. Besides, if it was likely to become dark, part of the recording could have been done on the next day, but there was no sense in carrying out the video recording perfunctorily and in a hurried manner, resulting in failure to give a correct picture of the scene of offence. Thus, the officer has failed to ensure that the video recording of scene of offence is done in a proper manner, causing immense prejudice to the investigation.

240.37 It further emerges from the testimony of this witness that he had got panchnamas of 513 properties drawn during the period when he was in charge of the investigation,

which was more or less an exercise in futility as the same are meant for assisting the concerned persons in obtaining compensation (a task which is required to be performed by the Collectorate) and do not in any manner help the prosecution in establishing the charge against the accused. Thus, it would have been better, having regard to the situation prevailing at the relevant time, when there was shortage of man-power if the available man-power had been utilized efficiently instead of wasting so much time in unnecessary tasks, which speaks volumes about the nature of the investigation and the lack of seriousness on the part of the concerned Investigating Officer in investigating into the offence.

241. **PW-262 Vinubhai Khemabhai Dilwadiya**, aged 47 years, has been examined at Exhibit-1770. This witness has deposed that earlier he was known as Vinubhai Khemabhai Solanki, in short, V.K. Solanki. However, subsequently vide Gujarat Government Gazette Part-II dated 13.6.2002, he is now known as Vinubhai Khemabhai Delwadia, which is, in short, V. K. Delwadia. The witness has stated that it is for this reason that in the first information report dated 28.2.2002, his name as complainant is shown as V. K. Solanki.

241.1 The witness has deposed that in the year 1993, he was selected by way of direct recruitment as Police Sub-Inspector and was appointed. After his training, in the year 1994 to 1996, he was posted at Junagadh. From 1996 to 1998, he was working as a P.S.I. at Ellisbridge Police Station in Ahmedabad city. From 1998 to November, 2002, he was working as a P.S.I. at Naroda Police Station. At the relevant time, he was discharging duties at Krushnanagar Police

Chowky, Udhyognagar Police Chowky as well as the Surveillance Squad at Naroda Police Station. In February, 2002, he was discharging duties as a P.S.I. in Surveillance Squad at Naroda Police Station. At present, he has been promoted and is working as a P.I. at Himmatnagar.

241.2 The incident took place on 28.2.2002. In connection with the incident that took place at Godhra on 27.2.2002, the Vishwa Hindu Parishad had given a call for Gujarat bandh on 28.2.2002, when the communal riots had taken place.

241.3 On the day of this incident, he was assigned duties for patrolling in the requisitioned jeep in the Naroda Police Station area. Together with him in the vehicle were his staff members A.S.I. Dashrathsinh Udesinh, Police Constable Ashoksinh Laxmansinh, Police Constable Bharatsinh Chanduji, as well as Police Constable Deepak Govindrao. They were patrolling in the Naroda Police Station area. In the meanwhile, at around 9:00 to 9:30 in the morning mobs of people started coming on the road. They tried to disperse the mobs of people during the course of patrolling.

241.4 At 11:00 to 11:30 in the morning, while patrolling they came near the Noorani Masjid, Naroda Patiya when A.S.I. Ramubhai Parsottambhai, A.S.I. V. T. Ahari, Police Constable Pradeepsinh Ratansinh, Police Constable Kiran Parsottambhai (PW-264) as well as Police Constable Chandravadan Ramjibhai, who were placed at the police point near the Noorani Masjid were present at the point and A.S.I. Sajjansinh (PW-265) as well as Police Constable Vinubhai and Police Constable Jitendrabhai were present at the point near the S.T.

Workshop gate.

241.5 At this time, Hindu mobs in large number had gathered at the Noorani Masjid as well as the entrance of Hussainnagar-ni-Chali and were shouting “kill” “cut” and were raising slogans.

241.6 In the meanwhile, the then Deputy Police Commissioner Shri P. B. Gondia as well as ‘G’ Division A.C.P. Shri M.T. Rana as well as Senior Police Inspector of Naroda Police Station Shri K. K. Mysorewala had also come to the spot. At that time, mobs were coming from Krushnanagar, Saijpur Fadeli, Kubernagar, Chharanagar and were gathering near the Noorani Masjid as well as Hussainnagar hutments.

241.7 In the mob, at that time, as leaders, active workers of V.H.P. as well as B.J.P., namely, Kishan Korani (A-20), P. J. Rajput (A-19), Haresh Rohera (A-43), Babu Bajrangi (A-18) as well as Raju Chaumal (A-24) were present. They had taken the leadership of the mobs and were instigating the mobs and in a little while, shops and houses belonging to Muslim community as well as the Noorani Masjid were targeted and damaged and were set on fire and looted. The five persons whom he has named were shouting “kill them” “cut them” and were instigating the people in the mobs. Therefore, with a view to disperse the mobs they had again and again made announcements from the loudspeaker in their jeep and had warned the mobs to disperse. Despite giving such warning, the mob had become uncontrollable and had started burning houses and shops as well as the Noorani Masjid and the people in the mob had also started looting all these places.

241.8 In the above circumstances, the then Deputy Police Commissioner had given an order, pursuant to which, he fired five rounds from his service revolver, Police Constable Bharatsinh who was with him fired two rounds in the air with a 410 musket rifle. At this time, the then Senior P.I. Shri K.K. Mysorewala also fired eight rounds in the air. At this time, they had also lobbed tear gas shells, despite which, the mob became uncontrollable and got distributed into different groups, out of which, one mob was on the side of Saijpur Fadeli, another on the side of Krushnanagar, another towards Bhagyodaya hotel and one towards Hussainnagar, Gangotri Society. The mobs were shouting slogans of "kill them", "cut them". The mob was committing arson and had broken the lock of Uday Gas Agency which was nearby and taken out the gas cylinders and thrown them in the Noorani Masjid and were torching it and damaging it.

241.9 Out of the mob, which got distributed in this manner, one mob assaulted men, women and children belonging to the Muslim community, which resulted in the death of fifty eight persons. They assaulted these people and burnt them to death.

241.10 In connection with the facts stated by him, he had filed a detailed complaint in respect of all the incidents in the presence of Senior Police Inspector Shri K. K. Mysorewala on the same day on 20:15 hours.

241.11 The witness is shown Mark 134/1 and is handed over the same for the purpose of reading. The witness has

deposed that the complaint is comprised of two pages with handwritings on both sides. The witness has identified his signature on the complaint and has also admitted the contents thereof.

241.12 The witness has stated that this complaint has been registered as Naroda Police Station I-C.R. No.100/2002 and below the complaint, P.I. Shri K .K. Mysorewala had signed as having been signed in his presence. The witness has, accordingly, identified his own signature as well as the signature of Shri K. K. Mysorewala on the complaint. The complaint is given Exhibit-1773.

241.13 The witness has further deposed that after the complaint was lodged, the investigation was taken over by Senior P.I. Shri K. K. Mysorewala.

241.14 After the complaint was given on the next day, the then Sub-Inspector of Naroda Police Station Shri J. V. Surela had called him at the scene of offence. He had shown the scene of offence. He had prepared a detailed panchnama, of the scene of offence in the presence of two panchas. The procedure for drawing the panchnama went on for four days. He had taken part in the four day proceedings for drawing the panchnama.

241.15 Crime Branch A.C.P. Shri A. S. Chudasama had, in connection with this investigation, called him on 24.5.2002 as well as on 26.6.2002 and recorded his statement in connection with the complaint. Thereafter, on 24.10.2008, the Deputy Superintendent of Police Shri V. B. Chaudhary of the S.I.T. had

recorded his statement at the S.I.T. office at Gandhinagar.

241.16 The witness has deposed that he knows the accused named by him in the complaint and can identify them. The witness has thereafter correctly identified P. J. Rajput (Accused No.19), Babu Bajrangi (Accused No.18), Haresh Rohera (Accused No.43) and Raju Chaumal (Accused No.24). Accused No.20 Kishan Korani had filed an exemption application and is, therefore, deemed to have been identified.

241.17 CROSS EXAMINATION: In his cross-examination, the witness has stated that no such fact has come to his notice that on 27.2.2002 in the evening, at around 7 to 8 o'clock, leaders of Hussainnagar had met Senior P.I. Shri Mysorewala and had requested him to place a police point and accepting such request, two constables had been posted at the corner of Hussainnagar on the day of the incident. The witness has denied that the people in the mobs were from the areas outside Naroda Patiya and has stated that over and above Naroda Patiya area there were people from outside also. The witness has admitted that he is aware of the fact that a Muslim driver had recklessly driven a Matador over the mob, due to which the mob had become more incited.

241.18 In his cross-examination, the witness has further stated that on that day there was a fixed point for discharging duties; his duty was to patrol. Hence he was required to go to the entire area. The entire Naroda Police Station jurisdiction was in an area of 40 kilometres. The witness has denied that after seeing fifty eight dead bodies he had gone to lodge the complaint. The witness has stated that he has no personal

knowledge as to whether Mysorewala had deputed anyone to take care of the fifty eight dead bodies which were found at the scene of incident. The witness has denied that he has not shown Shri J.B. Surela the place where the fifty eight dead bodies were found and that he had shown the spot on the next day.

241.19 The witness has admitted that he had participated in the proceedings of drawing of the panchnama of the scene of offence which went on for four days. The witness has admitted that on 27.2.2002, he was present at Naroda Police Station. He does not remember the RTO number of the police vehicle which was allotted to him, but the vehicle is known as 'Naroda-1'. The witness has admitted that whenever any incident takes place they inform their higher officers about such incident through wireless message. The witness has admitted that he has not seen the incident where fifty eight dead bodies were lying with his own eyes.

241.20 The witness has admitted that he has not informed his higher officers that the five accused whom he has named in his examination-in-chief were present and were instigating the mob. The witness has stated that the reason is because his higher officers were present at the spot and there was no necessity for him to inform them. The witness has stated that he had not given any wireless message in this regard to the police station, nor had he sent any message to the Gujarat Government, Home Department that the five accused are instigating the mob.

241.21 The witness has admitted that on the day of the

incident he had set out for patrolling at 7:00 in the morning. The witness has admitted that it was a part of his duty to move around in the entire 40 km. of the jurisdiction of Naroda Police Station and keep himself informed about it. The witness has admitted that on that day he was moving around in his jeep in the 40 km. area. The witness has stated that Naroda Police Station has four police chowkies, namely, Krushnanagar Police Chowky, Saijpur Police Chowky, Udyognagar Police Chowky and Nava Naroda Police Chowky. The witness has admitted that at 11:00 to 11:30 in the morning on the day of the incident, mobs started gathering on the roads from the Naroda Gam Road, Himmatnagar Road, Kubernagar Road, Saijpurbogha Road and towards Krushnanagar. The witness has admitted that people in the mob were thousands in number. The witness has stated that he had not seen any people in the mob coming in any vehicles. The witness has stated that he has seen these mobs at 11:00 to 11:30 while he was standing at the S.T. Workshop gate. The witness has stated that the mobs were also present at the S.T. Workshop.

241.22 The witness has admitted that at that time, he himself, DCP Shri Gondia, ACP Shri M.T. Rana, Senior P.I. Shri K.K. Mysorewala as well as 2nd P.I. Shri Gohil and other police staff were present at the S.T. Workshop gate. The witness has admitted that the police vehicles allotted to them were also present at the spot. The witness has admitted that armed policemen had also been placed there.

241.23 In his cross-examination, it has further come out that no untoward incident had taken place in his presence at the spot till 11:00 to 11:30 in the morning. However, he had

come to know about such incidents having taken place. The witness has admitted that he is not aware that prior to 11:00 to 11:30, there was any police firing. The witness has stated that he has not received any complaint that prior to his reaching the area, there was private firing. The witness has admitted that till he was there, no police firing had taken place from near the S.T. Workshop or near the Noorani Masjid. He has admitted that for the first time police firing had taken place after 11:30 in the morning. In his cross-examination, it has further come out that on the day of the incident he had continuously remained at the S.T. Workshop gate till 7:30 in the evening. Certain extracts of his statement recorded by the SIT have been brought on record in the cross examination of the witness. However, since such part of his statement has not been brought on record with a view to contradict any part of the evidence of the witness, the same is not admissible in evidence.

241.24 The witness has admitted that the Tata-407 was started from the road on the opposite side of the Noorani Masjid. The witness has admitted that at that time there were mobs of thousands of people on the road. The witness has admitted that driver of the Tata-407 had driven the vehicle in a manner whereby it would dash against the people and cause death. The witness has admitted that Senior P.I. Shri Mysorewala had followed the Tata-407 and has apprehended the driver and brought him to the police station.

241.25 The witness has admitted that upon the driver having driven the Tata-407 in this manner, one person had died and two persons were injured. The witness has admitted

that thereafter the mob got more aggressive and had started shouting loudly. The witness has admitted that amidst thousands of people, it was not possible to understand what any person was speaking.

241.26 The witness has admitted that he has not come to know that any rifle was taken away from any police personnel and private firing was resorted to. The witness has admitted that at the scene of incident, two persons under him, namely, Police Constable Bharatsinh and ASI Sajjansinh had musket rifles. The witness has admitted that ASI Sajjansinh and Bharatsinh were present at the point assigned to them. He has admitted that he had taken a rifle from Bharatsinh and fired in the air. The witness has admitted that it had not happened that any private person had taken the musket rifle from Bharatsinh. The witness has admitted that as long as he was on duty, till then they had not permitted the mob to enter the Muslim areas from the corner of the S.T. Workshop. The witness has admitted that when he was on duty Muslims had also come out of their chawls and gathered outside. The witness has admitted that he was on duty near the S.T. Workshop wall and on the opposite side the Muslim area was situated and there was passage in between. The witness has admitted that while he was there, Hindu and Muslim mobs pelted stones against each other. He has admitted that tubelights, glass, etc. were being thrown from the Muslim chawls. The witness has admitted that Muslims from the chawls brought weapons like sticks, pipes and dharias and started fighting with the Hindus.

241.27 The witness has admitted that at the entrance of

Hussainnagar lane, glass, stones, tube-lights, etc. were lying. The witness has admitted that due to this position, it was not possible to enter inside from the S.T. Workshop road. The witness has admitted that the incident of the Matador 407 was prior to throwing the glass, stones, etc. The witness has admitted that after throwing glass, stones, etc. at each other, the mobs on both the sides got more incited.

241.28 The witness has stated that during the course of his duties, he did not have occasion to enter the Noorani Masjid. He has stated that on that day he has seen people lifting gas cylinders and bringing them. The witness has stated that they were pushing gas cylinders with their feet and rolling them. The witness has admitted that he must have seen five to ten such persons. The witness has admitted that he has seen such people in the mob. The witness has admitted that all of them had entered the Noorani Masjid and climbed up and had thrown gas cylinders on that day. The witness has admitted that at the time of climbing on the Noorani Masjid, those persons had lifted gas cylinders on their shoulders and had climbed and thrown them. The witness has admitted that all the gas cylinders were full. He has admitted that upon gas cylinders being thrown inside the Noorani Masjid, there were loud sounds. The witness has admitted that he had seen all this from the S.T. Workshop gate. The witness has stated that he has not seen any tanker dash against the masjid wall as well as its gate. The witness has stated that he cannot say as to in which mob, the four persons named by him were present.

241.29 The witness has admitted that he had seen the accused in the afternoon between 12 to 2 o'clock. The witness

has admitted that after 2 o'clock he had seen the five accused near the S.T. Workshop gate.

241.30 The witness has admitted that on the day when the incidents took place, a complaint in respect of Naroda Gam was also registered. The witness has stated that as far as he is aware, the complaint in the Naroda Gam case has been lodged by ASI Shri N.T. Vala. The witness has admitted that the SIT officers had investigated both the complaints of Naroda Gam as well as Naroda Patiya. The witness has admitted that ASI Shri Vala has passed away. The witness has stated that he does not know as to at what time Shri Vala has lodged his complaint. The witness has denied that the Naroda Gam complaint was first read over to him and thereafter he had given the complaint Exhibit 1773. The witness has denied that the names of the five accused are verbatim the same as in the Naroda Gam complaint and that he had written those names in the same sequence in his complaint. He has denied that firstly Shri Vala's complaint came to be registered and his complaint had been registered after 1:30 at night and hence he had registered a time anterior to 1:30 in this complaint.

241.31 The witness has admitted that prior to lodging the complaint he had not gone near the Gangotri Gopinath water tank on the S.T. Workshop road. The witness has stated that he has seen the tank. He had reached this place at 12:00 to 12:30 at night on the day of the incident. The witness has stated that Mysorewala was with him at that time.

241.32 The witness has admitted that at the passage of water tank he had seen fifty eight corpses. The witness has

admitted that prior to seeing fifty eight dead bodies in the passage of the tank, he had not gone to Jawannagar or Hussainnagar. The witness has admitted that on the night of the day of the incident he had not gone to the Jawannagar hutments. The witness has admitted that he had gone to the water tank-passage from the road on the rear side and had not gone through the S.T. Workshop road. The witness has admitted that the corpses and the injured persons were sent to the Civil Hospital in police vehicles. The witness has admitted that those who were injured near the water tank were taken by Senior P.I. Shri Mysorewala.

241.33 The witness has admitted that on 1.3.2002, he had gone to show the spots for drawing of parts of the panchnama of the scene of offence. The witness has stated that he does not remember as to whether when he went for drawing the scene of offence panchnama, he had seen any corpses in Hussainnagar or Jawannagar. The witness has admitted that in the scene of offence panchnama, he has not shown any dead body.

241.34 The witness has admitted that the members of the Peace Committee are appointed from the people residing in the concerned area. The witness has stated that at present he does not remember whether Kishan Korani and Raju Chaumal were members of the Peace Committee. The witness has stated that he is not aware as to whether the five accused mentioned by him are social workers. The witness has denied that it is his personal opinion that the five persons whom he has named in his examination-in-chief are political leaders. The witness has stated that time and again they used to come to

the police station, and hence, he was saying so.

241.35 The witness has admitted that the members of the committee are given identity cards with photographs. The witness is shown a yellow-coloured card on which "Peace Committee, Naroda Police Station' is written. The witness has taken the card in his hand and has observed that it is a Naroda Police Station, Peace Committee Card which does not bear a photograph. The name of Kishanchand Khubchand Korani is written on it. The card bears a round seal and on the reverse side, it bears the seal and signature of P.I. of Naroda Police Station. The card is given Exhibit No.1774.

241.36 The witness has stated that he does not know as to when the incident of the mutilated dead body of a person named Ranjit had taken place. The witness has stated that he has not seen any such incident and has no personal knowledge about it, but he had heard about it. The witness has admitted that in connection with the mutilation of the corpse of a person named Ranjit, an offence has been registered with the Naroda Police Station. The witness has denied that in his complaint Exhibit 1773 he has stated only the facts which he has seen with his own eyes. The witness has stated that he has also stated the facts which he has heard.

241.37 The witness has denied that at the instance of Muslims and police officers, he has wrongly given the names of the five accused named in the complaint and that as they are political leaders, with a view to implicate them, their names have wrongly been given. The witness has denied that he has given the complaint at the instance of Shri Mysorewala. The

witness has stated that he cannot say as to in which area of Naroda Patiya, the five accused named by him are residing. The witness has denied that none of the five persons was present at the scene of the incident on the day of the incident.

241.38 SUBMISSIONS: The learned counsel for the appellants invited the attention of the court to the testimony of the witness to point out that he was at the S.T. Workshop Gate continuously till 7 o'clock in the evening. He reached the water tank at 12:00 to 12:30 at night and Shri Mysorewala was with him at that time. He saw fifty eight dead bodies in the passage of the water tank and prior thereto, he had not gone to Jawannagar or Hussainnagar. He went from the rear side and not from the side of the S.T. Workshop. It was pointed out that the witness did not go to the place of incident before 12:30 at night and prior to the incident coming to his knowledge, he was at the S.T. Workshop Gate till 7:30 p.m. He saw fifty eight the dead bodies at the passage, when he reached there at night.

241.39 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that from the testimony of this witness, it emerges that he could recognize only the leaders. He had given the names of known persons, which shows the credibility of the witness qua the names of the accused persons. According to the learned counsel, just because the police did not discharge their duties properly, the benefit would not go to the accused. It was submitted that the witness has named and identified the accused and nothing has been brought out in the cross-examination of the witness which shows that the identity of the accused is not believable. The cross-examination does

not dislodge the presence or identity of the accused. It was urged that the evidence of this witness qua the accused is credible, reliable and believable.

241.40 ANALYSIS: According to this witness at around nine to nine thirty in the morning mobs started gathering on the road and they made attempts to disperse them during the course of patrolling. At about 11:00 to 11:30 in the morning, while patrolling they came to Naroda Patiya near the Noorani Masjid, at that time Hindu mobs had gathered in large numbers and were shouting slogans like "kill them, hack them". In the meanwhile their Deputy Police Commissioner, Shri P.B. Gondia and A.C.P. Shri M.T. Rana and Naroda Police Station Senior P.I. Shri K.K. Mysorewala also arrived there. At that time mobs from Krushnanagar, Saijpur, Fadel, Kubernagar, Chharanagar started gathering near the Noorani Masjid and Hussainnagar hutments. At the relevant time, active members of the V.H.P. and B.J.P., Kishan Korani, P.J. Rajput, Haresh Rohera, Babu Bajrangi and Raju Chaumal were leading the mobs and were instigating them and in a while, shops, houses of Muslims and the Noorani Masjid were targeted and ransacked and set ablaze and looted.

241.41 The witness has deposed that they had warned the mobs through the loudspeakers on the jeeps to disperse but the mobs were beyond control and continued with the above criminal acts. Thereafter, they had resorted to firing and lobbing tear gas shells, whereupon the mob split into three parts. One such mob assaulted and attacked people at the corner of Gangotri Society in Hussainnagar and caused the deaths of fifty eight men, women and children belonging to the

Muslim community. He had lodged a complaint in this regard. The witness has clarified that he had not stated the facts regarding the presence of the five accused at the scene of incident to his higher officers, for the reason that the higher officers were present at the scene of incident.

241.42 The witness has admitted that no police firing took place prior to 11:00 to 11:30 in the morning. On the day of the incident he was continuously present near the S.T. Workshop Gate till 7:00 to 7:30 in the evening. He has further admitted that till he was on duty he did not allow the people in the mob to enter the Muslim areas from the corner of the S.T. Workshop. He has admitted that glass, stones and tube lights, etc. were lying at the entrance of the lane going to Hussainnagar and it was not possible to go inside through the S.T. Workshop road. He has seen people rolling gas cylinders and bringing them. The gas cylinders were thrown in the masjid and at that time there were loud sounds. He has not seen any tanker being rammed into the wall or door of the Noorani Masjid. He had seen the named accused between 12:00 to 2:00 in the afternoon, near the S.T. Workshop gate.

241.43 In his cross-examination it has come out that prior to lodging the complaint he had not gone near the Gangotri Gopinath water tank through the S.T. Workshop road. He had gone to this place at around 12:00 to 12:30 at night at which point of time Shri Mysorewala was with him. He had seen fifty eight corpses in the passage of the water tank. He had gone to the passage of the water tank through the road on the rear side and not through the S.T. Workshop road. He has further stated that as a P.S.I. of the Surveillance Squad, it was his duty

to prevent offences in the police station area and to maintain law and order.

241.44 From the testimony of this witness, it emerges that he was near the S.T. Workshop gate right from 11:00 to 11:30 in the morning till 7:00 to 7:30 in the evening. From the evidence of the witness, it emerges that a huge Hindu mob had gathered on the road and was ransacking, destroying and setting ablaze shops and houses of Muslims as well as Noorani Masjid. From the evidence of this witness, there is nothing to indicate that except for announcement on the loudspeaker to the people to disperse, any other positive steps were taken for dispersing the mob. It appears that police firing was resorted to and teargas shells were lobbed on occasional intervals, however, no serious efforts appear to have been made to prevent the mob from destroying the properties of the Muslims.

241.45 Despite the fact that the witness was there throughout the day, all that he says is that, the mobs on the road split into three mobs and one such mob attacked the people at the corner of Gangotri Society and caused the death of fifty eight people belonging to the Muslim community. It is a matter of deep concern that though the witness was present near the S.T. Workshop throughout the day, he does not refer to any houses being set ablaze in the chawls of Hussainnagar, Jawannagar as well as other chawls, starting right from the entrance of the S.T. Workshop. It is not possible that a policeman, who was standing at the corner of the S.T. Workshop, could not have noticed the incidents taking place inside the chawls. However, not a single police witness,

including this witness, has stated regarding having taken any steps for preventing the mob from damaging and destroying the houses in the chawls and causing harm to the lives of the Muslim people living inside the chawls. This witness has deposed that while he was on duty, he did not allow the mob to enter the Muslim areas from the corner of the S.T. Workshop. From the topography of the area, it is evident that apart from the road parallel to the S.T. Workshop compound wall, it was also possible to enter the chawls from the side of the S.R.P. Quarters and from the Uday Gas Agency lane, all of which is visible from the corner of the S.T. Workshop road. Despite this fact, huge mobs have entered the chawls from near the S.R.P. Quarters and the Uday Gas Agency road and none of the police personnel present at the scene of offence appear to have made any efforts to prevent them from entering the chawls. In fact, all the police officers and other staff members appear to have developed amnesia insofar as the events that took place between 1:00 to 7:30 in the chawls. None of the witnesses, including this witness, have even mentioned having seen any houses being burnt inside the chawls. Thus, it is evident that the police officers and personnel have turned a complete blind eye to the happenings inside the chawls as if their duty was to maintain law and order only on the highway, where too, they have miserably failed because the shops and houses belonging to the Muslims as well as the Noorani Masjid were damaged and destroyed in the presence of the police personnel, who did nothing except make nominal attempts to disperse the mobs.

241.46 While the witness speaks about a Muslim boy having fled with a Tata-407 which led to the mob getting

agitated, he pleads complete ignorance about a tanker having been rammed into the Noorani Masjid though he claims to have been present at the S.T. Workshop throughout the day. A perusal of the scene of offence panchnama as well as the photographs of the Noorani Masjid clearly show a tanker having been reversed into it, however, the witness is not aware of the same, which gives reason to believe that the witness has not come out with the truth.

241.47 Nonetheless, despite the above conduct of the witness, he has stated that at the relevant time, active members of the V.H.P. and B.J.P., Kishan Korani, P.J. Rajput, Haresh Rohera, Babu Bajrangi and Raju Chaumal were leading the mobs and were instigating them and in a while, shops, houses of Muslims and the Noorani Masjid were targeted and ransacked and set ablaze and looted. The presence of the witness at the scene of incident cannot be doubted. There is no reason for the witness to falsely implicate the above accused. In his cross-examination except for a suggestion that he was falsely implicating these accused as they were political persons, nothing has been brought out to indicate that there was any animosity with the accused named by him. Under the circumstances, through the testimony of this witness, the prosecution has proved the presence of the above named accused in the mob on the road.

242. **PW-264 Kirankumar Parshottambhai Makwana** has been examined at Exhibit 1778. This witness has deposed that from the year 2006 he was working as a Police Constable at Sardarnagar Police Station. Prior thereto, from January, 2000 to June, 2006, he was working as Police Constable at the

Naroda Police Station. In February, 2002 he was discharging duties at Saijpur Police Chowky under the Naroda Police Station.

242.1 The incident took place on 28.2.2002. On that day he was posted at the Noorani Masjid point in the Naroda Patiya area. In the context of the train incident that took place on 27.2.2002, the Vishwa Hindu Parishad had given call for Gujarat Bandh on 28.2.2002. On that day in the context of the bandh, *bandobust* has been arranged.

242.2 In the morning at around 7 o'clock he was on duty at Noorani Masjid. On that day, ASI Rambhai Parsottambhai, ASI Vijaykumar T. Ahari, Police Constable Indravadan Ramjibhai and Police Constable Pradeepsinh Ratansinh were with him. On that day Chandravadan had a rifle and rest of them had *lathis* with them.

242.3 The Noorani Masjid Police point was on the road outside the Noorani Masjid. On that day, in the morning at around 9 o'clock, mobs of people slowly started gathering on the road side at Noorani Masjid which goes from Naroda Patiya to Thakkarnagar. Out of these mobs, several mobs were also on the side of the Noorani Masjid. Therefore, he and the police staff accompanying him, had given instructions to the people in the mob who had gathered there, to disperse and had made attempts to keep the mob away from the Noorani Masjid.

242.4 In the meanwhile at around 10:30 to 11:00, despite their efforts, more and more mobs started gathering on the road. More and more people started gathering in the open

space near the Noorani Masjid.

242.5 In the meanwhile, Police Inspector Shri K.K. Mysorewala and Police Sub-Inspector Shri V.K. Solanki, Police Sub Inspector Shri P.U. Solanki as well as other police staff came to the Patiya area in their vehicles. They too made lawful attempts to disperse the mob; however, the mobs did not disperse.

242.6 In the meanwhile, D.C.P. Shri P.B. Gondia and Assistant Police Commissioner Shri M.T. Rana also arrived there. In the meanwhile, more and more mobs were gathering. A Tata 407 was parked near the Noorani Masjid. Some person sat inside and all of a sudden drove the vehicle through the mob in the direction of Naroda Patiya. Upon the vehicle being driven towards Naroda Baithak, Police Inspector Shri K.K. Mysorewala followed it and returned back after about twenty to twenty five minutes.

242.7 He had come to know that the Tata 407 vehicle had caused the death of one person and had injured two persons. Due to this incident, the mob on the road which was comprised of fifteen thousand to twenty thousand people, got provoked and started shouting 'kill, hack' and started pelting stones at Noorani Masjid. Therefore, the Muslim people residing in the houses near the Noorani Masjid, as well as those who were on the top of the Noorani Masjid, also started pelting stones to resist.

242.8 In the meanwhile, several people from the mobs on the road entered the Noorani Masjid and started damaging and

setting it ablaze. At this time the police had lobbed teargas shells to disperse the mob. However, the mob did not disperse and became more aggressive and started entering the shops and residential houses near the Noorani Masjid and damaging houses and shops and torching them. At this time the police had fired at the mob on the road and had attempted to disperse the mob. Chandravadan, who was with them, had also fired one round, but the firing was not successful and there was misfiring.

242.9 In the meanwhile the people from the mobs started pelting stones at Pandit-ni-Chali, Hussainnagar-ni-Chali and Jawannagar hutments situated opposite the Noorani Masjid and from inside the chawls also, there was cross stone- pelting at the people on the road and tube-lights, etc. were being thrown. Upon this happening, firing was resorted to to disperse the mob. As soon as there was firing there was a stampede.

242.10 In the mob he had seen Naresh Agarsingh Chara, who resides near Saijpur Cemetery and Umesh Bharvad, who resides in Krushnanagar Housing, shouting 'kill and hack' and had also seen Kalu alias Kalio Hathisingh Rathod who resides at Krushnanagar Fadeli, who was throwing burning rags on the houses in the chawls. In the meanwhile, on account of the stampede, several people entered into the lanes next to the S.T. Workshop.

242.11 In this incident, several people entered Jigar Hasan-ni-Chali and commenced loot and assault there. The mobs were comprised of the people belonging to the Hindu community.

242.12 These mobs became peaceful after around 7:30 in the evening and the people in the mob had dispersed. They had come to know that behind Hussainnagar, about fifty eight people including women, men and children had been burnt to death.

242.13 The victims, who had sustained burn injuries in the incident, were taken in ambulances and police vehicles to the hospital.

242.14 In this incident P.S.I. Shri V.K. Solanki had lodged the complaint. His (the witness's) statement was recorded on 3.3.2002. Thereafter, the SIT had also recorded his statements on two occasions.

242.15 The witness has stated that he could identify Naresh Agarsinh Chara, Umesh Bharvad and Kalu and has, accordingly, correctly identified all the three accused.

242.16 CROSS EXAMINATION: In the cross examination of the witness it has come out that his first posting was at the Naroda Police Station. The witness has admitted that in the year 2002 his residence was at the S.R.P. Headquarters. The witness has stated that he had discharged his duties at Saijpur Chowky for two years. The distance between Saijpur Chowky and Noorani Masjid must be around one kilometre. He has admitted that none of the five persons, who were posted at the Noorani Masjid, were allotted any teargas.

242.17 The witness has admitted that on the day of the

incident in the morning at 10 o'clock, he had occasion to meet the constable on duty at the S.T. Workshop point. He has stated that amongst the five persons who were posted at Noorani Masjid point, no one was in charge under whom the rest of them were required to work.

242.18 The witness has denied that on the day of the incident till 10 o'clock in the morning, everything was peaceful near Noorani Masjid. The witness has stated that there was a lot of movement and the mobs of people had started gathering. The witness has denied that they were required to stay at their point near Noorani Masjid and were not supposed to move from there. The witness has voluntarily stated that for the purpose of maintaining *bandobust*, they could move around within the range of one hundred to two hundred metres.

242.19 The witness has stated that on that day with a view to persuade the mobs not to gather near Noorani Masjid, sometimes two of them would go together and sometimes they would also go in pairs. The witness has denied that from their point, they were required to send messages to their P.I. that there is no rioting or stone pelting at the spot. The witness has admitted that the Naroda Police Station Van No.1 and Van No.2 used to come for inspection when they were at the point. The witness has admitted that if there was peace or unrest at the spot, they were required to inform the Naroda Police Station Van No.1 and Van No.2 when they came for inspection to their point, and they in turn, they would inform the Police Control Room. The witness has admitted that P.I. Shri Mysorewala had come to their point, but he does not remember, the time when

he had come.

242.20 The witness has stated that they were making oral requests on an individual basis to the people in the mob. The witness has admitted that they did not have a loudspeaker. The witness has denied that the mob got provoked after the driver of a Tata 407 drove the vehicle recklessly. The witness has stated that the mob was already provoked. The witness has stated that on account of this incident, the mob had got more provoked and this was one of the reasons for the mob getting more aggressive.

242.21 The witness has admitted that from the top of Noorani Masjid as well as the houses of Muslims nearby, burning rags, tube-lights, bulbs, empty glass bottles and stones were being pelted at the mob. The witness has stated that the said articles were being thrown in defence.

242.22 The witness has stated that as the number of people in the mob was very large; they (the police) were not normally standing at one place, but were required to go to different places to persuade the people in the mob.

242.23 The witness has stated that he is not aware that teargas was being released near the S.T. Workshop and that any youth belonging to Muslim community has been injured by the teargas. The witness has admitted that neither he nor the other police employees, who were with him, have caught any of the persons in the mob while they were looting or taking away the looted goods. The witness has admitted that he has not seen any Hindu injuring or causing burn injury to any

Muslim.

242.24 The witness has denied that from 27.2.2002 to 3.3.2002 he was continuously in touch with his P.I. and P.S.I. The witness has admitted that they used to come to their point while patrolling.

242.25 The witness has denied that till 3.3.2002 he had not informed his P.I. about having seen the accused named by him in the mob. The witness has stated that he had orally informed him.

242.26 The witness has denied that his statement was recorded on 3.3.2002, because till then, he did not know the names of the accused. The witness has denied that since no accused was being found, to detect the offence, with the assistance of the surveillance staff squad, names of these three accused have wrongly been given. The witness has denied that the three accused named by him were not present in the mob and that he has not seen them.

242.27 In his cross-examination it has further come out that the witness has not gone to Natraj Hotel or till the Krushnanagar Road. He has not gone inside Krushnanagar. The witness has admitted that from 7:00 to 9:00, he had not seen mobs gathering. The witness has stated that the mobs started gathering after 9 o'clock. Upon being asked as to whether after the mobs started gathering, anyone has asked the mobs to disperse, the witness has stated that they had. The witness has stated that he had approached the mobs that had gathered towards Naroda Patiya and had asked them to

disperse. The witness has stated that he had gone about fifteen to twenty steps from his police point to ask the mob to disperse. The witness has stated that upon the mob not dispersing, he had not spoken to the mob in a strict tone.

242.28 The witness has admitted that the mob had gathered out of curiosity. The witness has admitted that the police at their police point as well as at the S.T. Workshop point were continuously attempting to disperse the mob. The witness has voluntarily stated that they could not succeed.

242.29 In the cross-examination of the witness, it has come out that at his police point as well as at the S.T. Workshop police point and at the site, together with the police staff which had come with the higher officers, in all, about fifty policemen had gathered at the spot. The higher officers who had come there were standing in the open space opposite Noorani Masjid, near the S.T. Workshop. The witness has admitted that when the officers came, their vehicles were parked near the spot where they were standing. The witness has admitted that before the Tata 407 was driven away, he had not seen stone pelting. The witness has admitted that on account of a person dying due to the Tata 407 incident, the mob got provoked and thereafter pelted stones.

242.30 The witness has stated that he cannot say with certainty as to at what time the incidents of throwing burning rags, pelting stones and tube-lights and bulbs as well as glass bottles, had taken place. The witness has stated that it was at a little distance from their police point. One mob was from the direction of Thakkar Bapanagar and the other was from the

side of Natraj Hotel. The witness has admitted that the fifty to fifty five policemen, who were there, had got divided and were at different places. Some were near the Natraj Patiya, some were near the Noorani Masjid point, and some were at the S.T. Workshop point. Thus, they were at different places. The witness has admitted that the mob was at a little distance from them.

242.31 The witness has stated that there was no Muslim mob where he was standing near Noorani Masjid. The Hindu mob was at a little distance from where he was standing. The senior officers had lobbed teargas shells from their vehicles. The witness has voluntarily stated that there were gasmen in the vehicles of the senior officers. About twenty to twenty two teargas shells were lobbed. The witness has admitted that the teargas shells were lobbed towards Naroda Patiya.

242.32 The witness has denied that where teargas shells were lobbed, the mob had dispersed. The witness has stated that he does not know as to whether eyes were burning on account of gas being released. The witness has stated that on that day he did not feel any burning sensation in his eyes. The witness has denied that he was not at the scene of the incident and therefore, his eyes were not burning.

242.33 In his cross-examination, it has further come out that from the rear side of Noorani Masjid, Muslims were throwing tube-lights, bulbs and stones at the mob on the side of Patiya. The witness has stated that he and the police staff, who were with them during this period, had not caught anyone doing this. The witness has stated that they were blowing

whistles and asking the people above to move away from there. The witness has admitted that from where he was standing, the terrace of Noorani Masjid and other terraces were close-by. The witness has stated that he cannot name any of the Muslims who were present on the terrace. He also does not know any Muslim residing near Noorani Masjid.

242.34 The witness has stated that he has seen the mob which came to the corner of the chawl near the S.T. Workshop. The mob was comprised of around four hundred to five hundred people. He has admitted that the people in the mob had swords, dharias, pipes, etc. The witness has admitted that the mob was comprised of Muslims. The witness has stated that from where he was standing, the mob was at a distance of one hundred to one hundred and fifty metres. From this mob, the mob towards Patiya was at a distance of one hundred and fifty metres and the Thakkar Bapanagar mob was at a considerable distance.

242.35 The witness is sought to be confronted with his statement dated 3.3.2002. However, the statement is not put to him to bring on record any contradiction or omission, and hence, the same is not admissible in evidence.

242.36 The witness has admitted that during this entire incident, he had not sustained any kind of injury. The witness has denied that there was a hand to hand combat between the mobs in front of the S.T. Workshop compound wall and at that time, Muslims were pelting stones, tube-lights, glass bottles, etc. from the terrace of Noorani Masjid and the houses and terraces of the houses behind Noorani Masjid at the S.T.

Workshop mob.

242.37 The witness has admitted that during the course of his duty in the entire day of the incident, he was near Noorani Masjid from 7:00 in morning to 7.30 in the evening. The witness has voluntarily stated that as per the rules they can move around within a range of two hundred metres from their point.

242.38 In his cross examination, it has come out that on the day of the incident he has not gone with his officers towards Krushnanagar, Gangotri Society or Jawannagar. The witness has admitted that Hussainnagar is within a range of two hundred metres from Noorani Masjid.

242.39 The witness has admitted that in all, three statements of his, have been recorded, out of which, two have been recorded by the SIT.

242.40 Certain extracts of his statements dated 3.3.2002 and 16.12.2008, are put to the witness; however, since the witness is not sought to be contradicted with any part of his evidence, the same is not admissible in evidence.

242.41 The witness has admitted that Bipin Auto Centre is situated on this road, on the main highway. The witness has denied that on that day he had seen Bipin Auto Centre burning and has stated that he has not noticed any such thing.

242.42 The witness has admitted that he had seen mobs on both the sides of the national highway. He has admitted

that the mobs were in huge numbers and there was a lot of commotion. The witness has denied that on the day of the incident it was not possible, on an individual basis, to hear what anyone was speaking. The witness has stated that if one was near, one could hear. The witness has denied that he had not heard anyone's voice by going near. The witness has stated that he had heard Umesh Bharvad and Naresh Agarsingh Chara shouting. The witness has stated that when they went to drive away the mobs that had gathered on the road, the accused were present there. The witness has also stated that they had not gone up to the S.R.P. Camp to drive away the mob. They had gone up to S.R.P. Quarters to chase the mob. He does not remember as to how far they had gone to drive away the mobs.

242.43 The witness has stated that the mob in which the accused were present was at a distance of twenty to twenty five feet from him; this mob had come from the side of the S.R.P. Camp. The witness has admitted that the mob, in which he has mentioned the presence of the accused, came from the direction of Krushnanagar and not the S.T. Workshop. The witness has stated that when they went to drive away the mob, from amongst the police staff accompanying him, probably Sajjansinh was present and other policemen also might have been present, but he does not remember.

242.44 The witness has admitted that on the road going towards Krushnanagar, he had seen mobs and he had seen the accused in those mobs.

242.45 In his cross-examination it has come out that while

he was on the spot he had not noticed any policewoman. The witness has admitted that while he was on duty, the door of Noorani Masjid was open. The witness has admitted that the mob had entered Noorani Masjid through the door.

242.46 The witness has denied that in fact, he has not seen the three accused on the day of the incident, but at the instance of his higher officers he was giving their names and that because they have introduced them, he is in a position to identify them.

242.47 ANALYSIS: This witness was posted at the Noorani Masjid police point on the day of the incident. From the testimony of this witness, the futile attempts made by the police, to disperse the mobs and prevent the mobs from carrying on destruction, is evident. The efforts made by the police are on the face of it ludicrous. According to the witness they used to go in groups or pairs to ask the mobs to disperse and used to blow the whistle and ask them to disperse. From the testimony of the witness it appears that not only were any strict steps taken to disperse the mob, they had not even addressed the people in the mob in a strict tone to disperse from them. The police thus cut a very sorry figure regarding the attempts made by them to disperse the mobs and to bring them under control. The witness claims to have identified three persons in the mob, whom he has named. However, considering the overall reluctance of the police to bring the culprits to book, there is no reason to disbelieve the witness when he names the three accused whom he has seen in the mob. As is the case with all the other police witnesses, this witness also feigns ignorance about all the incidents that took

place in the chawls throughout the day. While the witness speaks about the mob indulging in destruction of properties of the Muslims, he does not speak about any earnest efforts having been made to prevent the mobs from doing so. It appears that the police were mute spectators to the entire incidents that took place throughout the day, except for lobbing tear gas shells and resorting to firing, wherein surprisingly it is the Muslims who were the targets. The witness says that the mobs calmed down at around 7:00 to 7:30 in the evening and dispersed and they came to know that fifty eight people had been done to death behind Hussainnagar. The apathy of the police to what was going on inside the chawls, where the rampaging mobs had entered, is highly regretful and shocking. Another notable aspect of the evidence of this witness is that while he refers to the Tata 407 incident, he is totally silent about a tanker being reversed and rammed into the Noorani Masjid, though he was posted at that point throughout the day. Thus, the entire attempt of the police appears to be to show that it was the Muslims who provoked the mobs leading to the rioting. It may also be noted that the witness is totally silent about the police firing wherein a Muslim and a Hindu youth had died, and several Muslims were injured. Thus, the police have adopted a partisan attitude not only while on duty on the day of the incident, but also at the time of deposing before the court. The fact that the conduct of the police who were present at the scene of incident has been condoned and most of them have been promoted within a short time, speaks volumes about the intention of the Government insofar as safeguarding the lives and properties of the Muslims and bringing the culprits to book is concerned.

242.48 This witness has deposed that in the mob he had seen Naresh Agarsingh Chara, who resides near Saijpur Cemetery and Umesh Bharvad, who resides in Krushnanagar Housing, shouting 'kill and hack' and had also seen Kalu alias Kalio Hathisingh Rathod who resides at Krushnanagar Fadeli, who was throwing burning rags on the houses in the chawls. The witness is consistent in this regard. His presence at the scene of offence cannot be doubted. Under the circumstances, there is no reason to disbelieve the witness when he says that he had seen the named accused as described by him. In the cross-examination of the witness nothing has been brought out to show any previous enmity with the accused and hence there is no reason for the witness to falsely implicate them. Through the testimony of this witness, the prosecution has proved the presence of the above three accused in the mob on the day of the incident.

243. **PW-265 A.S.I. Sajjansinh Jaswantsinh Puwar** has been examined at Exhibit 1781. This witness has deposed that he has retired as ASI, Odhav Police Station in January 2008.

243.1 In the year 2002 he was discharging his duties as an unarmed ASI at Naroda Police Station. At that time he was discharging duties at Krushnanagar Police Chowky.

243.2 The incident took place on 28.2.2002. On that day, in the context of the Godhra train incident, the Vishwa Hindu Parishad had given a call for Gujarat Bandh. On the day of the incident he was discharging his duties outside the S.T.

Workshop gate at Naroda Patiya. He had reported on duty at 7 o'clock in the morning. Head Constable-Ganpatsinh, Vinubhai Haribhai and Jayendrasinh Bapalal were with him. Except Jayendrasinh, all of them had batons, whereas Jayendrasinh had a rifle. On that day, at the point near Noorani Masjid, Ramjibhai Parsottambhai, Vijaykumar Trilokilal, Kirankumar Parshottambhai, Chandravadan Ramjibhai were present; out of whom Chandravadan had a rifle and the rest of them had batons.

243.3 On that day when he was present at his point, in the morning at around 9 o'clock people started gathering near Natraj Hotel, Naroda Patiya as well as Krushnanagar Road and out of curiosity they started roaming around the Noorani Masjid. For this reason, the police staff at their point as well as the policemen at the Noorani Masjid point, tried to persuade the people in the mob. They informed the mob to disperse and move away from near the Noorani Masjid. However, the mob did not disperse and went on swelling. In the meanwhile, PSI Shri V.K. Solanki of 'D' staff and Chowky PSI Shri P.U. Solanki as well as Naroda First P.I. Shri Mysorewala also arrived and lawfully tried to persuade the mob to go away from there. However, the people in the mob were not persuaded.

243.4 In the meanwhile Deputy Police Commissioner, Zone-IV Shri Gondia and 'G' Division ACP Shri Rana also arrived there and told the people in the mob present there, to go away. In the meanwhile, some individual started a Tata 407 mini-truck which was lying near the Noorani Masjid and drove it towards Naroda Baithak, and hence, Shri Mysorewala followed it in his Government vehicle. Due to this, the mob

became aggressive and started pelting stones at the Noorani Masjid. At this time, Muslims also resorted to cross stone pelting and also pelted empty bottles, tube-lights and burning rags.

243.5 Therefore, under the orders of Zone-IV, teargas shells were lobbed from Shri Mysorewala's vehicle. Shri Mysorewala had followed Tata-407 and had returned in about twenty five minutes.

243.6 Upon the Tata 407 being driven into the mob, one person had died and two to three other persons were injured. The people in the mob went below the masjid and torched it and damaged it, due to which, the Deputy Police Commissioner, Zone-IV Shri Rana ordered firing, whereupon firing was resorted to. The people in the mob were burning shops nearby the Noorani Masjid. At this time also the Zone-IV Deputy Police Commissioner ordered firing. However, the firing did not have any effect on the mob. Lobbing teargas shells also did not have any effect on the mob.

243.7 There was a constant growth in the mob near the Noorani Masjid and the number of people in the mob must have been around fifteen to seventeen thousand.

243.8 Thereafter, the people in the mob started going towards the road near Pandit-ni-Chali, Hussainnagar and Jawannagar. This mob, which was near the Noorani Masjid, was a Hindu mob. Moreover, mobs of Hindus had also come from Krushnanagar, Thakkarnagar, etc.

243.9 When the mob of Hindus was trying to enter Hussainnagar, Jawannagar and Pandit-ni-Chali, at that time a mob of around four hundred to five hundred Muslims had resorted to cross fighting with weapons. Therefore, Deputy Police Commissioner Shri Gondia had ordered firing for the second time. Upon firing having been resorted to, the people in the mob went from the lanes and jumped over the walls and fled towards the rear side.

243.10 The Hindu mobs which had come from the direction of the Noorani Masjid and Krushnanagar, was shouting 'kill, hack'. The people in the mob resorted to arson and burning houses. In the mob he had seen Naresh Chara, who resides near Saijpur cemetery, as well as Kalu Alias Kalio Harisingh from Saijpur Fadeli, as well as one more person, whose name he does not remember at present. These persons were throwing burning rags. These three persons were together in the mob and were pelting stones and burning rags. At present, he does not remember what else they were doing.

243.11 Subsequently, after the evening, those persons, who had sustained burns in the incident as well as those who had sustained different injuries, were taken to hospital for treatment under instructions of the police officers, and they had remained present at their post for their duties. As regards those people who had survived in the incident, arrangements were made to take them to the relief camps.

243.12 Shri V.K. Solanki, PSI had lodged his complaint in connection with the incident. In the context of the complaint, his statement was recorded in the year 2002. The witness has

stated that he knows Naresh Chhara and Kalu alias Harisingh and can identify them. The witness has stated that he does not remember the name of the third person, but he can possibly identify him. The witness has thereafter identified Naresh Chhara and Kalu alias Harisingh, but could not identify the third person.

243.13 [The court has made note below wherein it is recorded that third accused named in the statement was present amongst the accused when the witness went for identification. It may be noted that the witness in his examination-in-chief or his entire testimony has not named the third accused. Therefore, one fails to understand as to on what basis the trial court has referred to the presence of the third accused. The use of the police statement in this manner by the trial court, is, therefore, required to be deprecated in the strictest terms.]

243.14 CROSS-EXAMINATION: In his cross-examination, the witness has admitted that Shri P.U. Solanki was a Chowky PSI of the Krushnanagar Police Chowky. In his cross-examination, it has come out that at the S.T. Workshop point there were four people including him. The witness has admitted that he was the in-charge of the police point team. The witness has denied that he was not required to remain stationary at the point. The witness has stated that during the course of discharge of his duties, he was required to ensure bandobust near the point. At the spot, in terms of the instructions of the higher officers, they were required to discharge duties and were required to take decisions according to the incidents that took place at the spot.

243.15 The witness has admitted that at around 10:30 to 11:00, Shri M.T. Rana, ACP had come to their point. The witness has admitted that prior to 10:30, there were no disturbances, riots or incidents, at the point where he was standing. The witness has voluntarily stated that only mobs were gathering there. The witness has stated that he does not know whether at that time Shri Gohil, 2nd P.I., Naroda Police Station had also come there.

243.16 The witness has admitted that from Naroda Patiya to Krushnanagar and Thakkarnagar there was a mob of about ten thousand to fifteen thousand people. The witness has admitted that the mob was on the side of Natraj Hotel. He has admitted that from 7:00 in the morning till the *bandobust* was over, he was required to continuously remain at the point. The witness has stated that he had gone nearby wherever it was necessary. In his cross-examination, the witness has stated that he does not know as to how many teargas shells were lobbed from Shri M.T. Rana's vehicle. The witness has admitted that when the masjid was attacked, twenty to twenty one teargas shells were lobbed from Shri Mysorewala's vehicle. The witness has admitted that they had not arrested anyone from the riotous mob. The witness has voluntarily stated that number of people in the mob was so large that it was impossible to arrest anyone.

243.17 The witness has admitted that the mob had become aggressive after the incident of the Tata 407. The witness has admitted that after the Tata mini-truck was driven, the mob was provoked.

243.18 The witness has denied that Shri Mysorewala and Shri Gohil were coming to their point for checking. The witness has voluntarily stated that Shri Mysorewala was present at the spot and hence, the question of checking did not arise.

243.19 The witness has admitted that on the day of the incident, right from the beginning, till the end, Shri Mysorewala was present at the spot. The witness has denied that from the day of the incident till 3.3.2002, he had not given the names of the two persons named by him in his evidence and the third person, whose name he does not remember, to Shri Mysorewala.

243.20 The witness has denied that he has not seen the accused named in his examination-in-chief throwing burning rags or stones on the day of the incident. The witness has denied that till 3.3.2002, since he could not find the names of any accused to be implicated in the offence, at the instance of his higher officers, he had falsely given names of the accused implicating them in the offence.

243.21 In his cross-examination it has further come out that his statement was recorded at the Naroda Police Station. The witness has stated that he does not know whether there was a third police point at S.R.P. Quarters. The witness has stated that there were no S.R.P. Jawans at his police point. The witness has stated that after the riots took place, the S.R.P. Jawans were posted at Noorani Masjid. The witness has stated that he does not know as to how many S.R.P. Jawans had come there. The witness has admitted that the police vehicles

had come in open space near the road between the S.T. Workshop and Noorani Masjid.

243.22 The witness has stated that from the S.T. Workshop point, he had not gone up to Natraj Hotel to disperse the mob. The witness has admitted that he was making attempts to drive away the mob coming from that direction. The witness has stated that he is not aware whether the policemen at the Noorani Masjid point were making attempts to drive away the mob from Krushnanagar.

243.23 The witness has stated that he came to know about one person having died and two persons having been injured by the Tata 407 vehicle from the people in the public. The witness has denied that stone pelting initially started when Shri Mysorewala went after the Tata 407 and returned from there.

243.24 The witness has stated that around four hundred to five hundred Muslims had come up against the Hindu mob which was trying to enter Hussainnagar, Pandit-ni-Chali and Jawaharnagar, which he had seen from a distance. The witness does not remember as to whether anyone other than their officers had come.

243.25 Certain extracts of the police statement dated 3.3.2002 of the witness, are sought to be brought on record by the defence. However, since this part of the police statement does not, in any manner, contradict any part of the evidence of this witness the same is not admissible in evidence. The trial court was, therefore, not justified in permitting the defence to

bring the same on record.

243.26 The witness has admitted that he had seen Bipin Auto burning on that day but has stated that he does not know as to who had set it on fire.

243.27 SUBMISSIONS: Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the witness has named two accused and has identified them. So far as the two accused named by him are concerned, there is no substantial cross-examination in that regard. Therefore, the presence of these two accused is duly established through the testimony of this witness.

243.28 ANALYSIS: This witness was posted outside the S.T. Workshop gate on the day of the incident and claims to be present there from 7 o'clock in the morning till the evening. The witness has named two persons whom he had seen in the mob on that day in the morning on the road, viz. Naresh Chhara and Kalu @ Kaliya Harisingh and has alleged that they were throwing burning rags and pelting stones. According to this witness, Shri Mysorewala lawfully tried to persuade the mob to disperse but the people in the mob were not persuaded. Thereafter the higher officers arrived and told the mob to go away. In the meanwhile the Tata 407 incident took place and the mob became aggressive. The Muslims also pelted stones, bottles, tube lights and burning rags. He refers to firing and lobbing of tear gas shells by the police, which had no effect. According to this witness, when the Hindu mobs attempted to enter the chawls, four hundred to five hundred Muslims came out with weapons and the mobs started fighting

each other, due to which the Deputy Commissioner ordered firing, whereupon the people in the mob jumped over the walls in the chawls and fled on the rear side. Thus, from the testimony of this witness it emerges that the firing by the police, facilitated the entry of the mobs into the chawls. After referring to the police firing, the witness then jumps straight to the evening when the people who had sustained burns and injuries were taken to the hospitals for treatment. The witness is totally silent about any of the happenings in the chawls throughout the day, despite the fact that he was posted outside the S.T. Workshop gate from which most parts of the chawls would have been visible. Thus, the police appear to have deliberately turned a blind eye to the happenings in the chawls and have pretended to be totally unaware of the incidents that took place inside the chawls throughout the day on the day of the incident, presumably to wriggle out of the responsibility of the deaths and destruction that was caused inside the chawls on the day of the incident.

243.29 Having regard to the fact that the police have been totally unwilling to bring the culprits to book, when at least two persons have been named by this witness, may be as a face saving exercise, there is no reason to disbelieve their presence at the scene of incident on that day. Thus, through the testimony of this witness, the prosecution has proved the presence of Naresh Chhara (A-1) and Kalu @ Kaliya Harisingh (A-27) in the riotous mob on the road in the morning on the day of the incident.

244. **PW-266 Parbatsingh Vajesinh Thakore** has been examined at Exhibit-1775.

244.1 This witness has deposed that, at present, he is working as a P.S.O. at Odhav Police Station. Prior thereto, he was in the Crime Branch and in the year 2002, he was discharging duties as an Unarmed Police Constable at Naroda Police Station. At the relevant time, he was working as a Wireless Operator in the police jeep known as Naroda One. At the relevant time, Shri K. K. Mysorewala was the Senior Police Inspector at Naroda Police Station. His duties involved working as a Wireless Operator in his vehicle.

244.2 Out of the ten kar sevaks who were victims in the incident of burning of the train at Godhra on 27.2.2002, nine belonged to the Naroda area. Therefore, unrest had spread.

244.3 A Cotton Workshop in the Nava Naroda area came to be set on fire. Hence, on 27.2.2002, he was required to go with Shri K. K. Mysorewala to the area in which the shop was situated and Shri K. K. Mysorewala as well as the A.C.P. of 'G' Division had convinced the mob which had gathered there and dispersed it.

244.4 On 28.2.2002, the Vishwa Hindu Parishad had given a call for Gujarat Bandh. On that day, on account of the call for bandh, there was a stand-to bandobust and they were required to remain on duty continuously and, accordingly, they had remained present for their duties.

244.5 On 28.2.2002, he had reported on duty at the Naroda One vehicle at 7 o'clock in the morning. The other staff of the vehicle had also come. They were patrolling in the

Naroda Police Station area. Shri Mysorewala was with them and they had mostly patrolled in the Naroda Patiya area. In the morning at around 9:15, they had received a message from the Police Control that mobs of people had gathered at Naroda Patiya and were pelting stones. Thereafter they reached there. Mobs of people had gathered there. They tried to convince the mobs to disperse; however, the mob did not fully disperse.

244.6 As time went by, the mob started growing larger and larger. The mobs were comprised of Hindus. Mobs gathered from Krushnanagar, Patiya and all four sides. The mob had started pelting stones at Hussainnagar-ni-chali, the Noorani Masjid, etc. Hence, the police had resorted to lathi charge. The police had lobbed teargas shells and had used force to try to stop the stone pelting. However, the mobs continued with rioting.

244.7 At this time, Shri Gondia D.C.P. Zone-4 had come to the spot. He must have come at around 10:30. Upon the mob becoming uncontrollable, Shri Gondia ordered firing. Thereafter, the police had resorted to firing.

244.8 Thereafter, Shri Tandon, Joint Police Commissioner, Sector-2 arrived at the spot. He instructed that curfew be declared. Hence, they made an announcement from the Naroda No.1 vehicle declaring curfew. They made such announcement in the entire Naroda Police Station area.

244.9 At around 2:00 to 2:15 in the afternoon, he had seen workers from around the Naroda area, namely, Kishan Korani, Babu Bajrangi, P. J. Rajput and Raju Chaumal, amidst

the mob at Naroda Patiya. They were talking about something. The mob was pelting stones and rioting and were also creating a lot of commotion. The witness was present near the Noorani Masjid when there was an attack on the Noorani Masjid. He saw that the people in the mob were pelting stones. They had received such a message from the Police Control Room also. They had resorted to lathi charge near the Noorani Masjid also and had tried to drive away the public. Pursuant to their attempts, the mob would disperse for a while and then return.

244.10 The Hindus made a representation to Shri Mysorewala that two Hindus had been pulled and taken inside Hussainnagar-ni-chali. Therefore, they reached inside Hussainnagar-ni-chali. Upon inspecting inside Hussainnagar, they did not find any such thing and they could not find any one.

244.11 They came to know that outside Hussainnagar-ni-chali a dead body of a Hindu is lying in a distorted condition. Shri Mysorewala and his staff members reached the spot. They went where the dead body was lying. They followed the legal procedure in connection with the dead body, which was sent to the Civil Hospital. On account of this incident, the mob became more enraged and became violent and started pelting stones. They started pelting stones at the Noorani Masjid, Hussainnagar-ni-chali and other areas. The people in the mob were throwing burning rags, tube lights and stones also. The people in the mob were pelting stones at the Noorani Masjid as well as residences of Muslims and shops. They were damaging and burning houses, shops etc.

244.12 In the stone pelting, Senior P.I. Shri Mysorewala and other staff members sustained simple injuries. Despite there being a curfew in the Naroda Police Station area, the mob continued with violent attacks, stone pelting etc.

244.13 In the evening time, they came to know that houses in Hussainnagar-ni-chali have been burnt and there is loss of life. Hence, he, together with Shri Mysorewala, reached Hussainnagar-ni-chali. The witness has stated that he is referring to Hussainnagar as Hussainnagar-ni-chali.

244.14 When they reached Hussainnagar-ni-chali, many people had been injured, some were also burnt. They took steps to immediately give treatment to the injured. There were many dead bodies lying in the interior of Hussainnagar-ni-chali. They took steps to do the needful in connection with the dead bodies.

244.15 Necessary arrangements were made to take the Muslims who had escaped, wherever they wanted to go.

244.16 Shri V. K. Solanki, P.S.I. had given a complaint in connection with the incident. In connection with the complaint, the Assistant Police Commissioner, Crime Branch had recorded his statement on 25.5.2002. Moreover, his statement was also recorded by the S.I.T. on 16.12.2008. The witness has deposed that the four accused, whom he has referred to in his examination-in-chief, can be identified by him. The witness has thereafter correctly identified Raju Chaumal (Accused No.24) and Babu Bajrangi (Accused No.18) correctly, whereas the witness has identified Accused No.44 Bipin Panchal as Shri P. J.

Rajput. Accused No.20 Kishan Korani had filed an exemption application and, therefore, is deemed to have been identified.

244.17 CROSS-EXAMINATION: In the cross-examination, the witness has admitted that on 27.2.2002, Jivabhai Pujabhai and Chhababhai Chhaganbhai were in the One Vehicle and Hirasinh was the driver. He and Shri Mysorewala were also there. On 28.2.2002, all of them were in the one vehicle. The witness has admitted that on 28.2.2002 they were on duty till 12 o'clock at night. In his cross-examination, it has come out that as a part of his duties as a Wireless Operator, he is required to receive the messages, coming from the Police Control Room and to inform the Officers about these messages and correspondingly to give necessary messages to the officers and the Police Control Room. The witness has admitted that he is required to sit in front of the Wireless message equipment. The witness has voluntarily stated that if Shri Mysorewala entrusts some work to him or calls him, he is required to go with him, which had happened on that day. The witness has admitted that he records the messages which come from the Police Control Room as well as other Police Officers in a Wireless Book in his own handwriting wherein the time of receipt of the message and other details are written down by him.

244.18 At this stage, the learned counsel for the defence had sought permission to refer to internal page No.915 to 918 of the charge-sheet papers to cross-examine the witness. The witness is shown internal page No.915, which is an extract of the Naroda-1 Vehicle-1 log book, which starts from 27.1.2002, which is produced along with the purshis Exhibit-767.

244.19 The witness is shown pages 515 to 520, which he has identified to be extracts of the log book which are in his handwriting. The witness is shown internal pages 921 to 927 which also are extracts of the log book relating to the Naroda Police Van, which is known as No.1 Vehicle. The witness has stated that the handwritings up till the first lines of internal pages No. 921 to 927 are not his and that the handwritings are of his then colleague Jivabhai Punjabhai, who also was working as Wireless Operator -2 with them. The witness has stated that there are entries from 8 o'clock in the morning of 1.3.2002. Pages No.915 to 928, all of which are certified copies, have been given combined Exhibit No.1786.

244.20 The attention of the witness is invited to internal page No.921 and more particularly to the entry of 9:30 in the morning of 28.2.2002. The witness has stated that this entry is not in his handwriting but is in Jivabhai's handwriting. The witness has stated that he knows Jivabhai's handwriting. This message was received by them from the Police Control Room asking them to inform whether all is well (Khairiyat Janavo). The witness has admitted that in response to the message, the reply that was given was that all was well in Naroda Police Station area. The attention of the witness is drawn to page 921 and more particularly, to the entry relating to 10 o'clock wherein also the Police Control Room had asked regarding whether everything was all right in that area and in response they had stated that all is well in the Police Station area.

244.21 The attention of the witness is drawn to page 924 dated 28.2.2002 relating to evening 18:45 hours wherein

'Naroda-1 calling', there is a fight at Gopinath Ganga (the words that follow are not legible) Society.

244.22 The witness has stated that in the wireless message wherein they had employed the word "king" the same has been used for the Ahmedabad City Police Commissioner. The words, "lion" and "tiger" used in the wireless messages are respectively used for the Joint Police Commissioner of Sector-1 and Sector-2 respectively. The witness has admitted that the word "Khairiyat" has been used to demonstrate peace.

244.23 Certain extracts of the statement dated 16.12.2008 recorded by the SIT are put to the witness, however, the facts which are brought out in the extract are not put to him to bring out any contradiction in the evidence of the witness, and hence, are not admissible in evidence. The trial court was, therefore, not justified in permitting the same to be brought on record.

244.24 The attention of the witness is invited to the first four lines of paragraph 6 of his examination-in-chief. The witness has admitted that in the log book Exhibit-1786, there is no mention of the message received from the Police Control Room at 9:15 in the morning. The witness has stated that Exhibit-1786 is a Wireless Book. The witness has admitted that he does not know as to whether this message has been written in the Message Book Exhibit-1776.

244.25 The witness has admitted that at around 10:15 in the morning, upon it coming to the notice of Shri Mysorewala that mobs had started gathering near Thakkarnagar Cross

Roads and Bhagyodaya Hotel, they had reached there. Bhagyodaya Hotel is at a distance of around two kilometres from Naroda Patiya. They had reached Bhagyodaya Hotel at around 10:20 to 10:25. The witness has admitted that while going to Bhagyodaya Hotel from Patiya on that day, there were no obstacles in their way. When they reached the hotel, the stone pelting had already taken place. The witness has stated that they had remained there for about fifteen minutes. When they reached there, the mobs were nearby. They had dispersed the mobs. They had stayed there for fifteen minutes, during which period, the mobs had dispersed.

244.26 The witness does not remember as to whether after they had dispersed the mob at Bhagyodaya they had received any message that the Noorani Masjid was attacked. The witness has admitted that at around 11:00 to 11:15 he had reached the Noorani Masjid with Shri Mysorewala.

244.27 The witness has admitted that from Bhagyodaya Hotel they had gone straight to the masjid at Naroda Gam via Krushananagar and Naroda Patiya. The witness has admitted that when they went to Naroda Gam Masjid, there was no obstacle in their way. They had stayed at the masjid of the Gam for about fifteen minutes. They had dispersed the mobs which had gathered near the Naroda Gam Masjid. The witness has admitted that from the Gam Masjid, they had come to the Noorani Masjid at around 11:00 to 11:15 in the morning.

244.28 The witness has admitted that at this time, huge mobs had gathered near the Noorani Masjid and people were walking on the road and were coming running from the

direction of Naroda Patiya. The witness has admitted that on all the roads on the sides of Naroda Patiya circle there were mobs.

244.29 The witness has admitted that they had parked their Naroda-1 vehicle near the S.T. Workshop gate. The witness has admitted that at that time, policemen were present at the S.T. Workshop compound. The witness has admitted that at that time, all their higher Officers were present at the spot. He has further admitted that all their higher Officers, namely, Shri Tandon, Shri Gondia, Shri Mysorewala, Shri Gohil and Shri V.K. Solanki were present there. The witness has admitted that all the Officers had gathered near the S.T. Workshop together with their vehicles and their police staff was with them.

244.30 The witness has admitted that at this time in the morning at around 11:00 to 11:15, the driver of the Tata 407 Mini Truck had started the truck and had driven the same in full speed from the mob towards Naroda Baithak, due to which, there was a stampede amongst the people and the people in the mob became very incited. The witness has admitted that Shri Mysorewala had followed the mini truck and had apprehended the person and had handed him over to the police station P.S.I. Shri Katara. The witness has admitted that when Shri Mysorewala followed the vehicle, he was with him in the vehicle.

244.31 The witness has admitted that by the time they went and came back, the mob had increased. The witness has admitted that a rumour had spread that three Hindus had died

in the incident and the unrest amongst the mob increased. The witness has admitted that at that time, it had happened that the Hindu Muslim mobs were pelting stones, tube-lights, glass-bottles and burning rags, at each other. The witness has admitted that thereafter they had resorted to lathi charge.

244.32 The witness has stated that he does not know the exact time, however, curfew must have been declared at around 12 o'clock. The witness has admitted that prior to the curfew being declared Hindus had come and made a representation to Shri Mysorewala that two Hindus have been pulled in Hussainnagar-ni-Chali by the Muslims and thereafter, after about half an hour, a dead body of a Hindu was thrown out from Hussainnagar-ni-Chali. The eyes and face of the dead body had been injured with sharp edged weapons and was mutilated. The witness has admitted that at that time, the mobs on both the sides had become aggressive and came against each other. The witness has admitted that at that time, the Deputy Police Commissioner had ordered the persons under him to fire.

244.33 The witness has stated that on the day of the incident, he was on duty at the S.T. Workshop gate since 7 o'clock in the morning. Upon receiving different messages, they used to go to the spot, however, except that, that till 7 o'clock in the evening; they were at the S.T. Workshop gate. The witness has admitted that during this period, they used to go and drop the Muslim people to safe places.

244.34 The witness has stated that when they received messages they used to go, otherwise they used to send the

P.S.I. in the requisitioned vehicle. The witness has admitted that in the evening at 16:20, they, together with Shri Mysorewala and A.C.P. 'G' Division, had reached the masjid at Naroda Gam and had dispersed the mob which had gathered there. All this had taken around twenty to twenty five minutes.

244.35 The witness has admitted that they had kept about twenty families safely at Naroda Police Station and had taken steps to take them there. The witness has admitted that the police station is situated opposite the Naroda Gam Masjid. The witness has admitted that it had taken them about fifteen to twenty minutes to transport the families. The witness has admitted that from there they had gone to the Noorani Masjid.

244.36 In his cross-examination, the witness has stated that he does not remember as to whether they had stayed at the Noorani Masjid or had gone elsewhere. The witness has stated that he does not know as to whether at five thirty to quarter to six, on that day, he was at the Bhagyodaya Hotel. The witness has stated that he is not aware as to whether at quarter to six, they had received a message that there are riots in Gopinath Gangotri Society. The witness has admitted that their P.S.I. had received news that some incident had taken place at Hussainnagar, but he does not remember the time.

244.37 The witness has stated that he had gone from the Noorani Masjid to Hussainnagar but does not remember the time. It was evening time but he does not know the exact time. The witness has admitted that after going to Hussainnagar they had gathered all the persons who were injured. The

witness has admitted that they had gone to the chawls and called them and had gathered them at one place and had taken them in the requisitioned vehicle. The witness has admitted that they had gathered around twenty seven injured persons there which took around one hour. The witness has stated that he himself had not accompanied the injured people to Civil Hospital but he had sent them.

244.38 The witness has admitted that after the twenty seven injured persons were sent to the hospital, thereafter, they had tried to extinguish the fire in Hussainnagar-ni-Chali. The witness has stated that they had tried to extinguish the fire in around ten to fifteen houses. The witness has admitted that when they extinguished the fire in ten to fifteen houses, Shri Mysorewala was with them.

244.39 The witness is not aware as to whether Shri Gondia and Shri Tandon were present or not. The witness has admitted that it had taken them around an hour to extinguish the fire. The witness has admitted that thereafter, they had returned to the Noorani Masjid.

244.40 The witness has admitted that by the time they returned back, it was night and the lights were on. The witness has admitted that when they returned to the Noorani Masjid, Shri V.K. Solanki, Shri Gohil and Shri Mysorewala were at the Noorani Masjid. The witness is not aware as to whether thereafter they had received any wireless message to go to Gopinath Gangotri Society.

244.41 The witness has admitted that thereafter, they had

gone near the passage in Gopinath Gangotri Society. The witness is not aware as to whether at that time, Shri Mysorewala was present. The witness has admitted that at that time, he had come out of the vehicle and has voluntarily stated that, at that time, Jivabhai was a Wireless Operator. The witness has stated that when he went to the Gopinath Gangotri Society passage, there were many Officers there. D.C.P. Zone-4 Shri Gondia, Shri Mysorewala, Shri Rana and Shri V.K. Solanki were present there.

244.42 The witness has admitted that those who had sustained burns in the passage were separated and the dead bodies were counted. The witness has admitted that steps were taken to send the dead bodies which were lying in the passage for post mortem and the injured persons were also taken to the hospital. The witness has admitted that after they returned from Civil Hospital, Shri Solanki had given his complaint.

244.43 The witness has admitted that while they were on the spot, at that time, their centre point was the S.T. Workshop. The witness has admitted that all the mobs were at a distance of 150 to 200 feet. from the S.T. Workshop gate. The witness has admitted that he had seen that several people in the mob were coming walking and several people were coming running and some people were going back.

244.44 The witness has stated that he is not aware as to at what time, he had seen the mobs. The witness has stated that the accused whom he has referred to in his examination-in-chief were seen by him at around 12:00 to 2:00 in the

afternoon. The witness has stated that he cannot say as to in which mob the four people whom he had seen were. He cannot say what kind of clothes they were wearing.

244.45 The witness has denied that though he had not seen the four persons in the mob, at the instance of his Higher Officers he was falsely deposing before the court. The witness has admitted that the people whom he has identified are social workers. The witness has denied that he has not seen any of the four accused at the scene of offence on the day of the incident and is falsely deposing before the court.

244.46 PW-307 S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 25.5.2002. He has admitted that this witness had stated before him that at around 9:00 to 9:15, scattered people started gathering and coming on the road and as time passed, more and more people started gathering.

244.47 SUBMISSIONS: Mr. Prashant Desai, Learned Special Public Prosecutor, submitted that this witness has testified that he saw the four accused between 2:00 to 2:15 in the afternoon and he has identified all of them. It was submitted that there is no substantial cross-examination of the witness, and hence, the presence of all the four accused at the scene of offence is established through the testimony of this witness.

244.48 ANALYSIS: From the testimony of this witness, it emerges that at the relevant time, he was working as a Wireless Operator with Senior Police Inspector Shri K. K. Mysorewala. The witness was on duty with Shri Mysorewala

right from 7 o'clock in the morning of 28.2.2002. This witness has deposed that he had seen accused Kishan Korani, Babu Bajrangi, P.J. Rajput and Raju Chobal at around 2:00 to 2:15 in the afternoon in the Naroda Patiya mob. The witness refers to instances of police firing, clamping down of curfew in the area as well as the attack on the Noorani Masjid by the mobs. The witness has also referred to the Hindus making a representation to Shri Mysorewala that two Hindus had been dragged inside Hussainnagar-ni-Chali, whereafter they had gone to Hussainnagar-ni-Chali and investigated there, but could not find anything. Thereafter, a mutilated dead body of a Hindu was found outside Hussainnagar-ni-Chali due to which, the mob got provoked and became aggressive. The witness has thereafter stated that in the evening, they came to know that houses of people in the Hussainnagar-ni-Chali had been set ablaze and there was loss of life, and hence, he along with Shri Mysorewala reached Hussainnagar-ni-Chali, where many people were injured, some had also sustained burn injuries. They had taken steps to provide treatment to the injured. There were many dead bodies inside Hussainnagar-ni-Chali. Out of the accused named by him, the witness has identified accused No.24 and 18, but has wrongly identified accused No.44 Bipin Panchal as accused No.19 P.J. Rajput. Accused No.20 Kishan Korani had filed an exemption application and is, therefore, deemed to be identified. From the cross-examination of the witness, it emerges that he was on duty till 12 o'clock at night on 28.2.2002. From the messages sent to the Control Room recorded by the witness, it emerges that at 9:30 a.m. and also at 10:00 a.m., they had sent messages to the Police Control Room that everything was alright in the police station area. Thus, despite the fact that large mobs had

gathered on the highway and the higher police officers had already started coming to the spot, the messages were sent to the Control Room that all is well.

244.49 From the testimony of this witness, it emerges that they had parked their vehicle near the S.T. Workshop Gate, where the police who were deputed at the S.T. Workshop point were present. The witness has also admitted that the higher officers, viz., Shri Tandon, Shri Gondia, Shri Mysorewala, Shri Gohil and Shri V.K. Solanki were present at the spot near the S.T. Workshop with their vehicles and their staff. The witness has also admitted that the incident of the Tata 407 mini truck took place at around 11:00 to 11:15 in the morning. From the evidence of the witness, it further comes out that he was on duty at the S.T. Workshop Gate from 7 o'clock in the evening. The witness has also stated that they had tried to extinguish the fire of ten to fifteen houses, at which point of time Shri Mysorewala was with him. In the cross-examination of the witness, it has been brought out that while they were at the spot, their centre point was the S.T. Workshop Gate and that the mobs were at a distance of about 150 to 200 feet from the S.T. Workshop Gate.

244.50 Though this witness states that he was present at the scene of incident right from 7 o'clock in the morning till late at night, the witness is totally silent about the incidents that took place inside the chawls throughout the day. From the testimony of this witness, it emerges that in the morning hours at around 11 or so, all the high ranking officers were present near the S.T. Workshop Gate. Though this witness refers to the incident of a Tata 407 vehicle being driven, and the dead body

of a Hindu being found from Hussainnagar, he is totally silent with regard to the other incidents that have taken place, viz., deaths and injuries in police firing. The witness also does not refer to a tanker being reversed into the Noorani Masjid. The witness is also totally silent about the events that took place from the afternoon till the evening when the fifty eight dead bodies were found near the passage of the water tank. It is not possible to believe that the police officers who were deputed at the S.T. Workshop Gate would not have seen the houses in the chawls burning and the mobs attacking the people in the chawls. Evidently therefore, since the witness was present at the spot, he must be aware of the incidents that were taking place inside, but pretends to be totally ignorant about everything that took place in the chawls and thereafter, states that he came to know about the incidents inside the chawl only late in the evening. The witness, therefore, is not a truthful witness as regards all the incidents that took place on the day of the incident. However, when the police who are otherwise reluctant to investigate and name any accused, have still named a few of them, there is no reason to disbelieve the witness qua the accused named by him. The presence of the accused named and identified by the witness, viz., accused No.24 Raju Chobal, accused No.18 Babu Bajrangi and accused No.20 Kishan Korani, is, therefore, duly established through the testimony of this witness and there is no reason to disbelieve the witness to the extent he has named and identified these accused as being present in the mob in the afternoon.

245. **PW-267 Manubhai Madhabhai Rathod**, aged 47 years, has been examined at Exhibit-1789. This witness has deposed that, at present, he is working as a Head Constable in

the Miscellaneous Branch at Shaheer Kotda Police Station.

245.1 In February, 2002, he was discharging duties as Police Constable at Krushnanagar Police Chowki of Naroda Police Station. At the relevant time, Shri P. U. Solanki, P.S.I. was posted at Krushnanagar Police Chowki and his duties at the relevant time were to serve summons as well as to take part in the bandobust in the area, night rounds, etc.

245.2 On 27.2.2002, the Godhra railway carnage took place. In connection therewith, there was a call for Gujarat bandh by the Vishwa Hindu Parishad on 28.2.2002. Keeping in view the declaration of bandh, police points were arranged by the Naroda Police Station in the sensitive areas. On that day, his duty was to remain in the requisitioned vehicle with P.S.I. Shir P. U. Solanki. Police Constable Vinubhai Naththubhai, Police Constable Pradeepsinh Manujina were with them in the vehicle. On that day, he had a Muscat-410 rifle with him. The incident took place on 28.2.2002. On the said day, he was in the requisitioned vehicle with the P.S.I. He was present at the requisitioned vehicle at 7 o'clock. They were patrolling in the Police Chowki area on the date of the incident.

245.3 On the date of the incident, they were patrolling in the Thakkarnagar, Krushnanagar and Naroda Patiya road of the Krushnanagar Chowki area.

245.4 In the morning at around 9 o'clock, mobs of people started gathering on the road. The mobs slowly started increasing and hence, they instructed the mob to disperse. The mobs did not listen to them and the mob kept on increasing.

245.5 During this time, on the road from Patiya to Krushnanagar near Noorani Masjid, on the Saijpur road as well as open spaces nearby, mobs of people started gathering. The mobs had come out of curiosity. The mobs created a tense situation.

245.6 At this time around 10:30 to 11:00, Shri Mysorewala, Senior Inspector, Naroda Police Station came with the staff and vehicle. Shri V. K. Solanki also came to the scene of incident. Both these Officers came in their vehicles. The Police Officers made lawful attempts to disperse the crowd, however, the crowds did not disperse. The population of the crowd kept on increasing and increasing. At this time, Shri M. T. Rana, A.C.P. 'G' Division and Shri Gondia, Deputy Police Commissioner, Zone-4 also came on the spot.

245.7 At this time, a Tata-407 Matador was standing opposite the Noorani Masjid. Some individual set at it's steering, started it, and went in speed towards the Noorani Masjid where there were people in the mob. The then P.I. Shri Mysorewala, went after the vehicle. He returned after 20 to 25 minutes. They came to know that the individual who had driven the Matador had dashed against two-three people, due to which, the mob got very agitated. The mob started pelting stones at the Noorani Masjid. The people in the mob started pelting stones at the Noorani Masjid as well as the shops nearby. They also started pelting stones at the chawls situated near Noorani Masjid. At this time, the police had resorted to lathi charge and had released tear gas, despite which, the mob assumed a very violent form and started pelting more and

more stones. At that time, from the opposite side burning rags, tube lights, etc. were thrown due to which, the mob became even more violent. To control the people in the mob, the Deputy Police Commissioner, Zone-4 ordered firing and hence, firing was resorted to. At this time, Shri Mysorewala has resorted to firing. He also has resorted to firing. On all these attempts, the mob used to disperse for a slightly while and gathered again.

245.8 The mob caused damage to the Noorani Masjid as well as to the shops situated near the Noorani Masjid. The mob attempted to enter Hussainnagar-ni-chali, Jawannagar Chhapra, Panditji-ni-chali situated opposite S.T. Workshop. The mob was comprised of Hindus. In this manner, when they were trying to enter inside Hussainnagar-ni-chali, a mob of around four hundred to five hundred Muslims opposed them with weapons like sticks, pipes, dharia and the mobs came against each other. At this time, attempts were made to disperse the Hindu mob.

245.9 Naresh Agarsingh (A-1), Umesh Bharwad (A-3) and Kalu alias Nawab (A-27) were in the Hindu mob. They were shouting "kill" "cut". At this time, Kalu was throwing burning rags. He was throwing the burning rags on the Muslim mob. At this time also, they had resorted to firing. Assault and firing started between the two mobs. The mob entered the lanes and jumped over the walls and entered inside. The mob resorted to looting and assault.

245.10 In the evening, the Hindu mob started slightly dispersing. They came to know that inside, next to Gangotri

Society, about fifty eight women, men and children have been burnt alive.

245.11 Upon the mob dispersing, the police had taken steps to send those who were injured as well as burnt to the Government Hospitals for treatment. They took out the people who had survived in the incident and convinced them and sent them to the relief camp in Government vehicles.

245.12 Police Sub-Inspector Shri V. K. Solanki had lodged a complaint in connection with the entire incident. During the investigation of the complaint, his statement was recorded on 3.3.2002 and another statement was recorded by the S.I.T.

245.13 The witness has deposed that he can identify Naresh Agarsingh, Umesh Bharwad and Kalu alias Nawab whom he knows from out of the mob. The witness has thereafter identified Naresh Agarsingh (A-1), Kalu alias Nawab (A-27) and Umesh Bharwad (A-3) correctly.

245.14 CROSS-EXAMINATION: In his cross-examination, the witness has stated that he has never discharged duties at Naroda Police Station Saijpur Police Chowky. One or two months prior to the incident, he was discharging duties at the Krushnanagar Police Chowky. In his cross-examination, it has come out that in the morning from 7 to 8 o'clock; they were patrolling at Thakkarnagar, Krushnanagar and Naroda Patiya area. The witness has stated that he had not heard that a person named Ranjit was killed inside Hussainnagar and Jawananagar chawls and there was any such rumour. The witness has stated that Shri P.U. Solanki had not informed him

about this fact. The witness has denied that curfew had been declared after 12 o'clock in the afternoon. The witness has admitted that on 28.2.2002 till his duties were over, he was with Shri P.U. Solanki. The witness has stated that he has not arrested the three accused, at that time, for breach of curfew.

245.15 The witness has stated that it has not happened that he and Shri P.U. Solanki had occasion to go to the V.S. Hospital after the evening. The witness is not aware as to whether any offence has been registered against the driver of the Tata-407 at Naroda Police Station. The witness has stated that the incidents had taken place from 10:30 to 11:00 in the morning till late at night. He had fired three rounds under the instructions of the Deputy Police Commissioner. Shri Gondia was not with them, however, he had come to the spot and he had given orders. The witness has stated that Shri P.U. Solanki had not resorted to firing with his service revolver. The witness has stated that the walls over which the people of the mob were jumping were low and high walls near the houses. These walls were of the chawls and houses situated at the road.

245.16 The witness has admitted that from 28.2.2002 to 3.3.2002, he had not given the names of the accused mentioned by him in his examination-in-chief to Shri Mysorewala. The witness has admitted that he had not informed Shri Mysorewala that he had seen people in the mob jumping over the walls.

245.17 Certain extracts of his police statement dated 3.3.2002 are put to the witness to bring on record certain facts stated by him in the police statement. Since this part of his

police statement is not used to contradict any part of the deposition of the witness, the same is not admissible in evidence.

245.18 The witness has denied that on the day of the incident, his point was at Bhagyodaya Hotel and Krushnanagar and that he had not come to the Noorani Masjid. The witness has denied that for this reason, he was falsely stating that the wireless set was off and that on the day of the incident, the three accused were not in the mob and were not present at the spot.

245.19 The witness has stated that after 11 o'clock also, he had remained there and from 11:00 till late at night, he had remained there.

245.20 In his cross-examination, the witness has stated that in the evening he was in the Noorani Masjid area, that is, he was near the Noorani Masjid. The witness has stated that from 10:30 in the morning till the evening, the higher officers had instructed them to fire, except that they had not given any other instructions. The witness has stated that he had fired towards the mob which was rioting. He has stated that the mob was scattered and that he cannot specifically say as to in which direction the mobs were.

245.21 The witness has stated that when he resorted to firing, there were around fifteen to seventeen thousand people. None of his bullets were successful, namely, that no one was injured in the firing. He had fired in all three bullets. At the time of firing, the mob was at a distance. When they

resorted to firing, the mob would flee.

245.22 The witness has admitted that the mob was so huge that they could only see the heads of the people and it was not possible to know as to who is standing besides whom.

245.23 In his cross-examination, it has further come out that Shri Mysorewala had resorted to lathi charge, lobbed teargas shells and had made all lawful attempts to disperse the mob. The witness has admitted that out of the mob of fifteen to seventeen thousand people he had not beaten a single person or apprehended anyone. The witness has stated that he had chased the mobs to disperse them.

245.24 The witness has admitted that he had not gone upto Gangotri Society to drive away the mob. The witness has admitted that he had come to know about the details of the incident that took place in the chawls later on. The witness has admitted that he has not mentioned in his statement as to how far the accused were in the mob and where they were. The witness has stated that the police officers were parking their vehicles in the open space on the roads. The witness has stated that he does not know as to whether Hindu or Muslim people had caused any damage to the police vehicles. The witness has admitted that the mob had become incited against the police due to firing. The witness has stated that he does not know whether thereafter the mob had caused any injury to the police or police vehicles.

245.25 The witness has admitted that when he was on the road, at that time, one mob had come from the side of

Krushnangar and another from the side of Naroda Patiya. He has admitted that there was a Muslim mob at the corner of S.T. Workshop. The witness has stated that the mob was near Hussainnagar towards the side of going inside the chawl. The witness has admitted that at the S.T. Workshop corner also there was a Muslim mob.

245.26 The witness has admitted that Muslim women were helping the Muslim men by handing over dharias, sticks and burning rags. The witness has denied that their statements were ready, and that on the previous day he had personally come and was acquainted with the three accused and, accordingly, he was able to identify the three accused.

245.27 The witness has denied that on the day of the incident, he was not present at the scene of incident and that he had not seen any of the accused at the scene of incident and, therefore, he has not mentioned as to at what distance the accused were and at which place.

245.28 SUBMISSIONS: Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness establishes the presence of the accused named by him. There is no serious contradiction in the cross-examination to bring out that the accused were not present at the scene of offence.

245.29 ANALYSIS: This witness has named accused No.1 Naresh Agarsing, accused No.3 Umesh Bharwad and accused No.27 Kalu alias Nawab and has also identified all the three accused correctly before the court. This witness was patrolling in the Krushnanagar chowky area, Thakkarnagar and

Krushnanagar Naroda Patiya road on the day of the incident. According to the witness, at around 9 o'clock in the morning, the mobs of people started gathering on the road and which slowly started increasing. They had instructed the mob to disperse; however, the mob did not obey them and kept on growing larger. The witness refers to Shri Mysorewala and Shri V.K. Solanki arriving at around 10:30 to 11:00 and trying to disperse the mob, which did not disperse, but kept on getting larger and larger. He also refers to A.C.P., "G" Division Shri M.T. Rana and Deputy Police Commissioner, Zone-4 Shri Gondia arriving at the spot. He also refers to the Tata 407 incident. The witness also refers to police firing and the mobs ransacking the Noorani Masjid and the shops nearby and attempting to enter Hussainnagar-ni-Chali, Jawannagar hutments and Pandit-ni-Chali. According to this witness, when the mobs were trying to enter into the chawls of Hussainnagar, a mob of four hundred to five hundred Muslims opposed them by pelting stones armed with sticks, pipes and dharias. At that time, in the mob, he had seen the three accused who were shouting 'kill', 'hack'. The witness has attributed specific role to the accused and specially accused No.27 Kalu. According to this witness, the mobs entered into the lanes and jumped over the walls of the chawls and started looting and assaulting. He, however, is totally silent about the steps they took for preventing the mobs from doing so. The witness thereafter says that in the evening, the mobs started dispersing a little and they came to know that near Gangotri Society, fifty eight persons were burnt alive. Thus, this witness also is totally silent about the incidents that took place in the chawls throughout the day though they were present on the road and must have witnessed what was going on inside the chawls. While

some of the police witnesses have stated that they had taken care to see that the mobs do not enter the chawls, this witness has specifically stated that the mobs had entered the lanes and had jumped over the walls and entered the chawls and started assaulting and looting inside. Thus, though the police were present at the scene of offence, they remained mute spectators and permitted the killing spree inside the chawls. In the cross-examination of this witness, he has admitted that in his statement dated 3.3.2002 recorded by the police, he had stated that in this mob he had not seen P.J. Rajput, Raju Chobal, Kishan Korani, Babu Bajrangi and Harish Rohera. He knows all of them by their faces, but had not seen them in the mob. From the evidence of the witness, it further comes out that they had not used any force against the people in the mob and that he had merely chased them. The witness has also admitted that to chase the mobs, he had not gone till Gangotri Society.

245.30 Through the testimony of this witness the prosecution has established the presence of accused No.1 Naresh Agarsing, accused No.3 Umesh Bharwad and accused No.27 Kalu alias Nawab in the mob on the road on the day of the incident. The presence of this witness at the scene of incident has not been challenged in his cross-examination. The witness has been consistent and has named the accused in his previous statement as well as in his deposition and has identified the accused. Nothing has been brought on record to indicate any prior enmity with the accused so as to falsely implicate them. Under the circumstances, there is no reason to disbelieve the testimony of the witness qua the accused named by him.

246. **PW-274 Kerman Khurshed Mysorewala**, aged 58 years, has been examined at Exhibit-1824. The witness has deposed that he is working as a Dy.S.P. Modasa Division since 2008.

246.1 In the year 2002, during the period from 27.9.2001 to 30.3.2002, he was working as Senior P.I. at Naroda Police Station.

246.2 On 27.2.2002, the incident of burning alive the kar sevaks who were returning from Ayodhya in the compartment of the Sabarmati Express train at Godhra, took place. In connection therewith, there was an alert in the entire Ahmedabad city and accordingly, Naroda Police Station was also alerted. On that day, police bandobust was placed in the Naroda Police Station area and the Naroda Police Station Chowky's Sub Inspectors as well as Sub Inspectors of the Surveillance Squads were assigned duties of patrolling. He as well as the second P.I. was also on duty.

246.3 In the meanwhile, on 27.2.2002 in the evening, a message was received from the Control Room that the kar sevaks who have survived are returning from Godhra to Ahmedabad and that such people should be escorted from the Kalupur railway station to their area under protection. In his area, twelve kar sevaks of Nava Naroda area returned alive. Upon coming, they described the incident that took place at Godhra to their friends and relatives whereupon, the goods inside a mattress shop by the name of Paras Cotton Works belonging to a Muslim at Naroda Village, were taken out and

burnt and upon receiving such message, he and the ACP, "G" Division Shri M.T. Rana reached the spot. The people who had gathered there were forcibly removed. At the relevant time, they did not know as to who had set the fire. However, an offence was registered in this regard at the police station.

246.4 In the meanwhile, a Muslim was injured with some weapon on the back of his head at Kathwada road near Haridarshan Society. A second offence for the same was also registered against unknown person.

246.5 Thereafter, the Vishwa Hindu Parishad gave a call for Gujarat Bandh on 28.2.2002. Hence, a scheme for bandobust was made for Naroda Police Station Area on 28.2.2002. Since the Naroda Police Station was considered as a non-sensitive area, the Police Commissioner had not allotted additional police force and as per his instructions, keeping twenty persons in reserve for stand to, eighty police personnel, five sub inspectors, he and the second Police Inspector. In this manner, everyone was allotted bandobust. Five jeeps and one Tata 407 vehicle were requisitioned. All the chowky sub-inspectors were assigned their chowky areas for patrolling. Wherever there was possibility of riots taking place, keeping in view the earlier bandobust schemes, at every such place, points had been allotted. At every point, one Musket-410 rifle was allotted.

246.6 The bandobast started at 7 o'clock in the morning. The points were placed at *Muthiya Jakat Naka, Dahegam Road Jakat Naka, Naroda Gam Kabrastan, Naroda Joshivado, Naroda Gam Masjid, Naroda Baithak, Naroda Noorani Masjid, Near S.T.*

Workshop Gate, Saijpur Road, Near Jikarhasan-ni-Chali, Krushnanagar and Thakkarnagar areas. In this manner, twelve police points and five requisitioned vehicles for patrolling and three government vehicles for patrolling were available. In this manner, he had arranged for eight vehicles.

246.7 On 28.2.2002, in the morning at 7 o'clock, everyone from Naroda Police Station to whom he had allotted duties, had commenced their duties which he himself had verified, whereafter he had set off in his government vehicle with his staff from the Naroda Police Station. While they were patrolling in the police station area, after 9 o'clock, a few scattered people from the nearby area had started coming out and majority of the people started walking towards the Noorani Masjid at Naroda Patiya. Slowly, the mobs of people from *Thakkarnagar, Krushnanagar, Sardarnagar area, Saijpur, Fadeli and Naroda Bethak* started coming. These people were shouting slogans of "Jay Shri Ram".

246.8 In the meanwhile, at 10:25 hours, he received a message from the Control Room that there was stone pelting at Mayur Hotel at Naroda Gam and there were preparations to attack the masjid of the village. On the basis of the message, he reached Naroda Gam and lathi-charged the mob which had gathered there and dispersed it. In the meanwhile, at 10:40 hours, he again received a message to reach the Noorani Masjid. Hence, they set off from there and reached the Noorani Masjid, at Naroda Patiya.

246.9 When they reached the Noorani Masjid, their ACP Shri M.T. Rana was present there. A mob of approximately

eight thousand Hindus had gathered there and was pelting stones at the Noorani Masjid. Several Muslims had gathered and there was cross stone pelting from the direction of the Noorani Masjid. At this time, together with their ACP, they had resorted to lathi-charge and tried to disperse the mob; however, the people in the mob ran hither thither inside the lanes and after a little while, again assumed the form of a mob.

246.10 During this period, their Deputy Police Commissioner Shri P.P. Gondia also arrived there, and together with him, they again tried to disperse the mob, however, the mobs instead of dispersing, their numbers kept on increasing.

246.11 At around 11:30 in the morning, a person sat at the steering of a Tata 407 vehicle which was parked opposite the Noorani Masjid and suddenly very quickly started the vehicle and where the people had gathered, drove the vehicle recklessly through the Hindu mob and took the vehicle out on the road and drove it with speed on the Naroda Baithak road. While following him in his government vehicle via Naroda Baithak and Galaxy Cinema, he reached Naroda I.T.I. He stopped the vehicle. On the way, this vehicle had dashed against three people, out of whom it was learnt that one had died on the spot and two were injured. After stopping the vehicle, they had brought the vehicle together with the driver to the Naroda Police Station and had handed it over to P.S.I. Shri Katara and after giving instructions to register the offence against this person, he returned to the Noorani Masjid.

246.12 At this time, the words spread amongst the Hindu mobs which had gathered at the Noorani Masjid, that the truck

driver had taken a toll of three Hindus. Hence, the mob which had gathered there got very agitated and its fury was directed at the lower part of Noorani Masjid as well as the huts and houses nearby.

246.13 Under the orders of D.C.P. Shri Gondia, the people were instructed to disperse and that if they do not disperse, there would be firing. Such instructions were issued from the loudspeakers in the Government vehicles, despite which, it had no effect, and hence, firing was resorted to. He had fired two rounds from his revolver and the policemen with him had also resorted to firing. However, it did not have any effect on the mob.

246.14 At about 12:00 to 12:30, some of the Hindus made a representation that two Hindu youths have been pulled and taken into Hussainnagar-ni-Chali, and therefore, to rescue them, he took police personnel with him and he personally went inside to the end of Hussainnagar. Several Muslim elders were gathered together and they were interrogated. They informed him that no such youths had been brought there and after inspecting the chawls, they returned back.

246.15 About a quarter of an hour thereafter, the dead body of a Hindu individual Ranjit Vanzara was found in the pit behind Hussainnagar. The dead body was in a mutilated condition. Wounds inflicted by sharp cutting instruments were seen on his face and his eye-balls had been gouged out. Upon being informed about the dead body, they had sent the dead body in a police vehicle to the Civil Hospital. The investigation personnel at the police station were lawfully informed about

the same. While they were taking the dead body from where it was lying to the vehicle, innumerable people had seen the mutilated face of the dead body and on that account, the fury of the mob increased and it directly attacked the houses on the road outside Hussainnagar-ni-Chali as well as the Muslim settlements near the Noorani Masjid.

246.16 Upon the orders for releasing tear gas and firing being issued again, tear gas shells were lobbed and firing was resorted to. At this time, he had fired two rounds from his service revolver and the other police personnel had also fired. However, there hardly appeared to be any effect on the mob and it went ahead with acts of ransacking and arson.

246.17 The police personnel were continuously taking steps to disperse the mob. At this time, the entire area of Naroda had slowly become volatile and news of incidents from different areas of his police station started coming. Upon receipt of such news, the requisitioned vehicles were being sent for taking necessary action.

246.18 At around 12:30 in the afternoon, the Joint Commissioner Shri M.K. Tandon had a discussion with the Police Commissioner and declared curfew in the Naroda area, wherein curfew was firstly declared at Saijpur, Krushnanagar, Fadeli area and Thakkarnagar. Thereafter, to implement the curfew, through loudspeakers attached to Government vehicles, the news regarding the implementation of the curfew was proclaimed and spread. However, the same did not yield any effect on the mob.

246.19 After the Joint Commissioner imposed curfew, he went away to his jurisdiction. The news with regard to untoward incidents started coming from other areas of the police station. During this period, whenever any Muslim came to ask for help, they were helping them and steps were taken to keep about six hundred people out of them, in the police station compound.

246.20 In the afternoon at around 15:10 hours, he received a message from a woman constable Varshaben at the police station that: "The police station is full of Muslims and huge mobs have gathered outside." On the basis of this message, as the twenty four S.R.P. personnel who were allotted to him had arrived, he took five armed personnel from them with him and dispersed the people who had gathered near the police station. Thereafter he posted the reserve police personnel kept at the police station and the S.R.P. personnel around the police station compound wall and returned to Naroda Patiya.

246.21 In the mob that had gathered there earlier in the afternoon, after 2 o'clock in the area between the Noorani Masjid and Hussainnagar-ni-Chali, he had seen Kishan Korani (A-20), P. J. Rajput (A-19), Rajubhai Chobal (A-24) and Babu Bajrangi (A-18) talking and he had seen them trying to explain something to the mob and at this time, the mob was shouting, "kill, cut". He had seen all these four persons in the mob till around 2:45 p.m.

246.22 During this period, he and about five police personnel were injured in the stone throwing.

246.23 At 15:10 hours, he had attended the police station pursuant to the message from woman constable Varshaben and had returned to the Noorani Masjid. At this time also, the mob was entering the Muslim chawls, Hussainnagar as well as the chawls near the Noorani Masjid and damaging them and setting them on fire. Sounds of several gas cylinders bursting could also be heard. The police had resorted to firing at that time. He too, had fired four other rounds with his revolver, in all he had fired eight rounds. The ammunition and tear gas shells with the police started depleting. The tear gas was having no effect on the mob. The firing had a momentary effect on the mob and thereafter, the mob would gather again.

246.24 Thereafter, in the afternoon at about 4:00 to 4:30, he felt that the fury of the mob had subsided a little, and hence, he and the ACP went towards Naroda Gam for patrolling and came to know that the incidents of murder have also taken place at Naroda Gam and the police had resorted to firing.

246.25 Even at Naroda Gam, the mobs were roaming around here and there. After arranging for bandobust at Naroda Gam, at around 5 o'clock in the evening, they returned to the Noorani Masjid.

246.26 At this time, at 5:30 in the evening, ACP Shri Rana went to attend another message received by him and he went for patrolling to Thakkarnagar via Krushnanagar, and there he saw that Bhagyoday Hotel was vandalized and was set on fire and was damaged. A mini-motor garage was damaged at Thakkarnagar and the vehicles parked there were torched. When he was returning, a person told him that on the rear side

of Hussainnagar, near Gangotri Society, several Muslims have been killed. Therefore, he returned to Hussainnagar which is opposite the Noorani Masjid. On entrance to Hussainnagar from this road, there was scrap, burnt tyres, glass pieces, etc. and hence, it was not possible enter from that road. Therefore, he went via Mohannagar through the rear side road and came to the rear side of Gangotri Society.

246.27 Gangotri Society and Gopinath Society are situated next to each other and thereafter, there are the Hussainnagar settlements. Between both of them, there is a water tank with a "U" shaped open compound where there are walls on three sides and one side is open, from which, one can go out and at such place, several Muslims were killed and some inflammable substance was poured on them and they were burnt. When he was present at this place, he found that there was some movement insofar as twenty seven Muslim people are concerned, he therefore, took them out of the fire and buckets of water were brought from the neighbouring societies and the fire was extinguished, and a Tata 407 which had been requisitioned at the police station, was called for and he personally took those twenty seven persons and reached the Civil Hospital. His PSI Shri Katara was present there. He instructed him to issue a yadi to the doctor to provide treatment to the twenty seven persons at the Civil Hospital and returned.

246.28 While returning, he had informed his ACP about the incident and he told him that he himself was present with the Meghaninagar DCP and that he would visit that incident and come to Naroda. He returned back to the place of incident. At

the time of leaving that spot, he had deputed PSI Shri P.U. Solanki to take care of the spot and to look after the remaining dead bodies. He found that he was present there. Thereafter, he gave instructions for requisitioning large police vehicles for the purpose of shifting the Muslims who were kept under protection at the police station, to the relief camp or safe places.

246.29 At the "U" shaped passage of the water tank to which he has referred to, he had found fifty eight corpses which included women, men and children. Many dead bodies were burnt in a very mutilated condition, due to which, they could not be identified. At the time when the incident took place, the Surveillance Squad PSI Shri V.K. Solanki who is now known as V.K. Delwadia, had lodged a complaint before him at 20:45 in connection with the incident that occurred at Naroda Patiya.

246.30 He had recorded the complaint as stated by Shri V.K. Solanki. The witness is shown Exhibit-1773, that is, the complaint given by Shri V.K. Solanki. Upon reading the same, the witness has stated that this is the very complaint which was lodged before him. The witness has identified his signature and that of Shri Solanki as well as the contents thereof as being true.

246.31 The witness has further deposed that after receiving the complaint, he had made a report declaring the offence (Exhibit-1797). The witness has identified his signature on the report and has stated that on the basis of the report, Shri V.K. Solanki's complaint had been registered as Naroda I-C.R.

No.100/02. After the offence was registered, it was forwarded to him for further investigation.

246.32 For the purpose of investigating into the offence, he had made an investigation team in which PSI Shri Surela was entrusted the work of drawing panchnamas of the places where incidents had taken place and were damaged. The task of drawing the panchnama of the "U" shaped scene of incident at the water tank, as well as the inquest of the fifty eight dead bodies, was entrusted to PSI Shri Katara, and thereafter, the work of recording the dying declarations and statements of the injured who were admitted in the hospital was entrusted to Shri P.U. Solanki.

246.33 In connection with the investigation, on 3.3.2002, he had recorded the statements of the police personnel who were at the S.T. Workshop and the Noorani Masjid during bandobust. Upon the statements being recorded, the names of three accused were disclosed viz., Umesh Surabhai Bharvad (A-3), Naresh Agarsing Chhara (A-1) and Kalu alias Harisinh Rathod (A-27). He had sent the Surveillance Squad PSI to search for these three accused.

246.34 On 7.3.2002, late at night, Naresh Agarsing Chhara and Umesh Bharvad were found and after examining them, they were arrested on 8.3.2002. He had continued with the investigation. In the meanwhile, the investigation was entrusted to the ACP Shri P. N. Barot by an order of the Police Commissioner, and hence, he had handed over the investigation to Shri P. N. Barot on 8.3.2002 in the evening.

246.35 While the investigation was with him, the inquest panchnama Exhibit-662 of fifty eight dead bodies as well as other inquest panchnamas (as detailed in paragraph 37 of the deposition) came to be drawn. When he handed over the investigation to Shri P. N. Barot, all the investigation papers were handed over to him.

246.36 In his investigation, he had found evidence against three accused out of whom, Naresh Agarsing Chhara and Umesh Bharvad were arrested and they had stated that a person named Murli Narayan Sindhi was also with them, due to which Murli Narayan Sindhi was called and he had stated that he was present in the mob, and hence, he had also arrested him.

246.37 The witness has stated that he can identify four of the persons whom he had seen in the mob on the day of the incident as well as the three persons whom he has arrested. The witness has thereafter identified Umesh Bharvad, Murli Sindhi, Raju Chomal, P. J. Rajput and Babu Bajrangi and has stated that Kishan Korani and Naresh Agarsing are not present. It appears that Naresh Agarsing (A-1) and Kishan Korani (A-20) had filed exemption applications on that day, and hence, they are deemed to have been identified.

246.38 During the course of his investigation, he had recorded the statements of several witnesses. He had recorded statements of Police Constable Kiran Parsottambhai Makwana (PW-264), ASI Sajjansinh Jashvantsinh (PW-265) and Police Constable Manubhai Madhabhai (PW-267).

246.39 The witness has deposed that the Assistant Police Commissioner Shri S.S. Chudasama had recorded his statement while he was investigating the case. During the course of investigation by the SIT also, his statements were recorded on 25.10.2008, 3.2.2009, 6.7.2009 and 1.12.2009.

246.40 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he had information regarding the time when kar sevaks were going to arrive on 27.2.2002. They were in the train which was to arrive at 6 o'clock in the evening. The witness has admitted that he had come to know the names of kar sevaks afterwards. Prior thereto he did not know their names, but he knew that they were from Nava Naroda. The witness has denied that he did not have information to the effect that the kar sevaks were narrating the incident of the train to other people. The witness has voluntarily stated that as result of such narration, both the incidents had taken place at that time in Nava Naroda area. The witness has stated that on 27.2.2002, Zone-IV DCP Shri P.B. Gondia had instructed them to arrange for *bandobust* and to take necessary steps to see that incidents like the incident that had taken place after the kar sevaks came to Nava Naroda should not take place.

246.41 The witness has denied that on 28.2.2002 as there was a call for Gujarat Bandh, several unruly elements had been apprehended by way of precaution. The witness has voluntarily stated that prior to this incident, Naroda was considered to be a non-sensitive area for communal riots, due to which there was no such necessity. Moreover, there were no such persons in this area.

246.42 The witness has admitted that he had gone to the Noorani Masjid point for checking and has voluntarily stated that for majority of the time he was present there. The witness has admitted that he had requested for more help when huge mobs of fifteen to seventeen thousand people were openly roaming around. The witness has voluntarily stated that from the previous night itself he had asked for more help and that upon the happening of incidents also, he had asked for more police. The witness has denied that prior to his receiving information about the fifty eight persons near the water tank in the 'U' shaped area, he had not received any information about any such incident taking place in the chawls opposite the S.T. Workshop. The witness has voluntarily stated that he was receiving information about incidents of loot, arson, assault, etc. in the chawls. The witness has admitted that on 28.2.2002 in the morning at 10 o'clock, he had given a message that 'all is well' to the Police Control Room. The witness is confronted with an extract of his statement dated 24.5.2002; however, since such statement had not been put to contradict the witness qua any part of his evidence, the same is inadmissible in evidence.

246.43 The witness has denied that after curfew was declared at 12:30 on the day of the incident, he has not arrested a single person for breach of curfew. The witness has stated that there are eight cases of breach of curfew against thirty five accused under section 135. The witness has stated that he cannot say as to from which area persons have been arrested for breach of curfew. The witness has admitted that he has not arrested any person for breach of curfew from the

mobs in the Naroda Patiya area.

246.44 The witness has admitted that on the day of the incident, prior to 11 o'clock in the morning, Basirkhan Nannekhan and Dilshan Pathan had not met him near Hussainnagar. The witness has voluntarily stated that he reached Hussainnagar at 11 o'clock.

246.45 The witness has stated that he had recorded Shri Solanki's complaint at the police station and had immediately sent a report under section 157 of the Code of Criminal Procedure. The witness has stated that it had taken as much time as it takes for the procedure for registration. The witness has admitted that he had immediately commenced all the proceedings for investigation at that time.

246.46 The witness has admitted that Police Constable Sajjansinh and Kiranbhai had not given names of the three accused till 3.3.2002. The witness has voluntarily stated that after commencement of investigation, he had called them for recording their statements on 3.3.2002, when they had given such names in their statements. The witness has admitted that the procedure for drawing inquest panchnama as well as panchnama of scene of offence, etc. was carried out under his supervision. The witness has admitted that at the time when the scene of offence panchnama was drawn, they had not called the dog squad, FSL or personnel from the Chemical Department of FSL. The witness has stated that however, he had given clear instructions to Shri Surela to do so.

246.47 The witness has denied that he has not seen any of

the accused named by him in his examination-in-chief, at the scene of offence on the day of the incident. The witness has denied that with a view to falsely implicate accused No.1, 3 and 27, he had given their names and with a view to show progress in his investigation, he had falsely given names of all these three accused and had wrongfully arrested them.

246.48 The witness has admitted that Naroda Patiya as well as Naroda Gam are situated in the Naroda Police Station area. The witness has admitted that in both, the present case as well as Naroda Gam case, the SIT had recorded his statements. In his cross-examination, it has further come out that no divisions of the police stations have been formed, but since innumerable incidents had taken place on the day of the incident, for the sake of convenience, the area towards the east of Naroda Bethak was included in C.R. No.I-100 of 2002 and the area from Naroda Bethak to Galaxy Cinema and Naroda Gam as well as road towards Dehgam were included in C.R. No.I-98 of 2002. The witness has admitted that till the investigation was with him, statements of police staff had been recorded in his presence. The witness has stated that however, those whom he had entrusted work after forming the teams, had recorded statements of people other than police employees. The witness has stated that three Police Sub-Inspectors, namely, Shri P.U. Solanki, Shri Surela and Shri Makwana have recorded statements of witnesses. The witness has received these statements during the course of his investigation. The witness has admitted that from the statements of police as well as S.R.P. personnel recorded by him till 8.3.2002, he had not found any statement supporting the fact regarding presence of the five persons named by him. The witness has voluntarily

stated that on the day of the incident the number of people in the mob was very large, that it was quite possible that one police witness may have seen certain specific persons and the same persons may not have been seen by other police personnel for the reason that every policeman was given a different point and from one particular point, someone could see a person, then another may not be able to see such person. The witness has stated that in statements of the police as well as the S.R.P., nothing has come on record to the effect that five accused named in the complaint were not present. The witness is cross-examined with regard to the *bandobust* plan drawn by him and the police placed at each point.

246.49 In his cross-examination it has come out that from Kalupur-Naroda Road to the road on the north of Naroda Patiya, there is a way, which is considered to be part of Sardarnagar Police Station. The witness has admitted that the area from Naroda Gam to Teesra Kuva open ground till the road going to the S.R.P. Quarters comes within the jurisdiction of his police station. The witness has admitted that the open ground behind Teesra Kuva, the area behind Gangotri Society as well as Gopinathnagar Society fall within the jurisdiction of his police station. The witness has denied that he had carried out patrolling on all the roads referred to by him on the day of the incident. The witness has stated that he had carried out patrolling on the main road, viz. on the national highway.

246.50 The witness has stated that on the day of the incident he had not gone for patrolling on the Kubernagar Road. He had gone for patrolling on the Ahmedabad - Kalupur Naroda Road on the day of the incident. The witness has

admitted that he had gone up to Bhagyoday Hotel on the national highway while patrolling. The witness has admitted that he had carried out patrolling from around 7 o'clock in the morning till 10 o'clock. The witness has stated that on the day of the incident it was peaceful on these roads; however, there were mobs of people on the road. The witness has denied that the mobs of people were coming and going and has stated that the people in the mob were only coming, no one was going. The people in the mob were coming on foot and they were coming in groups of four and five.

246.51 The witness is shown a wireless message book-Exhibit 1786. Upon seeing the wireless message of vehicle No.1, the witness has stated that from 9:30 to 10:00 in the morning, Naroda-1 vehicle had given message of 'all is well' to the Police Control. The witness has admitted that till 10 o'clock no incident had taken place, and during this period, while patrolling in their vehicle, no one had tried to stop them. The witness has admitted that he had come from Naroda Gam to the Noorani Masjid. The witness has denied that at that time it was around 11:15. The witness has admitted that it must have been around 11 o'clock in the morning. He had gone to the Noorani Masjid point. The witness has admitted that there were mobs at that point. At that time, at that place, the then ACP, 'G' Division, Shri Rana was present. Those who were posted at the Noorani Masjid were also present there. The witness has denied that a huge mob of Saijpur Bogha had gathered at the Noorani Masjid point. The witness has admitted that at that time there was a mob of around seven to eight thousand people and the mob was pelting stones. The witness has denied that at that time there was a Muslim mob at the

Noorani Masjid. The witness has voluntarily stated that there were Muslim people near the Noorani Masjid. The witness has admitted that there were Muslim people on the half-constructed terrace behind the Noorani Masjid. The witness has admitted that the Muslims standing near the Noorani Masjid and the Hindus standing near the S.T. Workshop were pelting tube-lights, stones, empty bottles, etc., at each other. The witness has admitted that after pelting all these things, they had started throwing burning rags.

246.52 The witness has denied that at that time the police staff had also got injured. The witness has stated that the police staff was injured after 12 o'clock and he himself had sustained injury on his chest. The witness has stated that he does not remember at which spot he was injured, but it was around 12 o'clock in the afternoon. He had sustained such injury in front of the Noorani Masjid.

246.53 The witness has denied that he had remained at the Noorani Masjid point for two to three hours from 11 o'clock in the morning. The witness has voluntarily stated that he was there, but used to keep on moving around. During this period he has also followed the Tata-407 vehicle and had gone to place the vehicle at the police station.

246.54 The witness has stated that he had seen the Uday Gas Agency road and has admitted that he had not gone on the Uday Gas Agency road till 4 o'clock. The witness has denied that he has not seen any private vehicle near the Noorani Masjid on that day. The witness has admitted that he knows the MLAs, MPs and Corporators of this area by their

faces. The witness has admitted that while he was at the Noorani Masjid and the S.T. Workshop point, it had not happened that Mayaben had come and talked with him. The witness has stated that he had not seen that Mayaben had come there in her vehicle. He has admitted that he had not seen that after coming near his vehicle, Mayaben had distributed weapons from her vehicle. The witness has stated that on that day it has not happened that she had any discussion with him.

246.55 The witness has admitted that it has not happened that he has gone on the Uday Gas Agency road and that Mayaben had followed and Mayaben was in her vehicle and she had taken out weapons from her vehicle and distributed them.

246.56 The witness has admitted that since there were a large number of mobs on the road, there was lot of commotion and it was not possible to hear what an individual person was speaking.

246.57 The witness has denied that in his statement he has not stated exactly where he had seen the five persons. The witness has voluntarily stated that they were near the Noorani Masjid, at that time he had seen them in the mob on the opposite side. The witness has denied that the facts stated by him in paragraph 23 of his examination-in-chief to the effect that between the Noorani Masjid and Hussainnagar-ni-chali, he had seen Kishan Korani, P.J. Rajput, Raju Chomal and Babu Bajrangi amidst the mob, have not been stated by him in his statement recorded by the police. The witness has stated that

he has clarified in the statement that when he was near the Noorani Masjid he had seen them in the middle of the mob and that he had seen them between the Noorani Masjid and Hussainnagar Chawl.

246.58 The witness has admitted that towards the south of the S.T. Workshop gate, Hussainnagar chawls are situated. The witness has admitted that he had seen them towards the south of the Noorani Masjid. The witness has denied that the mobs on the southern side were at a distance of about 150 metres from him. The witness has admitted that there were mobs on the northern side of the Noorani Masjid as well as the S.T. Workshop. The witness has voluntarily stated that on that day there were mobs in the entire area. The mobs standing towards his north were hardly at a distance of fifteen feet, towards the south, mobs were standing behind the police vehicles and that the mobs were approximately at a distance of sixty to seventy feet from him. The witness has admitted that in his area no lady constable had been placed on duty. The witness has admitted that he had not seen any woman wearing a woman constable's uniform, going around in that area. The witness has admitted that on the day of the incident, till 2 o'clock, they had not let any Hindu mob enter the Muslim chawls from where they were standing. The witness has admitted that the police staff was present at the S.T. Workshop corner and he himself also was on duty. The witness has denied that the police were present in front of the S.T. Workshop and the Hindu and the Muslim mobs were opposite to each other. The witness has denied that they had a police point at the S.T. Workshop gate, where on one side there was a Hindu mob and on the other side there was a Muslim mob.

246.59 The witness has admitted that the road passing near the S.T. Workshop wall goes towards Teesra Kuva and that this road is parallel to the S.T. Workshop road. The witness has admitted that on the day of incident, if he wanted to go on this road in the evening it was not possible to do so, because there was tube light glass, burning tyres, bottle glass, etc. on the road. The witness has denied that the Hindu and the Muslim mobs had pelted stones at each other at this place.

246.60 In the cross-examination of the witness it has come out that he had got information about the incident that took place at Gopinathnagar-Gangotri Society's water tank in the evening at around 6:15 to 6:30. The witness has denied that he had reached the water tank spot at about 7 o'clock in the evening. The witness has admitted that he may have reached there at 6:45 hours. The witness has admitted that the personnel of Naroda vehicle No.1 were with him.

246.61 The witness has denied that his higher officers were also present on the spot at that time. Shri V.K. Solanki has come to the scene of incident after him. He too came with his staff. He had come about fifteen minutes after he (the witness) reached there and that it was he who had called him there. The witness has stated that it has not happened that during this time he had called his higher officers and they had come there. Shri Gondia had not come there. However, it might have happened that after receipt of information he may have come. Thereafter, all the higher officers including Shri Gondia had arrived. The higher officers had come at 12 o'clock at night and there were no people from the public there. The

witness has admitted that they had taken out the injured from that place and they had given them water and had extinguished the fire. The witness has admitted that it had taken them around half an hour to take out the injured persons and thereafter they were taken in police vehicles to the Civil Hospital. The witness has admitted that it must have been around 7:45 to 8 o'clock by the time they reached the Civil Hospital. The witness has admitted that thereafter he had entrusted the task of making further arrangements to Shri Katara and had reached the scene of incident and thereafter made necessary arrangement for taking out the dead bodies from the water tank area.

246.62 The witness has denied that it must have taken them around one and a half hour to two hours in separating the corpses and carrying out the necessary procedure. The witness has denied that he had counted the dead bodies in the presence of Shri Solanki and higher officers. The witness has stated that the higher officers had come after he had counted the dead bodies. Thereafter the witness has stated that Shri Solanki was present at that time.

246.63 The witness has admitted that he had seen that his higher officer Shri Gondia had rescued a child, which was lying in fire at the scene of incident. He has admitted that after counting the dead bodies, he had reached the police station.

246.64 The witness has admitted that he had gone to the Naroda Police Station to drop the Tata-407 driver as well as when in the evening at 15:10 hours, Police Constable Varshaben had given a message; except for these two

occasions, he has not visited the police station on the day of the incident, and thereafter he had gone night at the time when the offence was registered.

246.65 The witness has admitted that the complainant in their Police Station C.R. No.I-98 of 2002 was Shri Vala. The witness is shown a document Exhibit-1799, which is the complaint given by Shri Vala. The witness has admitted that that the time of offence is shown to be 12:00 to 2:00 in the afternoon. The witness has admitted that in the said offence also, the names of only these five accused have been shown.

246.66 The witness is shown Exhibit-1796, which is an extract of the station diary. The witness has admitted that the time of the present incident is shown from 11:00 to 20:00 hours at night and the time for reporting to the police station is 8:45, viz. 20:45 hours. The witness has admitted that after the complaint is registered, a report is made under section 154 of the Code of Criminal Procedure and thereafter, the complaint is sent to the court within twenty four hours. The witness has admitted that the SIT had put questions to him in connection with I C.R. No.98 of 2002 and that his deposition was recorded in the Naroda Gam case viz., Sessions Case No.203 of 2009.

246.67 The witness has admitted that the complaint being I C.R. No.98 of 2002 was given by Shri Vala and it was recorded by 2nd P.I. Shri Gohil. The witness has admitted that he has not carried out any investigation in that case. The witness has denied that on 28.2.2002 he had gone to his chamber after 00:15 hours, viz., on 1.3.2002 and at that time he had called Shri Gohil and Shri Vala and at that time Shri

Vala had told him that as he did not know any of the accused, he would not give their names in the complaint, and hence, under his orders, the complaint was registered after 12 o'clock at night viz. 1.3.2002 and was back-dated by showing a time earlier than the time when the complaint came to be lodged and thereafter the complaint was read over to Shri Solanki, the complainant in this case and by ante-dating it, the complaint was registered at night on 1.3.2002.

246.68 The witness has denied that accused No.2 Murli Sindhi was arrested on 4.3.2002 and has stated that he had arrested him on 8.3.2002. The witness has admitted that in the statements recorded by him during the course of the investigation, the name of Murli Sindhi was not disclosed by any of the witnesses.

246.69 The witness has admitted that in any of his statements he has not stated that upon Naresh Chhara and Umesh Bharwad being arrested, he had come to know that Murli Sindhi was with them and thereafter upon calling Murli Sindhi he had informed him that he was present in the mob. The witness has voluntarily stated that since he was not asked about it, he had not stated so. The witness has denied that he had fabricated the facts stated in paragraph 38 of his examination-in-chief.

246.70 Various parts of the statement of this witness recorded by the SIT are put to the witness to bring certain facts stated in those statements on record. However, since these parts of his statements are not put to the witness to contradict any part of his evidence, the same are not

admissible in evidence. The trial court was, therefore, not justified in permitting such evidence to be brought on record.

246.71 In his cross-examination the witness has stated that during the course of patrolling he had not seen any people sitting on the road divider and eating snacks and drinking liquor.

246.72 The witness has denied that those whom he has named in his examination-in-chief were all social workers and time and again used to visit his police station and therefore he knew them. The witness has voluntarily stated that all of them were not social workers. The witness has stated that those named by him were not social workers. The witness has admitted that from the names given by him, several persons, time and again used to come to his police station. The witness has stated that five persons named by him in his examination-in-chief are workers of BJP, Vishwa Hindu Parishad and Bajrang Dal. The witness has admitted that they used to come to his police station with minor as well as major issues. The witness has denied that when they came with such issues and they were not resolved, at that time there were heated discussions between them, and hence, he has nurtured grudge against them and felt that they were always interfering with his duties; therefore, to falsely implicate them he had given their names in this case.

246.73 The witness has stated that he does not know the five persons named by him in his examination-in-chief in their capacity as members of the Peace Committee. The witness has denied that at the stated time, the five persons were not

present at the spot and that despite the fact that there was no evidence against accused Murli Sindhi, on account of personal enmity against him, he had falsely given their names and had wrongly arrested them.

246.74 The witness has stated that from 1.3.2002 to 3.3.2002, he was continuously busy with the maintenance of the law and order situation. He was busy with maintaining law and order in the entire Naroda area. The witness admitted that other incidents had taken place in the Naroda area from 1.3.2002 to 3.3.2002. He was continuously engaged in *bandobust* up to 15.3.2002. On these fifteen days, he was also required to go to the police station, but stayed there for a very short time.

246.75 The witness has admitted that after 11:00 hours he had gone to follow the Tata-407. The witness has admitted that it must have taken him 30 to 45 minutes to follow the Tata-407 and return. The witness has admitted that he and other policemen were present at the time when the Tata-407 incident took place. There were mobs near Natraj and Krushnanagar. The witness has voluntarily stated that the mobs were spread everywhere.

246.76 The witness has stated that after apprehending the person driving the Tata-407, he had returned to the Noorani Masjid and thereafter upon receiving a message at 15:10 hours in the afternoon, he had left and till then he was present there. The witness has stated that the police mainly were not permitting any person in the mob to enter the Muslim chawls from the road. The witness has stated that he was present

there till 3 hours and 10 minutes in the afternoon on the day of the incident, during which had not heard about any incident taking place in the Muslim chawls. Till 3:10, at times he had looked towards Hussainnagar and Jawannagar from the S.T. Workshop lane.

246.77 At 3:10 in the afternoon, he had seen a house in front of the Muslim chawls being demolished. There is a plot in front of the shops and houses in the lane of the national highway, after which the chawls begin and he had seen the houses in chawls being damaged. At that time he was at a distance of about 50 feet from there. He had tried to disperse the people who were damaging the houses, but had not arrested them. The witness has voluntarily stated that they were about fifteen policemen and the mob was comprised of fifteen to seventeen thousand people, and hence, it was not possible to arrest any accused on the spot. The witness has admitted that it was not as if all the fifteen to seventeen thousand people were damaging the houses. He has further deposed that they had gone near and resorted to lathi charge. The witness has admitted that despite having resorted to lathi charge, they could not catch any one. The witness has admitted that he does not know the name of any person from amongst the people who were beaten with lathis.

246.78 The witness has stated that till 3:10 in the afternoon he had gone to the Muslim chawls. He had gone once around 12:15 to 12:30 in the afternoon. He had gone to all the chawls, when he was told that two Hindus had been pulled inside the Muslim chawls. When he went to the Muslim chawls, at that time there was a Muslim mob at the corner outside. He had not

seen any incident of assault inside the chawls at that time. After returning from the chawls, he had remained at the Noorani Masjid point.

246.79 When he was there till 3:10 in the afternoon, he had not seen any Muslim mob near the S.T. Workshop. At 3:10 in the afternoon, he had not seen any Muslim mob near the Noorani Masjid or on any house near it. Policemen were also there on the national highway on that day. On that day, the mobs kept on gathering and after they dispersed them, they again gathered together. The witness has denied that the mobs were coming out of curiosity. The mobs had caused injury to him. He and five policemen were injured by stones pelted by the mobs. The witness has admitted that he does not know any of the persons who had pelted stones at him and other police.

246.80 The witness has stated that after 3:10 in the afternoon he had gone to Naroda Police Station and had returned to the point after about fifty minutes. Thereafter he was there till 5:30 to 5:45. The witness has denied that there were no riots in any other area of Naroda, and hence, he remained at the Noorani Masjid. The witness has stated that at no other place riots were as intensive as at the Noorani Masjid, and hence, he stayed there.

246.81 The witness has stated that the Fire Brigade had not come to the Noorani Masjid on 28.2.2002. The witness has stated that upon the Noorani Masjid and nearby areas catching fire, he had called the Fire Brigade countless times; however, the Fire Brigade could not come. The witness has stated that

he cannot state exactly where he was standing, as he continuously kept roaming around. The witness has admitted that there was no cross stone pelting and throwing of burning rags between the mobs standing near the S.T. Workshop and Natraj or between the mobs standing near Krushnanagar and the S.T. Workshop.

246.82 The witness has stated that the Hindu mobs standing on the road and the Muslims standing near the Noorani Masjid had pelted stones and burning rags at each other. The Muslims had thrown stones and burning rags on the Hindus from the slab of a half constructed building near the Noorani Masjid.

246.83 The witness has stated that at the time of the incident, except for the police, no person was available for recording statements for the reason that the Muslim chawls were totally vacant and they had all been dropped at the relief camps. The witness has admitted that he knows where relief camps were. The witness has stated that during the period from 1.3.2002 to 8.3.2002 he had got statements of witnesses recorded through his Sub-Inspectors at the relief camps. The witness has admitted that the Muslim population behind the Noorani Masjid was totally gone. Till 30.3.2002, till he was at the Naroda Police Station, none of the Muslims had returned to their houses. The witness has stated that he is talking about the Muslims residing in the Hussainnagar chawls and the chawls behind the Noorani Masjid. The witness has denied that in case of Umesh Bharwad, he had not got any statement against him. The witness has denied that he had got the names of the three accused disclosed through his constables.

The witness has stated that he had not met any person named Ashish Khetan and he had not verified anything from him. The witness has admitted that he had not got any test identification parade of the accused carried out. The witness has denied that he is falsely giving evidence implicating the accused in the offence.

246.84 EXAMINATION BY THE COURT: This witness has also been examined by the court, wherein, it has come out that the witness has stated that twelve kar sevaks from Naroda Patiya were not injured, but they were in the train where the incident took place. On 27.2.2002 in the evening around 5:00 to 5:15, he had received information from the Police Control Room that the police should be sent to fetch the kar sevaks belonging to the Naroda area, from the railway station. The witness has stated that after coming to know that there were kar sevaks from his area, he has not arranged for any special *bandobust* or made any police arrangement in the area.

246.85 In his examination by the court, it has come out that as to who was the person sitting in the Tata-407 and as to which community he belonged to, was something which he came to know when he stopped the vehicle near Sardarpura ITI and after inquiring from the driver.

246.86 The witness has stated that he was informed that Murli Narayan Sindhi was personally present in the mob. However, he had not recorded statements of the two accused who had informed him about it under section 164 of the Code of Criminal Procedure, for the reason that he was busy with the law and order, performing last rites of those who had died,

their identification, handing over of custody as well as taking steps with regard to numerous rumours that were floating, that it was not possible to do any other work. The witness has stated that till 10 o'clock in the morning on the day of incident, he has sent messages of 'all is well' to the Police Control Room for the reason that as per his knowledge, no incident had taken place till 10 o'clock. The witness has admitted that from the road where he was near the S.T. Workshop, one could go to Hussainnagar and other Muslim chawls; however, there were two other roads from which one could enter the Muslim chawls. The witness has admitted that he had felt that he may need more vehicles than the six vehicles requisitioned by him, including the surveillance squad vehicle, on 28.2.2002 in the context of the bandh call; however, since he did not have more PSIs he could not do so. The witness has stated that sanctioned strength of PSIs at Naroda Police Station was eleven; however, he had been allotted only six PSIs.

246.87 RE-EXAMINATION: The witness has thereafter been recalled by the prosecution and in his re-examination he has stated that on 28.2.2002, several complaints, over and above Naroda Police Station I-C.R. No.100 of 2002, had been registered in respect of the communal incidents that had taken place on 28.2.2002. He was in-charge of the investigation of I-C.R. No.100 of 2002 till 8.3.2002 as well as some other complaints, which had been registered in connection with the incidents that had taken place at Naroda Patiya. During the course of investigation into I-C.R. No.100 of 2002 and other complaints, different police staff and officers under his jurisdiction had, under his instructions, performed tasks. The witness has stated that he had given instructions in the

context of investigation to the then PSI Shri Surela, PSI Shri L.K. Katara, PSI Shri P.B. Makwana, ASI Shri M.M. Parmar, ASI Shri A.M. Jhala and other police personnel under him. As Shri Katara was a PSI in his division, he had occasion to see his signature during the routine office work, and hence, he can identify his (Katara's) signature. The witness has stated that he knows that Shri L.K. Katara has passed away on 10.12.2003. The witness has stated that under his instructions, Shri Katara had recorded statements of the following witnesses:

PW No.	Name of the witness
151	Raziabano Mohammed Ayub Shaikh
54	Mohammed Alias Badshah Mehboobhusen Shaikh
165	Peermohammed Allabax Shaikh
167	Mohammedhusen Kaiyum Shaikh
205	Zarinabibi Nayeemuddin Shaikh
255	Mohammed Khalid Saiyed Ali Saiyed
155	Shehnazbanu Munavarbhai Shaikh

246.88 The witness has admitted that he had instructed all the officers, namely, PSIs and ASIs, to record statements of the witnesses as stated by them. Similarly, he had instructed them to draw panchnamas of loss and damage through independent and impartial panchas. The witness has admitted that he had not received any complaint against Shri Katara that he had not recorded any facts stated by him or that he had written down any facts in the statement, on his own. The witness has stated that whenever any police officer used to give him papers of the proceedings carried out by him during the course of the investigation, namely, panchnamas, copies of yadis, statements, etc. he used to read them and thereafter include them in the investigation papers. The witness has admitted

that he has seen the Muslim chawl areas, like Jawannagar, Hussainnagar, etc. He has admitted that the water tank which is the scene of incident is not situated in Jawannagar. The witness has voluntarily stated that this spot, namely, the water tank is situated after the Muslim chawls in the centre of Gopinath and Gangotri Society. The witness is cross-examined with regard to the statements of witnesses recorded by him as well as by Shri Katara, reference to which shall be made while discussing the evidence of those witnesses.

246.89 BY COURT: The witness is further put certain queries by the court wherein it has come out that he had joined as PSI in the Police Department in 1974 and was promoted in the year 1993 and became PI and since then he is working as PI. The witness has stated that he had no experience of investigating into communal riot cases at the time when the communal riots of 2002 took place. The witness has admitted that when he reached the Noorani Masjid at 10:30 in the morning on 28.2.2002, prior thereto he did not have any personal knowledge about the situation at the Noorani Masjid. On 28.2.2002 they were required to rescue about three thousand people belonging to the minority community from the incidents. On the day of the incident around eighty three different incidents had taken place in the Naroda Police Station area. On the day of the incident teargas shells were lobbed only in the Noorani Masjid, S.T. Workshop area of Naroda Patiya from 10:00 in the morning till 7 o'clock at night; 171 teargas shells were lobbed, out of which some shells were of short range, some of long range and some were hand grenade shells. The witness has further stated that ninety one rounds were fired in this area from revolvers, 303 rifles,

musket rifles and carbine guns. Out of this firing, part of the firing was in the air, and part of the firing was done keeping the object in view, but he does not have the break up thereof. The witness has admitted that at 10:40 when he reached Naroda Patiya, riots and stone pelting were going on at the Noorani Masjid as well as in the S.T. Workshop area. Certain extracts of his police statement and SIT statements are put to the witness. In the opinion of this court, in view of the bar contained in section 162 of the Code, it was also not permissible even for the court to bring such part of the statement on record in view of the fact that the witness is not sought to be contradicted by such statement.

246.90 The witness has stated that the fifty eight persons who died in a burnt condition, their dead bodies were found at this spot and over and above those fifty eight persons, at this very spot the twenty seven persons referred in his statement were found alive and they were sent for treatment. The witness has admitted that at this spot, in all, there were eighty five victims of the incident. The witness has admitted that the road from where he came was the open ground towards the east. The witness has admitted that he has reached the spot at 6:30 and when he reached there, except for eighty five victims, no one else was present at the spot.

246.91 The witness has further admitted that none of the police staff under his jurisdiction as well as the police staff attached to his higher officers was in a condition whereby he was required to be taken to the hospital for treatment. None of them were in a condition which required treatment.

246.92 The witness has admitted that no test identification of the accused was carried out as he was very busy and was under the burden of excessive work and the riots were continuously going on. Moreover, at that time the Naroda Patiya area had become almost vacant, and hence, test identification parade could not be conducted.

246.93 The witness has stated that he had talked with Shri Tandon about the incident at 9:45 hours in the morning and he had acquainted him with the fact regarding mobs gathering in the Patiya area. The witness has admitted that he does not consider the offences that took place on 27.2.2002 which are registered as Naroda Police Station I-C.R. No.96 of 2002 and I-C.R. No.97 of 2002, as serious offences.

246.94 To prove the omissions and contradictions as to the previous statements of this witness, the defence has cross-examined the concerned assignee officer/Investigating Officer who had recorded such statement.

246.95 PW-307 S. S. Chudasama, the Investigating Officer, has admitted that he has recorded the statement of this witness on 24.5.2002. He has admitted that this witness in the statement recorded by him had stated that upon coming to know from a private person at around 10:00 to 10:15, regarding a mob having gathered at Thakkarnagar Cross Roads, near Bhagyodaya Hotel, he had reached there.

246.96 The contents of paragraph 23 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein he has stated that in the area between the Noorani

Masjid and Hussainnagar-ni-Chali, he had seen Kisan Korani, P. J. Rajput, Rajubhai Chomal and Babu Bajrangi in the middle of the mob. The Investigating Officer has denied that these facts have not been stated by the witness before him. He has stated that in his statement, the witness has clearly stated that he had seen all four of them; however, he has not stated that the place was between the Noorani Masjid and Hussainnagar-ni-Chali.

246.97 Certain extracts of the statement of the Investigating Officer as recorded by the SIT on 22.1.2009 are put to him. In the opinion of this court, such questions ought not to have been permitted to be put to the witness, inasmuch as, the statement recorded by the SIT is in the nature of a statement under section 161 of the Code and hence, could not have been used for any purpose other than for contradicting the witness.

246.98 The Investigating Officer has, in his cross-examination, admitted that after the investigation came to him, no fact had been revealed to him that the dead body of any Muslim was lying on a platform or veranda and that any panchnama was drawn or that any dead body was found in a rickshaw and any panchnama was drawn or that there was any dead bodies in the chawls or in the lanes and any panchnama was drawn.

246.99 SUBMISSIONS: Mr. N.D. Nanavati, learned counsel for accused No.37, submitted that this prosecution witness who is a Police Inspector and was present on the spot has referred to the other prosecution witnesses; they in their

evidence admit about his presence also. This witness in his says deposition that Mayaben never came, she was not there at all and that he had never interacted with her. He has also stated that there was no lady constable which clearly falsifies the case of PW 52.

246.100 It was submitted that the evidence of this witness is in direct conflict with the other ocular evidence led by the prosecution. Therefore, it is word against word; straightway in conflict with each other and if this is so, which evidence should be believed and which evidence should not be believed, is an exercise to be undertaken by the court. It was submitted that when this witness has specifically admitted in his cross-examination that he had not met accused No.37, then at least the version given by other witnesses becomes doubtful, who is right who is wrong is difficult to be gauged at this stage and even at the trial stage; therefore, the court will have to appreciate the evidence on the touchstone of probabilities.

246.101 It was submitted that the entire prosecution case about the presence of Mayaben (A-37) at the scene of offence first of all becomes doubtful. In other words, the prosecution has failed to prove by credible and reliable evidence about her presence at any point of time right from 9.00 a.m. to 11 a.m. It was submitted that conviction based upon this type of evidence particularly under section 120B of the Indian Penal Code is not sustainable.

246.102 On behalf of the other appellants, submissions have been made in respect of the testimony of this witness while arguing on the point of the first information report being ante-

timed and ante-dated. Hence, reference to such submissions shall be made at the time of discussing that point.

246.103 Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has testified that he saw the four accused between 2:00 to 2:45 in the afternoon on the day of the incident. It was submitted that this witness was the Officer in-charge and he was present throughout the day except for some time. Two things are very clear from his evidence that prior to 3:10 in the afternoon, properties on the Highway were damaged and ransacked and after 3:10, the properties on the interior side were damaged. He received the information about the water tank incident and he immediately went there and saved at least twenty seven persons and took them to the hospital.

246.104 It was submitted that his witness also deployed police personnel at different points and tried to make necessary arrangement for stopping the mis-happening. Curfew was also imposed and they tried to implement it but were not successful. It was submitted that it may be a dereliction of duty on his part and the investigation carried out after the incident may have been done in a perfunctory manner, but this will not attach any criminal liability on him.

246.105 It was submitted that from the facts stated in the evidence, except some portion wherein there is some contradiction between the examination-in-chief and cross-examination, the other part is reliable and credible. It was submitted that the witness has deposed that the incident happened from the morning, there was a large mob pelting

stones at the Noorani Masjid. He found these five persons named in the FIR on the spot and he saw fifty eight dead bodies and saved twenty seven persons. Therefore, he is witness to the dead bodies after the massacre. Therefore, it can be safely presumed that such a massacre happened at the water tank passage wherein fifty eight Muslims were done to death and twenty seven were injured, some of whom died later on. All this proves beyond reasonable doubt that the intention of the mob and accused was to kill the Muslims and take revenge of Godhra. It was submitted that the five persons who are named by this witness in his examination-in-chief as well as in his cross-examination, according to him, are the members of the Vishwa Hindu Parishad and Bajrang Dal, who had given a call for bandh on that day. There is no further cross-examination in respect of them being members of the VHP and the Bajrang Dal. Therefore, the fact that these five persons were members of the VHP and Bajrang Dal is proved beyond reasonable doubt.

246.106 ANALYSIS: From the testimony of this witness, it emerges that he was the Senior Police Inspector of Naroda Police Station and the area in which the riots took place fell within his jurisdiction. The witness has deposed that while patrolling in the area, at about 9 o'clock, scattered people were coming out on the road and most people were walking towards the Noorani Masjid situated in Naroda Patiya and slowly crowds of people started coming. These people were shouting "Jai Shree Ram!" From the testimony of this witness it is found that he had talked with his higher officer Shri Tandon about the incident at 9:45 hours in the morning and he had acquainted him with the fact regarding mobs gathering in the

Patiya area. Nonetheless, on 28.2.2002 in the morning at 10 o'clock, the witness had given a message to the effect that 'all is well' to the Police Control Room. The reason for sending such message is that as per his knowledge, no incident had taken place till 10 o'clock. Thus, on the one hand, the witness informs his superior officer about mobs gathering in the Patiya area and on the other hand till 10 o'clock in the morning on the day of incident, he had sent messages of 'all is well' to the Police Control Room. From the evidence of the other witnesses including police witnesses, it emerges that by 10 o'clock huge mobs had gathered and the police were not able to control them, yet, for some inexplicable reason, this witness instead of asking for reinforcements had sent a message saying "all is well".

246.107 While curfew came to be clamped down in the area, which was completely disregarded by the mobs, the witness who was in charge as well as the other police personnel, have not arrested any person for breach of curfew from the mobs in the Naroda Patiya area.

246.108 The witness has deposed that he had seen in all four accused viz. Kishan Korani, P.J. Rajput, Rajubhai Chaubal and Babu Bajrangi in the afternoon after 2 o'clock. He had seen them in the mob talking to the people in the mob explaining something to them. At this time the mob was shouting kill cut. The witness claims to have seen all the four accused in the mob till 2:45 p.m. In his cross-examination, it has been elicited that when the witness was near the Noorani Masjid, he had seen them in the middle of the mob on the opposite side and that he had seen them between the Noorani

Masjid and Hussainnagar Chawl. In his cross-examination, it has further been elicited that the accused named by him were not social workers; however, the named accused time and again used to come to the police station. He has also stated that the five persons named by him in his examination-in-chief are workers of BJP, Vishwa Hindu Parishad and Bajrang Dal and that they used to come to his police station with minor as well as major issues. The witness has denied that when they came with such issues and they were not resolved, at that time there were heated discussions between them, and hence, he has nurtured grudge against them and felt that they were always interfering with his duties; therefore, to falsely implicate them he had given their names in this case. In the opinion of this court, such small skirmishes would not be sufficient for the witness to bear a grudge to such an extent that he would implicate them falsely in such a serious offence. Besides, he is not the only witness who has named these accused.

246.109 It has been contended on behalf of the accused that different police witness and other witnesses have named different accused, though many of them are stated to be present at the same time in the same area. In this regard, in the cross-examination of this witness, he has stated that on the day of the incident the number of people in the mob was very large, that it was quite possible that one police witness may have seen certain specific persons and the same persons may not have been seen by other police personnel for the reason that every policeman was given a different point and from one particular point, someone could see a person, then a policeman from another point may not be able to see such person. This explanation is a plausible explanation and a

complete answer to the contention raised on behalf of the accused.

246.110 From the testimony of this witness it further emerges that the number of people in the mob kept on increasing as people kept on coming and joining the mob. The people in the mob were coming on foot and they were coming in groups of four and five.

246.111 In the cross-examination of this witness it is further elicited that he knows the MLAs, MPs and Corporators of this area by their faces. The witness has admitted that while he was at the Noorani Masjid and the S.T. Workshop point, it had not happened that Mayaben had come and talked with him. The witness has stated that he had not seen that Mayaben had come there in her vehicle. He has admitted that he had not seen that after coming near his vehicle, Mayaben had distributed weapons from her vehicle. The witness has stated that on that day it has not happened that she had any discussion with him. Thus, while several eyewitnesses have deposed that Mayaben Kodnani (A-37) either alighted from her car or came out of the mob and talked to Shri Mysorewala, this witness has denied such fact.

246.112 The witness has admitted that the police staff was present at the S.T. Workshop corner and he himself also was on duty, whereas a majority of the witnesses who have named accused No.37 Mayaben Kodnani claim to have seen her near the S.T. Workshop in the morning hours. Therefore, if A-37 had indeed come to the S.T. Workshop either in a car, which would have been very conspicuous as on that day there were hardly

any vehicles on that road, or on foot in the mob, it is not possible that any of the police witnesses would not have seen her, more so, when there hardly appear to be any women in the mobs.

246.113 The trial court at page 721 of the judgement has observed that talking to Mysorewala on that day with the current MLA of the area viz. A 37 also seems very natural, he being Senior PI of the police station, it is but natural that if the MLA of the area would come at the spot, he would be talking to her but then it is not a crime. However, what the trial court fails to see is that if talking to the MLA was natural for the police officer, it was not necessary for him to suppress this fact from the court, inasmuch as, if the conversation between A-37 and the witness was an innocent conversation between a police officer on duty and the local MLA and it had nothing to do with the commission of the offence, there was no reason for the witness to suppress such fact, which gives reason to believe that either those witnesses are lying or this witness is lying. Therefore, either the witnesses have to be disbelieved that they have wrongly implicated A-37 or that Shri Mysorewala has not come up with the correct facts.

246.114 In his cross-examination, the witness has admitted that after 11:00 hours he had gone to follow the Tata-407. The witness has admitted that it must have taken him 30 to 45 minutes to follow the Tata-407 and return. The witness has admitted that he and other policemen were present at the time when the Tata-407 incident took place. There were mobs near Natraj and Krushnanagar. The witness has voluntarily stated that the mobs were spread over everywhere.

246.115 The witness has stated that after apprehending the person driving the Tata-407, he had returned to the Noorani Masjid and thereafter upon receiving message at 15:10 hours in the afternoon, he had left and till then he was present there. The witness has stated that the police mainly were not permitting any person in the mob to enter the Muslim chawls from the road. The witness has stated that he was present there till 3:10 in the afternoon on the day of the incident, during which had not heard about any incident taking place in the Muslim chawls. Till 3:10, at times he had looked towards Hussainnagar and Jawannagar from the S.T. Workshop lane.

246.116 At 3:10 in the afternoon, he had seen a house in front of the Muslim chawls being destroyed. There is a plot in front of the shops and houses in the lane of the national highway, after which the chawls begin and he had seen the houses in chawls being damaged. At that time he was at a distance of about 50 feet from there. He had tried to disperse the people who were damaging the houses, but had not arrested them. The witness has voluntarily stated that they were about fifteen policemen and the mob was comprised of fifteen to seventeen thousand people, and hence, it was not possible to arrest any accused on the spot. The witness has admitted that it was not as if all the fifteen to seventeen thousand people were damaging the houses. He has further deposed that they had gone near and resorted to lathi charge. The witness has admitted that despite having resorted to lathi charge, they could not catch any one. The witness has admitted that he does not know the name of any person from amongst the people who were beaten with lathis.

246.117 The witness has stated that till 3:10 in the afternoon he had gone to the Muslim chawls. He had gone once around 12:15 to 12:30 in the afternoon. He had gone to all the chawls, when it was told that two Hindus had been pulled inside the Muslim chawls. When he went to the Muslim chawls, at that time there was a Muslim mob at the corner outside. He had not seen any incident of assault inside chawls at that time. After returning from the chawls, he had remained at the Noorani Masjid point.

246.118 Thus, while the witness thought it fit to follow the Tata 407 at a time when there were huge mobs at the spot and apprehend the person inside the vehicle and bring him back to the police station along with the vehicle, he has failed to arrest a single person from the mob which had resorted to violence, destruction and arson under their very noses. At the time when the Tata 407 was driven away, curfew had not been declared and therefore, driving the vehicle was not an offence. As per the witness, the vehicle was driven recklessly and with great speed, which version is belied by the fact that not a single person in the mob present on the roads was injured. Considering the testimonies of the witnesses, who say that there were mobs of thousands of people on the road, it is not possible that a vehicle which was driven recklessly and with great speed would not injure a considerable number of people resulting in a high number of casualties, whereas here, not a single person has been injured at the spot. The accident wherein one person had died and two persons were injured took place near Naroda IIT which is at a considerable distance from the scene of offence.

246.119 Moreover, the concern shown by the witness for the Hindus in contrast to the treatment meted out to the Muslims of the area is evident on the face of the record. In the morning when the police had resorted to firing, apart from about two deaths, several persons belonging to the Muslim community were injured. However, despite requests by the Muslims to provide assistance to take the injured to the hospital, there was no response from the police, however, at around 12:00 to 12:30, when the aggressors, viz. the Hindus complained about two Hindus being dragged into the chawls, to rescue them, the witness went on foot with other police personnel and combed the area. Again it is only when Hindus were alleged to have been taken inside that the witness and other police thought it fit to go inside the chawls, but not a single policeman has entered the chawls despite the fact that mobs had entered the chawls and had resorted to violence, ransacking and arson. The discriminatory attitude of the witness is, therefore, manifest.

246.120 From the evidence of this witness, it further emerges that after 3:10 in the afternoon he had gone to the Naroda Police Station and had returned to the point after about fifty minutes. Thereafter, he was there till 5:30 to 5:45. The witness has denied that there were no riots in any other area of Naroda, and hence, he remained at the Noorani Masjid. The witness has stated that at no other place riots were as intensive as at the Noorani Masjid, and hence, he stayed there.

246.121 In the cross-examination of the witness it has further come out that he had got information about the

incident that took place at Gopinathnagar-Gangotri Society's water tank in the evening at around 6:15 to 6:30. The witness has denied that he had reached the water tank spot at around 7 o'clock in the evening. The witness has admitted that he may have reached there at 6:45 hours.

246.122 Thus, though the witness was present on the highway till 5:30 to 5:45 in the evening, he feigns to be blissfully unaware of the incidents that were taking place inside the chawls and states that he came to know about the incident from someone at around 6:15 to 6:30.

246.123 The witness has admitted that it had taken them around half an hour to take out the injured persons and thereafter they were taken in police vehicles to the Civil Hospital. The witness has admitted that it must have been around 7:45 to 8:00 p.m. by the time they reached the Civil Hospital. The witness has admitted that thereafter he had entrusted the task of making further arrangements to Shri Katara and had reached the scene of incident and thereafter made necessary arrangement for taking out the dead bodies from the water tank area.

246.124 In his examination-in-chief, this witness does not refer to the arrival of the higher officers at the scene of offence. However, in his cross-examination it has been elicited that his higher officers had come at 12 o'clock at night and there were no people from the public there. He has further stated that it was after he had counted the dead bodies that the higher officers had arrived. He, however, has admitted that he had seen that his higher officer Shri Gondia had rescued a

child, which was lying in the fire at the scene of incident.

246.125 In this regard it may be pertinent to note that PW 294 Shri Gondia, in his examination-in-chief, has stated that after he received information regarding people having been burnt at the spot, he had reached Naroda Patiya. Shri Mysorewala was present there and he had met him there. He has further stated that he, Shri Tandon and Shri Mysorewala had gone to the scene of offence on foot. He has further stated that he had inspected the scene of offence during which he saw a five year old child moving. Hence, Police Constable Manubhai Karshanbhai, the gunman accompanying him, was hung upside down by two other constables and the five year old child was taken out from the end of the heap of dead bodies. Now, Shri Mysorewala says that his higher officers came after 12 o'clock at night and before lodging the first information report the dead bodies had been counted. If that be so, one fails to understand as to why the corpses were lying in a heap when Shri Gondia reached the site, when they had already been counted. A perusal of the inquest panchnama (Exhibit 662) of the 58 deceased persons whose bodies were found in the passage of the water tank shows that the same was started at 00:00 hours on 1.3.2002 and was completed at 3:00 hours. Therefore, when the higher officers visited the site the panchnama was being drawn. However, a perusal of the extract of the station diary (Exhibit 1796) shows that the complaint was lodged at 20:30 hours pursuant to which the first information report came to be registered at 20:45 hours as Naroda Police Station I C.R. No.100/02. A perusal of the first information report (Exhibit 1773 show that the same refers to in all 58 persons having been done to death. Evidently,

therefore, the dead bodies would have been counted before the lodging of the first information report. If that be so, it is strange that the corpses were still lying in a heap when PW 294 Shri Gondia arrived at the scene of offence and took steps to rescue the child, which lends credence to the submission advanced on behalf of the appellants that the first information report is ante-timed and ante-dated. Besides, though the inquest panchnama has been commenced at 00:00 hours on 1.3.2002, it does not bear the crime register number of the first information report.

246.126 However, though the bona fides of the witness insofar the discharge of his duties is concerned are suspect, there is no reason to disbelieve the witness when he states that he had seen the four accused named by him, viz. Kishan Korani, P.J. Rajput, Rajubhai Chaubal and Babu Bajrangi sometime after 2:00 p.m. till 2:45 p.m. in the afternoon in the mob between the Noorani Masjid and Hussainnagar chawls, inasmuch as, his presence at the scene of offence is not in doubt, nor is there any doubt that he was not aware of the identities of those accused as the cross-examination of the witness clearly shows that he had prior acquaintance with the accused. Thus, through the testimony of this witness, the prosecution has duly established the presence of the above four accused in the mobs at the scene of offence in the afternoon after curfew came to be imposed.

247. **PW-275 Hareshkumar Prafulchandra Agrawat** has been examined at Exhibit-1833. This witness has deposed that from May 2002 to September, 2007, he was discharging duties as a Police Inspector in the Ahmedabad city Crime

Branch. At the relevant time, he was the Senior P.I. in the Crime Branch and hence, whenever the A.C.P. of the Crime Branch had gone out for some Government work or was engaged in some Government work or on leave, he used to handle the charge of A.C.P. Shri S.S. Chudasama was discharging duties as A.C.P. Crime Branch when on 20.6.2002 as he had to go for some other work, the investigation of Naroda Police Station I-C.R. No.100/02 was handed over to him as he was in-charge Crime Branch A.C.P.

247.1 During this period, he had also handed over accused Premchand Tiwari whom he had arrested as well as the investigation papers. He had interrogated Shri Premchand Tiwari and had made a remand application and obtained remand of the accused and upon the period of the remand being over, he was sent for the judicial custody.

247.2 During the course of investigation, accused Suresh alias Sahejad and Kalubhai Harisinh Rathod alias Nawab were absconding and as they were arrested in connection with the offence registered at Naroda Police Station and accused Suresh was yet to be arrested in connection with this offence, he had taken necessary steps for obtaining a transfer warrant from the court.

247.3 During the course of his investigation, he had recorded statements of witness Abdulaziz Shaikh and Naemuddin Shaikh. The witness has further deposed with regard to obtaining custody of Suresh alia Sahejad and Kalu alias Nawab on the basis of a transfer warrant and arresting them and following the normal procedures for arrest and

thereafter obtained their remand. During the course of his investigation Shri S. S. Chudasama reported back and hence the accused who were on remand as well as the investigation papers were handed over to A.C.P. Shri S. S. Chudasama and further investigation was carried on by Shri Chudasama.

247.4 Thereafter, in the month of September the investigation was handed over to him. At that time absconding accused Ashok Hundaldas Sindhi was found and was arrested by the Crime Branch on 26.9.2002 and the panchnama of his physical position was drawn and further investigation was carried out. The remand of the accused was obtained.

247.5 During the course of his investigation, the identification parade of the accused was required to be carried out, and hence, a yadi was sent to the Executive Magistrate, Metropolitan Area, Ahmedabad city on the basis of which the Executive Magistrate had arranged the identification parade of the accused on 3.10.2002 at 16:00 hours.

247.6 Thereafter, he had taken the steps to again obtain remand of the accused, which the court had granted and had extended the remand upto 4.10.2002. Upon A.C.P. Shri S.S. Chudasama being present on 3.10.2002, the accused who was on remand and the investigation papers were handed over to Shri S.S.Chudasama, who had carried out further investigation.

247.7 Thereafter, A.C.P. Shri S.S. Chudasama was transferred on 19.11.2002 and he had once again taken over the charge of A.C.P. While he was in charge, he was also entrusted with the investigation of Naroda Police Station I-C.R.

No.100/02.

247.8 After taking over the investigation, he had sent yadis for tracing out the absconding accused and had also taken steps under section 82 of the Criminal Procedure Code. He had also recorded statements of Bai Hanifabibi and witness Dahiben and upon A.C.P. Shri G.L. Singhal taking charge as A.C.P., he had handed over the charge of A.C.P. to him together with the investigation papers, whereafter Shri Singhal had carried out the investigation.

247.9 On 21.8.2004, A.C.P. Shri Singhal handed over this investigation to him. At that time, three accused who were arrested were handed over to him, namely, (1) Shri Ghanshyam Sindhi (2) Manoj Sindhi Kukrani (3) Haresh Parshuram Rohera. He had interrogated these three accused and had produced them before the court within the prescribed time and obtained remand. Since the identification parade of accused Ghanshyambhai was to be carried out, a yadi was sent to the Executive Magistrate, Metropolitan Area, who had fixed 25.8.2004 for test identification parade. The witness has deposed that he had obtained further remand of the accused on 26.8.2004. The witness has thereafter deposed with regard to a discovery panchnama at the instance of Shri Manoj Sindhi alias Kukrani, who was on remand. A panchnama was drawn on 25.8.2004 and after following the due procedure in the presence of panchas, a sword had been discovered at the instance of the said accused.

247.10 The witness is shown the panchnama Mark 134/85 and he has identified the signatures of the panchas as well as

his signature thereon and had admitted the contents thereof. The panchnama is given Exhibit-1834.

247.11 The witness is thereafter shown the muddamal sword and he has stated that it is the same sword which was discovered at the instance of the accused.

247.12 The witness has further deposed that the test identification parade of accused Ghanshyambhai was carried out and upon the period of remand being over, the accused was sent to judicial custody.

247.13 The witness has further deposed that thereafter on 27.8.2004, Police Inspector Shri Tarun Barot of the Crime Branch had arrested absconding accused Hira Marwadi and had handed over his custody to him and the accused was sent to judicial custody. At this time, absconding accused Shri Bipinbhai Umedrai Panchal was arrested by the Naroda Police Station. The witness has further deposed that absconding accused Shri Bipinbhai Panchal was arrested in connection with the offence registered by the Naroda Police Station and since he was yet to be arrested in connection with the present offence, he had taken steps to obtain his custody through a transfer warrant from the court and on 26.9.2004, he had obtained custody of accused Bipinbhai Panchal and produced him before the court within the specified period and obtained his remand till 1.10.2004.

247.14 During this period, Bipinbhai was interrogated and on 1.10.2004, a discovery panchnama was drawn wherein a sword had been discovered at the instance of Shri Bipinbhai.

The witness has referred to the formalities which were followed while drawing the panchnama. The panchnama is shown to the witness and he has admitted his signature as well as the contents thereof and the same is exhibited as Exhibit-1494. The witness has also identified the signature of the panchas on the slips which have been exhibited as Exhibit-1495. The witness has thereafter identified the muddamal sword as being the sword which was recovered by him.

247.15 The witness has deposed with regard to obtaining the P.M. notes, sending the swords to the F.S.L. and has stated that thereafter the investigation was once again handed over to Shri G.L. Singhal. The witness has thereafter deposed with regard to the muddamal yadi etc. sent to the Forensic Science Laboratory for analysis. From the testimony of this witness it further emerges that he had obtained approximately fifteen to twenty post mortem notes and placed them with the investigation papers.

247.16 He had also sent yadis so that the relatives of the deceased can get the P.M. notes. The witness has thereafter proved the yadis of the P.M. notes with regard to several of the deceased persons, as enumerated in paragraph 32 of the deposition, which have been exhibited as Exhibits 1835 to 1850. The witness has further deposed that he had also recorded the statement of witness Iqbalhussain Amirmiya Kureshi.

247.17 CROSS EXAMINATION: In the cross-examination of the witness, he has admitted that he had reached upto the level of Dy. S.P. in the police department and has worked in

the police department for 35 years. The witness has admitted that his statement was recorded by the S.I.T by Shri V.V. Chaudhary and that the end on the left side he has put his signature. The witness has admitted that ordinarily no signatures are obtained on statements recorded during the course of investigation.

247.18 The witness has denied that he has not arrested Ashok Hundaldas Sindhi and that to that extent he is falsely deposing before the court. The witness has voluntarily stated that in case of Ashok Hundaldas Sindhi he had drawn an arrest and physical position panchnama on 26.9.2002 from 20:05 hours to 20:25 hours and had also recorded his facial features. The witness has admitted that at the time when an accused is arrested his facial features identification statement is required to be filled up. The witness has stated that he had arrested Ashok Hundaldas Sindhi in the context of Naroda Police Station I-C.R. No.100/02 when the investigation was with the Crime Branch.

247.19 The witness has admitted that he cannot say as to how many times the investigation of I-C.R. No.100/02 was entrusted to him and then taken back. The witness has stated that he has recorded the statements of witnesses who he thought were necessary for the investigation. The witness has stated that Naemuddin Shaikh's statement was recorded by the Crime Branch but he cannot say the date on which it was recorded. He has further stated that he does not remember as to when the statements of Abdulaziz, Hanifa and Dahiben's statements were recorded but he has certainly recorded such statements. The witness has stated that it has not happened

that during the course of investigation any witness has given the names of accused and he has not written them down. The witness has stated that he has recorded all the facts in the statement. The witness has stated that he has no personal knowledge about the test identification parade of Ashok Hundaldas Sindhi. The witness has admitted that the sword which was recovered from accused No.41 was recovered from a place of common ownership.

247.20 The witness has denied that it has not happened that Manoj Sindhi had shown him any sword or that he has stated any such fact in this regard before the panchas. The witness has admitted that during the course of his investigation, he has not received any application making any allegations against any previous Investigating Officer.

247.21 ANALYSIS: This witness was in charge of the investigation as In-charge A.C.P., Crime Branch from 20.6.2002. While he was in charge he had arrested some of the accused and had recorded statements of two witnesses. Thereafter, he had handed back the charge to Shri S.S. Chudasama. In September, 2002, he was once again handed over the charge of the investigation. On 3.10.2002, upon Shri S.S. Chudasama reporting back on duty, he once again handed back the charge to him. Upon Shri S.S. Chudasama being transferred, the investigation was once again handed over to him on 19.11.2002. From the cross-examination of this witness, it emerges that the Investigating Officer (SIT) after recording the statement of this witness under section 161 of the Code, has obtained his signature below the same in flagrant violation of the provisions of section 162 of the Code.

248. **PW-276 Pruthvisinh Udesinh Solanki** has been examined at Exhibit-1854. The witness has deposed that in the year 1991, he had passed the departmental exam and was promoted as a P.S.I. He retired on 31.1.2004.

248.1 In the year 2002, he was working as a P.S.I. in the Investigation Squad of the Naroda Police Station and Krushnanagar Chowki. On 27.2.2002 and 28.2.2002, he was on duty. At the relevant time, Shri Mysorewala was the Senior P.I. of Naroda Police Station and Shri Gohil was the Second P.I.

248.2 In the context of the incident that had taken place at Godhra on 27.2.2002, there was bandobust in their area. Hence, from 11 o'clock he together with police constable Manubhai Madhabhai were continuously patrolling from the chowky area from Naroda Patiya to Thakkarnagar Cross Roads and till the canal area on the rear side which was within their chowky area and had taken care to see that no untoward incidents take place. The Noorani Masjid area comes within the Saipur Chowky area. On 27.2.2002, at about 7 o'clock in the evening, a Muslim mattress shop came to be set on fire in the Nava Naroda area and at Hari Darshan Char Rasta in the Naroda Police Station area, a person belonging to the minority community was assaulted by people and hence, tension had spread in the Naroda Police Station area and they were continuously on duty.

248.3 Late in the night of the 27th, that is, at around 2:00 to 2:30 in the morning of 28.2.2002, a requisitioned jeep came to be allotted to them for patrolling and police staff Vinubhai

Nathubhai and Pradeepsinh Manusinh had been allotted to him. Police Constable Manubhai Madhabhai, who was with him, was issued a rifle. Accordingly, with three police personnel, he was present for patrolling in the chowki area.

248.4 On 28.2.2002 as there was a call for Gujarat bandh, together with three police personnel he was present for patrolling from Naroda Patiya till Thakkarnagar Char Rasta and had returned and remained present at Naroda Patiya. On 28.2.2002 at around 9 o'clock in the morning, he had reported to Naroda Patiya. On account of the call for Gujarat bandh, people had gathered at Naroda Patiya. These people were getting the shops in the Naroda Patiya area shut down. Other mobs were also there were at Krushnanagar, the Noorani Masjid as well as near Hussainnagar and at the Patiya. In the meanwhile, at about 10.30 to 11:00 P.I. Shri Mysorewala also arrived at Naroda Patiya. He tried to disperse the people in the mob from there. However, the mobs slowly started increasing. At around 11 o'clock in the morning, on all four sides of the road, approximately fifteen thousand to seventeen thousand people had gathered there. Therefore, he and P.I. Shri Mysorewala together with police personnel had resorted to lathi charge and lobbing tear gas shells to disperse the mob and had made all attempts to disperse the mob.

248.5 During this period, upon A.C.P. Shri Rana and D.C.P. Gondia coming to know that mobs had gathered there, they too came to Naroda Patiya together with their staff.

248.6 In the meanwhile, a person started a Tata 407 vehicle lying opposite the Noorani Masjid and ran it over the

mobs. Hence, one person died and several persons were injured, and hence, to apprehend that person, Police Inspector Shri Mysorewala with his staff followed him. Thereafter, he had apprehended him at the railway crossing opposite Galaxy Cinema and had taken legal steps against him.

248.7 The people in the mob were getting the shops in the Naroda Patiya area closed and the people belonging to the minority community were not shutting down the shops at the Noorani Masjid, Hussainnagar and Patiya area and there was cross stone pelting. At this time, A.C.P. Shri Rana, D.C.P. Gondia and Police Inspector Shri Mysorewala were also present and they had resorted to lathi charge and lobbing tear gas shells and attempted to disperse the crowd. However, the mobs did not disperse and more people from the neighbouring areas started gathering there.

248.8 Thereafter, they had resorted to firing. He had, through Police Constable Manubhai Madhabhai, fired three rounds. The people in the mob had sticks, batons, pipes, etc.

248.9 The witness has further deposed that during this period, a person named Ranjitsinh from Saijpur was killed by the Muslims and thrown in the pit next to Hussainnagar and Jawannagar, due to which, the Hindu mob got more incited and they put obstacles of all four sides on the road. Due to this, the police staff and the police vehicles could not move forward on the road. Hence, the police personnel attempted to disperse the mob on foot. The mobs entered into the chawls in the Noorani Masjid area, Hussainnagar, etc. The mobs entered the houses in the chawls and damaged them and set them on fire.

The police did not have the sufficient strength and police force, and hence, they could not disperse the mob. In the meanwhile, at 12 o'clock curfew was declared in the city. The curfew was also proclaimed at Naroda Patiya; however, there were a large number of people in the mob and the people in the mob had put obstacles on the roads, and hence, the police could not go and disperse the mobs.

248.10 The mob kept on rioting till the evening and at around 7 o'clock in the evening the mob slowly dispersed.

248.11 Late at night, at around 10 o'clock he came to know that fifty eight people have been killed and burnt near the water tank next to Gangotri Society. In this regard, Police Inspector, Shri Mysorewala had taken lawful action.

248.12 In connection with the incident, the Surveillance Squad, P.S.I. Shri V.K. Solanki had lodged a complaint which was registered as Naroda Police Station I-C.R. No.100/02 and the investigation was taken over by Shri Mysorewala.

248.13 The witness has further stated that he was also included in the investigation team by Shri Mysorewala. On that day, they had taken part in rescue work and were constantly present. The houses of Muslims in the Muslims chawls were burnt. They had taken the Muslims who had survived to the relief camps.

248.14 On 4.3.2002, his second P.I. Shri Gohil informed him that the dead body of an unknown woman was lying in Jawannagar-ni-chali and hence, he had ordered investigation

into the same. He had investigated and had found that the dead body of an unknown woman was lying at the site and he had taken steps for drawing an inquest panchnama. Prior thereto, he had sent a yadi to the Assistant Police Commissioner seeking permission to draw an inquest in connection with which the Assistant Police Commissioner Shri Rana had given him permission.

248.15 The witness has thereafter identified his signature on the inquest panchnama as well as the yadi and the sanction granted by the Assistant Police Commissioner Shri M.T. Rana. The yadi has been exhibited as Exhibit-1855.

248.16 The witness had deposed that in anticipation of permission, he had drawn the inquest panchnama on 4.3.2002 from 14:15 to 15:00 hours in the evening. Since the dead body was of an unknown woman, a female and a male panchas were called and he had drawn the inquest panchnama of an unknown woman aged 35 years. The witness has identified his signature on the panchnama Exhibit-937.

248.17 The witness has further deposed that in connection with this case, the complainant had given an application on which a separate crime register number had been given, which was registered as Crime Register No.111/02 and a panchnama of the scene of offence was done. The witness has identified his signature as well as the signature of both the panchas on the panchnama and has stated that the panchnama of the scene of offence is of the house of Mehmoodbhai Abbasbhai Bagdadi.

248.18 The witness has further deposed that he had also drawn a scene of offence panchnama on 16.3.2002 in connection with I-C.R. No.179 of 2002 of the house of Allarakhbhai Gulammohammed Malik. The witness has identified his signature as well as the signature on the panchnama of the scene of offence, which is exhibited as Exhibit-1856.

248.19 The witness has deposed that the dead body whose inquest panchnama he had drawn was swollen and it was not possible to take the ornaments from the body. The body had decayed and it was not possible to identify it. The dead body was thereafter sent for *post mortem*.

248.20 The witness has deposed that the Doctor who had carried the *post mortem* had removed yellow metal earrings and silver anklets, two rings and a nose ring etc. from the body and Police Constable Manubhai Madhavbhai, who was present at the time of *post mortem* had handed them over to him in connection with which a panchnama was drawn on 5.3.2002 between 13:30 to 14:15 hours and he had taken custody of such ornaments.

248.21 The witness has stated that the panchnama Exhibit-177 is the panchnama of taking custody of such ornaments.

248.22 The witness has thereafter identified the ornaments that were taken possession of under the said panchnama.

248.23 The witness has further deposed that as and when instructed by the Investigating Officer he had recorded

statements of witnesses. The witness has deposed that he has recorded statements of Sarfarazkhan Abbaskhan Pathan (PW-144) and Shahnawazkhan Abbaskhan (PW-145) on 9.3.2002, the statement of Parveenbanu Salambhai Qureshi (PW-152) on 6.3.2002, Ahmed alias Badshah Maheboobhussian Shaikh (PW-154) on 7.3.2002, Abdulmajid Mahammadusman Shaikh (PW-156) on 6.3.2002, Pirmahammad Allabax Shaikh (PW-165) on 7.3.2002, Mahammadhusssain Kaiyumbhai Shaikh (PW-167) on 7.3.2002, Zarinabanu Naemuddin Shaikh (PW 205) on 7.3.2002 and Mahammadkhalid Saiyedali Shaikh (PW 255) on 7.3.2002.

248.24 The witness has further deposed that the SIT had recorded his statement on 24.10.2008.

248.25 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that he had recorded the statements of the witness as stated by them. He had not recorded any fact not stated by the witness in the statement. It had also not happened that he had not written down any fact which the witness had stated. The witness has been cross-examined with regard to the statements of the witnesses recorded by him, reference to which shall be made while discussing the testimonies of the concerned witnesses.

248.26 The witness has admitted that till he carried out the investigation, no witness had made any allegation before him that any police employee or police officer was not properly carrying out the investigation.

248.27 The witness has admitted that in the year 2002

during the time of the incident, the open space and the area thereafter where the canal is situated behind Gangotri Gopinath Society fall within the jurisdiction of his police chowky. The witness has admitted that he had carried out patrolling, including the above area viz., the canal and the adjoining open ground, and all the areas falling within the jurisdiction of Krushnanagar Police Chowky. The witness has voluntarily stated that they were able to carry out patrolling only in the morning.

248.28 In his cross-examination, it has further come out that he had gone for patrolling in the canal and the open space area on 28.2.2002 in the morning at around 7 to 8 o'clock. He has admitted that at that time, the situation was peaceful and under control. Thereafter, he had no occasion for going on the road behind the canal. The witness has further stated that the area of the passage of Gangotri Gopinath Society falls within the jurisdiction of his chowky. He came to know of the incident that took place in the passage of Gangotri and Gopinath Society at 9 o'clock at night. He was not informed about this through any private person. The witness has voluntarily stated that he was informed about the incident through P.I. Shri Mysorewala. The witness has stated that after he came to know, as he had stayed for bandobust at the scene of incident, he could not go there.

248.29 SUBMISSIONS: The learned counsel for the appellants submitted that this witness came to know about the incident of Gangotri Gopinath at 10:00 p.m. and according to what has been stated by him in paragraph 109 of his cross-examination is at 9 o'clock at night. It was submitted that the

witness has admitted that he had never gone to the place of incident as he was busy with the bandobust. Therefore, the claim made by Shri Mysorewala that Shri P.U. Solanki was posted at the passage of the water tank to keep watch over the dead bodies while he was removing the injured to the hospital, is not correct.

248.30 ANALYSIS : This witness was patrolling in the canal and open space area in the morning at around 7 to 8 o'clock on the day of the incident, at which point of time the situation was peaceful and under control. According to this witness, the area of the passage and Gangotri Gopinath Society falls within the jurisdiction of his police chowky. This witness has also referred to the incident of a person starting the Tata 407 vehicle as well as the incident of a person by the name of Ranjitsinh being killed. In terms of the testimony of this witness, the Hindu mob had put obstacles on all four sides of the road due to which, the police staff and police vehicles could not move on the road and hence, the police attempted to disperse the mob. This witness has stated that the mobs entered the chawls in the Noorani Masjid area, Hussainnagar etc. and entered the houses in the chawls and damaged them. He has stated that the police did not have sufficient strength and police force, and hence, could not disperse the mob. Thus, though the area where the incident took place was within the jurisdiction of this officer and he was aware of the fact that the mobs had entered the chawls near the Noorani Masjid and Hussainnagar and had entered the houses in the chawls and damaged them and set them on fire, no steps were taken by him to prevent the mob. It appears that the witness continued to remain on the road and did not take any action against the

mob inside the chawls.

248.31 This witness has deposed that he came to know about the incident at the water tank only at 9 o'clock at night when Mr. Mysorewala informed him about it, whereas Mr. Mysorewala has stated that he had posted Shri P.U. Solanki at the passage of the water tank to keep a watch over the dead bodies while he was removing the injured to the hospital, which is contrary to the testimony of this witness.

249. **PW-277-Madansinh Takhatsinh Rana**, aged 63 years, has been examined at Exhibit-1867. The witness has deposed that he has retired from service on 31.12.2005. Prior to his retirement, he was discharging duties as an Assistant Police Commissioner in "G" Division, Ahmedabad city. Meghaninagar Police Station, Sardarnagar Police Station and Naroda Police Station were included in "G" Division. However, in February 2002, over and above "G" Division, he was also holding the charge of "F" Division. Dariapur Police Station and Shahibaug Police Station were included in "F" Division. In the month of February 2002, he was holding the charge of Assistant Police Commissioner in respect of all the five police stations.

249.1 On 27.2.2002, Shri Tandel the Joint Commissioner of Police of his Department called him at 9:00 to 9:30 in the morning and informed him that the kar sevaks who had been attacked and burnt in the Sabarmati Express at Godhra in the morning that day, are to arrive. Since Dariapur Police Station was under him, hence, he should go to Dariapur Police Station and take care as the said area is a communally

sensitive area. Hence, he had gone to the area of Tambu Police Chowky at Dariapur Police Station, which is considered to be most sensitive. After going there, he gave instructions to both the Police Inspectors at Dariapur Police Station and the Chowky P.S.I. to ensure that there is no communal tension. On 27.2.2002, at 18:00 hours in the evening, he had stayed at Dariapur Police Station area.

249.2 In the evening at 18:00 hours, their D.C.P. Shri Gondia had given instructions to the effect that a mattress shop of a Muslim in Nava Naroda Gam has been torched, and hence, he should reach there and maintain law and order. Hence, he went from Dariapur and came to the Nava Naroda area. Police Inspector Shri Mysorewala met him there. He informed him that the kar sevaks who have survived have returned to Nava Naroda Gam and they have talked to other people, whereupon the incident of burning of the mattress shop had taken place. Moreover, he also informed him that in this area, on Kathwada road, near Haridarshan Society, a Muslim has been assaulted. Hence, he visited both the spots. He had dispersed the small mob which was present there. Thereafter, he had carried out patrolling in the area with P.I. Shri Mysorewala. In connection with the incident that had taken place, he gave instructions to the police to take necessary action. Thereafter, upon it appearing to be peaceful at the spot, at around 21:00 hours, he returned to Dariapur Police Station and maintained patrolling at Dariapur Police Station till 24:00 hours.

249.3 At this time, he came to know that the Vishwa Hindu Parishad had given a call for Gujarat Bandh on

28.2.2002. A message was received from the Police Control Room that on 28.2.2002 in the morning, stand to bandobust be maintained from 7:00 hours in the morning due to which, he had come to Dariapur Police Station between 7:00 to 7:15 and carried out patrolling. On that day, in the morning at 10:00 hours, D.C.P. Shri Gondia had given instructions to the effect that it appeared that there was unrest in the Naroda Gam area of Naroda Police Station, and hence, he should reach there. Therefore, he departed and came to the Noorani Masjid.

249.4 After coming there, he saw that a mob of around five to seven thousand Hindu people had gathered near the Noorani Masjid. At this time, the Muslim mobs had also gathered in front of the Noorani Masjid at Hussainnagar and the Hindus resorted to nominal stone pelting at the Muslims standing at the Noorani Masjid. At this time, from Naroda Bethak, Naroda Gam, Sardarnagar, Krushnanagar, Saijpur, Thakkarnagar road, huge mobs of Hindus were coming towards the Noorani Masjid. Apart from pelting stones, the people in the Hindu mobs were burning scrap, tyres, etc. on the road and were trying to put obstacles on the roads.

249.5 After he reached the Noorani Masjid, P.I. Shri Mysorewala, Second P.I. Shri Gohel and D.C.P. Shri Gondia also arrived at the Noorani Masjid. They were trying to disperse the Hindu and Muslim mobs. They achieved a limited success in their attempts. The mobs would gather again in a little while. At this time, a Tata 407 tempo was lying near the Noorani Masjid, wherein a driver climbed in the vehicle and drove it towards the Hindu mob and the vehicle went in full speed towards Naroda Bethak. At this time, there was a stampede

amongst the Hindu mob and the anger of the mob against the Muslims increased.

249.6 P.I. Shri Mysorewala chased the tempo and apprehended it at a short distance and handed over the driver and the tempo to Naroda Police Station and returned to the Noorani Masjid.

249.7 At this time, the anger of the Hindu mobs further escalated and hence, they started pelting stones and throwing burning rags, glass bottles, etc. on the Muslims as well as on their houses, shops, masjid as well as the shops and other places on the side of Hussainnagar. Because of this, the Muslims also got more provoked against the Hindus and they too resorted to pelting stones and glass bottles, etc. To disperse the mobs, he had resorted to strong lathi-charging. However, the lathi-charge did not have any special effect.

249.8 Since the lathi-charge did not have much effect, he had also got tear gas shells burst. However, even that did not have any effect on both the mobs and hence, they had to take support of firing.

249.9 Shri Mysorewala and Shri Gondia's staff, etc. had resorted to firing. At this time, the fire brigade was also called for, but it did not come.

249.10 At that time, at around 12 o'clock in the afternoon, Shri Tandon, Joint Police Commissioner, Sector-2 came to the Noorani Masjid and upon seeing the situation, he took steps to obtain orders for imposition of curfew and imposed curfew in

the area. He declared curfew in the Naroda Police Station and returned to his area along with his squad.

249.11 They had announced about the curfew with loudspeakers. However, the curfew had no effect on the mob. The mob was not implementing the curfew at the spot.

249.12 At this time, messages of incidents taking place in the nearby Naroda area started coming, and hence, the concerned P.S.I. were sent to the scene of incidents in their area.

249.13 Thereafter, the Hindus made a representation to the police that the Muslims of Hussainnagar had pulled two Hindus into Hussainnagar, and hence, they should save them. Therefore, Police Inspector Shri Mysorewala went to Hussainnagar with his staff. He returned and informed that in connection with the representation, nothing has been found in Hussainnagar.

249.14 After a little while, a dead body of a Hindu was lying towards Hussainnagar. At that time, the Police Inspector took steps to remove the dead body to the hospital. The face of the dead body was highly mutilated and the eyes of the dead body were gouged out. Upon seeing the dead body, the Hindus became agitated to a large extent and with the firm intention of killing the Muslims, the Hindus rushed towards the Muslims.

249.15 The Muslims also were angry with the Hindus. Moreover, the Hindus had set the Muslims' residences, shops, Masjid and the Noorani Masjid on fire.

249.16 With a view to see that both the mobs do not come together, they had arranged that the police staff remains between two mobs. To disperse both the mobs, they had once again started making attempts like lathi-charging, bursting tear gas shells etc.; however, their efforts did not have much effect on both the mobs. Therefore, under the instructions of the DCP, they had resorted to firing at the spot. During this period, they had received a message to the effect that the houses of several Muslims have been burnt in the residential area of the Dargah behind the masjid which is situated in the area behind the Noorani Masjid.

249.17 In the stone pelting referred to by him, Shri Mysorewala and other police staff had sustained nominal injuries. At this time, it was around 1:30 in the afternoon.

249.18 Upon once again trying to disperse the mob, he had seen Shri P.J. Rajput (A-19), Kishan Korani (A-20), Raju Chaubal (A-24) and Babu Bajrangi present in the mob. All these four persons were talking about something with the people in the mob, but he had not heard what they were talking. However, the mob got more and more volatile. To disperse the mobs, the police once again resorted to lathi-charge, bursting tear gas shells and firing. Of course, there was some reduction in the mob; however, the mob was not dispersed. All this went on till 4 o'clock in the afternoon. In the afternoon between 4:00 to 4:30, upon the mob reducing a little, he and P.I. Shri Mysorewala went to other spots from which messages of other incidents had started coming. Prior thereto, upon receipt of such messages, he had also sent P.I. Shri Gohel to the spot.

These kinds of messages kept on coming from Naroda Gam and the masjid area of Naroda Gam.

249.19 They had gone to Naroda Gam and in the evening from 5:00 to 5:15, they had come to the Noorani Masjid when Shri Mysorewala was also with him. The mob at the site was very small and upon making attempts to disperse the mob, the mob was dispersed and he had instructed PI Shri Mysorewala to maintain bandobust and as the incidents were also taking place at Gulbarg Society situated in Meghaninagar, he set off from there.

249.20 While taking necessary action in connection with the incidents at Gulbarg, he was there till 24:00 hours. At this time, Shri Mysorewala had given a message to him on the telephone that near the water tank between Gopinath and Gangotri Society, there is a place which is enclosed from three sides, where dead bodies are lying. Shri Mysorewala also informed him that twenty seven injured (groaning) Muslims were there and that they have been removed to the hospital. Shri Mysorewala informed him that there are fifty eight dead bodies lying at the spot and that he has saved twenty seven Muslims from the spot and taken them to the hospital. He also informed him that an offence has been registered in connection with the incident at Naroda Police Station being I-C.R. No.100/02.

249.21 In connection with the incident, steps for drawing the inquest were taken and instructions were given to continue proper investigation.

249.22 Steps were taken to send the Muslims who were victims of the incidents to different relief camps.

249.23 On 28.2.2002, he had remained present at the Noorani Masjid and while maintaining law and order, thirty six tear gas shells were burst and the police staff had released one hundred and seventy one tear gas shells, fired ninety one rounds, wherein one Hindu and one Muslim person died.

249.24 In the meanwhile, representations were made to the Human Rights Commission that rapes were committed on Muslims on the day of the incident, therefore, he had received instructions from Shri Tandon to investigate in that regard. Hence, he had recorded the statements of several Muslim witnesses at the relevant time.

249.25 During this time, Shri Tandon had instructed him to record the complaint of Hussainabanu Asgarkhan Pathan (PW-135). Hence, he had gone to the relief camp and recorded her complaint. The complaint so taken was registered as Naroda Police Station I – C.R. No.238/2002. The witness has deposed that he had carried investigation into the offence till 30.4.2002 and had recorded the statements of the concerned witnesses. During the course of investigation, the scene of offence panchnama came to be drawn and upon Police Sub Inspector Shri S.S. Parmar producing a mobile phone in his presence, the custody of such phone was taken over by drawing a detailed panchnama.

249.26 The witness was shown Exhibit-880 which was the original complaint and the witness has deposed that he has

signed below the complaint and Hussainabanu has put her thumb impression in his presence and that he identifies the signature on the complaint.

249.27 The witness has further deposed that in connection with the complaint of Hussainabanu, he had drawn a panchnama. The panchnama was of the scene of offence which was identified by Hussainabanu, from where they had collected burnt ashes and the control sample. The panchnama was of 15.4.2002.

249.28 The witness is shown the panchnama Exhibit-888 and he has stated that he had taken possession of the mobile under this panchnama and has identified his signature as well as the signatures of the panch on the panchnama. The witness has further deposed that on 17.4.2002, from 10 o'clock to 11 o'clock in the morning, he had drawn another panchnama, whereby Shri S.M. Parmar had produced the mobile phone before him. The witness has deposed that the panchnama was drawn in the presence of both the panchas and has identified his signature as well as the signatures of the panchas on the panchnama and has admitted the contents thereof. The panchnama is given Exhibit-1868.

249.29 The witness was thereafter shown the mobile phone which was seized under the panchnama, Exhibit-1868 which was without a seal and he has admitted that this is the same mobile phone which he had taken possession of.

249.30 The witness has deposed that in case of serious offences, he is also required to make a visit and that the

visitations have been made in connection with this offence. The witness has deposed that whenever he goes for visitation, he is required to sign on the same document. The witness has thereafter identified his signature on the original complaint, Exhibit-1773 as well as on the inquest panchnama of fifty eight dead bodies, Exhibit-662. The witness has thereafter proved various documents enumerated in paragraph 35 of his deposition. The witness has further deposed that he has recorded the statements of several witnesses as enumerated in paragraph-37 of the testimony. The witness has stated that he can identify the people whom he had seen in the mob, namely, Kishan Korani, P. J. Rajput, Raju Chobal and Babu Bajrangi. The witness has thereafter correctly identified P. J. Rajput and Babu Bajrangi. Accused Kishan Korani and Raju Chobal had filed exemption applications and are, therefore, deemed to have been identified.

249.31 The witness has further deposed that during the course of investigation, Shri Chudasama as well as the SIT had recorded his statements. The witness has further deposed that the further investigation has been handed over to the Crime Branch and on 30.4.2002, he had handed over the investigation of C.R. No.238/2002 to the Crime Branch.

249.32 CROSS-EXAMINATION: In his cross-examination, the witness has stated that on 27.2.2002, he was not in the 'F' Division or 'D' Division office. The witness has voluntarily stated that he was patrolling. On 27.2.2002, there was no unusual situation at the tent chowky area; however, with a view to see that no communal incidents take place, they were required to carry on patrolling. The witness has stated that he

cannot say as to exactly when he had occasion to go to the Noorani Masjid for the first time on 28.2.2002 and has stated that on 28.2.2002, he mostly had occasion to visit Naroda Patiya, Naroda Gam, Gulbarg and Dariapur. The witness has stated that till Shri Mysorewala informed him, he did not know that the kar sevaks of Naroda Gam, who had survived, were going to come back. However, he had general information that kar sevaks were going to return, but he did not know that they were also from Nava Naroda Gam. The witness has admitted that after the Tata-407 incident and the incident of throwing a Hindu's mutilated body as well as rumour about two Hindus being pulled inside Hussainnagar, the unrest amongst the Hindus increased. The witness has admitted that on 28.2.2002, the curfew was not implemented; however, not a single case of breach of curfew had been registered. At around 12 o'clock in the afternoon on the road near the Noorani Masjid, seventeen to twenty thousand persons had gathered in the mob and at 10:30 in the morning, there was a mob of five to seven thousand people at the Noorani Masjid. The witness has stated that he did not have any discussion at the Noorani Masjid with Shri Mysorewala regarding the mob; however, they were continuously trying to disperse the mob. His own Gas Man had lobbed thirty six teargas shells at the Noorani Masjid on the day of the incident. The witness has admitted that on account of lobbing of teargas shells, there was a burning sensation in the eyes, due to which one could not see, and hence the mob would flee. The witness has voluntarily stated that due to this, the mob would only retreat a little and go to a place where the smoke did not affect them and thereafter, would immediately return back. The witness has stated that he does not remember as to how many statements of persons have been

recorded at Dariakhan Ghummat. The witness has stated that he remembers having gone to the Shah Alam camp but does not remember whether he had visited any other camp. The witness has stated that when he went to investigate, at that time, they used to call the witnesses from the camp to the police chowky situated near Shah Alam. The witness has stated that he used to call the affected persons to the chowky through his constable. The witness has admitted that during the course of his investigation, he has not gone inside the Shah Alam Relief Camp. The witness has stated that whenever he needed any witness he used to call only that witness to the chowky nearby. The witness has voluntarily stated that he had recorded one or two statements. The witness has stated that at a time he has not recorded statements of more than one or two persons. The witness has stated that during the course of the entire investigation, he has not recorded more than twenty five statements. The witness has stated that he had received a letter from Shri Tandon, wherein names of Muslim persons who had made representations were stated together with the camps and on the basis of the statements which were recorded, if it was necessary to call them, then from the statement, it would be revealed as to in which camp such person is.

249.33 The witness has admitted that he had seen the accused persons whom he had named and identified before the court between 1:00 to 1:30 in the afternoon. The witness has admitted that between 1:00 to 1:30 in the afternoon, their D.C.P. was also present at Naroda Patiya. The witness has admitted that at this time there were Hindu mobs on all four sides of the road and that he was at a distance of around 50 to

60 feet from the mob. The witness has admitted that his other officers were also at a distance of about 50 feet and they were trying to stop the mob. The witness has admitted that when he saw the accused in the mob they were talking with each other. The witness has admitted that people were coming and going from the mob and has stated that mostly the people were coming, namely that they were joining the mob. The contents of paragraph 21 of his examination-in-chief are read over to the witness wherein he has stated that he had seen all the four accused talking about something with the people in the mob, however, thereafter the mob had got more incited. The witness has denied that he has not stated such facts in any of his statements and has voluntarily stated that he has stated these facts in his statement date 24.5.2002.

249.34 The last three lines of paragraph 24 of his examination-in-chief are read over to the witness, wherein the witness has stated the Shri Mysorewala had further informed him that he had registered an offence in connection with the incident at Naroda Police Station. The witness has admitted that these facts have not been stated by him in his statement. The witness has admitted that he had reached Naroda Patiya at around 12:30 at night. When he reached there, the procedure for drawing the inquest panchnama was going on. The witness has admitted that at that time, he had a talk with Mysorewala with regard to what has been stated by him in paragraph 24 of his examination-in-chief. The witness has admitted that his statement was firstly recorded on 24.5.2002 and prior thereto, his statement was not recorded. The witness has admitted that till 24.5.2002, he had not stated before any authority that he had seen the accused named by him. The

witness has stated that he does not remember, at present, as to whether his higher officer had given him in writing or an oral order to investigate into the offence No.282/02. The witness has denied that he had drawn the panchnama of seizing the Mobile Exhibit-1868 without calling the panchas. The witness has stated that this mobile was not received in a sealed condition. The witness has stated that he had sealed the mobile at the time of drawing the panchnama and thereafter, he had not opened the seal.

249.35 The witness has admitted that during the course of his investigation, he had not ascertained from the complainant Hussainabanu that this was the very mobile which she had deposited. He has stated that when he received the phone it did not have any black cover over it.

249.36 The witness has stated that in the context of Crime Register No.238/02, he had sent a yadi to the Talati-cum-Mantri to draw a map of the scene of offence; however, he had not received any such map during the time when the investigation was with him. The witness has stated that in the investigation of C.R. No.238/02, he had not received any information to the effect that the mobile phone had been produced by the managers of the camp. The witness has stated that Shri Tandon had not given him any instructions that the mobile phone had been produced by the managers of the camp. The witness has stated that the information regarding from whom, when and how the mobile phone was recovered, may be available in the statements.

249.37 The witness has denied that while investigating

into C.R. No.238/02, he had recorded the statements of only important witnesses when the investigation was with him, for the reason that sometimes even not very significant statements are recorded during the course of investigation. The witness has admitted that when the investigation was with him, statements of important as well as unimportant witnesses may have been recorded. The witness has denied that he has recorded several statements during the course of the Naroda Patiya investigation. The witness has voluntarily stated that he had performed the task entrusted to him by Shri Tandon. However, he had never taken charge of the investigation of this offence.

249.38 The witness has admitted that on the day of the incident, officers together with the staff were present at Naroda Patiya. The witness has voluntarily stated that in proportion to the number of people in the mob, the number of the staff was minimal. The witness has stated that he is aware that there were police points near Noorani Masjid and near S.T. Workshop on the day of the incident. The witness has admitted that they were continuously making efforts to disperse the mobs from all four sides near the Noorani Masjid area. The witness has stated that he cannot say with certainty as to at which point, he was on the day of the incident. The witness has stated that he kept on moving between and near the two points. The witness has admitted that while he was on duty, he had not seen any person on the footpath or the divider of the National Highway drinking liquor or eating snacks and rioting. The witness has stated that he has not seen anyone in an open jeep. On the day of the incident, he had not seen any persons wearing khakhi shorts and undershirts with saffron bands tied

on their heads or having black bands on their eyes. The witness has stated that he has not gone towards Teesra Kuva. However, at present he does not even remember as to whether he had gone there. The witness has admitted that on the day of the incident while he was on duty, he had not seen any private firing.

249.39 The witness has been cross-examined by the defence to bring out the contradictions in the statements of the witnesses recorded by him, reference to which shall be made while discussing the evidence of the concerned witness.

249.40 The witness has also been examined by the court wherein he has stated that he is aware of the incident of taking out the goods from Paras Cotton Works and burning them as well as the incident of a person belonging to the minority community being assaulted at Hari Darshan Cross Roads at 7 o'clock in the evening on 27.2.2002. He had gone to both these places. The incident of Hari Darshan Cross Roads had taken place after 7 o'clock in the evening on 27.2.2002. Paras Cotton Works was a shop belonging to a Muslim. The witness has stated that when he went to Paras Cotton Works, there was a group of persons who had come to see the incident. At Hari Darshan Cross Roads also, there were many people who had come to see the incident. The witness has stated that as far as he knows, statements have been recorded in connection with both the incidents and complaints have been registered and both the offences have been investigated. The witness has admitted that despite the fact that the Naroda area is not a communally sensitive area, incidents took place on 27.2.2002 and in both the incidents, offences relating to human body and

properties belonging to the Muslim community had taken place, which he had found to be alarming. The witness has stated that upon finding the incidents to be alarming, he had instructed Senior P.I. Shri Mysorewala to requisition more vehicles and to arrange for police bandobust at the places where there was a Muslim population. The witness has further stated that he had also instructed Shri Mysorewala to detain the antisocial elements in the area on 27.2.2002. The witness has stated that he came to know from Shri Mysorewala that he had not arrested anyone in the context of the incident that took place on 27.2.2002. The witness has admitted that on 27.2.2002, no antisocial element was detained. The witness has admitted that despite the fact that Shri Mysorewala had flouted his orders, and had not investigated into the incidents that took place on 27.02.2002 and arrested the accused, and despite the fact that he had not detained any antisocial elements, he had not taken any steps against him in this regard. He had also not informed his higher officers about it.

249.41 The witness has stated that after the incidents of 27.2.2002, he has not made any inquiry as to what was the population of Muslims in the Naroda Police Station area and what was the population of Hindus and the proportionate population of Hindus and Muslims in the area. The witness has stated that he had learnt that prior to the incident, on account of the festival of Eid, Shri Mysorewala had placed police points in the Muslim area. The Eid festival was prior to 27.2.2002, at that time, Shri Mysorewala had placed three police points wherein insofar as Naroda Patiya area is concerned, one point was at Jikar Hassan-ni Chali, which is behind the Noorani Masjid, the second point was at the Noorani Masjid and the

third point was at the S.T. Workshop. The witness has stated that insofar as he knows, the number of police points which were placed during Eid had been maintained on 28.2.2002. On a query by the court, as to whether he was of the opinion that a stricter bandobust was necessary on 28.2.2002 compared to Eid, the witness has stated that he is in agreement that more police points than those put during Eid were necessary on 28.2.2002. The witness has stated that upon inquiring from Shri Mysorewala as to why more police points were not placed on 28.2.2002, he had stated that there were no chances of getting more help. The witness has stated that he may have asked for more assistance for Naroda Police Station from the Police Commissioner in writing, and if he finds any such letter having been written asking for more assistance, he will produce the same, but he himself has not sent any such letter.

249.42 The witness has stated that he is in agreement with the view that considering the seriousness of this case, it was necessary to place more documents with regard to efforts having been made for additional police on the record. The witness has stated that he believes that Shri Mysorewala must have asked for more police help on 27.2.2002. The witness has stated that he is not aware whether Shri Mysorewala had asked for more assistance by a letter dated 27.2.2002 on account of the incidents that had taken place or for any other reason. The witness has stated that there is a total staff of one hundred and twenty persons at Naroda Police Station, out of which, twenty members were kept in reserve and the remaining hundred police were used on the day of the incident.

249.43 The witness has stated he is conversant with the fact that the Muslim population in this area is mostly from Maharashtra and Karnataka. The witness has stated that he is aware that most of them do not even know how to speak Gujarati properly though they speak in Hindi. These Muslims are mostly illiterate or very little educated and are people who are engaged in labour work. The witness has admitted that protection to the people and properties in this area was insufficient on the day of the incident. The witness has admitted that Shri Mysorewala had prepared a list of the places where police points were placed as well as which person was placed at which point. The witness has admitted that he had not supervised such list. The witness has admitted that if the P.S.I.s are less, A.S.I.s or Head Constables can also be placed on police points.

249.44 The witness has stated that at the relevant time, there were three vehicles at the Naroda Police Station, which are Naroda-One, Naroda-Two and Police Van. Six other vehicles had been requisitioned on 27.2.2002. The witness has stated that he believes that they should have requisitioned more vehicles. The witness has stated that they had received a message from the Police Control Room to requisition vehicles as per necessity; however, Shri Mysorewala had requisitioned only six vehicles. The witness has stated that he believes that he (Mysorewala) should have requisitioned more vehicles. The witness has stated that he agrees with the view that it is not necessary that requisitioned vehicles have to be allotted only to P.S.I.s and that only that many vehicles can be requisitioned as the number of P.S.I.s. The witness has stated that on the day of the incident, requisitioned vehicles could also have been

entrusted to A.S.I.s as well as Head Constables. The witness has stated that such arrangement could have been made on 28.2.2002, but it was not done.

249.45 The witness has stated that on 28.2.2002 at 11:30 or 12:00 to 12:30 in the morning, the corpse of a Hindu person named Ranjitsinh was found from outside Hussainnagar. On that day, after the dead body was found, nothing could be done immediately for providing more bandobust for the reason that there were instructions not to ordinarily send wireless messages. Moreover, their D.C.P as well as Sector-2 Shri Tandon were present there. The witness has admitted that on the day of the incident at around 1 o'clock in the afternoon, about twenty four S.R.P. personnel were sent. The twenty four S.R.P personnel, who were received by them, were not placed in the interior areas of Muslim chawls etc. opposite the S.T. Workshop for the reason that the Hindu mob on the road was so huge that if they reduced the number of police, the mobs would have entered the Muslim areas. The witness has admitted that later on it had dawned upon him that serious offences against the human body had taken place in the interior areas where police points were not placed and that in the other areas there were only scattered incidents.

249.46 The witness has stated that he could not pay attention towards the Naroda area for the reason that the Naroda area was not the kind of area where communal riots would take place and, hence, his attention was on the Dariapur area. The witness has admitted that he could not foresee that if proper police points or bandobust are not placed communal tension could take place at Naroda also. The witness has

admitted that in connection with the two incidents that took place in the evening on 27.2.2002, except for giving instructions to the P.I., he was not able to do anything. The witness has stated that, at present, he does not remember as to whether any orders had been passed by the Police Commissioner giving powers to recall the police staff which was on leave on 27.2.2002.

249.47 The witness has admitted that when he reached the Noorani Masjid at 10:30, Hindus were pelting stones at the Noorani Masjid. Shri Mysorewala had arrived at the Noorani Masjid after he reached there. The witness has admitted that in his presence, witness Abdul Majid Mohammadusman Shaikh (PW-156) had stated that on 28.2.2002, in the morning at 9:30, the mobs were damaging the Noorani Masjid and setting it on fire. He could not investigate in this regard.

249.48 The witness has admitted that at 10 o'clock in the morning, he was receiving messages that mobs are gathering in the Noorani Masjid area. The witness has admitted that at 10 o'clock, a message saying "all is well" had been received from Naroda-One, however, no message had been received that mobs had started gathering there. The witness has admitted that the message of "all is well" which was received at 10 o'clock had been registered by Shri Mysorewala in the message book and was given to the Police Control Room; however, upon seeing the incidents at the Noorani Masjid at 10:30 in the morning, he had felt that all is not well in the area. However, thereafter he could not send any message to the Police Control Room, which, in fact he should have sent.

249.49 The witness has admitted that if through message book or wireless message, a message had been sent to the Police Control Room with regard to the situation at the spot and regarding the position of the incidents that took place near the Noorani Masjid, possibly, the highest Police Officers might have been able to help or give some instructions.

249.50 The witness has admitted that during the course of visitation, he is required to supervise the visitation offences of the police station. The object of visitation is that offences of a serious nature are properly investigated and in case there is any mistake or neglect in the investigation, then the attention of the Investigating Officer can be drawn towards it and the mistake can be rectified. The witness has admitted that he has found this offence to be a serious offence and the investigation was with an officer under his jurisdiction till 8.3.2002. During this period, no test identification parade had been carried out and no F.S.L. Officer had visited the place and taken samples and the assistance of a Dog Squad had not been taken.

249.51 The witness has stated that as far as he knows, in connection with the incidents that took place on 28.2.2002, as well as the breach of curfew by the people in the mob, not a single person has been arrested and no case been registered against anyone. They had dispersed the mobs at the site but had not arrested any person from the mob. The witness has agreed that on the day of the incident when the situation was under control, at that time, if they had taken proper steps, communal riots would not have spread to such an extent at Naroda and the loss of lives and damage to properties could possibly have been averted. The witness has stated that on

that day, upon coming to know of the fact that the kar sevaks belonged to Nava Naroda, police arrangement had been made, however, no other bandobust had been arranged. The witness has stated that the reason for placing a police point near the S.T. Workshop was because there are Muslim chawls opposite to the S.T. Workshop compound wall and for the purpose of protecting such Muslims. The witness has stated that he was aware that it was possible to go into the Muslim chawls from paths other than the road next to the S.T. Workshop. The witness has stated that he is not aware that it was possible to go to the Muslim chawls from next to the S.R.P. Quarters. The witness has stated that Shri Mysorewala should have placed police points also at the points where one could enter inside Muslim chawls from the rear side. The witness has admitted that on account of the workload at Dariapur Police Station, it did not occur to him to give instructions to Shri Mysorewala to place police points on all the roads from which one can enter inside the Muslim chawls from the rear side. The witness has admitted that on 28.2.2002, keeping in view the date as well as the two incidents that took place in the Naroda area on the previous day as well as keeping in view the bandh call, he had not felt the movement of people to be routine and he had found it to be unnatural. The witness has stated that, at present, he does not remember as to how he received such information but he must have learned about it from Shri Mysorewala. The witness has admitted that when Shri Mysorewala informed him that he had given a message to the Police Control Room at 10 o'clock, that "all is well", at that time, he had felt that he ought to have given instructions about the movement at the site and should not have given a message of "all is well". The witness has admitted that he had

not given him any instructions in this regard.

249.52 The witness is shown an extract of the Naroda-One Log Book Exhibit-1786. The witness has admitted that after giving the message at 10 o'clock that "all is well", not a single message has been given after he reached the Noorani Masjid at 10:30 and stone pelting was going on.

249.53 The witness has admitted that no steps were taken by the Naroda Police to provide treatment or to issue treatment yadi to a single person who was injured in the police firing on the day of the incident. The witness has stated that on account of the Godhra incident, Hindus were highly provoked against the Muslims and every Hindu, except for small children, had come out of his house. On that day, the anger of the Hindus was at its peak and they were opening their buttons and telling the police to shoot them on their chests.

249.54 The witness has admitted that he personally had not asked for any help by way of armed police from the Police Commissioner. Unarmed police are given firing practice every year and that during the course of training, they are given training for firing. The witness has admitted that on the day of the incident 91 rounds were fired wherein two persons died and five to six persons were injured. The witness has stated that it might be possible that more people who were injured belonged to the Muslim community and there might be some Hindus also. The witness has admitted that he has not taken any steps to see that those who were injured in the firing receive compensation. The witness has stated that he is in agreement with the suggestion that while investigating into

any case, the initial days are considered to be most important days for collecting of evidence. The witness has admitted that till 8.3.2002, when the investigation was with an officer under his jurisdiction, scientific evidence could have been collected in connection with the incident; however, the Investigating Officer has not collected such evidence. The witness has voluntarily stated that after 28.2.2002, communal riots had continued. As an A.C.P. his area of jurisdiction was very wide and he had the charge of 'G' Division as well as 'F' Division. During this period, he was required to carry out visitation of many serious offences and Dariapur Police Station within his area was considered to be a communally sensitive area, and hence, his workload was very immense. The witness has stated that he could not use the experience gained by him during the communal riots that took place when he was a P.I.

249.55 To bring out the omissions and contradictions as to his previous statement, the defence has cross examined the Investigating Officer who had recorded such statement. PW-307, S. S. Chudasama, the Investigating Officer has admitted that he has recorded the statement of this witness on 24.5.2002. The contents of paragraph 21, from second line to the sixth line, of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that thereafter, the mob got more instigated. The Investigating Officer has denied that the witness has not stated these facts in the statement recorded by him. He has stated before him that the witness had stated that at around 2:00 to 2:30 in the afternoon, he had seen Kishan Korani (B.J.P. Worker) and Raju Choubal, Babu Bajrangi as well as Shri P. J. Rajput (V.H.P.) in the mob. They were talking something in the

mob. However, he could not hear them and know about it. The Hindu mob was still aggressive and continued shouting “kill, cut”. The Investigating Officer has admitted that this witness in his statement has not stated that after talking with the four people, the mob got further provoked. However, he has clearly stated that the mob was instigated and that the incitement continued.

249.56 SUBMISSIONS: Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this witness has named five persons in the mob at around 1:00 to 1:30 p.m., talking to somebody. So far as he is concerned, he has taken action in respect of dispersing the mob and giving orders to his subordinates to use force like teargas firing and lathi charge to disperse the mob. He was not in charge of only one area but since on that day, there was disturbance in the area, he spent considerable time in controlling the situation. According to him, because of the Godhra incident Hindus were having a grievance against the Muslim community and the mob was so large in proportion to the police that it was difficult to control the situation. He has not avoided any duty on 28.2.2002 and acted as per the best of his ability. It was submitted that in the cross-examination of this witness, there are not many contradictions which would go to the root of the matter, more particularly, the names of the five accused mentioned by him in his examination-in-chief and the same is supported in the cross-examination. It was submitted that in that view of the matter, the evidence of this witness is believable and credible.

249.57 ANALYSIS: This witness is an eye witness of the incidents that took place on the highway on the day of the

incident and has named four accused persons namely P.J. Rajput, Kishan Korani, Raju Chaubal and Babu Bajrangi, and has identified them. As per the version given by this witness, he received a message at 10:00 a.m. that mobs are gathering at the Noorani Masjid, and hence, he came there at around 10:30 a.m. At that time there were mobs of around five thousand to seven thousand people. The witness speaks about the mobs burning tyres etc. on the road to create obstacles, which has not been deposed by any other witness, including the police witnesses. According to the witness, attempts were made to disperse the mobs, with little success. Thereafter a Muslim youth drove a TATA 407 through the crowd, whereafter the tension escalated and the police had to resort to lathi charge and firing. At around 12:00 in the afternoon, there were around seventeen thousand to twenty thousand people in the mobs. Shri Tandon came at around 12:00 in the afternoon. From the testimony of this witness, it, therefore, emerges that police firing took place between 10:30 to 12:00 in the morning hours. The witness thereafter speaks of Hindus making a representation about two Hindus having been dragged inside the chawls and Mr. Mysorewala, together with his staff gone into the Muslims chawls on foot to ascertain such fact but found that it was not true. This is in stark contrast to the indifference shown by the very same police when Muslims died or were injured in the police firing. This witness in his examination by the court has admitted that no steps were taken to provide treatment to a single person who was injured in the police firing on the day of the incident nor had any treatment yadi been issued by the Naroda Police. It has come on record through the evidence of eyewitnesses that despite specific request having been made to call an ambulance, no

help was provided to them. Thus, the injured Muslims were not provided any assistance and were left to the mercy of the mob. One can only think of the plight of the injured, inasmuch as, the Muslims were confined to the chawls and were not permitted to come out on the highway, whereas under the pretext of dispersing the mobs, in effect and substance, the police let the mobs loose in the chawls and turned a blind eye to what was happening in the chawls, the result whereof is evident.

249.58 The witness has further deposed about a mutilated dead body of a Hindu having been found which further provoked the mobs. Thereafter at around 1:00 to 1:30, he saw the accused named by him talking to the people in the mob. At around 4:00 to 4:30 there was a reduction in the mobs at which point of time he had left for other spots from which messages of other incidents had started coming. He returned to the Noorani Masjid by 5:00 to 5:15, at which point of time the mobs were so sparse that they could easily be dispersed, whereafter he left. Thus, according to this witness, there were no mobs on the road after 5:00 to 5:15, but the witness is totally silent regarding the situation in the chawls. It is quite strange that despite the fact that incidents of violence were taking place in the chawls throughout the day and there were numerous incidents of arson, which could not have gone unnoticed from the highway, the witness is totally silent about it and does not appear to have deemed it fit to send the police inside the chawls to stop such incidents. The witness has stated that the twenty four S.R.P personnel, who were received by them, were not placed in the interior areas of Muslim chawls etc. opposite the S.T. Workshop for the reason that the

Hindu mob on the road was so huge that if they reduced the number of police, the mobs would have entered the Muslim areas. Nonetheless, not only did the mobs enter the Muslim areas and cause death and destruction, the police, including this witness have feigned total ignorance of what was going on in the chawls throughout the day. Besides, it appears as if the police have thought it their duty to maintain the law and order situation only on the road, which too, they miserably failed to discharge.

249.59 The witness has deposed that he had instructed Shri Mysorewala to requisition more vehicles as well as to detain anti-social elements; however, his orders were flouted with impunity but he did not deem it fit to take any steps against him or to report the matter to the higher authorities. According to this witness, when he inquired from Shri Mysorewala as to why he had not placed more police points, he had said that there were no chances of getting more help. If what is stated by this witness is true, then Shri Mysorewala has acted merely on the basis of assumptions and presumptions by not asking for more assistance.

249.60 From the testimony of this witness it further emerges that the witness agrees that Shri Mysorewala did not do the needful at the time of the incident to protect the Muslim residents and their properties. He further agrees that despite several defaults, he has not suggested that any action be taken against him.

249.61 This witness has deposed that when they were once again trying to disperse the mob, he had seen Shri P.J. Rajput

(A-19), Kishan Korani (A-20), Raju Chaubal (A-24) and Babu Bajrangji present in the mob. All these four persons were talking about something with the people in the mob, but he had not heard what they were talking. However, the mob got more and more volatile. Considering the testimony of the witness his presence on the road in cannot be doubted, nor has the defence sought to suggest that the witness was not present on the highway as deposed by him. In the cross-examination of the witness nothing has been brought out to suggest that the witness bore any animosity against the accused named by him. The witness is consistent in his version insofar as the accused named by him and the role attributed to them is concerned. Under the circumstances, there is no reason to disbelieve the witness in this regard. Through the testimony of this witness, the prosecution has therefore, succeeded in establishing the presence of the above accused in the mob on the road on the day of the incident.

250. **PW-278 Rameshkumar Bhavanishankar Joshi** has been examined at Exhibit-1886. The witness has deposed that since the last one and a half year he is discharging duties as a P.I. in C.I.D. Crime, Ahmedabad zone.

250.1 From 1997 to October, 2002, he was discharging duties as a P.S.I. in the Ahmedabad city Crime Branch. At that time, he was required to perform the tasks entrusted to him by the Police Inspectors in the Crime Branch or Officers of a higher designation. At the relevant time, Shri S.S. Chudasama was posted as the Assistant Police Commissioner in the Crime Branch and at that time Shri S.T. Agrawat was working as a Police Inspector in the Crime Branch.

250.2 In connection with the complaint lodged regarding communal riots that had taken place at Naroda Patiya in Ahmedabad city on 28.2.2002, a complaint was registered at the Naroda Police Station and the investigation into two other cases were being handled by Shri Chudasama.

250.3 In connection with the investigation, Shri Chudasama called him everyday and gave instructions and orders. Pursuant thereto, he had gone to the Shah Alam relief camp for recording statements of individuals who were victims of the communal riots and after meeting them and taking them to their residences at Naroda Patiya, they would show their residential houses and in the presence of two panchas, a detailed panchnama would be drawn regarding the damage caused to the properties in the communal riots as shown by the witness, a detailed panchnama was drawn in the presence of the witness and the panchas. After inquiring from the witnesses, as stated by them, detailed statements regarding the incident were also recorded. He had recorded statements on 7.5.2002 to 17.5.2002 as well as on 26.6.2002. Out of the statements recorded by him, he had recorded statements of Abdulhak Abdulrahim Luhari (PW 92), Nazirmahammad Faizmahammad Shaikh (PW 148), Chandbhai Abdurashid Shaikh (PW 124) on 7.5.2002, Shakurbhai Tajubhai Shaikh (PW 140), Abdulmajid Mahammadhussain Shiakh (PW 156), Rafiq Kallubhai Shaikh (PW 162) on 8.5.2002; Rahemanbhai Shakurbhai Saiyed (PW 114), Dildar (Dilawar) Umrao Saiyed (PW 143) on 9.5.2002; Mahammadkhurshid Mahammadnaseem Shaikh (PW 24) on 10.5.2002; Shabana Bundubhai Kureshi (PW 209), Rukshana Bundubhai Kureshi

(PW 212); Noorjahan Abdulkadir Shaikh (PW 246) and Hajrabibi Abdulsamad Shaikh (PW 259) on 11.5.2002; Sarmuddin Khwajahussain Shaikh (PW 59), Naseembanu Mahammadkhalid Saiyed (PW 68), Rashidkhan Ahemadkhan Makrani (PW 77), Farhana Ayubkhan Pathan (PW 106), Faridabibi Abdulkadar Khalifa (PW149), Mahammadhanif Yusufbhai Shaikh (PW 184) and Taherabanu Mahammadkasam Abduldar (PW 186) on 12.5.2002; Sufiyabanu Yakubbhai Basirahemad (PW 45, Mahammadimran Imtiazhussain Momin (PW 189) on 13.5.2002; Mahammadbhai Bachubhai Belim (PW 188) on 15.5.2002; Noorbanu Zakirhussain Saiyed (PW 219) on 26.6.2002.

250.4 The witness has deposed that on 26.6.2002, he had recorded statements of several witnesses in connection with the task entrusted to him and had submitted a detailed report in that regard to the Investigating Officer Shri Chudasama. The witness has further deposed that in connection with the action taken by him, the S.I.T. had recorded his statement on 25.1.2009.

250.5 CROSS EXAMINATION: In the cross-examination of the witness, he has admitted that he had read the statement recorded by Shri Chaudhary and has understood it and signed the same. The witness has admitted that he has not recorded the facts regarding the statements recorded by him in his case diary because he was not the Investigating Officer but had only carried the task in terms of the instructions given by the Investigating Officer.

250.6 The witness has further admitted that in the

statement of the witnesses he had recorded what was stated by them and has recorded what was referred by them in the panchnamas. The witness has admitted that it has not happened that he has not noted down any fact stated by the witness and that despite the witness having named some accused, he had not written them down. The witness has stated that he has not taken the signatures of any of the witness whose statements he has recorded. The witness has admitted that he used to go to the Shah Alam camp for recording the statements of the witnesses and thereafter used to take the witness to the concerned place for drawing the panchnama. The witness has stated that no police table was placed at the Shah Alam camp. He has not seen any one taking down complaints or writing down any printed complaint at the Shah Alam camp. The witness has stated that he has not seen any police station being setup at the Shah Alam camp. No police chowky has been setup near the camp or the masjid. However, there was a S.R.P. point there.

250.7 In the cross-examination of the witness, it has further come down that he has visited the Shah Alam camp approximately fifteen times. He would remain outside the Shah Alam camp and sit in his vehicle and his staff would go inside the camp and would call the concerned person outside to his vehicle. In the cross-examination of the witness, it has further come out that he has taken statements of witnesses as well as victims. The statements were in connection with the incident as well as the damage caused to the houses of the victims. The witness has thereafter been cross-examined to bring out the omissions and contradictions as to the statements of the witnesses recorded by him, reference to which is made in the

testimony of the individual witness.

250.8 ANALYSIS: From the testimony of this witness, one can see the manner in which the statements of the victims were recorded. The Investigating Officer has assigned the task of recording statements of witnesses to the assignee officers. The statements of those witnesses who came forward for recording their statements have been recorded. The assignee officer has not gone inside the camp. He has parked the vehicle outside the camp and his staff would go inside, call the concerned person and he would record the statement while sitting inside his vehicle. This is the manner in which the statements of the witnesses have been recorded which gives an indication to the kind of treatment the victims of the offence have been meted out.

251. **PW-279 Bhanjibhai Jivabhai Sadavrati** has been examined at Exhibit-1907. This witness has deposed that till 30.6.2007, he was serving as a P.S.I. in the Keshod Division and has thereafter retired.

251.1 In the year 2002, he was working as a P.S.I. at the Ahmedabad Crime Branch. He was at the Crime Branch till November, 2002. While he was at the Crime Branch, as a part of his duties, he was required to perform the tasks entrusted to him by his senior officers like the Police Inspector, Assistant Police Commissioner, Deputy Police Commissioner and Joint Police Commissioner. Moreover, he was required to perform any task which was entrusted to him in connection with any offence which was being investigated by the Crime Branch.

251.2 The investigation in the offence registered as Naroda Police Station I-C.R. No.100/02 was with then Assistant Police Commissioner Shri S.S. Chudasama in the year 2002. Moreover, the offences registered vide Naroda Police Station I-C.R. No.98/02 and Meghaninagar Police Station I-C.R. No.67/02 were also with Chudasama. During this period, in connection with the instructions given to him by the Assistant Police Commissioner he had gone in a Government vehicle to Shah Alam camp for recording statements of the affected persons of I-C.R. No.100/02 who were at the relief camp on 12.5.2002 and 13.5.2002. He used to record the statements of the affected persons as stated by them and would read over the statements to them and would sign the same as having been made in his presence. He had given a detailed report regarding the task performed by him together with all the statements to Shri Chudasama.

251.3 The witness has further deposed that as per the instructions of Shri Chudasama on 14/15/16.5.2002, he had gone to the Shah Alam camp and had taken the affected persons to the spot, and as shown by them, he had drawn panchnamas of the damage cause to their houses in the presence of panchas and had also recorded the statements of the affected persons at that time. He would then report of the entire proceeding to Shri Chudasama on the same day.

251.4 The witness has further deposed that on 12.6.2002, he was instructed by Shri Chudasama to obtain blood samples of two relatives each of five persons who were stated to be missing or dead, through the C.M.O. Civil Hospital and hand over the same to the F.S.L. with the necessary yadi, in respect

of which he had obtained a receipt.

251.5 The witness has thereafter proved the yadi Exhibit-1498, which he had returned to the CMO for obtaining a blood sample for D.N.A. profile analysis. The witness has further deposed that he had recorded the statements of Sardarali Kasamali (PW 74), Kaiyumkhan Rashidkhan (PW 141), Aiyeshabibi Abdulkadar (PW 168), Mustaqahemad Abdulrazzak (PW 171), Arifali Kasamali (PW 172), Gulammahammad Faizmahammad (PW 223) and Mahammadyunus Abdulhaik (PW 248) on 12.5.2002; Badshah Abdulkadir (PW 69), Altafhussain Abdulraheman (PW 187), Samsuddin Shahabuddin (PW 202), Shokat Nabibhai (PW 200) and Maiyuddin Ahmedmiya (PW 75) on 13.5.2002; Salim Yusifbhai (PW 91) on 15.5.2002 and Basirkhan Nanhekhan (PW 136) on 16.5.2002.

251.6 The witness has deposed that over and above the above statements, as and when the Investigating Officer Shri Chudasama had instructed him, he had recorded statements and taken other action. The witness has further deposed that in connection with all the proceedings taken by him, the S.I.T. had recorded his statement on 6.3.2009.

251.7 CROSS EXAMINATION: In his cross examination, the witness has admitted that except for the statement recorded by the S.I.T., no other statement of his has been recorded. He has admitted that his signature was obtained below his statement. Certain extracts of his statement recorded by the SIT are put to the witness, without seeking to contradict him qua any part of his evidence, which is not permissible and hence, not admissible in evidence. Therefore, it is not

necessary to refer to the same. In his cross-examination, it has come out that when they went to the camp announcements were made on the mike calling upon the affected persons that vehicles had come for taking them to Naroda Patiya and anyone who wanted to go, may go. The announcement was made only in respect of loss and damage panchnamas and recording of statements. The witness has admitted that he had recorded all the statements in accordance with what was stated by the witness and it has not happened that he has not written what was stated by the witness or that he had written down anything on his own.

251.8 The witness has been cross-examined to bring out the omissions and contradictions in the statements of the witnesses recorded by him, reference to which is made in the testimonies of the individual witnesses.

251.9 ANALYSIS: From the testimony of this witness, it emerges that the statements of only those witnesses who came forward were recorded. No effort was made to carry out investigation to ascertain as to who are the culprits in the offence. From the evidence of the witness, it further emerges that no efforts were made to record the statements of the victims of the offence and merely the statements of affected persons who came forward were recorded. Thus, it appears that no genuine efforts were made to investigate into the case to ascertain as to who were the actual offenders in the offence and the prosecution has merely recorded the statements of witnesses who came forward for recording them.

252. **PW-280 Bhanushankar Chhaganlal Joshi** has

been examined at Exhibit-1915. The witness has deposed that since the month of April, 1999 to 16.11.2002, he was discharging duties as a P.S.I. in the Ahmedabad City Crime Branch.

252.1 As a part of his duties, he was required to perform the task as per the instructions and orders of his higher officers, namely, the Police Inspector, Assistant Police Commissioner, Deputy Police Commissioner and Joint Police Commissioner.

252.2 On 28.2.2002, there were riots in Ahmedabad city in connection with the call for Gujarat Bandh. In connection with the incidents that took place, the investigation of Naroda Police Station I-C.R. No.100/02 and Gulbarg case were entrusted to the Ahmedabad City Crime Branch. The investigation of C.R. No.100/02 was entrusted to their Assistant Police Commissioner Shri S. S. Chudasama. In connection with the investigation, he would issue oral and written instructions to them every day on the basis of which, together with their staff they would go to the relief camps where the affected persons and victims were staying. They would take them in Government vehicles to their residences, etc. and would draw the panchnama of the damage sustained by them, as shown by them, in the presence of panchas, and would record their statements, as stated by the witnesses. The witness has deposed that he has read over the statements to the witnesses.

252.3 The witness has deposed that he had made written reports and had handed over the papers to Shri Chudasama.

The witness has deposed that on 11.6.2002, he had taken the witnesses from the relief camp with him to Naroda Patiya and had drawn panchnamas of their houses, as shown by the witnesses and had recorded their statements. The witness has deposed that on 11.6.2002, he had recorded the statements of Zulekhabibi Sardarahemad Sarmuddin (PW 176), Rashidabanu Imtiazhussain Momin (PW 192), Abdulrazzak Abdulraheman Saiyed (PW 204) and Nazirkhan Rahimkhan Pathan (PW 208).

252.4 The witness has deposed that in connection with the action taken by him, the S.I.T. had recorded his statement on 7.12.2008.

252.5 CROSS EXAMINATION: In the cross-examination of this witness, he has admitted that except for the statement dated 7.12.2008, no other statement of his has been recorded. The witness has admitted that he has signed his statement and has also read his statement.

252.6 In paragraph 14 of his deposition, the witness has admitted that in the statements of the four witnesses recorded by him on 11.6.2002, as stated in paragraph 5 of his examination-in-chief, the witnesses have not named any accused. The witness has voluntarily stated that the statements were in connection with the loss caused to the witnesses.

252.7 The witness has been cross-examined with regard to the omissions and contradictions in the statements of the witnesses recorded by him, reference to which has been made in the testimony of the concerned witness.

252.8 On a question by the court, the witness has admitted that in case where the houses of the witnesses were burnt, he had recorded the statements while standing as there was no other arrangement for recording the statements.

253. **PW-281 Dhananjaysinh Surendrasinh Vaghela** has been examined at Exhibit-1918. The witness has deposed that, at present, he is discharging duties as a P.I. in the Intelligence Branch, Gandhinagar. In the year 2008, he was discharging duties as a Police Inspector at Anand District.

253.1 From 2.9.1997 to 11.11.2002, he was discharging duties as a Police Sub-Inspector in the Ahmedabad City Crime Branch. His duties, while at the Crime Branch, were to perform the tasks entrusted to him by the higher officers in the Crime Branch.

253.2 The witness has further deposed that while he was discharging duties as a Police Sub Inspector in the Crime Branch, on 28.2.2002, communal riots had erupted in Ahmedabad city, in connection with which, the Investigating Officer of Naroda Police Station I-C.R. No.100/02 was the Assistant Police Commissioner, Crime Branch. In connection with the investigation, as per the instructions of the Assistant Police Commissioner, the Police Sub Inspectors discharging duties at the Crime Branch used to go to different relief camps in different parts of the city where the victims and the affected persons of the communal riots were residing and take them to Naroda Gam, Naroda Patiya, Gulbarg Society, as per the residential place shown by them and draw the panchnama in

the presence of panchas as well as record their statements regarding the incidents, as stated by them, and thereafter, drop them at the relief camp and submit a report with a forwarding letter regarding the action taken in the day together with the statements and panchnamas to the Assistant Police Commissioner.

253.3 Accordingly, he, pursuant to the oral instructions received by him, on 12.5.2002, 13.5.2002 and 7.6.2002 and other dates, had drawn panchnamas of the residences of the persons affected by the communal riots and had recorded their statements, as stated by them. Out of whom, he had recorded the statements of Bizanbibegum Usmanbhai Shaikh (PW 62), Basubhai Maiyuddin Saiyed (PW-73), Zubedaben Mahammadidrish Belim (PW-169), Mahammadjalaluddin Ibrahim Shaikh (PW-170) and Mariambibi Hasanbhai Saiyed (PW-261) on 12.5.2002; Shahidhussain Abdulgafur Shaikh (PW-232), Maiyuddin Imamuddin Shaikh (PW-244) on 13.5.2002 and Kamrunisha Muradali Shaikh (PW-56) and Salim Rahimkhan Shaikh (PW-217) on 7.6.2002.

253.4 The witness is shown the panchnama Exhibit-1455 and he has identified his signature as well as the signatures of the panchas thereon. The witness has further deposed that in connection with the action taken by him, the S.I.T. has recorded his statement on 6.12.2008.

253.5 CROSS EXAMINATION: In the cross-examination of the witness, it has come out that he had signed on the statement recorded by the S.I.T. and that he had read and understood the statement and thereafter signed it.

253.6 The witness has admitted that he had recorded the statements of witnesses as stated by them and that it has not happened that he has not recorded what is stated by the witnesses and has recorded what has not been stated by the witnesses.

253.7 The witness has admitted that he had recorded the statements of the witnesses after putting necessary questions in the context of the incident.

253.8 The witness has been cross-examined to prove the omissions and contradictions in the testimonies of witnesses as to their statements recorded by him, reference to which shall be made while discussing the testimonies of the said witnesses.

254. **PW-282 Kalubhai Sartanbhai Desai** has been examined at Exhibit-1922. The witness has deposed that, at present, he is discharging duties as a Police Inspector in the Anti Corruption Bureau at Palanpur.

254.1 During the period 1997 to 2002, he was discharging duties as a Police Sub Inspector in the Crime Branch, Ahmedabad. At the relevant time, as a part of his duties, he was required to perform the tasks entrusted to him by the higher officers in the Crime Branch. At the relevant time, his higher officers were the P.I. as well as the then A.C.P. Crime Branch Shri Chudasama.

254.2 In the context of the Godhra incident, there were

riots in Ahmedabad city in the year 2002, wherein the investigation of Naroda Police Station I-C.R. No.100/02 and other offences were entrusted to Crime Branch A.C.P. Shri Chudasama.

254.3 During this period, Shri Chudasama had passed an order that in connection with this offence, in case of any persons who were affected by the communal riots, they should go with them and draw panchnamas of the damage caused to their houses and also record the statements of the witnesses. On the basis of such orders, he had drawn panchnamas of the properties of the affected persons and recorded their statements. They used to bring them from the camp to Naroda Patiya. The witness has deposed that in connection therewith, he had recorded the statements of Yunus Mahammad Shaikh (PW 85) on 15.5.2002, Umedhasan Kallubhai Shaikh (PW-38) on 16.5.2002, Hussainbhai Valibhai (PW-105) and Mahammadyunus Abdulhai Chaudhary (PW-248) on 17.5.2002 and Mahammadsalim Mahammadhussain (PW-104) and Ibrahimbhai Chotubhai Shaikh (PW-115) on 11.6.2002.

254.4 The witness has deposed that over and above the witnesses named by him, he had recorded statements of other witnesses also and that he used to perform the task in terms of the instructions issued by Shri Chudasama and used to submit a written report together with the papers to Shri Chudasama.

254.5 The witness has further deposed that in connection with the action taken by him, his statement was recorded by the S.I.T. Officers on 24.12.2008.

254.5 CROSS EXAMINATION: This witness in his cross-examination has admitted that he has recorded the statements of witnesses as stated by them. He had read over and explained their statements to them. He had not written down anything in the statements according to his wishes and it has not happened that he has not written down what was stated by the witnesses.

254.6 He has stated that when he went to Naroda Patiya and drew panchnamas, he had called the panchas from the site. He has admitted that no one was living in the Naroda Patiya area and all the people were staying at relief camps. The witness has voluntarily stated that a few people were residing there as people were present and there was police bandobust also. The witness has admitted that Shri Chudasama had instructed him to take statements in the context of the incident only. The witness has denied that he had only recorded statements of loss and damage. The witness has stated that he must have written what the witness must have stated.

254.7 The witness has denied that upon announcing on the mike at the camp, the affected persons had come. The witness has stated that when the police vehicle goes to the relief camp, the affected persons will come.

254.8 The witness has been cross-examined to bring out the contradictions in the testimonies of the witnesses as to the statements recorded by this witness, reference to which shall be made while discussing the testimonies of the concerned witnesses.

255. **PW-283 Jagdishsinh Temubha Chudasama** has been examined at Exhibit-1931. This witness has deposed that, at present, he is discharging duties as a Police Inspector in LCB, Gandhinagar Branch.

255.1 From 1998 to 2002, he was discharging duties as a Police Sub Inspector in the Ahmedabad City Crime Branch. During the course of his duties at the Crime Branch, he was required to perform the duties entrusted to him by the higher officers in the Crime Branch.

255.2 While he was discharging duties as a Police Sub Inspector in the Crime Branch on 28.2.2002, communal riots had erupted in Ahmedabad city, in connection with which, the investigation of Naroda Police Station I-C.R.No.100/2002 was entrusted to the Assistant Police Commissioner, Crime Branch. In connection with the investigation, in terms of the instructions issued by the Assistant Commissioner, the Police Sub Inspectors discharging duties at the Crime Branch used to personally go to the relief camps situated at different places and used to meet the victims and affected persons of the communal riots and used to take them to Naroda Gam, Naroda Patiya as well as Gulbarg Society and used to draw the panchnamas of their houses, as shown by them, in the presence of the panchas and used to record their statements in connection with the incidents, as stated by them, and after such task was over, drop them at the relief camp and submit a report of the proceedings of the day with a forwarding letter together with the statements and panchnamas to the Assistant Police Commissioner. Accordingly, in terms of the oral

instructions he had drawn panchnamas and recorded statements of the victims and affected persons of the communal riots on 12.5.2002, 16.5.2002 and 17.5.2002. He had recorded the statements of Yakubali Kasambhai Saiyed (PW-175) on 12.5.2002; Maheboobbhai Abbasbhai Baghdadi (PW-1) and Sumarbhai Mahammadmiya Makrani (PW-2) on 16.5.2002, Jaydabibi @ Gauriben wife of Mahammadmashak Abdulla Kureshi (PW-90) on 17.5.2002; Abdulkarim Saiyedrasul Shaikh (PW-61) on 14.5.2002.

255.3 The witness has deposed that in connection with the action taken by him, the S.I.T. had recorded his statement on 6.12.2008.

255.4 CROSS EXAMINATION: In his cross-examination, the witness has admitted that he had read and understood his statement recorded by the S.I.T. and had signed it.

255.5 The witness has admitted that he has recorded the statements of witnesses as stated by them. He had read over their statements to them. It has not happened that he has not written down what is stated by the witnesses or that he has he had written down anything in the statements on his own.

255.6 Certain portions of his statement recorded by the SIT are put to the witness, however, the witness is not confronted with the statement to contradict any part of his deposition, and hence, this part of his deposition is not admissible in evidence.

255.7 The witness has stated that at present he does not

remember as to how many statements he had recorded. He has denied that he has recorded as many statements as the number of loss damage panchnamas of the victims drawn by him. The witness has denied that the names of any accused are not disclosed in any of the statements recorded by him.

255.8 The witness has been cross-examined to bring out the contradictions in the testimonies of the witnesses as to the statements recorded by this witness, reference to which shall be made while discussing the testimonies of the concerned witnesses.

256. **PW-284 Tarunkumar Amrutlal Barot** has been examined at Exhibit-1932. This witness has deposed that, at present, he is discharging duties at Mehsana city as Dy. S.P.

256.1 In the year 2002, he was discharging duties as a Police Inspector in the Ahmedabad city Crime Branch. While discharging his duties at the Crime Branch, he was required to perform any task entrusted to him by the higher officers in the Crime Branch. While he was discharging duties as a Police Sub Inspector in the Crime Branch, on 28.2.2002, communal riots erupted in the Ahmedabad city, in connection with which the investigation of Naroda Police Station I-C.R. No.100/02 was entrusted to the Assistant Police Commissioner, Crime Branch. In connection with the investigation, in terms of the instructions issued by the Assistant Commissioner, the Police Sub Inspectors discharging duties at the Crime Branch used to personally go to the relief camps situated at different places and used to meet the victims and affected persons of the communal riots and used to take them to Naroda Gam, Naroda

Patiya as well as Gulbarg Society and used to draw the panchnamas of their houses, as shown by them, in the presence of the panchas and used to record their statements in connection with the incidents, as stated by them, and after such task was over, drop them at the relief camp and submit a report of the proceedings of the day with a forwarding letter together with the statements and panchnamas to the Assistant Police Commissioner. The witness has deposed that in this manner, on the basis of the oral and written instructions issued to him, he had on 12.5.2002, 13.5.2002 and 14.5.2002 and other dates, drawn panchnamas of the victims and affected persons of the communal riots and had recorded their statements, as dictated by them. He has recorded the statements of the Abdulrahim Abdulwahab Shaikh (PW-65), Pirmahammad Allabux Shaikh (PW-165), Salauddin Sharifuddin Saiyed (PW-249), Shakilabanu wife of Firozahemad Ansari (PW-72) on 12.5.2002. He has also drawn panchnama of house of Zubedabibi Rashidbhai Shaikh on 14.5.2002 Exhibit-162.

256.2 The witness has deposed that his statement was recorded by the S.I.T. on 11.9.2008.

256.3 CROSS EXAMINATION: The witness has denied that he has carried out investigation in I C.R. No.100/02 and I C.R. No.98/02. The witness has stated that he has only done the work entrusted to him in the case of I C.R. No.100/02.

256.4 The witness has admitted that the SIT had recorded his statement on 11.9.2008.

256.5 The witness has admitted that he had investigated

about Teesra Kuva with Shri A.A. Chauhan wherein they had taken the assistance of Shri Dastur from the fire brigade. The witness has admitted that Naroda area A.C.P. Shri Rana and Shri Khunti P.I. had called them at the site.

256.6 The witness has admitted that people were lowered about thirty feet inside the well at the site and complete investigation had been carried out in the well. In his cross-examination it has come out that a person had come to Shri Chudasama and told him that there are corpses in the well, and hence, he had orally instructed him to investigate in this regard. The witness does not remember whether a person named Mahammedbhai Kalubhai Khalifa had come. The witness has admitted that they had not found any human corpses or remains of corpses in the well.

256.7 The witness has admitted that he has recorded the statements of witnesses as stated by them. He has not written down anything that was not stated by the witnesses and it has not happened that he had not written down what was stated by the witnesses.

256.8 The witness has been cross-examined to bring out the contradictions in the testimonies of the witnesses as to the statements recorded by this witness, reference to which shall be made while discussing the testimonies of the concerned witnesses.

256.9 ANALYSIS: From the testimony of this witness, it emerges that inspection of the well had been carried out through the fire brigade officers to verify as to whether there

were any corpses in the well as certain witnesses have deposed that people were killed and thrown in the well. During the course of the investigation, no human corpses or remains of human corpses had been found.

257. **PW-291 Mukundsinh Balvantsinh Raj** has been examined at Exhibit-1995. This witness has deposed that, at present, he is discharging duties as a Police Inspector, Udhna Police Station, Surat city. During the period 1998 to 2002, he was discharging duties as a Police Sub Inspector in the Crime Branch, Ahmedabad city. During that period, as a part of his duties, he was required to perform the tasks as per the orders or instructions of the ACP, DCP or higher officers in the Crime Branch.

257.1 In the year 2002, their ACP was Shri S.S. Chudasama. He was entrusted with the investigation of the offence registered vide Naroda Police Station I-C.R. No.100/02. Shri Chudasamda had entrusted him the task of recording statements and drawing panchnamas of the properties of the victims of the communal riots of the 2002, which he had performed as per the instructions given to him. On 25.6.2002, as per the instructions given to him, he had drawn the panchnama of the house of Hasan Abubakr Saiyed. He had drawn the panchnama in the presence of the panchas. The witness is shown the panchnama Exhibit-931 and he has admitted his signature as well as the signatures of the panchas thereon. The witness has deposed that he had recorded the statements of statements of Mebalahussain Munirahemad Shaikh (PW-111) on 17.7.2002, Hussainabanu Asgarali (PW-135) on 25.6.2002, Jannatbibi Kallubhai (PW-142) on

25.6.2002, Ishaqkhan Sardarkhan Pathan (PW-150) on 26.6.2002, Mahammadmaharroof Raufullakhan (PW-191) on 23.5.2002, Haseebkhan Acchankhan (PW-213) on 17.7.2002, Gulammahammad Faizmahammad (PW 223) on 16.5.2002, Maiyuddin Imamuddin (PW-244) on 26.6.2002 and Afrozbanu Mahammadrazak (PW-247) on 17.7.2002.

257.2 The witness has deposed that as per the action taken by him, he had submitted a report to Shri Chudasama together with the panchnamas and the statements of the witnesses.

257.3 CROSS EXAMINATION: This witness, in his cross-examination, has admitted that it has not happened that the witness has said something before him and he has not written it down in his statement or that he has written down any fact other than that stated by the witness. The witness has stated that, at present, he does not remember as to whether in case where he had drawn the panchnama of loss and damage of any person's house, any complaint of that person had been given to him before carrying out such task. The witness has stated that he was required to draw the panchnama in connection with the Naroda Police Station I-C.R. No.100/02. The witness has stated that Shri Chudasama had not asked him as to whether prior to Exhibit-931, a panchnama of this place was drawn. The witness has stated that he does not remember that when he went to draw the panchnama, Hasan Abubakr had informed him that a panchnama of that place had already been drawn earlier. The witness has admitted that the SIT people have recorded his statement and the statement was read over to him and his signature was taken below such

statement.

257.4 The witness has stated that during the role played by him in the investigation of the offence, no facts which could be considered to be of significance had come to his notice, which he felt that he should inform Shri Chudasama about. The witness has admitted that at the Crime Branch they were instructed that they should go to Shah Alam and record statements of the victims of the communal riots. They were instructed to take them to Naroda Patiya at their residential houses and to record their statements. The witness has admitted that they had taken the victims from Shah Alam to their chawls. The witness has stated that except for the persons whom they had taken to the chawls they had not met any other persons.

257.5 The witness has stated that he had called the panchas at the place of incident after going there. The witness has stated that, at present, he does not remember as to whether he has recorded the statements to the extent of the loss sustained by the witnesses. The witness has, however, stated that he has recorded their statements, as stated by them. The witness has thereafter been cross-examined to bring out the contradictions in the depositions of the witnesses as to the statements recorded by him, reference to which shall be made while discussing the statements of individual witnesses.

257.6 The witness has admitted that at the time of recording the statements of witnesses, Shri Chudasama had not given any copies of complaints given by the witnesses.

258. **PW-292 Rajeshkumar Chinubhai Pathak** has been examined at Exhibit-2001. The witness has deposed that presently, he is discharging duties as Dy. S.P. Anand Division since last two years. From 15.7.2000 to 2003, he was discharging duties as a Police Inspector in the Ahmedabad City Crime Branch. As a part of his duties, he was required to perform the tasks entrusted to him by his higher officers.

258.1 While he was at the Crime Branch, the investigation was being carried out by Shri P.N. Barot and as per the orders of the then Police Commissioner, he was required to assist him in the investigation and, accordingly, he had assisted Shri Barot as per his instructions and guidance. He had thus, assisted him during the period 11.3.2002 to 30.4.2002. The witness has further deposed that while assisting Shri Barot in the investigation of the offence, he had recorded the statements of Anishkhan Nasirkhan Mansuri (PW-117), Basirkhan Nanhekhan Pathan (PW-136) and Ishakkhan Sardarkhan Pathan (PW-150) on 18.3.2002. Moreover, he had also recorded statements of other witnesses and drawn other panchnamas till 30.4.2002.

258.2 On 30.4.2002, the investigation was handed over to the then Police Commissioner, Crime Branch and since he was in the Crime Branch, thereafter also, he had taken action as per the instructions.

258.3 The witness has deposed that in terms of the instructions issued by then Crime Branch, Assistant Police Commissioner S.S. Chudasama and under his guidance, he had

recorded statements and drawn panchnamas of damages caused to the victims in terms of the work allotted to him. Accordingly, he had recorded the statements of Afzalkhan Abdulrauf Abdal (PW-67), Zulekhabibi Sardarahemad Chaudhari (PW-176), Ishratjahan Parvezhussain Saiyed (PW-177) on 12.5.2002.

258.4 Additionally, in the same investigation, under the instructions of Shri Chudasama he had recorded the statements of Faruk Kasambhai Saiyed (PW-55), Babubhai Mahammadhussain Shaikh (PW-66), Mahammadhussain Munirahemad (PW-76), Salauddin Abdulkarim Shaikh (PW-190), Ibrahim Hasanbhai Shaikh (PW-196) and Sabbirali Nivasali Ansari (PW-243) on 13.5.2002.

258.5 He had also recorded the statement of Zulekhabegum MahammadAyub Shaikh (PW-231) on 7.9.2002.

258.6 The witness has deposed that while Shri Barot was the Investigating Officer as well as while Shri Chudasama was the Investigating Officer, at both stages, he had acted as per their instructions, and had submitted the connected documents to the Investigating Officer. The witness has deposed that the SIT has recorded his statement on 31.1.2009.

258.7 CROSS EXAMINATION: This witness in his cross-examination has admitted that the SIT has recorded his statement in this case. That he has read and understood the statement and has put his signature thereon.

258.8 The witness has stated that he can state as to how

many statements he has recorded when he was assisting Shri Barot in the investigation by looking at the record. The witness has stated that Shri Barot had not instructed him to record statements of witnesses by name but had given him guidance in this regard to the effect that he should visit the areas near the place of incident as well as the relief camps and to record statements of available victims. The witness has admitted that at that time, he had investigated at the chawls at the scene of incident. The witness has admitted that at the scene of incident, majority of the Muslim victims were not found and that Hindu victims and Hindu witnesses were only found and he had recorded their statements. The witness has admitted that he had recorded the statements of other Muslims at the relief camp or at site. The witness has admitted that in case of those who had given details of the loss sustained by them, panchnamas of loss and damage had been drawn.

258.9 The witness has admitted that he had recorded the statements of witnesses as stated by them and it has not happened that he has not written down what is stated by the witness. It has also not happened that he has recorded facts different from the facts stated by the witness and had written down the statement on his own. The witness has admitted that at the time when the witness was giving his statement, it has not happened that the witness has named any accused and he has not written down such name.

258.10 The witness has admitted that he had recorded certain statements by visiting the relief camp. The witness has stated that he was required to go to the relief camp for the limited purpose of recording the statements. The witness has

denied that at the relief camp there was a police table. The witness has admitted that they would go to the relief camp and would announce in the mike that if any person from that area wants to record his statement he should do so. The witness has denied that the announcement made in the mike was also for recording of complaints.

258.11 The witness has stated that he has not seen any social worker or service minded people in the relief camp. The witness has been cross-examined to bring out contradictions in the testimonies of the witnesses qua statements recorded by him, reference to which shall be made while discussing the evidence of the concerned witness.

259. **PW-293 Bhailalbai Tulsibhai Karoliya** has been examined at Exhibit-2010. This witness has deposed that upon his retirement on 30.9.2008, the Government had granted him an extension of service for a period of one year and, accordingly, he has retired on 30.9.2009.

259.1 The witness has deposed that in the year 2002, he was discharging duties as a P.S.I. in the Ahmedabad City Crime Branch. In the discharge of his duties, he was required to comply with any instructions or orders issued by his higher officers.

259.2 The investigation of Naroda Police Station I-C.R. No.100/02 had been entrusted to the Assistant Police Commissioner Shri S.S. Chudasama. At that time, in connection with the investigation into the offence, he was entrusted duties on a daily basis, which he had fully discharged.

259.3 He had gone to the relief camps and had recorded statements of the victims and had drawn panchnamas of the properties of the victims as per the instructions. After performing the task entrusted to him in connection with the investigation, he would hand over all the connected documents together with his report to Shri Chudasama.

259.4 On 12.5.2002, he had recorded the statements of Zubedakhatoon Rahimbhai Shaikh (PW-70), Mahammadnaseem Shaikhbuddhu Shaikh (PW-173), Naseembanu Abdulraheman (PW-179), Apsarabegum Kabirali (PW-181) and Sairabanu Khwajahussain Shaikh (PW-229).

259.5 On 13.5.2002, he had recorded the statements of Bhikhabhai Habibbhai Mansuri and on 26.6.2002 he had recorded another statement of Naseembanu Abdulraheman.

259.6 Over and above the aforesaid, he had also recorded other statements and made panchnamas of properties as per the instructions given to him and had submitted a report to Shri Chudasama.

259.7 In connection with this case, his statement had been recorded before the S.I.T. on 6.12.2008.

259.8 CROSS EXAMINATION: In his cross-examination, the witness has admitted that he had understood and signed his statement recorded by the SIT. The witness is confronted with his statement recorded by the SIT to the effect that he had stated therein that in the statements recorded by him

during the course of investigation, the witnesses had not named any accused. The witness has stated that this appears to be a mistake of the writer. Apart from the explanation given by the witness, since this part of the statement of the witness has not been put to him to contradict any part of his primary statement, even otherwise it is not admissible in evidence.

259.9 The witness has admitted that he has recorded the statements of the witnesses as stated by them and that it has not happened that he has not written down anything stated by them or that he has not written down the names of the accused named by them and has further stated that he had read over their statements to them.

259.10 The witness has stated that during the course of investigation, from the statements of the witnesses, it has been revealed that people wearing shorts and undershirts who had tied saffron bands were present in the mob with swords. The witness has stated that as per his impression, out of the six witnesses whose statements he has recorded, two witnesses have said such facts.

259.11 In the cross-examination of the witness, it has come out that he has not made any inquiry with regard to the presence of people wearing shorts and undershirts and saffron bands as he was not the Investigating Officer and that as an assignee officer, he was only required to act, according to the instructions of the Investigating Officer, and that he had no instructions in this regard.

259.12 The witness has been cross-examined to bring out

the omissions and contradictions in the statements of the witnesses recorded by him reference to which shall be made while discussing the testimonies of the individual witnesses. The witness has admitted that he was not instructed to record the statements of the witnesses on the basis of their names. Different teams were instructed to go to the relief camps and record statements of refugees residing in different lines and, accordingly, in the line which was assigned to him, the above six persons and other witnesses were found.

259.13 In the cross-examination of the witness, it has come out that he had gone to the camp on three occasions to record statements, that is, on 12.5.2002, 13.5.2002 and 26.6.2002 and it had taken him about half an hour to record the statements of each witness. On the day when he had to record statements of more than one witness, he had stayed at the Shah Alam camp for almost the whole day. The witness has further stated that at the Shah Alam camp, he had met Shri Chudasama and policemen of other teams from the Crime Branch.

259.14 In the cross-examination of the witness, he has admitted that in the statement recorded on 26.6.2002, the witness has stated that he does not know the names of the riotous mobs. He, however, has clarified that the said sentence was in the context of the mob which had caused damage to the property.

259.15 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has, in his cross-examination, admitted that he has recorded the statement of this witness on 6.12.2008. He

has admitted that in the statement recorded by him during the course of investigation, the witness had stated that in the statements recorded by him, the names of accused have not been disclosed. The Investigating Officer has admitted that he has obtained the signature of Shri Karoliya on his statement and that such signature is put in his presence. He has further admitted that while he was taking the signature. The witness had not raised any dispute that something was wrongly recorded.

260. **PW-294 Pravinbhai Bhadiyabhai Gondia** has been examined at Exhibit-2014. This witness has deposed that, at present he is discharging duties as I.G.P. (Home-guards) at Ahmedabad.

260.1 From 23.4.2000 to 30.3.2002, he was working as a Deputy Police Commissioner, Zone-4, Ahmedabad City. At the relevant time, F & G Divisions were included in his jurisdiction of Zone-4. Such divisions have been formed for the purpose of smooth administration and the law and order situation. Out of the two divisions, Sardarnagar and the entire Naroda police area fell within his 'G' Division and at the relevant time, Shri M.T. Rana was the Assistant Police Commissioner of 'G' Division.

260.2 During that period, Shri Mysorewala (First Inspector) was working as a Police Inspector at Naroda Police Station. At the relevant time, his Mobile Phone Number was 98250 49197. His post was, in short, known as Zone-4 or DCP Zone-4. At the relevant time, his duties mostly included supervising the offences registered in the concerned police stations as well as

to maintain law and order situation etc. His duties included giving instructions, guidelines and supervising the investigation into the offences registered in the police stations within his jurisdiction.

260.3 On account of the incident that took place at Godhra on 27.2.2002, the Vishwa Hindu Parishad had given a call for Gujarat Bandh on 28.2.2002. In the train which was coming to Godhra on 27.2.2002, out of the kar sevaks who were coming to Ahmedabad, twelve were from the Naroda Police Station area. Upon they reaching the Naroda area from the Kalupur Railway Station, discussions about the incident started taking place amongst the people. On 27.2.2002, a mattress shop belonging to two Muslims came to be burnt in the Parshawanth Township of Naroda Police Station, in connection with which, an offence was registered as Naroda Police Station I-C.R. No.96/02. At this time, the fire brigade was called and the fire was extinguished. Thereafter, on the same day in the evening, a Muslim individual who was passing by Haridarshan Society at Kathwada road was assaulted with a pipe and his right leg was fractured, in connection with which, an offence was registered at the Naroda Police Station and in connection therewith, search for the accused was started.

260.4 In connection with the call for bandh, which was given on 28.2.2002, all the Inspectors of the police stations were instructed to contact the leaders of the Hindu as well as the Muslim communities and advise them to maintain peace. He had also directed that the antisocial elements in the concerned area be apprehended.

260.5 On 28.2.2002, instructions were issued that, upon the study of the past incidents keeping in view the past experience, considering the circumstances of the day, bandobust for armed policemen at the communal sensitive areas was arranged and in that regard, a scheme had been formulated, namely, which police personnel was to be allotted to which police point and a statement showing details thereof and to prepare a bandobast statement and send the copies of such statements to the higher officers.

260.6 On 28.2.2002, instructions had been issued for "stand to" from 7 o'clock in the morning. "Stand to" means that all Police Officers have to report on duty at 7 o'clock in the morning and remain on duty till further orders are passed. Accordingly, on 28.2.2002, all the police staff and officers had reported on duty at 7 o'clock in the morning, which was ascertained by him from the Police Inspectors through the control room.

260.7 As per the stand to orders, he himself had reached the Tent Chowky at Dariapur Police Station, which was the most sensitive area in his jurisdiction. When he was present at the chowky, at that time, in the morning at around 10 o'clock, he received a message that Hindu and Muslim mobs have gathered opposite each other at Naroda Patiya and the mobs are becoming volatile. Upon receiving such a message, he firstly sent the ACP 'G' Division, Shri M.T. Rana within his jurisdiction to Naroda Patiya. Thereafter at around 10:25, he received another message in connection with Naroda Patiya and as per the message, the situation had become more volatile at Naroda Patiya. Hence, he left the Tent Chowky and

set off for Naroda Patiya and reached there at around 11 o'clock.

260.8 When he reached Naroda Patiya, at that time, from the direction of Natraj Hotel, from the direction of Naroda Bethak as well as on the other side, from the Narol Himmatnagar Highway and Hussainnagar-ni-chali and the Noorani Masjid, mobs were present opposite each other. In these mobs, on one side there were mobs of Hindus and on the other side, there were mobs of Muslims. Whenever they got an opportunity, the mobs would pelt stones at each other and attempt to attack each other. Hence, to disperse the mobs and to keep them calm, tear gas, lathi charge and firing shots in the air was commenced, due to which, the mobs, for a little while, went into the lanes inside and again gathered on the main road and attempted to attack each other.

260.9 The volatility of both the mobs kept on increasing and they kept on coming nearer to each other and were prepared to cause damage to property and life of each other. Hence, at that time, the police resorted to lathi charge, tear gas and firing shots at the spot.

260.10 In the meanwhile, an individual sat in a Tata 407 Tempo parked near the Noorani Masjid and drove it recklessly from Naroda Bethak towards Naroda Crossing. Police Inspector Shri K.K. Mysorewala followed the Tata 407 and he apprehended the driver together with the tempo and lodged a complaint against him. When the tempo was driven in a reckless manner, in an accident, a Hindu died and two Hindu persons were seriously injured. At this time rumours started

spreading amongst the Hindus in connection with this incident that on account of reckless driving of the tempo, three Hindus had died, whereas in fact, one Hindu had died and two Hindus were seriously injured.

260.11 On account of this incident, the volatility of the Hindus in the mob escalated and the number of people in the mob also increased. The mobs started damaging and setting the shops near the Noorani Masjid and houses on the road on fire.

260.12 In the meanwhile, in the afternoon at 12:15 hours on 28.2.2002, the Joint Police Commissioner Shri M.K. Tandon also arrived at Naroda Patiya and assessed the situation at Naroda Patiya and discussed the same with the Officers and contacted the Police Commissioner, Ahmedabad city on telephone and declared curfew in the Naroda Police Station area from 12:30 hours.

260.13 For the purpose of implementing the curfew that was declared in the Naroda Police Station area, necessary lathi charge, patrolling with vehicles and bursting of tear gas shells on account of increase of the mob and when necessary even firing shots in the air were resorted to. In the meanwhile, the Officers received an oral representation from the Hindus that two Hindus have been taken inside Hussainnagar-ni-Chali and have been killed. Hence, to verify the said aspect, it was decided that Police Inspector Shri Mysorewala should go and accordingly, necessary instructions were issued to him.

260.14 Pursuant to such instructions, Shri Mysorewala

together with the necessary armed force and man power, went on foot personally inside Hussainnagar-ni-chali and he went inside and investigated and after ascertaining, he came out and informed him that there are no dead bodies of Hindus in Hussainnagar and that no Hindu has been detained and kept there. In the meanwhile, from time to time, mobs from both the sides were coming on the road and hence, the police used force and sent them back inside the chawls. In the meanwhile, the Officers received another representation from the Hindus that between Hussainnagar-ni-Chali and S.R.P., opposite the Noorani Masjid, a Hindu man has been killed and has been thrown near the road. Upon verifying this fact, the dead body of a Hindu male whose eyes and face had been injured and mutilated was found. This dead body was found between Hussainnagar and S.R.P. The dead body was sent in an ambulance to the hospital.

260.15 On account of this incident, the Hindu mob became more aggressive. However, he cannot state the exact time. The incident took place at approximately 1 o'clock in the afternoon.

260.16 As a result of this incident, attack by the Hindus on the Muslims became more violent and police also started using force. Such use of force was continued for approximately half an hour. Use of force included lathi charge, bursting of tear gas shells and firing. During the firing by the police, one person had died and several persons were injured.

260.17 As a result of the effective use of force by the police, violence in the mob and the number of people in the

mob also decreased and it was next to nil and the Police Commissioner had allotted a platoon, that is, about twenty four personnel to the Naroda Police Station, out of whom, one P.S.I. and around seventeen personnel were placed for bandobust at Naroda Patiya. Considering the situation on the day of the incident, they had been placed at the disposal of the Naroda Police Station.

260.18 On this day, in the afternoon at around 14:20 hours, armed S.R.P. having reached for bandobust, there was a considerable decrease in the groups of Hindus as well as the Muslims at Naroda Patiya, and hence he had departed for going to other police stations in his jurisdiction.

260.19 At this time, ACP 'G' Division, M.T. Rana, Police Inspector Shri Mysorewala and the S.R.P. people placed for bandobust were present at Naroda Patiya. Between 14:20 to 19:00 to 20:00 hours, he was discharging duties at his other police stations, when he came to know that between the boundary of Hussainnagar and Gangotri Society beyond Gangotri Society, adjoining the S.T. Workshop wall, in a closed house, several dead bodies had been burnt and over and above this, several persons had been burnt in the area and fatal injuries had been caused with weapons and other injuries had also been caused. The witness has stated that what he means to say is that on that day, in the evening, he came to know that at this spot people have been burnt, and hence, he reached Naroda Patiya.

260.20 Naroda Patiya Police Inspector Shri Mysorewala and Joint Police Commissioner Shri Tandon were also present there

and met him. All three of them, namely, he, Shri Tandon and Shri Mysorewala reached the scene of incident in the chawls, namely, Gangotri Society, on foot. In the meanwhile on the way, they noted some movement on the terrace of a two storeyed house. He had inspected the scene of incident and at that time the electricity supply was shut off. Hence, he had inspected with a torch. In the meanwhile, he noted the movement of a five year old child. Hence, Police Constable Manubhai Karsanbhai who was a gunman, accompanying him, was held upside down from a wall by two constables and the five year old child was taken out from the heap of dead bodies. When the child was taken out, it was alive.

260.21 Thereafter, lawful steps were taken in connection with the dead bodies lying at Gangotri Society as well as the nearby societies. Before he reached the spot, Shri Mysorewala had reached the spot and had returned to the road to fetch him. During this time, Shri Mysorewala had performed the task of taking the persons who were injured in the incident for treatment to the Civil Hospital. Thereafter, he (the witness) had reached the two storeyed house where he had noted some movement and had flashed the torch light on his body and had given his introduction to the people on the terrace and had also introduced his higher officer Shri Tandon and the accompanying officers. Hence, two persons came down from the terrace and they had ascertained that they were really Police Officers. Thereafter, the people on the terrace were explained that if they wanted to go under police protection, the police vehicles would take them to safe places. Upon their trust being gained in this regard, he, the Police Officers in his area and other personnel took these people to the main road

on foot. They had taken the people who had survived to safe places, namely, relief camps which were opened on that very day. However, once or twice while they were taking the victims to the camps, the mob present at Natraj Hotel had tried to disturb them. They had to resort to bursting tear gas shells to keep the mob under control. At this time, it was already midnight of the day and till 7 o'clock in the morning they had continuously performed the task of following the legal procedure in connection with the dead bodies which were lying on the spot and for taking the Muslim families who had survived to safe places, that is, the relief camps.

260.22 The process of taking the Muslim families who had survived to the relief camps continued from 1.3.2002 to 3.3.2002 and in this manner, all the Muslims, who had survived, were taken to relief camps.

260.23 During the course of police firing which had to be carried out during the entire day at Naroda Patiya, two persons had died and five persons were injured.

260.24 During the entire day, around 95 rounds had been fired and 171 tear gas shells had been used.

260.25 The S.I.T. had recorded his statement in this regard on two occasions. His first statement was recorded in connection with the investigation and the second statement had been recorded in connection with the further investigation.

260.26 CROSS-EXAMINATION: This witness in his cross-examination has admitted that on 23.1.2009, SIT has recorded

his statement and that after reading and understanding the statement he had signed the same. The witness has admitted that the statement was in a question answer form. The witness has admitted that while recording his statement before the SIT on 23.1.2009, he had produced a copy of the bandobust statement arranged at the Naroda Police Station on 28.2.2002 as well as a zerox copy of the affidavit submitted by him before the Hon'ble Shri G.T. Nanavati Commission. The witness has stated that the facts stated by him in the affidavit dated 28.2.2002 are true and proper. The affidavit filed before the Hon'ble Shri G.T. Nanavati Commission is shown to the witness. The witness has admitted his signature below the affidavit and has admitted the contents thereof. The affidavit is exhibited as Exhibit-2015.

260.27 The witness has admitted that as a part of his duties, on the day of the incident also, he was required to visit the Naroda Police Station area. The witness has stated that he is not required to appoint the Peace Committee at the Police Stations. The witness is not aware as to whether there was any Peace Committee at the Naroda Police Station, at the relevant time. He, however, is aware of a Peace Committee in the Dariapur Police Station area. The witness has stated that ordinarily, such Peace Committees are appointed in communally sensitive areas where communal riots take place. The witness has stated that he cannot say as to whether he had instructed Shri Mysorewala to call the leaders of his area in the context of 28.2.2002 and to hold the requisite meeting for the purpose of maintaining communal harmony and peace. The witness has admitted that as the Supervising Officer of Naroda Police Station, he had an occasion to visit the Naroda

Police Station prior to the day of the incident. The witness has admitted that on the day of the incident, he had remained at Naroda Patiya area for around three hours. The witness has admitted that on that day, striking force personnel were with him together with their vehicles. The witness has admitted that the striking force personnel are armed and there are around five to six persons. The witness has stated that additional ten armed persons received by him from the Office of the Police Commissioner on the day of the incident were also present in a Tata 407 Tempo. In this manner, in all, including his vehicle, there were three vehicles. In the striking force, there was one Gas Man for teargas, one person with arms, one striking incharge, one driver and another armed person. Additional striking force means ten armed persons who had been arranged for him by the Office of the Police Commissioner on the day of the incident, for which a Tata 407 vehicle had been requisitioned. The witness has stated that on the day of the incident, when he went to Naroda Patiya in the three vehicles including him, there were eighteen persons. The witness has admitted that taking his entire convoy of three vehicles, he had gone to Naroda Patiya on the day of the incident, that is, on 28.2.2002 in the morning at 11 o'clock. The witness has admitted that before they reached Naroda Patiya area Shri Mysorewala and Shri Rana together with their staff had reached the Naroda Patiya area. The witness has admitted that the place where he stopped could be said to be a place in the vicinity of the S.T. Workshop gate. The witness has stated that at that time, at the spot he had seen Shri Mysorewala and Shri Rana. He had seen them at the spot in his presence. The witness has admitted that on all four sides from where he was standing there were mobs. The witness has stated that what

he wants to say is that except for leaving a portion near the S.T. Workshop there were mobs on all the areas. The witness has admitted that except for Jawannagar, the S.R.P. Quarters, the S.T. Workshop there were Muslim mobs near Hussainagar-ni-Chali, etc. The witness has admitted that these Muslim mobs were on the southern direction towards Narol Himmatnagar Highway from where they were standing. The witness has admitted that towards Naroda Bethak and Natraj Hotel area there were Hindu mobs. The witness has denied that on the road going from Naroda Patiya to Kalupur, there were Hindu as well as Muslim mobs and has stated that there were Hindu mobs. The witness has admitted that in front of the door of the Noorani Masjid where there is a tea stall and an open space, Muslim mobs were present.

260.28 The witness has admitted that he had reached Naroda Patiya at 11 o'clock in the morning. The witness has admitted that when he reached Naroda Patiya there was a Muslim mob towards the south, whereas towards the north there was a Hindu mob. The witness has stated that he does not remember that when he reached Naroda Patiya, there was nominal stone pelting. The witness has admitted that when he reached Naroda Patiya they had tried to bring the mobs on both the sides under control. The witness has admitted that while he was there, attempts were made to see that there is no friction between the two mobs and that they do not cause any loss of life or property to each other.

260.29 The witness has denied that on the day of the incident from 11:00 to 2:20 in the afternoon, he had sat near the S.T. Workshop. The witness has stated that as per

necessity they used to move back or forth from north-south-east and west. That as per the need, they had gone to that area and that they had gone upto the Naroda Bethak area. The witness has denied that he was at the place of incident till 14:20 hours and till then, they had not let the mobs of both the communities cause any loss of life or property. The witness has stated that, however, he had made earnest efforts, but all of them were not successful. The witness has denied that he had permitted the Hindu mob to go towards the south. The witness has stated that they had made earnest efforts to see that the mob does not go; however, their attempts had failed.

260.30 The witness has stated that he cannot say as to how many persons from the Hindu mob had entered the Muslim area on account of his failed attempts. The witness has denied that on the day of the incident, while he was there, the Muslims who were present at that time had also gone inside the Hindu area. The witness has admitted that from the Hindus who had gone to the Muslim areas in this manner, they could not catch any of the Hindus; however, they had carried out necessary lathi charge and had used other force to prevent them.

260.31 The witness has stated that when the Hindus were entering the Muslim areas, he had ordered firing in that area. The witness has stated that in his opinion, at that time, properties of Muslims were being damaged and hence he only ordered firing in the air and at that time, he had not taken shelter of effective firing. The witness has stated that he cannot say the exact time when he passed such orders of firing in the air because the incident went on from 11:00 to 20:00.

260.32 The witness has admitted that the mob which was going towards the south and was pelting stones was being pushed back by using force towards the northern direction.

260.33 The witness has stated that on the day of the incident, he had reached Naroda Patiya at 9:00 to 9:30 at night. The witness has stated that it took him about ten minutes to walk from Naroda Patiya via the S.T. Workshop to the chawls inside. The witness has admitted that at that time, Shri Mysorewala had come out to receive them and thereafter, he had accompanied them and till they were inside, Shri Mysorewala was with them. The witness has admitted that there were dead bodies and burning people inside and that after completing the procedure stated by him, it was almost 12 o'clock at night by the time he came out.

260.34 The witness has denied that after he went inside, he had taken steps to provide treatment to those who needed it and to save the lives of the people. The witness has stated that such action had already been taken before he went inside. The witness has admitted that when he went inside, he went through the entrance of Hussainnagar-ni-Chali. The witness has stated that he had not seen any dead body on the verandah of any house at the corner of Hussainnagar-ni-Chali. He does not remember as to whether on any verandah of Jawannagar, he had seen any burning dead body.

260.35 The witness has stated that he had not seen the area of the Muslim chawls prior to the incident, for the reason that he had no occasion to visit these chawls prior to the day

of the incident. The witness has stated that the two storeyed house where he had seen movement, was on the road from Hussainnagar-ni-Chali to Gangotri Society on the right hand. The witness has denied that he was at the spot till 2:30 in the afternoon and during that time, no incident against the human body had taken place wherein he was required to pass orders of effective firing. The witness has stated that while he was there, he had passed orders as per necessity to fire in the air as well as effective firing.

260.36 The witness has admitted that on account of driving the Tata-407 recklessly and on account of a mutilated dead body being found, unrest in the mob had increased and thereafter, the riots escalated and he was required to order effective firing. The witness has admitted that on the day of the incident, there were around fifteen to seventeen thousand people in the riotous mob at Naroda Patiya and these people were shouting and there was a lot of commotion. The witness has denied that he could not see what anyone was doing on that day. He has admitted that it was not possible to hear what anyone was speaking, however, he could see that they were talking loudly, The witness has admitted that on the basis of the wireless message at 10 o'clock in the morning, he can say that the traffic on the Highway was shut down. The traffic was asked to stop wherever it was at the Naroda-Narol Highway near Naroda Patiya.

260.37 BY COURT: In his cross-examination by the court, the witness has stated that on 8.3.2002, after investigation was handed over to A.C.P. Shri Barot, supervision of the offence was not with him. However, as per his knowledge, from

15.3.2002, supervision was entrusted to then Crime Branch D.I.G. Shri Surela.

260.38 The witness has admitted that on 27.2.2002 and thereafter, since Dariapur Police Station was communally more sensitive, his priority was to maintain law and order situation at Dariapur Police Station. Such priority was keeping in view the past incidents that had taken place at the Dariapur Police Station.

260.39 The witness has admitted that at 10 o'clock in the morning, he and Shri Rana were in the Dariapur Police Station area when for the first time at 10 o'clock, upon receiving a wireless message, he was required to give instructions to A.C.P. Shri Rana to leave Dariapur and reach Naroda Patiya. Thereafter, at 10:25 upon receiving a second message on the day of the incident, he himself was required to leave the Dariapur Police Station at 10:30 and reach Naroda Patiya as there was a serious situation there. The witness has admitted that a decision to impose curfew in the area can be taken within ten minutes and that such a decision can be taken even if under his briefing, the Joint Police Commissioner informs the Police Commissioner on telephone.

260.40 The witness has stated that as per his opinion, as in contrast to the usual bandh calls which are given, the intensity and conduct of the mob on the day of the incident, selection of target, the spots chosen for the incident, as well as the number of people in the mob, was different and was in extremely higher proportion.

260.41 SUBMISSIONS: Mr. Prashant Desai, learned Special Public Prosecutor, submitted that this Officer is a higher officer. Pursuant to his duty, as soon as he received a message at around 10 o'clock in the morning, firstly he sent his subordinate A.C.P. M.T. Rana to the place of incident, and thereafter, he himself went to the place of incident looking to the gravity of the incident. It was submitted that, therefore, the witness was cautious about his duty, and hence, he personally went to the place of incident. After reaching there, at about 11 o'clock, he saw mobs of both the communities and to disperse the mobs and to have peace he used teargas, lathi charge and firing in the area. Because of this action for some time, the mob was dispersing and again collecting for attacking each other. Therefore, the first step that he had taken was to see that law and order is maintained in that area was proper and in accordance with law.

260.42 The next step was imposing a curfew by the Police Department and for the purpose of implementation of curfew, increased the patrolling of their vehicles, lathi charge, teargas and firing. In view of all the actions taken earlier, there was reduction in the size of the mob on the road and after entrusting duties to one P.S.I and fifteen others, he left at 1:20 in the afternoon for other areas because he was concerned with other areas also. During that time, the S.R.P. also came there and thereafter, when he got the information about the evening incident, he again went at around 9:00 to 9:30 and stayed till 12 o'clock.

260.43 The learned Special Public Prosecutor submitted that this witness also tried to repose confidence in the people

who were saved and had taken shelter on the terrace that they will be given proper help and he was monitoring the police and taking them to the relief camp till 7:00 in the morning of 1.3.2002. It was submitted that looking to this, this witness has discharged the duty which was entrusted to him and there is no dereliction of duty so far as he is concerned. He has also named five accused who have been seen on the day of the incident in the afternoon and he has given proper instructions to his subordinates according to his ability. It was urged that, therefore, this witness is believable and credible. No contradictions have been suggested vis-a-vis his statement and he is required to be believed.

260.44 ANALYSIS: This witness was working as a Deputy Police Commissioner at the relevant time and the entire Naroda Police Station area fell within his "G" Division. As per the testimony of this witness, on the day of the incident at 10 o'clock in the morning, he received a message that the Hindu and Muslim mobs have gathered opposite each other at Naroda Patiya and the mobs are becoming volatile. It may be noted that at around the same time, a message was sent to the Police Control Room that "All is well". Therefore, one wonders as to how at the same time a message is sent to this witness regarding the situation becoming volatile and another message is sent to the Police Control Room stating that "All is well." This witness has deposed that upon receipt of the message, he had sent Shri M.T. Rana to Naroda Patiya and upon receipt of another message at 10:25, he had gone to Naroda Patiya at 11 o'clock. This witness talks about mobs of Hindus as well as mobs of Muslims and says that the volatility of both the mobs kept on increasing. This witness is the only

witness who talks of two volatile mobs, inasmuch as, none of the witnesses have deposed regarding any violent mob of Muslims. The witness has deposed regarding the mobs damaging and looting the shops near the Noorani Masjid and the houses on the road, but does not speak about any action taken by him to restrain the mob. At 12:15 hours, Shri M. K. Tandon, Joint Police Commissioner arrived and after assessing the situation, contacted the Police Commissioner on telephone and declared curfew in the Naroda Police Station area from 12:30 hours. It may be noted that despite the fact that curfew was declared, the mobs did not disperse and continued with their violent acts. Despite this position, the Police Officers received an oral representation from the Hindus that two Hindus had been taken inside Hussainnagar chawl and had been killed, and hence, to verify the same, Police Inspector Shri Mysorewala was instructed to go inside the chawls with necessary armed force and manpower. It is quite confounding as to why despite the fact that curfew had been declared and the Hindu mob in flagrant breach of the curfew continued to rampage in the area, the concerned police officers thought it necessary to accede to their requests and go on foot inside Hussainnagar-ni-Chali to ascertain as to whether any Hindus had in fact been killed. When, none of the police officers thought it fit to go inside the chawls to curb the violence that the mobs were indulging inside Hussainnagar area, one fails to understand as to why at the request of the aggressors, viz., the Hindus, the police had so willingly complied. This witness further states that as a result of effective use of force by the police, violence in the mob and the number of people in the mob also decreased and it was next to nil and at 14:20 hours, there was a considerable decrease in the groups of Hindus as

well as Muslims at Naroda Patiya and hence, he departed for going to other police stations in his jurisdiction. It may be noted that this is the only police witness who states that the mobs had decreased in the afternoon hours, inasmuch as, all the other police witnesses have stated that they continued to remain on the road trying to control the mobs, but to no avail. If the mobs had decreased on the road and the number of people in the mob was next to nil, one fails to understand as to why though a considerable police force was available, they did not go inside the chawls and prevent the mobs from indulging in violence.

260.45 The testimony of this witness, therefore, does not inspire confidence inasmuch as his testimony is not in consonance with the testimonies of the other witnesses. Moreover, though this witness was the Deputy Police Commissioner and the area fell within his jurisdiction, the Police Commissioner had allotted platoon of about twenty four persons to the Naroda Police Station, but no effective steps were taken to curtail the mob and prevent the violence. If the excuse given by the officer that despite all efforts they could not restrain the mob were to be accepted, one fails to understand as to how the police would look after the safety of the citizens. It is a matter of shame that though about eighty to eighty eight police personnel were available at the site, no steps had been taken against a single person in the mob throughout the entire day and the only step taken by the police was to chase the Muslim youth who fled with the Tata 407 vehicle and to comb the chawls to find out whether any Hindus had actually been taken inside. This shows the partisan attitude adopted by the police on the day of the incident.

261. **PW-295 Bhupendra Chandidaan Gadhvi** has been examined at Exhibit-2028. This witness has deposed that presently he is discharging duties as Deputy Superintendent of Police at Viramgam.

261.1 From June 2001 to 7.6.2002, he was discharging duties as a Police Inspector, Ahmedabad City Crime Branch. At the relevant time, his duties included following the orders and instructions issued by his higher officers. At the relevant time, Shri S.S. Chudasama was the Assistant Police Commissioner in the Crime Branch.

261.2 The investigation of the complaint lodged in connection with the incident that took place on 28.2.2002 at Naroda Patiya was handed over to Shri Chudasama. Upon Shri Chudasama passing orders, directing the witnesses to record statements of the persons affected by the communal riots and to draw panchnamas in that regard in connection with the present investigation, he had acted accordingly.

261.3 He was performing his task in consonance with the instructions issued to him and used to make a report in connection with the action taken by him and used to hand over the report along with all the papers to Shri Chudasama. If any important fact came to his notice, while recording the statement, he would also bring it to the notice of Shri Chudasama.

261.4 The witness has deposed that during the course of the work entrusted to him, he had recorded the statements of

Jamilabanu Maheboobhussain Muslim (PW-88) and Sharifabibi Iqbalbhai Shaikh (PW 203) on 12.5.2002 and 13.5.2002 respectively.

261.5 In connection with the action taken by him pursuant to instructions, the S.I.T. had recorded his statement.

261.6 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that he used to go for recording the statements to the relief camps and to Naroda Patiya. The witness has further stated that he has not gone into the chawls where the Naroda Patiya incident took place and that he has only seen those places which the witnesses had shown for the purpose of drawing panchnama. It has further come out in his cross-examination that Shri Chudasama had instructed him to record statements of the affected persons in the Naroda Patiya case. Shri Chudasama had not instructed him to record statements of any specific community.

261.7 The witness has been cross-examined to bring out the contradictions and omissions in the statements of the witnesses recorded by him, which shall be referred to while discussing the evidence of the concerned witness.

262. **PW-296 Jashwantsinh Vasantsinh Surela**, has been examined at Exhibit-2035. This witness has deposed that, at present, he has retired. In the year 2002, he was discharging duties as a Police Sub Inspector at Nava Naroda Chowky of Naroda Police Station. At that time, Nava Naroda Chowky fell under the jurisdiction of Naroda Police Station.

262.1 At the relevant time, Shri Mysorewala was the Police Inspector of the Naroda Police Station.

262.2 In the context of the incident that had taken place at Godhra on 27.2.2002, the Vishwa Hindu Parishad had given a call for Gujarat bandh on 28.2.2002. In the context of this declaration, on 28.2.2002, between 11:30 to 19:30 mobs of both the communities came opposite each other at Naroda Patiya, which he had heard. In connection therewith, an offence came to be registered vide Naroda Police Station I-C.R. No.100/02. Shri Mysorewala was handling the investigation in this case.

262.3 On 1.3.2002, under instructions of Shri Mysorewala, the witness had taken over the task of drawing panchnama of the scene of offence for which he had summoned two panchas and had also kept the complainant Shri Solanki present. The panchnama was started at 12 o'clock in the afternoon, as shown by Shri Solanki. He had made the panchnama on 1st March from 12:00 in the afternoon to 18:30 hours in the evening. This panchnama was of the Noorani Masjid and the chawls etc. behind it where the Muslims were residing. While drawing the panchnama, it became 6:30 in the evening and it also became dark. Hence, the panchnama remained incomplete and he informed the panchas to remain present on the spot at 10 o'clock in the morning on the next day.

262.4 On 2.3.2002, both the panchas and the complainant had reached the spot where they had stopped on 1.3.2002. In this manner, on 2.3.2002, in the morning at 10 o'clock from the same spot, the procedure for drawing the remaining

panchnama was further carried on. On 2.3.2002, they had drawn the panchnama of Imambibi-ni-Chali, Chetandas-ni-Chali, Hussainnagar, Kumbhaji-ni-Chali, Balvirsingh-ni-Chali etc. opposite the Noorani Masjid in front of the S.T. Workshop wall and other spots where houses of Muslims were damaged and were set on fire. The panchnama continued till 6:30 in the evening on the second day and at 6:30, further panchnama was postponed and the panchas and the complainant were asked to come on that spot at 10 o'clock in the morning of next day.

262.5 On 3.3.2002, in the morning at 10 o'clock both the panchas and the complainant had remained present at the spot where the panchnama had stopped and the procedure for drawing the remaining panchnama was carried further at 10 o'clock in the morning on 3.3.2002. On this day, they had drawn the panchnama of Jawaharnagar, which is also known as Jawannagar, Gangotri Society, behind Jawannagar in the pit and on the rear side towards the National Highway and from there they reached Thakkarbapanagar to Bhagyodaya Hotel. In this manner, they carried out the proceedings in the areas near Bhagyodaya Hotel and at 18:30 in the evening they postponed the proceedings of the panchnama and the panchas and the complainant were instructed to come to the road which goes to Kalupur on the next day.

262.6 On 4.3.2002, both the panchas and the complainant had come to the road going from Naroda to Kalupur at 10 o'clock in the morning and the proceedings of the panchnama were commenced. On that day, they had drawn the panchnama of the shops on the Naroda Kalupur road where

the shutter of the mattress shop of a Muslim was broken and looted and set on fire as well as from a shop by the name of 'Janta Welding' the furniture was taken out and there were incidents of arson, a detailed panchnama was drawn and in this manner the panchnama which was commenced on 1.3.2002 at 12:00 hours was completed on 4.3.2002 at 12:30 hours in the afternoon.

262.7 He had drawn this panchnama on four days in four parts. The witness has further deposed that he had noted down the facts in the panchnama as dictated by the panchas and that the entire proceedings of the panchnama were drawn in the presence of the complainant and in his presence.

262.8 The witness has thereafter proved the panchnama Exhibit-1749 Part-1, Part-2, Part-3 and Part-4.

262.9 The witness has further deposed that at the relevant time, various complaints relating to the riots, regarding loss of property and other complaints came to be registered with the Naroda Police Station. In connection with the complaints, under the instructions of Shri Mysorewala, he had drawn different panchnamas of the damage caused to the properties of victims and of identification of dead bodies of the deceased, etc. All the panchnamas were drawn by him by calling two panchas. The witness has deposed that the contents of all the panchnamas drawn by him are correct and have been written down in terms of what was stated by the panchas and bear the signature of all the panchas as well as his signature.

262.10 Various panchnamas drawn by the said witness of the damage caused to the properties of Umedhasan Kallubhai Kureshi, Akbarmiya Junedmiya Sumrani, Sufiyabanu Yakubbhai Shaikh, Kasamali Akbarali, Munirkhan Pathan and Sarmuddin Khwajahussain Shaikh have been exhibited as Exhibits 2036, 2037, 2038, 2039 and 2040 respectively. The witness has further proved the panchnama Exhibit 2041, which relates to the identification of dead bodies of Zarinabanu Kureshi and Naseembanu Kureshi.

262.11 The witness has further deposed that pursuant to the instructions issued by the Investigating Officer Shri Mysorewala, he had recorded statements of the witnesses from 3.3.2002 to 20.3.2002 in connection with I-C.R. No.100/02 and other complaints. The witness has deposed that he has recorded the statements of Sufiyabanu Yakubbhai (PW 45) on 20.3.2002, Sarmuddin Khwajahussain Shaikh (PW 59) on 17.3.2002, Dhoriben @ Jaydabibi Mahmudishaq Shaikh (PW 90) on 4.3.2002, and Farzana Ayubkhan Pathan (PW 106), Naemuddin Ibrahimhai Shaikh (PW 158), Sabbirahemad Munirahemad Shaikh (PW 159), Afsanabanu Raheman Saiyed (PW 160), Shahjahan Kabirali Shaikh (PW 161), Usmanbhai Valibhai Mansuri (PW 163), Yasin Usmanbhai Mansuri (PW 164), Mahammadmaharroof Abdulraufkhan Pathan (PW 191) and Saberabanu Abdulaziz Shaikh (PW 214) on 3.3.2002 and Basirahemad Mahammadyusuf Shaikh (PW-207) on 10.3.2002.

262.12 The witness has further deposed that all the documents in connection with the action taken by him were handed over by him to Shri Mysorewala.

262.13 CROSS EXAMINATION: In the cross-examination of the witness, it has come out that in the year 2002, he was a Police Sub Inspector at Naroda Police Chowky and prior thereto, he had experience of twenty five years. He was a promotee PSI. At the relevant time, he had experience of fifteen years as a PSI. The witness has admitted that during these fifteen years, he had investigated many offences. The witness has admitted that at the time of drawing a panchnama, one is required to go around the spot and take note of the details minutely and record them in the panchnama.

262.14 The witness has admitted that Shri Mysorewala had not issued any written order to him for drawing a panchnama in connection with I-C.R. No.100/02 and that he had issued oral instructions. At the time of drawing the panchnama, he had obtained the complaint of I-C.R. No.100/02. The witness has stated that he had received the order to draw a panchnama early in the morning between 3:30 to 4:00 on 1.3.2002 and thereafter, he had received the complaint. He had studied the complaint and had understood the area in which the incident had taken place.

262.15 The witness has admitted that on 1.3.2002, at 12 o'clock in the afternoon, after meeting Shri Solanki, he had drawn the panchnama of the scene of incident shown by him in the presence of panchas. The witness has admitted that he, Shri Solanki and the panchas had observed all the places minutely and drawn the panchnama.

262.16 The witness has admitted that he had personally

gone inside the Noorani Masjid and inspected it. The witness has admitted that on the reverse side of page 1 of part 2 of the panchnama Exhibit-1749, he has referred to three gas cylinders lying there, however, he has not examined or noted as to whether the gas cylinders were empty. The witness has admitted that on the basis of his experience in the police department, he can say that if there are blasts by throwing gas cylinders, the cylinders would be broken and the remnants of the broken cylinders would be found from the nearby area. The witness has admitted that at the Noorani Masjid, he had not found any remnants of broken cylinders.

262.17 The witness has stated that he does not remember as to whether Milan Tea Stall is situated outside the Noorani Masjid at a distance of 30 to 40 feet from the masjid. The witness has stated that at the relevant time, he had seen this stall. He has stated that at present, he does not remember as to whether Milan Tea Stall is situated in the south i.e. towards Narol. The witness has voluntarily stated that at the relevant time when the panchnama was drawn, the situation was very tense; there were a huge lack of instruments and amidst the non-cooperation of the residents, they had carried out all these activities. Only they know as to how they had worked at that time under those circumstances. The witness has stated that at present, he does not remember as to whether Milan Hotel's door opens towards the national highway and as to whether there was any window of the hotel opening towards the Noorani Masjid. The witness has denied that if he had seen the window, he would have mentioned it in his panchnama. The witness has voluntarily stated that when he went to draw the panchnama, at that time, he used to note down the bigger

things and the main matters and move ahead.

262.18 The witness has admitted that in the panchnama drawn earlier, no article had been recovered from Jigar Hasanni-Chali and that he had not seized anything which supports the complaint from there. He has also admitted that he had not made any attempts to carry out any scientific investigation in the context of the burnt vehicles.

262.19 The witness has admitted that on the road, there was a shop by the name of Vikram Tyres in front of which, tyres had been burnt. The witness has denied that except for this place, he had not found any signs of tyres having been burnt. The witness has admitted that there is no mention of any vehicles having been set on fire near Vikram Tyres.

262.20 In his cross-examination, the witness has stated that the second and third parts of the panchnama are of the chawls in Jawannagar, the lanes, Hussainnagar, etc. The second and third parts of the panchnama were made till Bhagyodaya Hotel. The witness has denied that he had drawn a minute panchnama of the scene of the incident. The witness has stated that it can be said that loss which could be seen with naked eyes and major facts, had been included in the panchnama. The witness has admitted that whatever he had seen on the second and third day had been mentioned in the panchnama. The witness has voluntarily stated that he had seen the spots shown by the panchas and the complainant. The witness has admitted that he had not seen remnants of any burst gas cylinders in the chawl and had not seized any empty or full gas cylinders. The witness has admitted that he

has not seized any burnt parts of the body of any person in this case and he had not seen any signs thereof. The witness has denied that he had not seen any burnt cots, etc. The witness has admitted that he has not seized them.

262.21 The witness has stated that at present, he does not remember as to whether he had seen that there was any masjid in the area up to Hussainnagar or Jawannagar. The witness has admitted that if he had seen a masjid, he would have mentioned it in the panchnama. The witness has admitted that in the burnt vehicles seen by him in the area, he had not seen any corpses nor had he seen any remnants of any dead bodies.

262.22 The witness does not remember as to whether he had seen any godown in Gangotri Society when he went to draw the panchnama. He had not gone to Teesra Kuva.

262.23 The witness has stated that he had gone till the passage of the water tank between Gopinath and Gangotri society. The witness has admitted that he had not seized any muddamal worth sending to the FSL from there. The witness has admitted that he has roamed about the entire chawls of Jawannagar and Hussainnagar for drawing the panchnama. During this period, he had not seen any corpse in any of the houses which were set on fire.

262.24 The witness has admitted that he had recorded all the statements in accordance with what was stated by the witnesses and had not recorded anything on his own. The witness has admitted that no officer who has carried out the

investigation in this offence has recorded his statement.

262.25 The witness is thereafter cross-examined to prove the contradictions in the deposition of the witnesses as to the statements recorded by him, reference to which shall be made while discussing the evidence of the concerned witnesses.

263. **PW-297 Pruthvisinh Bhavanisinh Makwana** has been examined at Exhibit-2045. This witness has deposed that he retired as a Police Sub Inspector on 31.3.2003. In the year 2002, he was discharging duties as a Police Sub Inspector at Naroda Saijpur Police Chowky.

263.1 The investigation in connection with the incident that took place on 28.2.2002 at Naroda Patiya was at the relevant time being carried by Shri Mysorewala Senior Police Inspector, Naroda Police Station. During that period, he had taken steps as per Shri Mysorewala's instructions and had handed over the documents of the action taken by him to Shri Mysorewala. Shri Mysorewala had told him to record the statements and draw panchnamas.

263.2 In connection with the incident that took place on 28.2.2002, different complaints had been registered with the Naroda Police Station. Such registered complaints were Naroda Police Station I-C.R. No.115, 129, 153, 181, 182 and 183 in respect of which, as per the instructions of Shri Mysorewala, he had drawn the panchnama of the scene of offence in the presence of two panchas and all the panchnamas which were drawn in his presence were handed over to Shri Mysorewala.

263.3 The witness has thereafter proved the panchnama of the properties of Sumermiya Mahammadmiya Makrani, complainant of I-C.R. No.115/02, which is exhibited as Exhibit-2046. The witness has further proved the panchnamas of the properties of Taufiqmiya Akbarmiya Sumrani and Allauddin Adambhai Mansuri, which have been exhibited as Exhibits 2047 and 2048. The witness has further deposed that in connection with the task entrusted to him, he has recorded the statement of Tamizanbanu Taufiqmiya Sumra (PW 87) on 11.3.2002.

263.4 CROSS EXAMINATION: This witness has been cross examined by the learned counsel for the defence, but nothing worth mentioning has been elicited.

264. **PW-298 Manubha Bhikhubha Gohil** has been examined at Exhibit-2076. This witness has deposed that he has retired as a Police Sub Inspector on 31.8.2006.

264.1 In the year 2002, he was discharging duties as a Police Sub Inspector in the Crime Branch and at the relevant time, he was required to do the work as per the instructions and written or oral orders of the higher officers and, accordingly, he had recorded statements of the witnesses and drawn panchnamas in connection with the Naroda Police Station I-C.R. No.100/02.

264.2 At the relevant time, the charge of the investigation was with Shri Chudasama and in that investigation, the witness used to perform the tasks entrusted to him and used to submit the documents in connection therewith on the same day.

264.3 The witness has deposed that in connection with the task entrusted to him, he had recorded the statements of Zubedabibi Rashidbhai Shaikh (PW 54) and Mahammadhussain Kaiyumbhai Shaikh (PW 167) on 12.5.2002 and handed over the same to Shri Chudasama.

264.4 CROSS EXAMINATION: This witness in his cross-examination has stated that he had recorded the statements of PW 54 and PW 167 at the Shah Alam relief camp. He had personally gone to record the statements. Sitting arrangement had been made at the camp in a hall where there was a table and chair. They used to record the statements of those persons who came for recording their statements in seriatim. The witness is not aware whether the arrangement for the witnesses to come in a queue for recording their statements had been made by the camp people. The witness has stated that he had not asked the persons who had come for recording their statements as to whether recording of anyone's statement has been left out.

264.5 The witness has stated that the statements were being read over to the witness and their signatures were being taken thereon. Thereafter he has stated that signatures were not being taken. The witness has stated that he has not verified whether his writer had read over the statement to the witness for the reason that there was no such necessity. The writer had recorded the statement in his presence and had recorded the statement as stated by the witness. The witness has stated that he is not aware as to whether any leaders of the Muslim Jamaat or social organisations and advocates were

present at the camp.

264.6 The witness has been cross-examined to bring the omissions and contradictions in the testimonies of the witnesses, whose statements he has recorded, reference to which shall be made while discussing the testimonies of the concerned witnesses.

265. **PW-299 Dilipsinh Prabhatsinh Zala** has been examined at Exhibit-2081. This witness has deposed that he has retired as an A.S.I. Satellite Police Station on 30.11.2002.

265.1 In the year 2002, he was discharging duties as a Head Constable in the Crime Branch, Ahmedabad City. At that time, he was working under Shri J. T. Chudasama, P.S.I. At the relevant time, Shri S.S. Chudasama was the Assistant Police Commissioner of the Crime Branch.

265.2 The witness has deposed that the investigation of the offence registered vide Naroda Police Station I-C.R. No.100/02 was entrusted to Shri S.S. Chudasama and that the witness had taken action as per the instructions of Shri S.S. Chudasama. While acting under such instructions, on 25.6.2002, he had recorded the statement of Salim Roshanali Shaikh (PW 37) on 25.6.2002. Over and above that, he had carried out whatever instructions were issued to him in connection with the complaint and had recorded such statements. The witness has deposed that he has handed over the papers in connection with the action taken by him to Shri S.S. Chudasama.

265.3 CROSS EXAMINATION: In the cross-examination of this witness, in connection with the statement of Salim Roshanali Shaikh, the witness has denied the suggestion that he used to beat the witness with a baton and tell him to sit quietly and was scolding the witness and that he has written down the statement on his own. He, however, has admitted that he had not read over the statement to the witness as he had written it down as dictated by him.

265.4 The witness has admitted that this witness has not named any accused nor has he attributed any weapon to any accused nor has he involved any accused in connection with the offence in his statement. Certain omissions and contradictions as to the statement dated 25.6.2002 of PW-37 Salim Roshanali Shaikh have been brought out in the cross-examination of this witness, reference to which shall be made while discussing the evidence of the said witness.

266. **PW-300 Nisharmahammad Sultankhan Malek** has been examined at Exhibit-2089. This witness has deposed at present he is discharging duties as a Police Inspector at Changodar Police Station.

266.1 In the year 2002, he was discharging duties as a P.S.I. Crime Branch, and as a part of his duties, he was required to perform the task assigned to him, under instructions of the higher officers.

266.2 The investigation of Naroda Police Station I-C.R. No.100/2002 was entrusted to the Assistant Police Commissioner, Shri S.S. Chudasama in the year 2002 and at

that time, as per the instructions given to him in connection with the incident, he had recorded statements of several witnesses and drawn panchnamas of the properties. After performing the task, as per the instructions, he used to submit the documents to Shri Chudasama.

266.3 The witness has deposed that he recorded the statements of Abdulrashid Abdulkarim Shaikh (PW.89) on 23.5.2002, Mahammadbhai Kalubhai Khalifa (PW 107) on 14.5.2002, Mahmadsafi Allabux (PW 157) on 23.5.2002, Mahammadrafiq Mahammadrahim Shaikh (PW 230) on 23.5.2002.

266.4 The witness has further deposed that at the relevant time, the Crime Branch had formed different teams for apprehending the accused. His team had apprehended accused Suresh Langdo and had handed over his custody to A.C.P. Shri S.S. Chudasama.

266.5 In connection with the task performed by him, his statement had been recorded before the S.I.T. on 8.12.2008.

266.6 CROSS-EXAMINATION: In his cross-examination, this witness has admitted that the SIT officer had recorded his statement on 8.12.2008 which he had read and understood and signed. The witness has admitted that the statements of witnesses which he had recorded had been recorded in accordance with what the witnesses had stated and he had not written down anything on his own and it had not happened that though the witness had not stated something, he had written it down. He has stated that it has not happened that

any witness had given him the name of the accused despite which, he had not written it down.

266.7 The witness has stated that whenever he used to go for recording the statements, Shri Chudasama had not given him any list of witnesses. He had not given him any lists to arrest the accused together with the names of the accused. The witness has admitted that whenever he went to record the statements, he used to go to the camp. The witness has admitted that he used to go to the Shah Alam camp to record the statements. The witness has stated that he has recorded some statements in the camp and some statements at the site, namely, at Naroda Patiya.

266.8 In his cross-examination, the witness has stated that when he used to go to the camp, no announcements were made on the mike to call the witnesses. He had not heard the announcements being made on the mike. The witness has denied that when he used to go to the camp, the advocates, service oriented workers and workers of the voluntary organizations were also there.

266.9 The witness has stated that he used to go to the camp and tell the organizers of the camp to call the affected persons or the victims of Naroda Patiya. The managers did not give him names and addresses of the persons, whom he used to call. He has stated that he used to record the statements of those persons who came. The witness has denied that he has recorded the statements of witnesses in the presence of the managers of the camp.

266.10 The witness has stated that it has not happened that Shri Chudasama had given him any complaint and instructed him to record the statement of any witness.

267. **PW-301 Devendragiri Himmatgiri Goswami** has been examined at Exhibit-2091. This witness has deposed that he is working as a Nodal Officer in the Special Investigation Team in the Gulbarg Society Case.

267.1 In the year 2002, he was discharging duties as a P.S.I. in the Ahmedabad City Crime Branch and at that time, Shri Chudasama was the Assistant Police Commissioner and he was in-charge of the investigation into the offence registered vide Naroda Police Station I-C.R. No.100/02.

267.2 In the Crime Branch, he was required to follow the instructions and orders of his higher officers and was required to perform such tasks. He was working as a Reader P.S.I. with S.S. Chudasama.

267.3 During this period, he recorded the statements of Iqbalhussain Amirmiya Kureshi (PW 108), Mahammadbhai Abdulhamid Shaikh (PW 138), Sahinbanu Mahammadhussain Kureshi (PW 166) and Mahammadazharuddin Shaikh (PW 254) on 12.5.2002 as well as other statements.

267.4 He had handed over all these statements to Shri Chudasama.

267.5 **CROSS EXAMINATION:** In the cross-examination of this witness, he has denied that he used to go to the camps

and meet the victims personally. The witness has stated that the managers of the relief camp were informed in advance and they would keep the victims present and such statements were recorded at the relief camp itself. The witness has admitted that his statement has not been recorded in connection with this offence.

267.6 Various omissions and contradictions in the statements of the witnesses whose statements have been recorded by this witness are sought to be proved in the cross-examination of this witness, reference to which shall be made while discussing the testimony of the individual witness.

268. **PW-302 Dilipbhai Arjunbhai Rathod** has been examined at Exhibit-2096. This witness has deposed that in the year 2002, he was discharging duties as a Police Inspector with the Ahmedabad City Crime Branch. At the relevant time, Shri Chudasama was the A.C.P. of the Crime Branch and the investigation in this case was entrusted to him.

268.1 While he was at the Crime Branch, he was required to act in accordance with the instructions of the higher officers. As per the instructions of Shri Chudasama, he was required to perform certain tasks and in accordance therewith he had performed such tasks. Shri Chudasama had instructed him to record statements of the victims of the communal riots in connections with I-C.R. No.100/02. Accordingly, he had recorded the statements of Kamrunisha Muradali (PW 56) on 12.5.2002. Munawar Sarmuddin Shaikh (PW 58) on 13.5.2002, Chandbhai Saiyedbhai (PW 81), Akbar Subbhani Nazirahemad (PW 94), Naemuddin Ibrahim Shaikh (PW 158), Nadeemuddin

Sharifuddin Shaikh (PW 235) on 13.5.2002 and Afrozbanu Mahammadrazak Ansari (PW 247) on 12.5.2002.

268.2 The witness has deposed that apart from the above witnesses, he had recorded statements of the victims in terms of the instructions given to him and had handed over all the papers in connection therewith to the Investigating Officer Shri Chudasama.

268.3 CROSS EXAMINATION: The witness has admitted that no statement regarding the action taken by him in connection with this case has been recorded. The witness has been cross-examined to bring out the contradictions and omissions in the statements of the witnesses recorded by him, reference to which shall be made while discussing the evidence of the concerned witness. The witness has admitted that he has recorded the statements of all the witnesses as stated by them. He has not written down anything not stated by the witness and it has also not happened that the witness has stated something despite which he has not recorded it and that he has written the statement on his own.

269. **PW-307 Sukhdevsinh Sardarsinh Chudasama** has been examined at Exhibit-2127. The witness has deposed that he has retired as Assistant Commissioner (Intelligence) on 31.5.2006.

269.1 From 21.11.2001 to 19.11.2002, he was discharging duties as Assistant Police Commissioner at the Ahmedabad City Crime Branch. During this period, the investigation of the offence registered vide Naroda Police Station I C.R. No.100/02

was entrusted to him. The witness has deposed that apart from I-C.R. No.100/02, he was also handed over the investigation of other offences of communal riots registered at the Naroda Police Station.

269.2 He had taken over the charge of the investigation in this offence from A.C.P. Shri P.N. Barot 'B' Division.

269.3 He had taken charge of the investigation of I-C.R. No.100/02 on 1.5.2002. With the investigation of I-C.R. No.100/02 by and order of the then Police Commissioner, twenty five other offences registered with the Naroda Police Station and thereafter two other offences, in all, twenty seven offences were merged with Crime Register 100/02. Thus, he had carried out investigation of, in all, twenty eight offences.

269.4 The witness is shown an order dated 1.5.2002 of the then Ahmedabad City Police Commissioner and upon seeing the said order, he had stated that this is the order by virtue of which the Police Commissioner has ordered to merge the other offences. The said communication is exhibited as Exhibit-2128.

269.5 The witness has further deposed that in the year 2002, Ahmedabad City Crime Branch was working under the direct supervision of the Ahmedabad City Police Commissioner. At that time, Shri A.K. Sureliya was the Deputy Police Commissioner of the Crime Branch and he was discharging duties as an Assistant Commissioner. Hence, the office of Crime Branch was working at Gaekwad Haveli. In the Crime Branch, Police Inspectors, Police Sub Inspectors, Head Constable and Constables are discharging duties.

269.6 Upon being transferred to Gandhinagar Head Quarters as Deputy Police Commissioner, he had handed over the charge to A.C.P. (Sr. P.I.) Shri Agrawat on 20.11.2002. After the investigation was handed over to him on 1.5.2002, he had studied the original case papers and the case diary. The investigation of this offence was handed over to him sixty days after the occurrence of the incident.

269.7 Apart from this offence, other offences in the riots where there was loss of life had been entrusted to the Ahmedabad City Crime Branch. The supervision of the said offences was also under him.

269.8 On 2.5.2002, a meeting was convened of the Deputy Police Commissioner Shri Surelia, of himself and Inspector Shri Agrawat for discussing as to how to proceed further with the investigation of the offence. Since the investigation in connection with the offence was of a large scale, and such victims were residing in different relief camps in the city, different teams were formed and instructed to record their statements and to draw panchnamas of the damage caused to the properties on account of vandalism and arson. For this purpose, assistance of five Inspectors, eleven Police Sub-Inspectors as well as Head Constables, Constables and Writers was taken. He has entrusted certain tasks to them, which they were performing under him and the investigation was carried on. Since the investigation was under his guidance, different teams of Police Officers and staff had been formed and action had been taken.

269.9 He, as well as the investigation teams, had visited and met the Muslims at the relief camp at Shah Alam and had met the Camp Committee who was coordinating with the victims who were taking shelter at the camp as well as the Muslims leaders of the relief camp as well as Muslim advocates.

269.10 The Managing Committee of the Relief Camp, Ahmedabad city had prepared a list of the victims of communal riots of different areas. He had informed the leaders of the Managing Committee of the relief camps that he is required to record the statements of the affected persons of Naroda Patiya area and that the statements of the affected persons have been recorded through his investigation team.

269.11 The documents collected by the previous Investigating Officer of Naroda Police Station I-C.R. No.100/02 had been handed over to him, whereafter A.C.P. Shri M.T. Rana had also handed over the statements recorded in connection with other offences registered with the Naroda Police Station.

269.12 On 2.5.2002, he had submitted a report in the Metropolitan Magistrate's Court for addition of section 376 IPC in the offence. On the same day, he had also recorded statements of connected people.

269.13 On 4.5.2002, he had personally recorded statements during the course of investigation and under his instructions, P.S.I. Shri Joshi had recorded statements of witnesses on 5.4.2002.

269.14 On 7.5.2002, P.S.I. Shri Joshi had submitted a report and handed over the papers of the statements recorded by him pursuant to his instructions.

269.15 On 8.5.2002, he had searched the house of accused No.38 Ashok Hundaldas Sindhi alias Khatwani and had drawn a panchnama in that regard in the presence of panchas.

269.16 The witness has thereafter deposed regarding the arrest of Ratilal Somabhai Rathod alias Jaybhawani (deceased) on 12.5.2002 as well as regarding the statements of several witnesses.

269.17 The witness has further deposed with regard to Police Inspector Shri Tarun Barot, Police Sub-Inspector Shri H.B. Gohil, P.S.I. Shri Goswami, P.S.I. Shri Vaghela, P.S.I. Shri Karoliya, and Police Inspector Shri Pathak having submitted reports pursuant to the investigation carried out under his instructions. The witness has further deposed regarding drawing of a discovery panchnama at the instance of accused Jaybhawani, which has been exhibited as Exhibit-2129. The witness has identified the muddamal can which was recovered during the course of the discovery at the instance of accused Jaybhawani.

269.18 The witness has further deposed that since the investigation was handed over to him sixty days after the lodging of the first information report, in view of the provisions of law, he was required to file the charge-sheet within thirty days only. Hence, they had carried out the investigation night and day. The witness has deposed regarding recording of

statements by himself on 13.5.2002 as well as Police Inspector Shri A.P. Chauhan and P.S.I. Shri Gadhavi. The witness has further deposed regarding the Police Officers in the team having recorded statements of witnesses at the relief camps on 14th and 15th May, 2002. The witness has further deposed regarding the investigating teams having recorded statements and drawn panchnamas of the damage caused to the properties on 16.5.2002 and 17.5.2002 and having submitted reports to him.

269.19 The witness has deposed that on 19.5.2002, he had recorded the statement of witness Zahirabibi Mahammad Mustaq Qureshi (PW-90 Dhoriben alias Jahedabibi). The witness has deposed that on the basis of the statement of witness Mahammadbhai Kalubhai recorded on 21.5.2002, investigation was carried out in Teesra Kuva located in the Naroda area through the Fire Brigade authorities.

269.20 The witness has further deposed regarding statements having been recorded by the team of officers on various dates and arrest of accused Babu Bajarangi (Accused No.18) Parmendrasinh alias P.J. Rajput (Accused No.19), Kishan Khubchand Korani (Accused No.20 and Prakash alias Suresh Chhara (Accused No.21).

269.21 The witness has also deposed that on 29.5.2002, he had received a map of the scene of offence and had kept the same with the investigation papers and on the same day, he had instructed Police Constable Himmatsinh Narubha to obtain and submit the injury certificates and P.M. notes of the victims, which he had submitted pursuant to his instructions and which

were also kept with the investigation papers.

269.22 The witness has further deposed that he had instructed P.S.I. Pathak to trace out the individuals who were lost in the communal riots and he had traced out nine missing persons and had submitted a report to him, which was also kept with the case papers. On the same day, accused No.22 Suresh Ranchhod Kantibhai was arrested. The witness has thereafter deposed with regard to obtaining remand of accused Suresh on 30.5.2002 and on the same day, he had received approval for submitting the charge-sheet, which he had kept with the investigation papers.

269.23 The witness has further deposed that on 4.6.2002, he had prepared a charge-sheet in connection with the offence and had submitted the same in the Metropolitan Court No.11 together with all the record. The witness has deposed regarding the procedure followed with regard to different accused who had been arrested by him.

269.24 The witness has deposed that on 23.8.2002, he had prepared a supplementary charge-sheet and had submitted the same in Metropolitan Magistrate's Court No.11, which was registered as Criminal Case No.1662/02.

269.25 The witness has deposed that on 27.9.2002, since he was required to go out of station for some other investigation, the investigation of the present case was handed over to Senior P.I. Shri H. B. Agrawat. The witness has thereafter deposed that on 3.10.2002 upon returning back, he had taken over the charge of the investigation.

269.26 The witness has inter-alia deposed that he had instructed P.S.I. Shri Goswami to carry out test identification parade of Ashok Hundaldas Khatwani. On the same day, he had recorded the statement of witness Hussainabanu.

269.27 The witness has deposed that on 7.11.2002, since the other offences registered at the Naroda Police Station have been included in the present investigation 'C' Summary reports were prepared and submitted to the concerned court.

269.28 On 19.11.2002, he had handed over the investigation to P.I. Shri Agrawat as he was transferred to Gandhinagar.

269.29 The witness has deposed that he had recorded the statements of the following witnesses:

Sr. No.	Name of the witness	PW No.	Date of recording the statement
1.	Gauriben alias Jahedabibi Mahammadmashak Qureshi	90	19.5.2002
2.	Sarfarazkhan Maheboobkhan	109	12.5.2002
3.	Hussainabanu Agarkhan Pathan	135	4.5.2002
4.	Zannatbibi Kallubhai Shaikh	142	19.5.2002
5.	Dildar Umrao Saiyed	143	4.5.2002
6.	Iqbalbhai Ismailbhai	146	13.5.2002
7.	Abdulmajid Mahammadusman	156	5.9.2002
8.	Shaukat Nabibhai Mansuri	200	7.6.2002
9.	Nazirkhan Rahimkhan Pathan	208	6.5.2002
10.	Firoz alias Babakhwaja Maiyuddin Shaikh	225	26.8.2002
11.	Zulekhabegum MahammadAyub Shaikh	231	6.5.2002
12.	Nadim Mahammadali Saiyed	245	2.5.2002
13.	Inayat Abdulrahim Saiyed	251	14.9.2002
14.	Rasulbi Ajmuddin Shaikh	260	5.5.2002

15.	Shri V.K. Dilwadiya (Solanki) (P.I.)	262	24.5.2002 26.6.2002
16.	Head Constable Parbatsinh Vajesinh	266	25.5.2002
17.	Shri K. K. Mysorewala	274	24.5.2002
18.	Shri M.T. Rana A.C.P.	277	24.5.2002

269.30 The witness has stated that over and above the above witnesses, he has also recorded the statements of other witnesses during the course of investigation.

269.31 The witness has deposed that Police Inspector Shri A.A. Chauhan was working under him in the Criminal Branch and that he has passed away. The witness has deposed that Shri A.A. Chauhan had recorded statements of the following witnesses under his instructions:

Sr. No.	Name of the witness	PW No.	Date of recording the statement
1.	Gulamrasul Saeed Rasul Shaikh	64	13.5.2002
2.	Noormahammad Sarmuddin Shaikh	78	13.5.2002
3.	Ibrahim Alambhai	79	13.5.2002
4.	Maheboobbhai Umarbhai Shaikh	80	12.5.2002
5.	Pirubhai Ismailbhai	82	12.5.2002
6.	Fatimabibi Makboolbhai Shaikh	83	12.5.2002
7.	Rajiyabanu Yakubbhai Shaikh	86	12.5.2002
8.	Jahedabanu Iqbalahemad Shaikh	93	12.5.2002
9.	Mahammad Kalubhai Khalifa	107	13.5.2002
10.	Aslambhai Shamsheerbhai	180	13.5.2002
11.	Basir Usmanbhai	183	13.5.2002
12.	Mahammad Ayub Shofilal Shaikh	185	13.5.2002
13.	Rashidabanu Imtiyazhussain Shaikh	192	12.5.2002
14.	Kherunnisha Riyazuddin Shaikh	197	12.5.2002
15.	Noormahammad Nazirmahammad Pathan	199	12.5.2002
16.	Sattarbhai Mahammadhussain Shaikh	201	13.5.2002
17.	Abdulrazak Abdulrehman	204	13.5.2002

18.	Nasimbanu Khwajahussain Shaikh	250	13.5.2002
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269.32 The witness has deposed that he is acquainted with the signature of Shri A.A. Chauhan as time and again, he had occasion to see his signature during the course of investigation and routine office work.

269.33 The witness has deposed that different Police Officers under him had recorded statements of different witnesses and had drawn panchnamas of the properties of the victims of the riots during the course of investigation of the offence, under his instructions, and had submitted all the papers of the task performed by them together with the reports and at times without reports and all of which had been kept by him with the investigation papers. The witness has submitted before the court a list of the names of the Police Officers who had recorded statements of the witnesses together with the names of the witnesses they had recorded.

269.34 CROSS EXAMINATION: In the cross-examination of this witness, it has come out that on the day of the incident, that is, on 28.2.2002, he has not visited Naroda Patiya. On 28.2.2002, he had not received any orders from the Police Commissioner to reach Naroda Patiya. The witness has stated that after he was handed over the investigation, he had personally visited the relief camp and he had not called the managers of the camp to the Crime Branch. The witness has denied that after he was entrusted with the investigation, he had obtained information with regard to all the relief camps in Ahmedabad city. The witness has admitted that if he needed

any information as to which victim is in which relief camp, he used to get it through the managers of the camp. The witness has stated that he does not know the exact number of relief camps in Ahmedabad at the relevant time. The witness has admitted that during the course of investigation in this case, he had visited the Juhapura relief camp, the Shah Alam relief camp and the Dariakhan Ghummat relief camp.

269.35 The witness has denied that the team of officers which he had formed at the Crime Branch for the purpose of investigation had also visited all the relief camps. The witness has stated that the officers of the investigation team formed by him had only visited the Shah Alam camp. The witness has admitted that amongst the organisers of the relief camps, there were people from organisations and Muslim advocates. He did not know the name of the organisation, but it was an organisation which took care of affected Muslim persons.

269.36 The witness has admitted that whenever he met the victim, at that time the person from the organisation or the advocate present there used to announce the name on the mike and call the victim. The witness has denied that he used to put questions to the victims through the office bearers of the organisation and they used to dictate the same to them verbatim. The witness has denied that he used to record the statements of witnesses in the presence of the office bearers of the organisations.

269.37 The witness has admitted that when the office bearers used to announce the names of the victims on the mike, he used to record their statements. The witness has

voluntarily stated that at that time also, he did not record the statements in the presence of the office bearers of the organisations. The witness has stated that he had recorded the statements of the witnesses about two months after the incident.

269.38 The witness has stated that it has not happened that any affected person of the incident had made a telephone call to him or had given him any application that Naroda Police Station had not recorded their statements as stated by them. The witness has admitted that if any such application was received, the Deputy Police Commissioner, Crime Branch would have sent him such application.

269.39 The witness has admitted that the reporters and media personnel used to time and again visit the relief camps. He has stated that he has not seen the victims in the camp give interviews to the political leaders, reporters or media personnel.

269.40 The witness has denied that some of the witnesses of the Naroda incidents were from the S.R.P. Quarters. The witness has stated that during the course of his investigation, it was not found necessary to record the statements of the people from the S.R.P. Quarters.

269.41 The witness has admitted that on 4.5.2002, he had recorded the statement of PW-143 Dildar Umrao Saiyed. The witness has denied that he had also recorded the statement of this witness on 9.5.2002. The witness has admitted that on 4.5.2002, Dildar Saiyed in his statement had not given the

name of accused Tiniya (A-54) before him.

269.42 The witness has stated that during the course of investigation, he used to have discussion with Shri A. K. Sureliya, DCB Crimes. The witness has admitted that he had also read the report sent by the team which has inspected Teesra Kuva. In his cross-examination, it has come out that the distance between Jawannagar and the Noorani Masjid is approximately 700 feet. The witness has stated that he is not aware whether any officer from the investigation team had gone to the Civil Hospital personally and recorded the statements of any of the witnesses. The witness has stated that he himself did not keep any memorandum of how many victims were there in which camp. He has stated that he did not keep the names, addresses and telephone numbers of the managers of the camp.

269.43 In his cross-examination, it has come out that he has served in the police department for thirty eight years. The witness has admitted that during this period, he was also given training as to how to investigate cases. The witness has stated that he is conversant with the Gujarat Police Manual.

269.44 The witness has admitted that in all, three of his statements were recorded by the SIT on 22.1.2009, 30.6.2009 as well as 16.12.2009. The witness has admitted that he has put his signatures at the bottom of both his statements dated 22.1.2009 and 16.12.2009 and that in the statement dated 22.1.2009, he has put his signature on every page.

269.45 The witness has admitted that in his statement

before the SIT, he had stated all the true facts regarding whatever he knew. The witness has admitted that the statement dated 22.1.2009 was in the form of questions and answers, viz., the issues and their reply.

269.46 Certain extracts of the statement are put to the witness regarding his reply to the issues put to him by the Investigating Officer. However, since all these extracts are part of a statement under section 161 of the Code and have not been put to contradict the witness qua any part of his primary statement, the same are not admissible in evidence. As noted earlier, the statement under section 161 of the Code cannot be used to contradict a witness qua anything elicited during the course of cross-examination.

269.47 In his cross-examination, the witness has admitted that when the Crime Branch handed over the investigation to him, he had studied all the papers received by him. The witness does not remember as to whether the muddamal articles seized by the previous Investigating Officer had been handed over to him. The witness does not remember as to whether during the course of his investigation, the panchnama of the scene of offence was given to him. The witness has stated that he had studied the earlier panchnama of the scene of offence.

269.48 The witness has stated that he does not know that the earlier Investigating Officer had got the videography of the scene of offence done. The witness has admitted that it has not happened that he has received the muddamal videography cassettes. The witness has admitted that after the

investigation came in his hands, he felt that he should have visited the scene of offence. The witness has stated that when he thought so, he had not seen the map of the scene of offence and has voluntarily stated that he received the map subsequently. The witness has admitted that during the course of his investigation, he has not recorded the statement of any witness under section 164 of the Code. The witness has stated that the officers had given him a report regarding Teesra Kuva. The witness has admitted that during the course of his investigation, no remnants of any human body had been found from Teesra Kuva.

269.49 The witness has stated that he has not inquired regarding the number of family members of the accused from whose house he had seized the plastic can and that he has not recovered any documents to ascertain the ownership of the house from which such can was recovered. The witness has admitted that the plastic cans recovered from the house of the accused are similar to the ones which are sold in the open market. The witness has denied that he has not seized the cans in the presence of panchas. The witness has denied that in every case when an article is seized, the slip bearing the signatures of the panchas are required to be affixed and it is required to be sealed. The witness has admitted that the slips on the cans bear only his signature and do not bear the signatures of the panchas.

269.50 The witness has admitted that he had not sent these cans to the FSL for testing. The witness has stated that it is not necessary in every case to send the muddamal to the FSL. He has stated that he has not obtained any scientific

opinion regarding the contents of the liquid in the cans and has voluntarily stated that upon the panchas of the panchnama being asked to smell the can, he had ascertained that the smell of kerosene was emanating which is mentioned in the panchnama.

269.51 The witness has denied that in every case where the muddamal is seized, it is necessary to affix the slips bearing the signatures of the panchas. The witness has admitted that he had not found it necessary to obtain the signatures of the panchas on the slips affixed on the swords, dharias and cans which he had seized during the course of his investigation. The witness has denied that in every case where the muddamal is seized, it is necessary to affix the slips bearing the signatures of the panchas. The witness has denied that he has not seized three articles in the presence of panchas and that he has got up these three articles during his investigation and placed them in the record. The witness has stated that he has carried out investigation from 1.5.2002 to 20.11.2002. The witness has stated that he cannot remember as to from which date to which date, he had carried out the investigation.

269.52 The witness has stated that he knows the procedure for conducting the test identification parade. The witness has admitted that the facial identification register. Exhibit-1851 of accused No.38 Ashok H. Sindhi bears his signature. He has stated that the facts stated therein are true facts. The witness has admitted that this facial identification register has been filled in while he was on duty. The witness has admitted that the identification marks of an accused are to be recorded in

this facial identification register.

269.53 The witness has stated that he is not aware that at the time of test identification parade, dummies who look like the accused are required to be kept present.

269.54 The witness has stated that he had gone to the chawls of the scene of incident. He has not prepared any note as to which incident has taken place in which chawl. The witness has voluntarily stated that the reason was that at that time, much time had not passed since he had taken over the investigation and that the position was not clear. The witness has admitted that when he went to the scene of incident, he had not called any victim there and questioned them. He has stated that he has not prepared the site map and has voluntarily stated that they are not required to prepare such maps.

269.55 In his cross-examination, it has come out that he had received video cassettes together with the investigation papers. He has stated that he has not opened the video cassettes prepared by the earlier Investigating Officer and seen them. The witness has admitted that when an Investigating Officer is transferred, the panchnama of the scene of offence is required to be read. He has stated that he did not feel that the scene of offence is not properly demonstrated and hence, it is necessary to draw another panchnama.

269.56 The witness has admitted that in the scene of offence panchnama, Exhibit-1749, Parts I to IV, the names of

the chawls are not shown anywhere. The witness has admitted that in the panchnama, there is no mention as to which incident took place in which house. The witness has voluntarily stated that the reason may be that on that day, all the lanes had become ruins and when he himself had visited the scene of offence, all the chawls were in a state of ruins and no one was residing there on that day. The witness has stated that when he went to visit the scene of offence, he had not kept the panchnama Exhibit-1749 with him.

269.57 The witness has admitted that he has not verified the statements and the evidence collected by the earlier officer as there is no such practice. In his cross-examination, it has come out that during the course of investigation, no fact has been revealed that on the day of the incident, any gas cylinder had been burst. In his cross-examination, he has stated that he has not found any facts to the effect that there is an Uday Gas Agency in the Naroda area and that it deals with Indane Gas Cylinders and that on the day of the incident, gas cylinders were looted from Uday Gas Agency.

269.58 In his cross-examination, it has come out that the order for filing "C" summary in twenty seven offences was made by the Police Commissioner, Ahmedabad. The witness has admitted that the procedure for asking for "C" summary in twenty seven complaints had been carried out by the Crime Branch. The witness has admitted that the procedure for asking for "C" summary was carried out through him. The witness has stated that wherever necessary, he has studied the Gujarat Police Manual. At present, he does not remember as to whether "C" summary has been asked in this case for the

reasons shown in rule 232 of the Gujarat Police Manual. The witness has admitted that he had studied the twenty seven complaints prior to processing the "C" summary in the court of the Metropolitan Magistrate. At present, he does not remember that in some of the twenty seven cases whether the panchnamas were drawn and in some cases, the statements were recorded.

269.59 The witness has admitted that after the weapons given to the police department are used, they are required to deposit the empty cartridges. The witness has denied that despite the fact that he did not have any evidence and no evidence had been revealed during the course of investigation, under pressure from NGOs and the media, he had wrongly arrested the accused during the course of his investigation. The witness has admitted that during the course of investigation, it has not been revealed that any accused had snatched any weapon from any police personnel.

269.60 The witness has admitted that some of the people from amongst the refugees in the relief camp had given complaints in printed form. The witness has admitted that that he had seen such complaints. The witness has stated that it has not happened that when he sent his investigation team to the relief camps for recording the statements, at that time, the printed complaints were given for recording the complaints. The witness has stated that he had investigated regarding the printed complaints and had recorded the statements of some complainants. However, no facts were revealed as to who had prepared the printed complaints. The witness has stated that the witness did not know the facts. They had stated the fact

that someone from the relief camp had got the complaints printed, but the witness did not know such person. The witness has stated that he has not recorded any statements of the managers of the relief camps in connection with the printed complaints, nor had he recorded the statements of any advocates in connection therewith.

269.61 The witness has admitted that during the course of his investigation, it has not been revealed that seven to eight dead bodies were found in any house at Jawannagar or Hussainnagar.

269.62 In his cross-examination, it has come out that it has been revealed that at the scene of incident, in the police firing as well as in the communal riots, one or two Hindus had died. The witness has denied that during the course of his investigation, facts had been revealed regarding the damage caused to properties of Hindus during the communal riots.

269.63 In his cross-examination, the witness has admitted that PI Shri A.A. Chauhan, who has passed away, had recorded the statement of Ahmad Abbas, etc. The witness has thereafter been cross-examined to prove the contradictions in the testimonies of the witnesses as to the statements recorded by this witness as well as by Shri A.A. Chauhan (deceased), reference to which shall be made at the time of discussing the evidence of those witnesses.

269.64 BY COURT: The witness has been asked by the court to read item No.11 of his statement dated 22.1.2009 which has been recorded in paragraph 219 of the cross-examination. The

witness is then examined by the court in that regard. It may be noted that the contents of the statement dated 22.1.2009 have not been put to the witness to contradict any part of his primary evidence. It is therefore, not open for the trial court to examine the witness as to his statement dated 22.1.2009, as it would be hit by the bar contained in section 162 of the Code, which prohibits the use of such statement for any purpose other than to contradict a witness in accordance with the provisions of section 145 of the Evidence Act. Therefore, the court does not deem it fit to refer to that part of the testimony of the witness. The witness has stated that without perusing the record, he cannot say as to how many persons had passed away during the duration of his investigation. The witness has stated that during his investigation, he had undertaken the procedure for DNA test of 20 to 25 unidentified dead bodies for the reason that he could find that there were many relatives. The witness has stated that they had created a DNA squad. The witness is shown Exhibit-1497 which is a yadi for DNA tests of ten dead bodies. The witness has stated that he had stated that in 25 cases the proceedings for DNA had been undertaken is on account of the mistake. The witness has stated that from the record, he can say that during the course of his investigation, it had been revealed that 86 persons had died in the incident.

269.65 The witness has admitted that his Assignee Police Officers used to go to the camp and announce on the mike and used to record the statements of the witnesses who came forward to given the statements. The witness has admitted that if a person's relative has died in the communal riots or if a person is injured, then after the assignee officer recorded the

statement of such person, he had not verified their statements, nor had he gone to meet the witness at the camp. The witness has stated that, however, he used to carry out sample checking.

270. **PW-313 Harishbhai Ranchhodlal Muliya** has been examined at Exhibit-2207. This witness has deposed that presently he is discharging duties as a Superintendent of Police at Amreli. From 15.12.2006 to 18.4.2009, he was discharging duties as ACP Crime Branch, Ahmedabad City, During that period, he had carried out the investigation in connection with this offence and had taken over the charge from then P.I. Crime Branch Shri H.P. Agrawat. At the relevant time, the Investigating Officer Shri Singhal was promoted and hence, he had gone to take charge of the new post and, accordingly, he had handed over the charge of the investigation to Shri Agrawat and he (the witness) had taken over the charge from Shri Agrawat.

270.1 The witness has deposed that he has recorded the statements of, in all, six witnesses. Moreover, he has also arrested absconding accused Babu Vanzara on 19.11.2007 and had obtained remand of the accused. On 23.11.2007, test identification parade of the accused was carried out in the presence of the Executive Magistrate by witness Shaukat Nabi Qureshi. The test identification parade was successful.

270.2 The witness has deposed that he has kept the papers of the panchnama of the identification parade carried out by the Executive Magistrate with the investigation papers. The witness has further deposed that he had carried out the

lawful procedure for filing chargesheet against accused Babubhai Vanzara and had obtained necessary sanction for prosecuting him under section 153A of the Indian Penal Code and had kept the papers of the sanction with the chargesheet papers.

270.3 The witness has stated that he had also taken steps for arresting absconding accused Pappu Sindhi. The witness has stated that on 15.2.2008 upon having found sufficient material against the accused he had filed the chargesheet against him.

270.4 The SIT having been constituted, pursuant to the order of the Hon'ble Supreme Court, he had handed over the investigation to the then Deputy Police Commissioner of Porbandar Shri V.V. Chaudhary on 10.4.2008.

270.5 The witness has deposed that out of the six witnesses whose statements he had recorded, he had recorded the statements of Jetunbanu Aslammiya Shaikh (PW 206) on 7.1.2007 and Basirahemad Mahammadyusuf Shaikh (PW 207) on 27.3.2007.

270.6 CROSS-EXAMINATION: This witness in his cross-examination has stated that he has not recorded any statement of Shaukat Nabi on the day when his test identification panchnama was drawn. However, the earlier Investigating Officer had recorded the statement of this witness. The witness has admitted that the statements of witnesses which he had recorded had all been recorded in accordance with what the witness had stated. He had not

written any facts in the statement on his own. There is nothing in the statement which the witness has not stated and which he has written down. The witness has denied that though he had no evidence against accused Babu Vanzara, only with a view to harass the accused, he had wrongly arrested him and, therefore he had not drawn any arrest panchnama or panchnama of his physical position. The witness has denied that witness Shaukat was an accused in this case. The witness has stated that he is not aware as whether prior to arresting the accused, he had seen him. The witness has denied that he had called Shaukat to the police station and shown accused Babu Vanzara to him and thereafter had conducted the test identification parade for identification of accused Babu Vanzara.

271. **PW-327 Vinaybhai Vanarbhai Chaudhary** has been examined at Exhibit-2287. This witness has deposed that since the last two and a half years, he is discharging duties as Deputy Police Commissioner (Intelligence).

271.1 The witness has deposed that in April, 2008, he was discharging duties as Deputy Superintendent of Police, Porbandar city. Upon receiving instructions that he is required to investigate in the Godhra riot case, he had remained present at Gandhinagar before the Special Investigation Team, Godhra Riot Cell, Gandhinagar on 10.4.2008. In this investigation team, which is known as SIT, he was entrusted with the investigation of Naroda Police Station I-C.R. No.100/02, which is also known as the Naroda Patiya case for the offence under section 302 etc. of the Indian Penal Code.

271.2 In the year 2008, Shri Raghavan, was the Chairman of the SIT team and Geeta Johri, Shri Shivanand Jha and Shri Ashish Bhatia were members thereof.

271.3 He had taken over the investigation from the then Assistant Police Commissioner of the Crime Branch Shri H.R. Muliya.

271.4 On 10.4.2008, pursuant to the order passed by the Convenor of the SIT, he had commenced further investigation into the offence.

271.5 Upon taking over the investigation, he had studied the record of the investigation which was collected so far as, well as the case diary of the action taken earlier. Moreover, he had also studied the notification whereby the SIT was constituted which he had got from the SIT.

271.6 The witness has further deposed that he had sent a yadi to the Metropolitan Magistrate Court No.11 to the effect that he was required to carry out further investigation under section 173(8) of the Cr. P.C. on the basis of the order of the Supreme Court.

271.7 The witness has further deposed that since as per the order of the SIT and further investigation having been taken over, over and above, the case diary of the record of the investigation, he had studied all the 27 complaints, which had been merged with the investigation the P.M. notes of the victims who died in the incident, the injury certificates of all the victims who were injured in the offence, the applications

made by the different witnesses staying at the relief camps after the incident, the panchnamas of the scene of offence, the panchnamas of the damage caused to the household goods, etc.

271.8 Moreover, he had also inspected the scene of offence and since the main offence being I-C.R. No.100/02 was registered with the Naroda Police Station, he had requested for certified copies of the vardhi register, the allocation of police staff for the purpose of bandobust at the scene of offence and the distribution statement for the bandobust, the statement maintained regarding the firing and the teargas shells lobbed by the police staff on duty on the day of the incident, the station diary of the date of the incident, the log book of the Government vehicles used by the concerned officers, message book, etc. from the Naroda Police Station. He had made an in depth study of all the aforesaid documents.

271.9 Upon commencing with the investigation and studying the same, it came to his notice that several dead bodies of which post-mortem was performed were unidentified and that several injured witnesses had not received injury certificates, which were all necessary for the further investigation into the case. Hence, he had sent yadis to the Police Surgeon, Civil Hospital and the R.M.O. Vadilal Sarabhai Hospital to send information in this regard. On the basis of the yadis, he had received identification of several unidentified dead bodies as well as injury certificates of several injured persons.

271.10 The witness is shown a yadi Mark-576/29 which he

has stated is their office copy, the original whereof has been sent to the Civil Hospital and there is an endorsement thereon with the date regarding the same having been received as per prescribed procedure. The witness has identified his signature on the document and has admitted the contents thereof. The witness has stated that by this letter he had written a yadi for writing the remaining details regarding the names of the deceased in the post-mortem notes. All the facts of the corpses of the concerned deceased which were identified by their relatives at the Kalandri Masjid, Momin Jamaat Kabrastan whereafter their burial ceremonies came to be performed in this yadi, were written down in the letter dated 18.5.2008. This letter was written in their office routine and at the time when the letter was written a carbon was kept. The witness is shown the letter Mark-576/29 and he has admitted the same. He has deposed that he had got this letter written and he has identified the handwriting of his writer. Mark-576/29 is given Exhibit No.2288.

271.11 Upon further study of the investigation papers, he had noticed the fact that several applications had been received from different relief camps, wherein it was stated that in the earlier investigation, sufficient investigation had not been made with regard to the suspects named by them. The investigation was carried out by the SIT, prior thereto, several applications had been received from witnesses wherein names, addresses and other details of accused were stated, he had studied those applications and had also recorded the statements of those witnesses during the course of his investigation.

271.12 During the course of the earlier investigation, DNA samples of the relatives of eighteen deceased persons had been obtained for the purpose of DNA match and were sent to the FSL. However, since the FSL report regarding the match of the samples was not on the record, a yadi was sent to the FSL through a messenger and the FSL report was sent with the messenger. Upon a perusal of the report, it was noticed that the FSL had already carried out inquiry and investigation of the issues in the year 2003 and, at the relevant time, had sent the analysis report of the samples in the form of a report. The same is exhibited as Exhibit-1498.

271.13 Thereafter, he had learnt that the accused who had been arrested and had thereafter been granted bail by the orders of the court had committed breach of the conditions, and hence, he had taken steps for cancellation of bail.

271.14 In this investigation, he had also taken steps to record additional statements of the witnesses whose statements had been recorded prior to the investigation being handed over to the SIT.

271.15 Moreover, certain persons had also filed affidavits in the case pending before the Supreme Court and he had taken steps to record their statements in connection with the affidavits. Moreover, since 27 complaints had been clubbed with these offences, he had taken steps to record the statements of those complainants and necessary witnesses. Moreover, during the course of further investigation, he had also taken steps to record the statements of those witnesses whose statements were necessary.

271.16 Pursuant to the order of the Supreme Court directing further investigation, the SIT had given a public notice in the local newspapers, etc. calling upon any person who wanted to give his statement before the SIT to make an application and several applications were received from the applicants in connection with the public notice. The applications made by the different persons were received by the SIT on different dates.

271.17 The witness is shown the applications Mark 644/1 to 66, which he has stated are all applications received from different applicants by the SIT. He has further deposed that the SIT had maintained a common register for the applications wherein numbers were given and on the application, the number and the date on which the application was received were written and the person who received the application in the SIT used to put his short signature thereon. After following this procedure, the applications in connection with the Naroda Patiya incident were allotted to him.

271.18 The witness is shown several applications as indicated in paragraph 20 of his deposition, which he has stated had been received by his office in the routine course.

271.19 The witness has further deposed that he had sent summons under section 160 of the Code to all the applicants and had called them and, accordingly, during the course of further investigation, he had recorded the statements of all those witnesses.

271.20 The witness is shown the application Exhibit-1744 Mark-644/15 which has been exhibited only to the extent of the signature. All the contents of the application are exhibited. Other than that the witness is shown Mark-644/1, 11, 14, 19, 20, 25, 26, 28, 29, 30, 32, 34, 35, 40, 45, 51, 52, 53 and 55 to 64, which he has stated were received by his office in the office routine which the SIT had accepted and allotted to him. He had carried out further investigation thereon and as stated by him in his deposition, all the procedure had been carried out in the context of these applications.

Note: The trial court has made a note that the learned counsel for the defence has submitted that when several applicants came to depose, the prosecution has not shown these applications to them and as they are the authors of such applications, the applications cannot be exhibited without being shown to them and that several applicants have still not been examined and in these circumstances, the applications cannot be exhibited.

The learned Special Public Prosecutor submitted that all these applications have been received by this witness for the purpose of investigation, and hence, he had carried out the work as per office routine and was deposing before the court when these documents are relevant, and hence, they should be exhibited.

The trial court has recorded a finding that it is worth mentioning that in this bunch, in case of many applicants, their applications, viz. Exhibit-1405, Exhibit-1130, Exhibit-907, Exhibit-953, Exhibit-1213, Exhibit-1623, Exhibit-609, Exhibit-

1464, Exhibit-669, Exhibit-1744 (to the extent of signature only), Exhibit-741, Exhibit-896, Exhibit-1638, Exhibit-1306, Exhibit-1096, Exhibit-1355, Exhibit-1016, Exhibit-700, Exhibit-1112, Exhibit-1529, Exhibit-1663, Exhibit-670, etc. are there. All these are from this very bunch of applications and they were exhibited in the cross-examination at the request of the defence. The defence has relied upon them and has conducted cross-examination. Not only that, in case of the application Exhibit 670 which is a joint application of thirty applicants, wherein though all the witnesses have not been examined, in the cross-examination of PW 104 even on behalf of the applicants who have not been examined, a request has been made to exhibit the document, which has been accepted. It may be noted that the defence has placed reliance upon and has referred to majority of similar applications produced along with list Exhibit 644 and has got them exhibited. Moreover as discussed hereinabove, in case of Exhibit 670, even in case where the applicants have not been examined by the prosecution, the defence has placed reliance upon such application and has conducted cross-examination which this court has permitted in the interest of justice, hence at this stage, it is not proper for the defence to raise such objection when the Investigating Officer has give a detailed report of the investigation before the court in the form of his deposition.

Moreover, as per settled principles merely because a document is exhibited, it cannot be said that the court has accepted it beyond doubt. The objection raised by the defence is akin to the mentality of "heads I win and tails also I win", which is not in consonance with the interest of justice and the principles of evidence for exhibiting a document.

The court has observed that it is of the firm opinion that at present the Investigating Officer is present and he has personal information about the documents obtained by him in his office routine and the applications have been produced from his custody and when he is deposing about them, it would be in the larger interest of justice to exhibit all the documents.

The court has observed that it would be clear that both the defence and the prosecution have been given a fair trial or else the application Exhibit-670 will become an example wherein it would be considered that the court has given the defence complete and unlimited opportunity whereas the prosecution has not been granted reasonable opportunity, which the court cannot do and it is not in the interest of justice and equality before law, and hence, it is held that it is in the interest of justice to exhibit all the applications in respect of which the witness is deposing and overrule the objections raised by the defence.

In this regard it may be noted that the defence has cross-examined certain witnesses in the context of the applications made by them. In case where the witness has only admitted the signature, the application has been exhibited only to that extent. Now in testimony of the Investigating Officer who has merely received the applications in the course of routine office procedure, the applications are sought to be exhibited. It cannot be gainsaid that the contents of the document are required to be proved by the author of such document and when the author, viz. the concerned witness has not admitted the contents thereof, as a result whereof the document has

been exhibited only to the limited extent of the signature, one fails to understand as to how such documents can be proved through the testimony of the Investigating Officer who has merely received such documents and had no role in the making of the same. The comparison with the application Exhibit-670 is totally misconceived, inasmuch as the application was signed by about thirty applicants and was proved through the testimony of a signatory to the document. When there are thirty signatories, it is not necessary to examine all the persons who have signed the document and it is sufficient if one of the signatories proves the contents thereof. At best it can be said that the signatures of the applicants who have not been examined have not been proved, but the contents of the document would certainly stand proved. Whereas the trial court was concerned with the contents of applications the contents whereof were not proved by the signatories thereto. Hence there was no basis for comparison between the two. Therefore, the defence was wholly justified in raising such objection and the trial court was not justified in commenting that the defence was displaying the attitude of "heads I win and tails also I win". The applications, therefore, have wrongly been exhibited at the instance of the Investigating Officer.

271.21 The applications described earlier are given Exhibits No.2289 to 2316. The witness has deposed that on various dates, as stated in paragraphs 24, 25, 26 and 27 of his deposition, he had recorded the statements of the witnesses named therein.

271.22 The witness has deposed that he had taken steps

for cancellation of the bail of the accused, who were enlarged on bail, after which he had visited the scene of offence together with the members of the SIT. The witness has deposed that in the course of investigation, he had recorded the statement of PW-185 Mahammad Ayub Sofilal Shaikh on 7.6.2008. The witness has further deposed that on various dates, as reflected in paragraph 29 of his deposition, he had recorded the statements of the witnesses named therein.

271.23 The witness has deposed that additionally, he had written a letter to the Chief Area Manager, Indane calling for information as regards what was the quantity of stock with Uday Gas Agency. He had also called for information from the Medical Officer, V.S. Hospital as to whether any bullets, etc. were recovered from the bodies of the victims, who were injured by bullets.

271.24 The witness has deposed that on various dates as mentioned in paragraphs 31, 32 and 33 he had recorded the statements of the witnesses named therein.

271.25 The witness has deposed that on 7.8.2008 he had called witness Zarinabanu for recording her statement but she had not come for recording her statement. The witness has deposed that on 9.8.2008, he had received a letter in the context of postmortem reports from the Police Surgeon, Civil Hospital, Ahmedabad which was kept with the police papers. The witness has further deposed that on various dates as reflected in paragraphs 35, 36, 37, he had recorded the statements of the witnesses named therein.

271.26 The witness has deposed that on 7.9.2008, summons was issued to witness Zarinabanu for coming to record her statement through the ASI. Thereafter, on various dates, he had recorded the statements, as reflected in paragraphs 38 and 39 of his deposition, of the witnesses named therein.

271.27 The witness has deposed with regard to having arrested certain accused and the steps taken to arrest them etc. on 16.9.2008. The witness has further deposed that on various dates as stated in paragraphs 42, 43, 45, 46, 47 and 48 of his deposition, he had recorded the statements of the witnesses named therein. The witness has thereafter deposed regarding forwarding yadis to (1) Satish alias Bala Balaji Jadav, (2) Pappu Sindhi Renumal Kukrani and (3) Shamalbhai Jivabhai Rathod to remain present before the Executive Magistrate on 1.11.2008 for test identification parade. He had also issued yadis to (1) Iqbalhussain Amirmiya Kureshi, (2) Rukshana Bundubhai Kureshi and (3) Salim Roshanali Shaikh to remain present before the Executive Magistrate on 6.11.2008. The witness has thereafter recorded the statements of one Khillubhai Abdulgafur Maniyar on 2.11.2008. The witness has referred to the arrest of certain other accused on 4.11.2008 upon sufficient material being available against them. The witness has further deposed that he had issued yadis to (1) Praful alias Chakiyo Prakashbhai Sonar, (2) Vilas alias Viliyo, (3) Nilam Marathi, (4) Rajesh alias Raju Sitaram, (5) Sitaram Shankarbhai Dalvi, to remain present before the Executive Magistrate. Moreover, he had called for information from the R.M.O., V.S. Hospital as to whether during the course of treatment at the V.S. Hospital any bullets from the bodies of

(1) Mahammadkhalid, (2) Mahammadhussain, (3) Pir Mahammad and (4) Mustaqmahammad, who had sustained fire arms injuries during the course of firing.

271.28 The witness has further deposed that on 6.11.2008, he had kept a suspect Hundraj Renumal Kukrani (Pappu Sindhi) present before the Executive Magistrate for test identification parade, however, the test identification parade had failed.

271.29 The witness has deposed that on 10.11.2008, a test identification parade had been carried out through witness Shabana Bundubhai Kureshi in the presence of the Executive Magistrate in connection with the suspects of this offence, viz., (1) Vilas alias Viliyo Prakashbhai Sonar and (2) Praful alias Chakiyo Prakashbhai Sonar, she had identified Vilas alias Viliyo Prakashbhai Sonar, whereas the identification qua suspect Praful alias Chakiya had failed.

271.30 Thereafter, on 11.11.2008, a test identification parade was carried out through witness Abdulmajid before the Executive Magistrate, in respect of suspects of the offence, viz., (1) Nilam Marathi, (2) Raju Manek (3) Sitara Manek, wherein the witness has identified accused Nilam Marathi, who was arrested and examined.

271.31 Thereafter, there being sufficient material against Dinesh alias Tiniyo Govindbhai and witness Noorbanu Zakirhussain having identified Geetaben Ratilal alias Jaybhavani Rathod's daughter in the test identification parade, both the accused were arrested and their remand was obtained.

271.32 On 17.11.2008, there being sufficient material against (1) Pankajkumar Mohanlal Shah and (2) Santoshkumar Kodumal Mulchandani, they were arrested and their remands was obtained.

271.33 Attempts were made to trace out the absconding accused Vinod Marathi on 20.11.2008, however, he could not be found.

271.34 On 24.11.2008, there being sufficient material against Subhashchandra alias Darji, he was arrested and steps were taken for obtaining his remand.

271.35 On 27.11.2008, he had recorded a detailed statement of Shri P. N. Barot, the then Assistant Police Commissioner and Investigating officer, who is prosecution witness No.178.

271.36 The witness has thereafter deposed that on 28.11.2008, a test identification parade was conducted in the presence of the Executive Magistrate through witness Shabana Bundubhai Kureshi and witness Salim Roshanali Shaikh, for identification of a suspect viz., a light-eyed person and Darbar Shamalbai Nirmalsinh respectively, however, the identification parades failed. The witness has deposed that he had thereafter sent proposals for prosecution of the accused arrested by him under section 153-A to the Home Department.

271.37 On 5.12.2008, he had obtained the statements of (1) Gaurav Jayrambhai Prajapati, (2) Dhirajlal Lakhabhai

Rathod, (3) PSI Shri M. D. Lathiya and (4) Kantibhai Soni from Shri P. L. Mal, Investigating Officer of Naroda Gam case being I-98/02 and had kept them with the investigation papers of this offence. All these statements were in relation to accused Dr. Smt. Mayaben and he had obtained all these statements and included them with the papers of investigation.

271.38 The witness has further deposed that he had, on various dates as mentioned in paragraphs 65, 66, 70 and 71 of his testimony, recorded the statements of the witnesses named therein.

271.39 On 10.12.2008, he had submitted a report to the court for adding sections 307, 324, 325, 326, 201, 295 and 295A, IPC in this case.

271.40 On 11.12.2008, he received sanction under section 196(1) of the Code, to prosecute the fifteen accused arrested by him. Upon obtaining such sanction, he had submitted a chargesheet against the fifteen accused in the Metropolitan Magistrate Court No.11, wherein since (1) Gulabbhai Kalubhai Vanzara, (2) Dipakbhai Laljibhai Koli, (3) Ramesh alias Subhash Ramkrushna Tukaram Hirvade, (4) Maheshbhai Bhikhabhai Solanki had passed away, their names were shown in column No.2 of the charge-sheet and the other accused were shown to be absconding.

271.41 The witness has further deposed that out of the forty six accused earlier arrested by the SIT, (1) Dalpat Abhesinh Jadeja, (2) Jashvant alias Balo Keshavlal Rathod, (3) Raju Ratilal Rathod, (4) Rajendra Keshrisinh Bhat, (5) Ratilal

alias Jaybhavani, (6) Mukesh alias Jivanlal Chhara, had passed away and such note was kept in the record.

271.42 On 7.1.2009, having found sufficient material against Ankur alias Chintu Ashokbhai Parmar (Accused No.31), he had arrested him and obtained the remand to interrogate him.

271.43 The witness has deposed that on various dates, as mentioned in paragraphs 73, 74, 75, 76, 77 and 78, he had recorded the statements of the witnesses named therein.

271.44 The witness has deposed that on 16.3.2009, 19.3.2009 and 29.3.2009, having found sufficient material against (1) Laxman alias Lakho Budhaji Thakor (A-34), (2) Vijay alias Munna Shetty Keshrisinh Didavala (A-35) and (3) Janaksinh Dharamsinh Nahera (A-36) respectively, he had arrested them and taken steps to obtain their remand.

271.45 On 1.4.2009, he had recorded the statement of retired A.D.G.P. and the then Joint Police Commissioner of Naroda Patiya, Shri M. K. Tandon.

271.46 On 2.4.2009, he had requested for sanction to prosecute accused Ankur alias Chintu Ashokbhai Parmar and Shivdayal Rajhakamsinh and he had received sanction from the Home Department to prosecute Ankur alias Chintu Ashokbhai Parmar (A-31), after which he had submitted the chargesheet against the said accused which came to be registered as Criminal Case No.87/09.

271.47 On 4.4.2009, having found sufficient material against accused Dr. Smt. Mayaben Kodnani, he had arrested her and after following due procedure, had informed the Presiding Officer of the Gujarat Vidhan Sabha and had kept the case papers with the record of investigation.

271.48 The witness has deposed that on 1.5.2009, he received sanction from the Government to prosecute (1) Laxman alias Laxman Budhaji Thakor (A-34), (2) Vijay alias Munna Shetty (A-35), (3) Janaksinh Dharamsinh Nahera (A-36) and (4) Dr. Mayaben Kodnani (A-37), whereupon he had kept the sanction order in the investigation papers and had submitted the charge-sheet which came to be registered as Criminal Case No.123/09.

271.49 The witness has thereafter referred to various steps taken by him against different accused during the course of investigation.

271.50 On 4.7.2009, he had recorded the statement of Shri Savani, the then Deputy Police Commissioner of Naroda area.

271.51 On 18.7.2009, absconding accused No.61 Ramilaben Ratilal alias Jaybhavani Rathod was found during the course of investigation and there being sufficient material against her, she was arrested and remand was obtained and necessary steps were taken.

271.52 Similarly, on 19.7.2009, he had traced out absconding accused No.62 Kirpalsing Jangbahadur Chhabda and had arrested him, obtained remand and taken necessary

steps.

271.53 On 22.7.2009, he had recorded the further statement of Shri P.B. Gondia, Deputy Police Commissioner, Naroda area.

271.54 Upon receipt of sanction to prosecute against accused (1) Pintu, (2) Ramilaben and (3) Kirpalsingh etc., a fourth charge-sheet by the SIT was submitted before the court which came to be registered as Criminal Case No.239/09.

271.55 The witness has deposed that thereafter, on various dates as mentioned in paragraphs 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104, he had recorded the statements of the witnesses named therein.

271.56 On 5.1.2010, he had received call details of (1) Babu Bajrangi, Mobile No.98250-20333 (Call details Exhibit-2193), (2) Dr. Smt. Mayaben Kodnani, Mobile No.98250-06729 (Call details Exhibit-2194 and Exhibit-2244) , (3) Raju Chomal, Phone No.079-2830678 (Call details Exhibit-2195), (4) Kishan Korani, Phone No.079-2818316 (Call details Exhibit-2196), (5) Kirpalsingh, Mobile No.98250-74044 and Phone No.079-22822082 (Call details Exhibit-2197), (6) Bipin Panchal, Mobile No.98240-85556 (Call details Exhibit-2198), from Shri P.L. Mal (PW-318), Investigating Officer of Naroda Police Station I – C.R. No.98/02 and had kept them with the record of investigation. He had also recorded the statement of Shri J. S. Gedam (PW-311). On 6.1.2010, he had recorded the statement of Shri D.J. Patel, who was discharging duties in the DCB Control Room at the relevant time.

271.57 He had earlier informed the mobile companies to submit the details of the persons who made phone calls as well as the addresses from 1.1.2002 to 31.3.2002, in the context of which, he received a letter dated 4.2.2010 informing him that it was not possible to get the names and addresses of the mobile phone holders.

271.58 On 10.2.2010, he recorded the statements of (1) Shri Tarun Tejpal, Editor-in-chief of Tahelka Newspaper and (2) Shri Kumar Harvinder Baveja, Editor Investigation and News, Aaj Tak/Headlines Today.

271.59 The witness has further deposed that on various dates as mentioned in paragraphs 109 and 110 of his testimony, he had recorded the statements of the witnesses named therein.

271.60 On 7.4.2010, voice samples of accused (1) Babubhai alias Babu Bajrangi Rajabhai Patel (A-18), (2) Prakash Sureshbhai Rathod (A-21) and (3) Suresh alias Richard alias Suresh Langdo Kantibhai Didavala (A-22) had been taken at Akashvani, Ahmedabad. He had sent a request letter for obtaining the voice samples of the three accused. The witness has admitted his signature on the letter dated 5.3.2010 and has admitted the contents thereof and the same is exhibited as Exhibit-2319.

271.61 The witness has deposed that in the form of a reply to his letter (Exhibit-1729), they had received two letters dated 8.3.2010 and 30.3.2010 respectively, viz., Exhibit-2213 and

Exhibit-2214 from Akashvani.

271.62 The witness has further deposed that on the date and time given by Akashvani, he had called three accused at Akashvani for obtaining their voice samples and their voice samples were taken there. The Akashvani had given him the voice samples of the three accused in a sealed CD, which he had seized by drawing a panchnama Exhibit-2203.

271.63 The witness has further deposed that he had taken the sealed CD to the Navrangpura Police Station and a muddamal receipt had been issued (Exhibit-2202).

271.64 The witness has further deposed that with a view to match the voices of the three accused in the Aaj Tak programme broadcast by Tahelka with the CDs of the voice samples of the accused, they had written a letter to the State Forensic Science Laboratory for analysis thereof. The witness has identified his signature on the letter and has proved the same which is exhibited at Exhibit-2277.

271.65 The witness has further deposed that the receipt Exhibit-2275 was issued to him by the Forensic Science Laboratory acknowledging the receipt of the CDs, etc. of the voice samples.

271.66 The witness has further deposed that the FSL, Jaipur had matched and analysed the samples and had sent the report which was received by him through messenger Rajesh Sharma. The witness has deposed that the sealed CDs Exhibit-A were received back by him and that the report with the

forwarding letter Exhibit-2276 are the same which he had received. The witness has deposed that his messenger had handed over the sealed cover and packet, etc. Mark-Exhibit-A which he had received from FSL, Jaipur.

271.67 The witness has deposed that on 8.8.2010, the SIT passed order whereby further investigation was entrusted to the Police Commissioner, Crime Branch Shri Himanshu Shukla, hence, he had sent a forwarding letter to him together with the sealed cover and sealed packets which were received from the FSL, Jaipur, Rajasthan and had sent the voice spectrography reports which he had received. The witness has proved the letter Exhibit-2321 together with which he had forwarded the aforesaid articles to Shri Himanshu Shukla on 30.10.2010.

271.68 The witness has thereafter deposed with regard to other ministerial action taken by him during the course of his investigation.

271.69 Various omissions and contradictions as to the statements of the witnesses recorded by the said officer have been sought to be proved through the testimony of this witness, reference to which shall be made while discussing the evidence of the individual witnesses.

271.70 CROSS-EXAMINATION: In his cross-examination, the witness has admitted that despite the fact that the previous Investigating Officer had recorded statements of witnesses, he had again recorded all the statements. The witness has stated that he had done it for the purpose of further investigation. In his cross-examination, it has come out

that he had not asked for any information from the TV Channel or the media regarding the coverage of the incident that took place on 28.2.2002. The witness has stated that in his investigation, it was not revealed that there was any Managing Committee in the Relief Camps which were set up after the incident and as to from where the printed applications which were made from the camp had been printed and who had got the same printed.

271.71 The witness has stated that he has recorded the statement of one Noormohammad Nazirmohammad Mev (Pathan) (PW-199) on 2.6.2008. The witness has admitted that he has recorded what was stated by the witness in his statement. The witness has stated that he cannot remember as to whether during the course of investigation, he had carried out any investigation at Kathwada or Bahiyal villages. The witness does not remember whether he had recorded the statements of any Sarpanch. The witness has stated that all the facts stated by him in his examination-in-chief include all the significant part of his investigation.

271.72 The witness has stated that he has not visited the scene of offence keeping in mind the incident of Ayub or any specific incident. When he visited Gangotri Society in the year 2008, a hall, as described by the witnesses was there. The witness has voluntarily stated that this was a shuttered place but he had no occasion to go inside it. The witness has admitted that Hindus reside in Gangotri Society. When he visited the place, majority of the houses in the chawls where the incident had taken place had single floors, namely, that there were only ground floors and that in a very few scattered

houses, there were two floors. The witness has admitted that he had seen a temple between Gopinath and Gangotri Society. The witness has stated that he cannot say as to exactly how many times he had visited Jawannagar and Gangotri Society. The witness has stated that he had no occasion to go on any terrace when he visited Gangotri Society and that no witness had shown him any terrace of Gangotri Society. The witness has stated that he cannot say as to how many times he met the Doctors at the Civil Hospital but has stated that he had met them during the course of his investigation. The witness has admitted that in his investigation, it was revealed that after the incident, unidentified dead bodies were kept in the cold room at the Civil Hospital. The witness has admitted that after commencement of his investigation, when he carried out the test identification of the accused, it was six years after the incident.

271.73 The witness has denied that from 15.4.2002 till he took over the investigation, witness Abdulmajid Mohammadusman Shaikh (PW-156) did not give the names of Vilas and Neelam. The witness does not remember as to whether Abdulmajid Mohammadusman Shaikh had sent any application to the police prior to his investigation. The witness has voluntarily stated that he had made an affidavit in the Supreme Court. The witness has denied that he had given the identification of accused No.53 and 54 prior in point of time and thereafter, he had drawn the test identification parade panchnama Exhibit-246. The witness has denied that the names of accused No.53 and 54 were not there in Column No.1 or 2 of any charge-sheet. The witness has voluntarily stated that in the first charge-sheet filed by the SIT in Criminal Case

No.295/02 (Sessions Case No.246/09), the name of Vilas is shown in Column No.1 as accused No.9 and the name of Neelam Manohar Chaubal is shown as accused No.10. The witness has denied that under pressure of the NGOs, he had made a false investigation against the accused persons who were arrested subsequently and filed a false charge-sheet against them.

271.74 In the cross-examination of this witness, it has come out that as per the order Exhibit-2331; he was handed over the investigation of Naroda I-C.R. No.100/02 on 11.4.2008. The witness has admitted that he has abided by the order. The witness has admitted that when he took charge of the investigation from Shri Muliya, he had studied the record collected by him. The witness has admitted that he had studied the statements recorded by the previous Investigating Officer, the panchnama of the scene of offence, inquest panchnamas, P.M. notes, injury certificates, F.S.L. report etc. The witness has admitted that he has seen the defects in the earlier investigation. The witness has admitted that in the record collected by the previous Investigating Officer, there were some dying declarations also, which he had seen. The witness has admitted that he was required to study the affidavits made by the witnesses of I.C.R. No.100/02. The witness has denied that to obtain such affidavits he had gone to the Supreme Court. The witness has admitted that the affidavits made before the Supreme Court by the witnesses have been included in the case papers.

271.75 The witness has admitted that he has recorded the statements of Dildar Umrao Saiyed (PW-143). The witness has

stated that he had made a note as regards which witnesses statements were required to be recorded again. The witness has stated that he had carried out the further investigation of the investigation carried out earlier.

271.76 Upon being asked as to whether he had conducted investigation in the criminal cases in which four charge-sheets had been filed earlier, the witness has stated that he has also carried out further investigation of the investigation which was carried out earlier.

271.77 The witness has denied that he did not have any personal information with regard to the test identification parade during his investigation. The witness has stated that as far as he remembers, he had personally gone to the Executive Magistrate, Shri Parghi and another Executive Magistrate and the entire procedure was carried out under his personal supervision.

271.78 The witness has stated that he does not remember the exact number but he must have recorded the statements of approximately three hundred witnesses or may be even more. The witness has admitted that summonses were served upon the witnesses. The witness has admitted that the witnesses who had given statements before him had given him some information as regards the offence during the course of his further investigation. The witness has stated that about 66 witnesses had made applications to the SIT for recording the statements. The witness has denied that he had the jurisdiction only to record the statements of those witnesses, who had made applications to him. The witness has denied

that the investigation carried out by him, except for recording the statements of 66 witnesses, is unauthorised and that he had got up false witnesses and recorded false statements and in connivance with the prosecution had got up a false case. The witness has admitted that he had obtained four statements recorded by Shri Mal, the Investigating Officer of Naroda Gam and has kept the four statements as part of the present investigation. The witness has admitted that he has recorded the statements of all the witnesses mentioned by him in paragraph 104 of his examination-in-chief and recorded the statements on 30.12.2009, as stated by them. The witness has admitted that he has also obtained the signatures of the persons who had given their statements.

271.79 The witness is shown Exhibit-2190, which is an Attendance Register of the Legislative Assembly. Upon perusal of the same, the witness has stated that at Serial No.78 of the attendance statement, Mayaben's name is there in the Legislative Assembly List.

271.80 The witness has admitted that he had seen the panchnama Exhibit-662 of fifty eight corpses and had read it. The witness has stated that he has read the first four lines in the panchnama Exhibit-662 wherein it is written behind Jawaharnagar hutments in the kacchcha house behind the Workshop. The witness has stated that he had visited the spot. The witness has stated that he was not required to see as to in which hutments of Jawaharnagar, the fifty eight dead bodies were found for the reason that before him, the witnesses had stated that the fifty eight dead bodies were lying near the water tank.

271.81 The witness has stated that he has not seen the Operation Kalank, Aaj Tak CD. The witness has admitted that during the course of his investigation, he had come to know that the Aaj Tak had broadcast a programme by the name of Operation Kalank. The witness has denied that he has not seized the CD Operation Kalank during the course of his investigation. The witness has stated that in fact, the CD has been received by the SIT which was the investigating agency in the Gulbarg case, and hence, the CD was considered as muddamal and the same was sent to the FSL for the purpose of testing the voices of the accused. In the meanwhile, since three of the accused in this investigation are involved in the Operation Kalank CD and the CDs were with the F.S.L., the voice samples of the accused were collected and were sent to the F.S.L. for testing and the report was called for in this case.

271.82 The witness has admitted that he has never seen the Operation Kalank CD. The witness has voluntarily stated that the CDs were in the custody of the CBI and were straightway obtained by the Investigating Officer of Gulbarg case. The witness has stated that he had come to know from the statement of witness Ashish Khetan regarding the facts which were broadcast in this CD as well as upon receipt of the transcript prepared at the time of testing of the Operation Kalank by the FSL as well as the report sent by the C.B.I. and the certified copy of the transcript.

271.83 The witness has denied that he has not received the copy of any transcript. The witness has stated that he had received a certified copy of the transcript from FSL, Jaipur. The

witness has admitted that no transcript or CD had been given together with the statement of Ashish Khetan; however, Ashish Khetan had given him a CD. The witness has denied that NGOs were meeting him in the matter of Operation Kalank and in the year 2009, he had recorded statements after seeing the CD and as per the say of the NGOs.

271.84 The witness has stated that the panchnama regarding fifty eight corpses having been found below the water tank is the panchnama Exhibit-662, which he had obtained during the course of investigation. The witness has denied that he had concocted the fact regarding fifty eight dead bodies being found near the water tank during the course of his investigation at the instance of NGOs and for the purpose of showing his investigation work.

271.85 The witness has denied that on the facts in the FIR, it has been revealed that mobs of Hindus and Muslims had come opposite each other at Hussain-ni-Chali and that fifty eight persons had been done to death after assaulting and setting them on fire. The witness has stated that during the course of his entire investigation, it has clearly come out from the statements of the witnesses recorded by him that the incident took place near the water tank whereas in the FIR of the incident, there is mention of such fact having been learnt. The witness has stated that he is not aware as to whether in his investigation, it has been revealed that there was cross fighting. The witness has admitted that he has not drawn any panchnama of the site of the water tank.

271.86 The witness has denied that the four names

mentioned in paragraph 68 of his examination-in-chief viz. Gulab, Dipak, Ramesh and Mahesh, all of them had died in the police firing on the day of the incident. The witness has voluntarily stated that only Gulab had died in the police firing and not the others. The witness has denied that the three other persons had died in the incidents that took place on the day of the incident.

271.87 The witness has stated that apart from the panchnama of the fifty eight bodies Exhibit-662, he had also sent other inquest panchnamas. He had sent the inquest panchnama of Jadikhala and Mariyam's son Moin. The witness has admitted that during the course of investigation, he had obtained the burial receipt of Kausarbanu daughter of Khalidbhai Shaikh.

271.88 In the cross-examination of this witness, it has come out that he does not remember that he had taken any witness or victim along with him and visited the scene of offence. The witness has stated that in case of some witnesses, he has verified their statements. The witness has stated that he did not find it necessary to reconstruct the scene of offence and reconstruct the incident and that he had not carried out any such investigation. The witness has stated that he had examined the possibility of the incidents taking place at the place, as stated by the witnesses. The witness has stated that he has not prepared any personal note in this regard but had satisfied himself with regard to such possibility. The witness does not remember as to in case of which witness he had carried out verification but by way of example he has stated that he had verified in the case of witness Dildar Umrao

Saiyed. The witness has stated that in case of several dead bodies, inquest of such dead bodies was also carried out, their post-mortem was also conducted; however, the dead bodies were not identified. The witness has denied that in case of all unidentified dead bodies, he had received burial receipts during the course of investigation.

271.89 On the basis of the record, the witness has stated that in case of eighty three deceased persons there were both post-mortem reports as well as inquests; however he had also received burial receipts in respect of many of these eighty three persons. The witness has stated that apart from the eighty three persons referred to, in case of eleven deceased persons, only burial receipts were received, which are on record. The witness has stated that apart from the eighty three and eleven persons, three other persons had died, which is revealed only from the statements of the witnesses and they are referred to as missing persons and that nothing in particular was found with regard to the three persons. However, on the basis of the statements of the witnesses, it may be presumed that the three persons have died.

271.90 The witness has admitted that in case of Mobile No.98250 20333, it has been revealed during his investigation that the name of the mobile holder is Sunil Prahlad Sevani and not Babu Bajrangi. The witness has voluntarily stated that in his investigation, it is revealed that this mobile phone was used in the Vishwa Hindu Parishad office at Ahmedabad and in the year 2002 this phone was being used at the Vishwa Hindu Parishad, Ahmedabad. The witness has admitted that he had recorded statements of Bharatbhai alias Bhano, Mahendrabhai

Manilal Pandya, Bhartiben Prahladbhai Shevani, Prahladbhai Kishanbhai Shevani in the context of Mobile No.9825020333 and he had also obtained their signatures thereon. The witness has admitted that such statements were recorded in the year 2009.

271.91 The witness has admitted that during the course of his investigation, it has been revealed that apart from Babu Bajrangi, the telephone was used by other persons at the Vishwa Hindu Parishad office, Paldi, Ahmedabad. The witness has admitted that during the course of his investigation, it has been revealed that on the day of the incident, telephone No.9825020333 was not with any of the accused but was with some other person. The witness has further stated that the phone was being kept at the Vishwa Hindu Parishad Office at Ahmedabad and that Babu Bajrangi and others were using it, had also been disclosed during his investigation.

271.92 The witness has admitted that he has not received any video cassette or photograph indicating the position of the water tank in the year 2002. The witness has admitted that if any incident has taken place in the Jawannagar pit, he has not received any video cassette or photograph of the year 2002 during the course of his investigation. The witness has admitted that he has not received any photograph, panchnama or videography of any obstacles having been placed on the highway between the Noorani Masjid and the S.T. Workshop. The witness has voluntarily stated that the same is mentioned in the statement. The witness has admitted that there is no panchnama or video recording or photograph of the year 2002 indicating that tyres were burnt on the National Highway and

obstacles were created. The witness has voluntarily stated that there is mention about the same in the statements.

271.93 The witness has admitted that in his investigation, it has come out that on the day of the incident, Bipin Auto Garage had been set ablaze. The witness has stated that for the purpose of investigating regarding the Motorola Company mobile phone of Ashok Sindhi, he had obtained the mobile from the court muddamal. The witness has admitted that he could not obtain call details of the mobile, though he had made attempts. The witness has stated that he had obtained information as regards who had talked with whom from 28.2.2002 till the mobile was seized in accordance with law.

271.94 In the cross-examination, the witness has stated that during the course of his investigation, he had recorded the statements of Hussainabanu (PW-135). The witness has stated that he has not examined as to whether from the place where Hussainabanu had stated that she had seen the incident, it was possible to see such incident. The witness has stated that he has not examined as to whether there is any toilet at that place and as to whether it had a window and a door on the side of the road from which it would be possible to see the incident.

271.95 The witness has admitted that Shri Ketan Parikh and Shri Dataniya were the Officers in the S.R.P. at the relevant time. The witness has admitted that he has recorded statements of both these persons. The witness has admitted that he has taken these persons as witnesses and not as accused.

271.96 The witness has admitted that he has recorded the statement of Abdulmajid Mohammadusman Shaikh (PW-156). The witness has stated that he has not visited Abdulmajid's house at the scene of incident. The witness has stated that he has not visited the house of Mariyambibi (PW-261) and Abdulmajid (PW-156) at the scene of offence. The witness has stated that he has not carried out reconstruction of the offence and has voluntarily stated that this was for the reason that he was investigating the offence six years after the incident.

271.97 The witness has admitted that Serial No.3 and 4 of Exhibit-2192 are shown as Raju Chaumal and Kishan Korani respectively, which are reflected as BSNL members and that the statements of the subscribers of both the telephones have not been recorded by him. The witness has voluntarily stated that he had obtained documents which reflected that in case of Serial No.3 Manjuben Chaumal and Serial No.4 Ishwariben Korani were the consumers of the telephone number. The witness has admitted that he had not investigated as to who was residing at the address where these telephones were located. The witness has voluntarily stated that he was under an impression that during the course of the earlier investigation, the addresses of the accused must have been verified, and hence, he had not carried out any investigation in this regard. The witness is extensively cross-examined with regard to the call details and telephone numbers etc.

271.98 The witness has admitted that he had recorded the statement of Ashish Khetan as regards the transcript of the Operation Kalank CD, which he had received from F.S.L., Jaipur. The witness has stated that in this statement, Ashish Khetan

had given details of the talk which he had in the CD. The witness has admitted that upon inquiring about the Babu Bajrangji's visit to Abu, it is not revealed that Babu Bajrangji had gone to Gujarat Bhawan at Abu after the incident. The witness has admitted that during the course of his further investigation, it has not been revealed that Babu Bajrangji had collected 23 revolvers. The witness has further admitted that during the course of his further investigation, he has not investigated as to whether Babu Bajrangji had gone to Godhra on 27.2.2002.

271.99 The witness has admitted that in the statement of Amrish Govindbhai Patel recorded by him, it is stated that accused Mayaben was at Vidhan Sabha till 9 o'clock and till 12:30, she was at the Civil Hospital and in the evening at 3:30 she was once again at the Hospital. The witness has, however, stated that from the statements of several witnesses as well as her call details, there is also mention of her presence at Naroda Patiya at this time and that in his investigation, it was revealed that her mobile phone was switched off in the morning. The witness has stated that he is not aware as to whether when one goes to Legislative Assembly, the mobile phone is required to be switched off. [In this regard, it may be noted that Amrish Govindbhai Patel has not been examined as a witness in this case. Under the circumstances, the statement of this witness recorded under section 161 could not have been brought on record through the testimony of the Investigating Officer. That part of the deposition is, therefore, inadmissible in evidence.]

271.100 The witness is thereafter further cross-examined

with regard to the statements of Dr. Anilkumar Chhadda, Dhirajbhai Lakhabhai Rathod, Mansukhbhai Dugarbhai Lathiya, Dr. Dhaval Rajnikant Shah, Lataben Jayendrakumar Gurjar, Jilaben Pankajbhai Chauhan recorded by this witness for the purpose of indicating that Mayaben Kodnani was present elsewhere at the time of incident. In this regard, it may be noted that none of the above persons has been examined as witnesses either by the prosecution or the defence. Since the witnesses have not been examined by the prosecution, the statements of such witnesses recorded under section 161 could not have been brought on record through the testimony of the Investigating Officer in view of the bar contained in section 162 of the Code. This part of the testimony of the Investigating Officer is, therefore, inadmissible in evidence and no reliance can be placed on the same.

271.101 In his further cross-examination, The witness has denied that at the instance of politicians, NGOs and victims he has carried out a false and illegal investigation, this investigation is one sided and biased, and hence, he has only arrested Hindu accused and has not arraigned Muslims as accused, and hence, the Hindus who have died in the incident have been been arraigned as accused and have been included in the list of accused and a false charge-sheet has been prepared. The witness has admitted that no facts have been revealed to the effect that on the day of the incident, there was any rioting inside the S.T. Workshop. The witness has admitted that nothing has been revealed before him that there was no kind of disturbance inside the S.T. Workshop. The witness has voluntarily stated that in his investigation, it has been revealed that on the interior side near the compound wall

of S.T. Workshop, people had climbed on the barrels as well as buses, etc. lying there and had thrown burning rags. The witness has admitted that he has not carried out any panchnama of the place from where burning rags were thrown from S.T. buses and barrels.

271.102 The witness has admitted that the SIT had given advertisements in majority of the daily newspapers calling upon the witnesses that they can come to the SIT to give their statements, if they so desire. The witness has stated that he had received applications from witnesses and he had called the witnesses whose statements he had found necessary for the purpose of further investigation. The witness has admitted that it had happened that several witnesses had not given the name of any accused in the previous investigation and had revealed names during the course of investigation by him.

271.103 The witness has admitted that ordinarily when further investigation is carried out, the previous statements are read over. The witness has admitted that after the previous statement is read over, the witness says whether it is correct or incorrect. The witness has voluntarily stated that in this investigation, he wants to clarify that in majority of the cases, the statements of the witnesses were to the effect that their properties had been burnt in the incident, or goods and properties had been looted, their family members were injured and in several cases their family members had died and in this context, during the course of his investigation, the witnesses have stated as to whether these facts stated in their earlier statements were correct. The witness has stated that he has recorded the statements of witnesses in further investigation

from all angles. The witness has stated that in case where the witness has not named an accused in the year 2002 and subsequently such witness had given the name in the year 2008, he had not found the statement of such witness to be suspicious but he had felt that the true facts are coming out. The witness has admitted that he has not inquired from the assignee officer or the Investigating Officer who had recorded the statements of such as to why he had not written down the names of the accused. The witness has stated that he did not find such necessity.

271.104 The witness is cross-examined with regard to the contradictions in the testimonies of the witnesses qua the statements recorded by this witness, reference to which shall be made while discussing the testimonies of these witnesses.

271.105 In his further cross-examination, the witness has stated that in case of those witnesses who had stated that they were given treatment at the camp in respect of injuries sustained by them, he had not obtained their certificates. The witness has voluntarily stated that since a period of six years had passed, it was not possible to obtain such certificates and it was not possible to obtain details of the Doctors who had given treatment at the camp.

271.106 The witness has admitted that in those cases, where witnesses have stated that during the earlier investigation, the police had not written their statements as stated by them, he had examined the concerned Officers who had recorded their statements and inquired from them and their statements are also included in the charge-sheet. The

witness has admitted that the statements are not written down by the Officers but by the Writers and that he has not recorded statements of the Writers.

FINDINGS ON POLICE WITNESSES WHO ARE EYE WITNESSES AND CONDUCT OF THE POLICE AT THE TIME OF THE INCIDENT:

272. The complicity of the police in the sordid episode is writ large on the face of it. Right from the morning, they permitted mobs to gather without calling for reinforcements though having regard to the area being sensitive around 55 police personnel had been deputed in that area. Thereafter, when the Muslims came out of the chawls out of curiosity to see what was happening, the police told them to go inside. When the Muslims resorted to cross pelting in defence, the police resorted to firing to quell the mobs, and surprisingly almost all the casualties were amongst the Muslims. One Abid was killed and five to six other Muslims were injured, whereas it appears that one Hindu also died in the incident. Insofar as the Hindu who died is concerned, he was immediately taken back home which is evidenced by the police vardhi dated 28.2.2002 recorded at 13:15 hours (Exhibit 1798); and was thereafter taken to the Civil Hospital which is evidenced by a vardhi of the same date, whereas it has come on record that some Muslims requested the police to call an ambulance or make arrangements for taking the injured to the hospital but to no avail. The injured Muslims were therefore, taken inside the chawls and spent the day running from one lane to the other in trying to escape from the blood thirsty mobs.

272.1 A perusal of the testimony of PW 264

Kirankumar Parshottambhai Makwana shows the futile attempts made by the police, to disperse the mobs and prevent the mobs from carrying on destruction. The efforts made by the police are on the face of it ludicrous. According to the witness they used to go in groups or pairs to ask the mobs to disperse and used to blow the whistle and ask them to disperse. From the testimony of the witness it appears that not only were no strict steps taken to disperse the mob, they had not even addressed the people in the mob in a strict tone to disperse from them. The police thus cut a very sorry figure regarding the attempts made by them to disperse the mobs and to bring them under control.

272.2 The record of the case shows that all the other police witnesses without exception, have feigned ignorance about all the incidents that took place in the chawls throughout the day. While the witnesses speak about the mob indulging in destruction of properties of the Muslims, they do not speak about any earnest efforts having been made to prevent the mobs from doing so. It appears that the police were mute spectators to the entire incidents that took place throughout the day, except for lobbing tear gas shells and resorting to firing, wherein surprisingly it is the Muslims who were the targets.

272.3 Most of the police witnesses have referred to the incident where some Muslim youth drove a Tata 407 through the mob which resulted in the death of one person and injuries to two persons which took place at a considerable distance from the scene of offence, to highlight the fact that it was due to this incident that the crowd had got provoked and

became violent. Thus, an attempt has been made on the part of the police witnesses to lay the blame for the violence at the door of the victims and to justify the acts of the mob. All the police witnesses who have deposed about this incident have said that Mr. Mysorewala immediately followed the Tata 407 in his police vehicle. One fails to understand as to why Shri Mysorewala followed the driver of the Tata 407 and apprehended him and brought him to the police station when he has failed to arrest a single person from the mob which had resorted to violence, destruction and arson under the very noses of the police. At the time when the Tata 407 was driven away, curfew had not been declared. Driving a vehicle was not an offence. The version that the vehicle was being driven roughly and with immense speed is not credible given that there were huge mobs on the road and the roads were filled with crowds. Had the version been correct, there would have been a large number of casualties at the spot itself. Besides, no one died on the road near the Naroda Patiya area. The accident took place at a distance. Therefore there was no question of any rumours instantly circulating in the mobs at Patiya.

272.4 The second incident referred to by the police witnesses is regarding a mutilated dead body of a Hindu named Ranjit being found from the Jawannagar Pit, resulting in the crowd became more aggressive.

272.5 Yet another incident which finds reference in the testimonies of several police witnesses is that around 12:00 to 12:30 hours, representatives of the riotous Hindu mob made a representation to Mr. Mysorewala that two Hindus had

been dragged inside the chawls by the Muslims, whereupon Mr. Mysorewala, (who did not show any concern for the Muslims who were injured in the police firing), went on foot with other police personnel inside the chawls to ascertain as to whether anyone was actually taken inside. In the context of this incident, PW 294 Pravinbhai Gondia was working as a Deputy Police Commissioner at the relevant time and the entire Naroda police area fell within his "G" Division, has deposed that on the day of the incident at 10 o'clock in the morning, he received a message that the Hindu and Muslim mobs have gathered opposite each other at Naroda Patiya and the mobs are becoming volatile. It may be noted that at around the same time, the message was sent to the Police Control Room that "All is well". Therefore, one wonders as to how at the same time a message is sent to this witness regarding the situation becoming volatile and another message is sent to the Police Control Room stating that "All is well." This witness has deposed that upon receipt of the message, he had sent Shri M.T. Rana to Naroda Patiya and upon receipt of another message at 10:25; he had gone to Naroda Patiya at 11 o'clock. This witness talks about the mobs of Hindus as well as the mobs of Muslims and says that the volatility of both the mobs kept on increasing. This witness is the only witness who talks of two volatile mobs, inasmuch as, none of the witnesses have deposed regarding any violent mob of Muslims. The witness has deposed regarding the mobs damaging and looting the shops near the Noorani Masjid and the houses on the road, but does not speak about any action taken by him to restrain the mob. At 12:15 hours, Shri M. K. Tandon, Joint Police Commissioner arrived and after assessing the situation, contacted the Police Commissioner on telephone

and declared curfew in the Naroda Police Station area from 12:30 hours. It may be noted that despite the fact that curfew was declared, the mobs did not disperse and continued with their violent acts. Despite this position, when the Police Officers received an oral representation from the Hindus that two Hindus had been taken inside Hussainnagar chawl and had been killed, to verify the same, Police Inspector Shri Mysorewala was instructed to go inside the chawls with necessary armed force and manpower. It is quite confounding as to why despite the fact that curfew had been declared and the Hindu mob in flagrant breach of the curfew continued to rampage in the area, the concerned police officers thought it necessary to accede to their requests and go on foot inside Hussainnagar-ni- chali to ascertain as to whether any Hindus had in fact been killed. When, none of the police officers thought it fit to go inside the chawls to curb the violence that the mobs were indulging inside Hussainnagar area, one fails to understand as to why at the request of the aggressors, viz., the Hindus, the police had so willingly complied.

272.6 Thus, though it was the Hindus who were the aggressors and did not disperse despite repeated announcements by the police, the police thought it fit to cooperate with the rioters and were more concerned about their safety than of the Muslims residing in the area, for whose protection they had been posted there.

272.7 Moreover, though PW-294 was the Deputy Police Commissioner and the area fell within his jurisdiction and the Police Commissioner had allotted platoon of about twenty four persons to the Naroda Police Station, no effective

steps were taken to curtail the mob and prevent the violence. If the excuse given by the officer that despite all efforts they could not restrain the mob were to be accepted, one fails to understand as to how the police would look after the safety of the citizens. It is a matter of shame that though about eighty to eighty eight police personnel were available at the site, no steps had been taken against a single person in the mob throughout the entire day and the only step taken by the police was to chase the Muslim youth who fled with the Tata 407 vehicle and to comb the chawls to find out whether any Hindus had actually been taken inside. This shows the partisan attitude adopted by the police on the day of the incident.

272.8 Another notable aspect of the evidence of the witnesses is that while they refer to the Tata 407 incident, they are totally silent about a tanker being reversed and rammed into the Noorani Masjid, though they were present there throughout the day. Thus, the entire attempt of the police appears to be to show that it was the Muslims who provoked the mobs leading to the rioting. It may also be noted that the witnesses are totally silent about the police firing wherein a Muslim and a Hindu youth had died, and several Muslims were injured. Thus, the police have adopted a partisan attitude not only while on duty on the day of the incident, but also at the time of deposing before the court.

272.9 A perusal of the testimonies of the police witnesses, including the officers, who were deputed there, shows that their testimonies only refer to what was happening on the road and are totally silent about what happened from noon till 7:00 pm, when according to them they came to know

that many people were killed near the water tank. The evidence on record shows that the incident at the tank took place sometime between 5:00 to 7:00 p.m. when the mob reached the end of Jawannagar to Gangotri Society; however, prior thereto, throughout the day, the mob had ransacked the houses in the chawls and set them on fire and had also killed the few persons who came in their hands, as most of the residents of the chawls had fled and had gone near the S.R.P. Quarters compound wall or had taken shelter in the godown in Gangotri Society, terraces of Gangotri Society or in the Pinjara's house. However the police witnesses, though present there throughout the day being on "stand to" duty, are totally oblivious of any incidents taking place inside the chawls. It is not believable that the police on the main road could not have noticed the houses being burned throughout the day, as considering the state of the houses a lot of flames must have risen and smoke must have billowed. Besides to prevent the mobs from entering the chawls all that the police were required to do was man the entry points of the chawls, namely the road adjoining the S.T. Workshop wall and the road from Uday Gas Agency. However, the police failed to do so and in fact all they did was confine the Muslim residents to the chawls and permitted the mobs to enter the chawls and cause havoc and kill and burn the Muslims to death, which culminated into the massacre that took place near the water tank. The apathy of the police to what was going on inside the chawls, where the rampaging mobs had entered, is highly regretful and shocking.

272.10 PW 322 Shri Ashish Khetan, who had conducted the sting operation, has deposed before the trial court that accused No.18 Babu Bajrangi had said that at the time of the

incident if the police wanted they would not have let them enter the Patiya. He had said that there was only one entrance from where the Patiya where Muslims reside begins and that there were fifty to sixty policemen and if they wanted to stop them they could have done so. According to the accused if the police so desired, they would not have allowed them to enter inside and that they had a great deal of support from the police.

272.11 It is astonishing that though there was a considerable police force present throughout the day, which was vigilant to consider the welfare of the Hindu mob, though they were the aggressors, the very same police were oblivious to and deliberately turned a blind eye to the happenings inside the chawls which would have been easily visible from the highway where the police were said to be present and patrolling throughout the day.

272.12 Despite the fact that curfew had been clamped in the area and the mobs were openly resorting to ransacking and arson, not a single person from the mob has been arrested by the policemen posted there, though more than fifty five police personnel were on duty. It may be that the strength of the police force was too small to quell the riots, but there was nothing to prevent the police from arresting some of the miscreants. Even that might have had some effect, if the people in the mob had found that their actions would be visited with consequences. However except for mouthing platitudes that the police had taken all legal steps to disperse the mob, no other substantial action has been taken by the police. Not only that, despite the fact that the police found that their

numbers were too small to bring the situation under control, there is no evidence worth the name on record to indicate that any message was sent to the control room or to the higher officers to send reinforcements, and on the contrary even when huge mobs had gathered and the situation was getting out of control, the message sent to the control room was "*All is well*", which gives reason to believe that the police had no intention of quelling the riots. The evidence of the witnesses in fact paints a contrary picture to the effect that it was the police which led the mob by firing at the Muslims and the mob followed.

272.13 Despite the overwhelming evidence on record which unerringly points towards the active connivance of the police in the incident, the trial court has given a more or less clean chit to the police. One factor that appears to have appealed to the trial court is that the police rescued the victims and ferried them to the relief camps else the number of casualties would have been much more. However, what is lost sight of by the trial court is that the police came to the scene of the offence only after the mob had dispersed, probably because it had become dark. Therefore, what was done by the police was merely a face saving exercise to lend some credibility to them. Besides the people who were rescued were sitting on terraces. In the opinion of this court the people who form part of such mobs are basically cowards who gain strength and support only from their numbers and get an opportunity to show that they are brave. Therefore, once it became dark, in the absence of any light it would not have been able to distinguish between the Muslims and the Hindus. Moreover, the access to the terraces was through narrow staircases with Muslims sitting on

the terraces. Therefore, for the mob to attack the Muslims sitting on the terrace, they could have had to go single file in which case they could have been overpowered by those sitting on the terrace, which is probably why they did not attack the people who took shelter on the terraces. As far as burning the houses below and burning the people on the terrace is concerned, it may be noted that the houses in Gangotri and Gopinath Society were pucca houses mostly owned by Hindus, who were much better off than the Muslims who occupied the chawls. Therefore, the Hindu mob would be reluctant to destroy and damage properties belonging to reasonably affluent Hindus to attack those sitting on the terrace with fire

272.14 The helplessness displayed by the State authorities is mindboggling. After the occurrences commenced, officers of the rank of Deputy Police Commissioner, Assistant Police Commissioner, Senior Police Inspector, Police Inspectors, and Police Sub-Inspectors were present; however, it is astounding that they were so helpless, that not only could they not control the mobs, they could not arrest a single person even when the mobs had not grown very large. Though curfew was imposed, it was only namesake. No efforts were made to implement the curfew. The police witnesses have come up with huge figures of bursting of tear gas shells, lathi charge and firing, which does not at all tally with the testimonies of the other witnesses. None of the witnesses even mention that the police had resorted to lathi charge. While there was firing, it is surprising that it was not the aggressors who were injured or killed except for one Hindu, whereas one Muslim died on the spot and five to six others were injured. It appears from the messages received by Van I that the Police Commissioner had

ordered that where mobs come up against each other the police may resort to firing, therefore, when the Muslims with a view to prevent the mob from entering the chawls put up some resistance, the police resorted to firing, which was directed at the Muslims and not at the aggressors.

272.15 What is most confounding is the amnesia developed by all the police officers insofar as what had transpired from 2:00 pm to 7:00 pm. What is also disturbing is that despite the police being present on the road from 7:00 a.m. till night, none of the officers have deposed anything about any tanker being pushed against the door of Noorani Masjid to break the door, though the presence of such tanker is evident from the panchnama of the scene of offence as well as the video of the scene of offence, likewise, the police have feigned ignorance about the presence of an Eicher truck at the boundary wall of Jawannagar, near the broken part of it, which had been used for breaking the wall to enter Jawannagar.

272.16 In the facts of the present case, the manner in which the incident has taken place suggests the active connivance of the police in the commission of the offence. As is evident from the evidence which has come on record, the police were present at the scene of offence since 7:00 a.m. in the morning. Though huge mobs started gathering since around 9:00 a.m., no serious efforts were made to disperse the crowd at the inception itself. The mobs swelled and resorted to stone throwing and damaging the properties on the road. No effective efforts were made by the police to quell the disturbances at that stage. It appears that the Commissioner had instructed the police to resort to firing when mobs come

against each other. Therefore, though the Hindu mob went on rampage, firing was not resorted to. It was only when the mobs attempted to enter the chawls from the road on the side of S.T. Workshop that the resident Muslims resisted and resorted to cross stone pelting whereupon the police resorted to firing, not at the aggressors, viz. the Hindus but at the Muslims. No doubt a Hindu was also killed in the firing, but considering the number of casualties on the side of the Muslims, it is apparent as to against whom the firing was aimed, namely, who were the targets. One Muslim, Abid died on the spot and five to six others were injured. Though at that stage, the riots had not escalated much, no efforts were made by the police to take the injured and dead to the hospital and they were left to fend for themselves. Abid is stated to have been burnt by the mob whereas the other injured persons were moving around in search of a safe place. The partisan attitude of the police is evident on the face of the record.

272.17 A perusal of the video of the scene of offence shows that the houses and shops situated on the road are badly burnt. On the side of the Noorani Masjid the destruction is more. The large scale destruction caused under the very noses of the police has to be seen to be believed and which also indicates the extent to which the police were merely passive spectators.

272.18 The conduct of the police is disgraceful and shameful to say the least. The police officers and the staff deployed at Naroda Patiya on that day are a disgrace and a blot in the name of the Police Force. They have not only failed to discharge their duties diligently and impartially, but have

deliberately sided with the mob in their attack on the minority community. The testimonies of the police witnesses indicate the depth to which they have descended, inasmuch as they have suppressed the correct facts and their entire testimonies reek of their partisan attitude at the time of and after the incident.

271.19 The fact that the conduct of the police who were present at the scene of incident has been condoned and most of them have been promoted within a short time, speaks volumes about the intention of the Government insofar as safeguarding the lives and properties of the Muslims and bringing the culprits to book is concerned.

272.20 During the course of hearing of the case, the court had put a query to the learned Special Public Prosecutor that from the evidence of the witnesses it emerges that A-37 Mayaben Kodnani alighted from her car and talked to K.K. Mysorewala and then left, after which the police started firing. If Mayaben has been arraigned as an accused, why is it that K.K. Mysorewala has also not been arraigned as an accused? In response to such query, the learned Special Public Prosecutor invited the attention of the court to a report submitted by the Investigating Officer (SIT) under section 173(3) of the Code of further investigation conducted under section 173(8) of the Code. The report appears to have been submitted at a much later date and is concerned with whether or not the police officers and political leaders mentioned therein should be prosecuted. While the court does not join issue with the fact that the Investigating Officer has not recommended any action against the officers concerned, the tenor of the report which is

lopsided and tends to create an impression that it was the Muslims who were responsible for the mobs getting aggravated and violent, is certainly objectionable. Unfortunately, the Investigating Officer of the SIT which had been constituted due to allegations of bias against the earlier investigating agency, sings the same tune as the police witnesses in this report, which mentions the TATA 407 incident and the Ranjit incident as being responsible for the crowds getting incited, but fails to refer to the large scale damage caused to the life and properties of the Muslims under the very eyes of the police officers who were posted at site on that day. The report, while giving a clean chit to the officers refers to the situation having become calm at the time when they left the spot, however, from the evidence on record it emerges that from morning till the massacre near the passage of the water tank, the situation had never calmed down and the police were never in control of the situation. Insofar as investigation into the role of Shri K.K. Mysorewala, shockingly, the Investigating Officer has placed reliance upon statements of other police officers and the accused with whom he was alleged to be in contact on phone, without reference to the statements of any of the witnesses, who have clearly ascribed an active role to Shri K.K. Mysorewala and the police in abetting and conniving with the Hindu mob.

XIX FIR ANTE TIMED AND ANTE DATED:

273. Based upon the testimonies of the police witnesses, the learned counsel for the appellants have submitted that the first information report is ante dated and ante timed.

274. Mr. Y. S. Lakhani, learned counsel for the appellants submitted that PW-262 Shri V. K. Solanki is the first informant in this case and according to him, the time of the incident is 11:00 to 20:00 hours and the time of registration of the first information report is 20:45 hours. In all, five accused have been named in the said first information report. Referring to the testimony of the said witness it was submitted that as per the testimony of the witness, he was at the S.T. Workshop Gate continuously till 7 o'clock in the evening. He reached the water tank at 12:00 to 12:30 at night and Shri Mysorewala was with him at that time. He saw fifty eight dead bodies in the passage of the water tank and prior thereto, he had not gone to Jawaharnagar or Hussainnagar. He went from the rear side and not from the side of the S.T. Workshop. It was pointed out that the injured persons were taken to the hospital by Shri K. K. Mysorewala and that Shri V.K. Solanki did not go to the place of incident before 12:30 at night. Prior to this incident coming to his knowledge, he was at the S.T. Workshop Gate till 7:30 p.m. He saw fifty eight dead bodies at the passage when he reached there at night.

274.1 Reference was made to the testimony of Shri K.K. Mysorewala (PW-274) to submit that in paragraph 160 thereof, he has stated that he came to know about the incident that took place at the water tank between 6:15 to 6:30 in the evening. He reached there at around 6:45 p.m. and at this time, his Naroda-I staff was with him. It was submitted that out of all the persons who accompanied him, it is only Parbatbhai, a Wireless Operator, who has been examined as a witness by the prosecution. The witness has further stated that Shri V. K. Solanki came about fifteen minutes after him and the Senior

Officers came at 12:00 p.m. at night. Referring to the contents of paragraph 113 of his testimony, it was submitted that, therefore, they must have reached the hospital at around 7:45 to 8:00 p.m.

274.2 Referring to the testimony of PW-276 Shri P.U. Solanki, it was submitted that, according to the version given by this witness in paragraph 14, he came to know about the incident at Gangotri Gopinath Society at 10:00 p.m., whereas as per the version given in paragraph 109, he came to know about it at 9 o'clock. It was submitted that the witness has admitted that he had never gone to the place of incident as he was busy with the bandobust. Therefore, the claim of Shri Mysorewala, that Shri P.U. Solanki was posted there to keep watch over the dead bodies while he removed the injured to the hospital, is not correct. It was pointed out that Shri Mysorewala, in paragraph 30 of his testimony, has stated that he had entrusted the work of taking care of the dead bodies to Shri P.U. Solanki when he went to the hospital, and when he returned, P.U. Solanki was present there.

274.3 Reference was made to the testimony of PW 268 Virchand Morarbhairathod, who was the Station-In-Charge of Naroda Police Station on 28.2.2002 to submit that this witness had registered the first information report in this case. He has produced the Station Diary of Naroda Police Station, a perusal whereof reveals that a first information report being I C.R. No.98 of 2002, viz., the Naroda Gam FIR was registered at 16:00 hours and the time of the incident is shown to be 12:00 to 14:00 hours and the very same accused persons named in I C.R. No.100 of 2002 relating to the Naroda

Patiya incident are named in the said FIR in the same chronological order. It was submitted that even the opening paragraphs of both the first information reports are almost similar, which cannot be a mere coincidence, more particularly considering the fact that the time of lodgment of both the first information reports is different and the officers who lodged the first information reports are different and in both the cases the allegations have been made against a mob of thousands of persons. It was urged that the fact that even the sequence of the names of the accused in both the FIRs are the same, gives reason to believe that after the Naroda Gam FIR was registered, the names of the accused recorded therein, have been taken down and recorded in the present FIR.

274.4 Referring to the testimony of PW-266 Prabhatsingh, it was submitted that, according to this witness (paragraph 48), after the dead bodies were taken out, counted and taken to the Civil Hospital and they returned, the first information report was lodged before Shri K.K. Mysorewala.

274.5 Adverting to the testimony of Mr. M.T. Rana (PW-277), it was pointed out that, according to the version given by this witness in paragraph 24 of his testimony, Shri K.K. Mysorewala, told him that I-C.R. No.100/2002 was registered. Reference was made to the contents of paragraph 66 of his deposition wherein the witness has admitted the contents of his statement dated 24.5.2002, to submit that the witness is not saying the correct facts, as compared to what he has stated in this paragraph. It was submitted that from the testimony of this witness, it emerges that till 24th May, none of the three Officers whose statements he had recorded had told

anyone the names of the accused, except for lodging the FIR. It was contended that the fact is very clear that till 2:00 p.m., the witness was at Gulbarg and reached Naroda Patiya at 12:30 at night. In the FIR and forwarding letter, M.T. Rana's signature is found to have been made on 28.2.2002. It was submitted that it is inexplicable as to how Shri M.T. Rana could have signed the same on 28.2.2002. Reference was made to the first information report Exhibit-1773 to point out that the same was verified by Shri M.T. Rana on 28.2.2002. It was pointed out that Exhibit-1797 also indicates that it was signed by M.T. Rana on 28.2.2002, which was not possible in the present fact situation.

274.6 It was submitted that Shri K.K. Mysorewala and M.T. Rana have named the accused in their statements recorded on 24.5.2002 only to support the FIR. It was submitted that having regard to the fact that the FIR is ante-timed, the contents thereof naming five accused in an identical manner in two FIRs may not be believed. It was further argued that in the inquest panchnama, which is performed subsequent to the registration of the first information report, the crime register number is not reflected nor are the names of the accused indicated therein, which gives reason to believe that at the time when the inquest was carried out the first information report had not been registered.

274.7 Reliance was placed upon the decision of the Supreme Court in the case of **Meharaj Singh v. State of U.P.**, (1994) 5 SCC 188, wherein it has been held thus:

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The

object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

274.8 The decision of the Supreme Court in the case of **Thanedar Singh v. State of M.P.**, (2002) 1 SCC 487, was

cited wherein the court relied upon its earlier decision in the case of Meharaj Singh (supra).

274.9 Reliance was also placed upon the decision of the Supreme Court in the case of **Ramesh Baburao Devaskar v. State of Maharashtra**, (2007) 13 SCC 501, wherein it has been held thus:

“18. A first information report cannot be lodged in a murder case after the inquest has been held. The first information report has been lodged on the basis of the statements made by PW 11 to the informant himself at the spot. If the said prosecution witness who claimed himself to be the eyewitness was the person who could lodge a first information report, there was absolutely no reason as to why he himself did not become the first informant. The first information report was recorded on the basis of his information given to the first informant at the spot. All information given by him to PW 13 was made before the investigating officer himself. What prevented him from lodging the first information report is beyond our comprehension. PW 11, we may place on record, categorically stated that he had disclosed the details of information to all concerned. Therefore, it is expected that the first informant was informed thereabout. We have noticed hereinbefore that the information given by PW 13 had at least been recorded by the police in the crime register and he categorically stated a few facts viz. the main accused Accused 9 committed murder of his brother Shivaji Patil and one Baburao Patil. Even the place where the murder took place was known to him. If we are to believe the investigating officer, he recorded the statement after holding inquest. The detailed report in regard to the nature of injuries as also the place where the injuries were inflicted was known to him as inquest report had already been prepared. Such an attempt on the part of the investigating officer has been deprecated by this Court in a large number of decisions. All other witnesses including the panch witnesses must have been present there. If despite the same, according to panch witnesses, at least in respect of Baburao, unknown persons are said

to be his assailants, it is evident that PW 11 did not disclose the names of the assailants; at least all of them before PW 9 as also the investigating officer.

19. *In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital."*

274.10 It was submitted that the medical certificates of the victims show that their treatment started at 10:30 p.m. It was pointed out that PW-179 (paragraph 18), PW-188 (paragraph 16), PW-231 (paragraph 12), PW-246 (paragraph 14) and PW-248 (paragraph 12) have also stated that late at night when the police came, they had seen dead bodies burning. It was pointed out that in fact PW-191 Mahammad Maharooof has stated that he had helped the police to find out the people who were alive. It was submitted that if the facts stated by the witnesses are correct, the version given by Shri Mysorewala cannot be believed, and hence, it is apparent that the first information report was not lodged at the time which is indicated therein.

274.11 It was pointed out that the first information report is stated to have been written down by Writer Jayendrasingh in his handwriting. It was submitted that except the Wireless

Operator, no other person including Jayendrasingh, who was with Mr. Solanki and who was with Mr. Mysorewala, is sought to be examined by the prosecution in support of the prosecution case that the FIR, in fact, is registered, as stated by them.

274.12 It was submitted that thus there are in all three witnesses who are party to the recording of the first information report, that is, PW-274 Shri Mysorewala, PW-262 Shri Delwadia and PW-277 Shri Rana. If the evidence of these persons is read together, it is not possible that Shri Mysorewala and Shri Delwadia were present at the Naroda Police Station at the time of recording of the first information report, that is, between 20:15 to 20:45 hours on 28.2.2002 and that Shri Rana signing as visiting officer on 28.2.2002, is contrary to the events on record as per the deposition of such witnesses. Therefore, the evidence of such witnesses has to be closely scrutinized. By way of an example it was pointed out that accused No.18 has been named by four police personnel, namely, PW 262, PW 266, PW 274 and PW 277. After registration of the first information report, the statement of PW 262 came to be recorded on 24.5.2002 and 26.6.2002, the statement of PW 266 came to be recorded on 25.5.2002, the statement of PW 274 came to be recorded on 24.5.2002 and the statement of PW 277 came to be recorded on 24.5.2002. Therefore, about two and a half months after the registration of the first information report, for the first time the accused has been named by such police authorities who are themselves party to the ante-timed FIR and therefore are bound to support the contents thereof.

274.13 It was submitted that just because the names of

the five accused figure in the FIR, it cannot be considered as evidence against them to get them involved in any crime, as the overall circumstances and evidence on record would on the contrary create a complete shadow of doubt about the genuineness of such names having surfaced in the FIR. Thus, there is no guarantee of the truthfulness of these five names figuring in both the FIRs in the same chronological order in the set of facts of the case and therefore benefit of such serious doubt ought to be extended to the accused persons.

274.14 It was, accordingly, urged that the first information report is ante-time and ante-dated and in no manner could the first information report have been recorded at the time shown in the report and no reliance can be placed upon such a first information report.

274.15 On the other hand Mr. Prashant Desai, learned Special Public Prosecutor, invited the attention of the court to the testimony of PW 191 Mahammad Maharooof to submit that from the evidence of this witness it is revealed that when twenty seven persons were saved at around 7:30 to 8:45, there was already a counting of fifty eight dead bodies and therefore the submission made by the defence that after Shri K.K. Mysorewala returned from the Civil Hospital they would have started counting the dead bodies is falsified by this witness. Referring to the testimony of PW 262 Shri V.K. Solanki, it was submitted that there is no cross-examination to the effect that he has mentioned the time and date which is not the correct fact and that he has given the complaint at a later point of time. It was submitted that though this witness is the first informant, no suggestion in this regard has been made to

him so as to impeach the credibility of the version given by him. Similarly, during the course of the cross-examination of PW 276 Shri P.U. Solanki no question has been put to him about lodging of the first information report and the time and date of the FIR. Referring to the testimony of PW 277 Shri M.T. Rana, it was submitted that no question has been asked to this witness in his cross-examination that he had not verified the first information report on 28.2.2002. Referring to the testimony of PW 274 Shri K.K. Mysorewala, it was submitted that such suggestion has been made only to this witness and not to the other witnesses including the first informant.

274.16 It was argued that it has come out in the evidence of K.K. Mysorewala that the Naroda Gam and the Naroda Patiya FIRs relate to the same area and that it is only for the sake of convenience that two separate first information reports have been registered one by Mr. Vala in the respect of Naroda Gam and one by Mr. V.K. Solanki in respect of Naroda Patiya. It was contended that the argument of the defence about use of similar language in respect of the first paragraph is of no consequence and on that ground the first information report cannot be doubted.

274.17 It was submitted that the purpose which has been highlighted by the defence that the FIR has been filed late only to implicate some of the accused is not at all evident from any of the depositions of either the person who filed the FIR and the officer before whom the first information report was registered and the officer who verified it.

274.18 It was submitted that in the first information report

the facts stated are such which have actually happened and the first information report is not tainted by mentioning of facts that had not happened. It was urged that merely because the first information report is ante-dated and ante-time it will not make the prosecution case weak as regards the incident.

274.19 In support of his submissions, the learned Special Public Prosecutor placed reliance upon the decision of the Supreme Court in **Anjan Dasgupta v. State of W.B.**, (2017) 11 SCC 222: AIR 2016 SC 5510, wherein it has been held thus:

“18. *The inquest report thus mentioned both unnatural death case (UD No. 43 of 2000) dated 16-6-2000 and PS Case No. 99 of 16-6-2000 under Sections 302/34 IPC and Sections 25/27 of the Arms Act. From the above, there can be no doubt that the FIR was registered before the inquest of dead body started. The evidence indicates that information of death was received by the police station before 1715 hours and the police officials arrived at the spot immediately and the IO arrived at the spot at 1745 hours, by that time other police officials had already reached. The receipt and the recording of first information report is not a condition precedent for setting in motion of a criminal investigation. When the information that Debol Kumar Ghosh is shot dead was received, police was duty-bound to start the investigation.*

19. *This Court in Apren Joseph v. State of Kerala, (1973) 3 SCC 114, stated the following in para 11:*

“11. ... As observed by the Privy Council in King Emperor v. Nazir Ahmad Khwaja, (1943-44) 71 IA 203, the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation.”

20. *Much emphasis has been laid down by the learned counsel for the appellant on the fact that, FIR notes in Column C, “time 1735”. The time 1735 hours, we have already noted that Sunil Giri, Sub-Inspector of Police has recorded in the first information report. He had already*

received the information before 1715 hours since he had sent the RT message to the IO. Information of cognizable offence having been received by the ASI, with regard to the mention of time at 1735 hours in the FIR, which was recorded after 1730 hours could have been explained if any questions were put to ASI Sunil Giri. From the cross-examination of ASI Sunil Giri, it does not appear that any question was asked regarding the recording time of 1735 hours in the FIR. The possibility cannot be ruled out that while registering the FIR on the basis of written complaint, the ASI recorded the time when he received the information in the police station, of the death of Debol Kumar Ghosh. In any view of the matter, the above in no manner diminishes the value or credibility of the FIR.

21. The information of murder was received before 1735 hours at the police station which is fully proved by arrival of the police officers much before 1740 hours as proved by the IO. Hence mention of the time at 1735 hours can be treated as the time of receipt of the information of the offence in the police station and there is no such inconsistency in the FIR so as to come to the conclusion that FIR was ante-timed.

274.20 Reliance was also placed upon the decision of the Supreme Court in **Mahmood v. State of U.P.**, (2007) 14 SCC 16, the relevant part whereof has been extracted herein below:

9. There is no doubt that FIR in a criminal case and particularly in murder case is a vital and valuable piece of evidence for the purpose of appreciating evidence led by the prosecution at the trial. FIR is the earliest information regarding the circumstances under which the crime was committed, including the names of the actual culprits and the part played by them, the weapons, if any, used as also the names of the eyewitnesses, if any. Delay in lodging FIR may result in embellishment, which is a creature of an afterthought. This Court in *Meharaj Singh v. State of U.P.*, (1994) 5 SCC 188, observed that:

“12. ... With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks.

One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching a receipt of the copy of the FIR by the local Magistrate. ... The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report."

274.21 The decision of the Supreme Court in **Om Prakash v. State of U.P.**, (1983) 2 SCC 358 [AIR 1983 SC 431], was cited wherein it was held thus:

11. *The learned counsel for the appellants submitted that the FIR Ex. Ka-1 is antetimed. He drew our attention to Section 157 of the Code of Criminal Procedure and submitted that the time of despatch of Ex. Ka-1 is not entered thereon. Section 157 only states that the first information report should be despatched forthwith and does not say that the time of despatch must be noted thereon. The learned Sessions Judge has observed in his judgment that Ex. Ka-1 seems to have been lodged at the police station without any inordinate delay and that there is nothing on record to show that there was any oblique motive for concocting a false story of the occurrence itself in that first information report.*

274.22 Reliance was placed upon the decision of the Supreme Court in **Budh Singh v. State of M.P.**, (2007) 10 SCC 496, wherein the court followed its earlier decision in *Meharaj Singh* (supra) and held thus:

23. *The question as to whether the first information report is an ante-timed one or not must be considered having regard to the facts and circumstances of the case as has been opined by this Court in *Meharaj Singh (L/Nk.) v. State of U.P.*, (1994) 5 SCC 188, whereupon Mr Singh placed strong reliance. Having perused the first information report, we are of the opinion that although*

the same was transcribed by PW 8 from the oral statement made by PW 1, it contained all the material particulars. The very fact that it was recorded almost immediately after taking place of the occurrence, the question of its being an ante-timed one would not arise.

274.23 In conclusion, it was submitted that it depends on the facts of each case whether the first information report is ante-timed or ante-dated. It was submitted that a delay of a few hours in lodging the first information report is not detrimental to the case of the prosecution in such type of circumstances where there are large casualties in a riot case and also in the FIR which has been registered there is no concoction of false story as regards the incident in question, which does not prejudicially affect the defence in any manner whatsoever. Therefore the argument regarding ante-timed and ante-dated FIR does not have serious consequences on the prosecution case.

274.24 From the submissions advanced by the learned counsel for the respective parties and considering the evidence of the witnesses connected with the registration of the first information report as referred to hereinabove, this court is in agreement with the contention raised by the defence that the first information report in question is ante-timed and ante-dated. Having regard to the sequence of events as unfolding from the testimonies of the above witnesses, it would not have been possible to lodge the FIR at 8:15 in the evening as recorded therein. There are serious discrepancies in the testimonies of the police witnesses, namely K.K. Mysorewala and P.U. Solanki. Moreover, considering the sequence of events, viz. Mr. Mysorewala first

visited the scene of offence and took the injured victims to the hospital and then went to the Naroda Police Station to record the first information report. Considering the time it took to rescue the victims and take them to the hospital, it is difficult to believe that the FIR could have lodged before Mr. Mysorewala at 8:15 p.m. Moreover, the first information report refers to fifty eight dead bodies having been found at the scene of offence. Reference to the number of dead bodies would not have been possible unless they had been counted. From evidence of the witnesses, it is not possible to believe that such counting could have been done before 8:15 p.m. when the FIR is stated to have been lodged. Mr. M.T. Rana has deposed that while taking necessary action in connection with the incidents at Gulbarg, he was there till 24:00 hours; at this time, Shri Mysorewala had given a message to him on the telephone that dead bodies were lying near the water tank between Gopinath and Gangotri Society and had also informed him that he has saved twenty seven Muslims from the spot and taken them to the hospital. He also informed him that an offence has been registered in connection with the incident at Naroda Police Station being I-C.R. No.100/02. Thus, if Mr. Rana was informed about the registration of the first information report in question at 24:00 hours, he could not have possibly verified it on 28.2.2002, which gives rise to a suspicion that the first information report is ante-dated and ante-timed. However, while this court agrees with the contention that the first information report is ante-timed and ante-dated, it does not agree with the reasons put forth by the learned counsel for the appellants in that regard.

274.25 In the opinion of this court, the first information

report is shown to have been lodged at 8:15 p.m. and registered by 8:45 p.m. with a view to obviate recording of a first information report at the instance of any victim eye-witness so as to ensure that the investigation does not proceed in the correct direction. Had the first information report been lodged at the instance of any of such eye-witnesses, who were available in large numbers at the scene of offence when the police reached there, the correct facts reflecting the events that had unfolded throughout the day, including the complicity of the police in aiding and abetting the accused would have to be recorded, which would have resulted in implicating the police officers who were present at the site. Therefore, despite eye-witness versions being available to the police, the first information report has been lodged by a Police Sub-Inspector who came to the spot at a much belated stage, and which is totally bereft of the basic facts about the incident at the passage of the water tank and jumps directly from the early noon hours to fifty eight persons having been killed, without reference to the events that took place between the afternoon and the evening. Though the complaint is said to have been lodged in the presence of Shri K.K. Mysorewala after he returned from the Civil Hospital after taking the injured victims to the hospital, it is a matter of deep concern that the same is totally silent about the twenty seven injured persons who were rescued at the site; the spot from where the fifty eight dead bodies were found; and more particularly there is no mention regarding the deceased having been burnt to death. The conduct of the police, including the higher officers, in not registering the offence at the instance of injured eye witnesses or any other witness as the site and registering a complaint which is bereft of the basic facts regarding the incident

through a police officer, is therefore, highly suspect. However, insofar as the accused persons who have been named in the first information report are concerned, there is nothing to show that they have been falsely implicated for any oblique purpose.

XX WITNESSES OF THE STING OPERATION:

275. The next set of witnesses referred to by the learned counsel for the appellants are the witnesses of the sting operation.

276. **PW-322 Ashish Sureshchandra Khetan** has been examined at Exhibit-2265. The witness has deposed that he can understand Gujarati to a certain extent but would find it more convenient to depose in Hindi.

276.1 In the year 2009, he was residing at Mumbai. In the year 2009 as well as prior thereto, he was working as a reporter. In the year 2009, he was working as a reporter with a news channel by the name of 'Aaj Tak'. Prior to 30.9.2007, he was working for a magazine by the name of 'Tehelka'.

276.2 The witness has deposed that while he was working with Tehelka magazine, his posting was at Mumbai. The Head Office of Tehelka magazine was at Delhi and as a part of his duties; he was required to remain in contact with them.

276.3 In May, 2007, the Editor-in-Chief of the magazine was Shri Tejpal. In the second week of May, 2007,

his Officer called him on phone and instructed him that there was a painting exhibition in Arts College of Baroda University and in the said exhibition, several elements had resorted to vandalism, wherein there was an attack, etc., on students and the professors and the entire dispute was publicised in the news medium and hence, he should go to Baroda and investigate and find out as to who was responsible for the entire incident and which elements were acting and what was their intention/object.

276.4 Upon receiving such instructions, he had gone to Delhi from Mumbai via air and had obtained a spy camera from his Delhi office and, accordingly, he had come from Mumbai to Baroda.

276.5 After coming to Baroda, he had met Shri Niraj Jain, who was an advocate by profession. Shri Niraj Jain, at the relevant time, was an officer holder of the District Unit of the Bharatiya Janta Party. Upon coming to Baroda, he had contacted Shri Niraj Jain, because his name had come up in the newspapers as well as media in connection with the controversy regarding tearing of paintings in the exhibition, and hence, he had contacted him on telephone and he had introduced himself as a Research Scholar on Hindutva from Delhi University. He had called him to the BJP Office at Baroda to meet him. Shri Niraj Jain had talked with him personally for about one and a half hours.

276.6 He had talked with him about Hindutva and Muslims. He had also told him that in this regard, there is an employee (faculty member) by the name of Shri Dhimant Bhatt

at Baroda University, who is more knowledgeable and that he should meet him. He had also given him the telephone number of Shri Dhimant Bhatt. He had gone to the Baroda University office and met Shri Dhimant Bhatt, who had talked about Baroda University, politics as well as the Baroda Senate. He had told him that the biggest work of Hindutva was done in the year 2002. He talked to him about the communal riots of 2002 and also told him that in the year 2002, he himself had provided weapons to people in the name of Peace Committee and that they had targeted leading Muslims at Baroda, all of which they had done with a lot of planning. He also told him that they had burnt Muslim Professor Bandukwala's house.

276.7 Shri Dhimant Bhatt had introduced him to different persons at the University. However, he does not remember their names. However, from their talk, he had learnt about the communal riots of the year 2002. Upon obtaining such information, he had made a phone call to the Editor of Tehelka at Delhi and told him that if he is given permission, he is in a position to obtain lot of information about the communal riots of 2002 and that a lot of information in this regard is available, and hence, instead of the controversy regarding burning of paintings, more interesting information on this issue can be made available.

276.8 After this representation, their Editor at Delhi gave him permission to inquire into the communal riots of 2002 and to collect information in respect thereof and gave him leave to focus on the communal riots of 2002.

276.9 Shri Dhimant Bhatt had given him several

telephone numbers of Ahmedabad, wherein he was given the numbers of Shri Purshottam Rupala as well as the Private Secretary of Shri Purshottam Solanki and had informed him that upon meeting them at Ahmedabad, he would get information on the subject.

276.10 Thereafter he had come to Ahmedabad. After coming to Ahmedabad he had made a phone call to Shri Purshottam Rupala and to the Private Secretary of Shri Purshottam Solanki. One out of them told him to go and meet Shri Damleji at Hegdewar Bhavan in Ahmedabad. Shri Damleji was a senior worker of R.S.S.

276.11 He went to Hegdewar Bhavan and met Shri Damleji. During his talk with him, he was informed that he would get proper information regarding the communal riots of 2002 as well as on Hindutva from the Vishwa Hindu Parishad and gave him the telephone number of one Shri Jaydeep Patel. He had made a phone call to Shri Jaydeep Patel, who called him to the VHP office at Paldi.

276.12 When he talked with Jaydeep Patel at the VHP office, at that time, he had talked about ordinary things. When he made inquiries about the subject of communal riots of 2002 and asked him as to how the huge massacre at Naroda Gam and Naroda Patiya had taken place, he had told him that there were allegations against him also in one case, and hence, he would not talk any more on the subject. However, he had told him that their Vishwa Hindu Parishad organisation is strong in the Naroda area, which is one of the reasons why the massacre was possible.

276.13 He (Jaydeep Patel) had given several telephone numbers, out of which, one number was of Shri Arvind Pandya, who was working as a Special Public Prosecutor with the Nanavati Investigation Commission. Moreover, he had also given him the telephone number of Shri Haresh Bhatt, who was an M.L.A. from B.J.P. at Godhra. Shri Patel had also briefed him about both of them.

276.14 He had made a telephone call to Shri Haresh Bhatt. He called him to his residence at Ahmedabad where he (the witness) went to meet him. His first meeting with Shri Haresh Bhatt took place in the evening of 29th May, 2007 which he remembers.

276.15 During the course of the conversation with him, there was talk about politics and political organisations. During the course of conversation, he also informed him that he had a fire cracker factory, wherein they had made weapons and had distributed such weapons to the rioters who took part in the communal riots.

276.16 Shri Bhatt, during the course of further conversation had briefed him about different people, out of whom; one was Jayanti Patel of Himmatnagar, who was a Home Guard Commander. He had also given him introduction of Shri Babu Bajrangi at Ahmedabad. The witness has stated that, at this stage, he would like to clarify that he had got the reference of those people during the course of conversation with different people. Therefore, it also happened that more than several persons may have briefed him regarding one person by

referring to such person during the course of conversation with him.

276.17 On 30.5.2007, once more, he had gone to meet Shri Haresh Bhatt at his residence. On that day, there was a lot of conversation with him. During this period, he had said many things and had mainly stated that there was a meeting at the residence of the Chief Minister. He himself was present at the meeting and in the meeting the Chief Minister had also stated that they have three days with them. Over and above, he had talked of many other things, out of which, the main thing was what he has stated above.

276.18 On 30.5.2007, he had gone to Godhra with Shri Haresh Bhatt in his car. However, he had returned from Godhra in an S.T. bus and he (Haresh Bhatt) had stayed at Godhra. On that day, he had returned to Ahmedabad and had then gone to Mumbai.

276.19 Thereafter, in the first week of June, he had come to Ahmedabad. After coming to Ahmedabad, he had met Shri Arvind Pandya. Shri Arvind Pandya had given him the contact and telephone number of many people, out of whom one was Shri Rajendra Vyas. He had told him that this Rajendra Vyas is an officer of the Vishwa Hindu Parishad and that on the date of the Godhra train incident, he was a passenger in the train, which stopped at Godhra.

276.20 Shri Pandya had also given him the telephone number of one Shri Dilipbhai Trivedi, who was the Public Prosecutor at Mehsana. He had met Shri Pandya twice, and on

both these occasions, he had talked about ordinary things with him. He had not talked with him on any specific issue. He had introduced him to Shri Rajendra Vyas. Shri Rajendra Vyas had introduced him to Shri Ramesh Dave and one Shri Gilletwala.

276.21 In the meanwhile, he had also gone to Himmatnagar and met Shri Jayantibhai Patel. Shri Jayantibhai Patel had given him the number of one Shri Anilbhai Patel of Sabarkantha and he (the witness) had gone to meet him at Sabarkantha. He had met Shri Anil Patel, who introduced him to Shri Dhavalbhai Patel. During the course of conversation with him, Shri Anil Patel and Shri Dhaval Patel had narrated the roles played by them in the communal riots.

276.22 He had gone to Sabarkantha once again where had an occasion to once again meet R.S.S. workers, namely, Shri Mohan Patel and Shri Koyabhai Patel. They had also introduced to him one Public Prosecutor named Shri Bhatt. In the meanwhile, he had also gone to meet Shri Dilipbhai Trivedi at Mehsana. Thereafter, he had returned to Mumbai. Thereafter, in the second week of June, 2007, he had returned to Ahmedabad and he had met all of them in June, 2007.

276.23 After coming back to Ahmedabad, he had met Shri Babu Bajrangi on 14th June, 2007. He (Babu Bajrangi) had called him to his office on the top floor of a mall near Galaxy cinema. He had gone to meet him there. He had met him. He had introduced himself as a Research Scholar on the subject of Hindutva. After gaining his confidence, he had given him reference of all the persons whom he had met till that day. He (Babu Bajrangi) had talked with him for approximately one

hour. The witness has stated that he has a transcript of all the talk that he had with him.

276.24 The witness has deposed that he had recorded all the meetings with whomever he had met from May 2007 till he met Shri Babu Bajrangi with his spy camera. He used to keep one spy camera in his shirt button and the second camera was fitted into his diary. Every time he used to meet a person, at the time when he entered the place where he had to meet them and till the time he left the place, he had carried out recording of every minute.

276.25 [The court has made a note below that, at this stage, the witness has stated that he desires to keep and refer the extracts of the transcripts which he has brought with him related to this case in his testimony and has sought permission to do so. The court has upheld the request.

276.26 The court has recorded that these transcripts of the talk with Shri Babu Bajrangi are given Serial No. 'B.B. 1 to 6'. The two transcripts of his talk with Prakash Rathod are given number 'P.R.-1 and 2' and similarly, the three transcripts of the talk with Shri Suresh Richard are given numbers 'S.R. 1 to 3'. All the transcripts are produced with the list of the witnesses and the witness was going to refer and rely upon the same in his deposition. The same are produced with the list of witnesses and copies thereof are given to the defence.]

276.27 The witness has further deposed that in the year 2007, he had prepared total transcripts for his Tehelka magazine and extracts of his transcripts of certain important

talks also. The witness has stated that he has brought with him all the transcripts. Out of which, six transcripts relate to Shri Babu Bajrangi, two transcripts to Shri Prakash Rathod and three transcripts to Shri Suresh Richard. The list with which he has produced the transcripts before the court is given Exhibit-2266.

276.28 The witness has deposed that on 14.6.2007 before lunch and after lunch, in two such sessions, he had conversation with Shri Babu Bajrangi. As per his opinion, significant extracts of talk with Shri Babu Bajrangi are:

276.29 On 14.6.2007 before lunch and after lunch, in two sessions he had talked with Shri Babu Bajrangi. In his opinion the significant parts of his conversation with Shri Babu Bajrangi are as under:

- *Tehelka : Your workers would not have come out had it not been for your call.*
- *Babu Bajrangi : They would not have come at least in Naroda. ... We had given a challenge that on the next day ... Do not write this down or you'll get me in trouble.*
...
- *Tehelka : No. No. There is no such question.*
- *Babu Bajrangi : We had given such a challenge. When we had gone to Godhra and had seen corpses, we had given challenge that we would drop four times the number of corpses at Patiya.*
- *Again Babu Bajrangi: We reached near you and told to give your revolver. ... said we will not give, we said*

tomorrow the first bullet will be fired at you.

- *Tehelka: To whom did you say?*
- *Babu Bajrangi: From whom we took the revolver. ... From Hindu people. ... We roamed about at night and collected 23 revolvers. ... 23 revolvers and assume that you have said no revolver. Then I said tomorrow morning we will shoot bullets at all of you. ... In front of their children. ... said (dirty words). Do whatever you want to and if you want to go to the police station you go there. ... Tomorrow morning we will shoot you. (dirty words). ... first ... in this manner we brought 23 revolvers.*

276.30 Over and above this, on the same day there was further talk between him and Shri Babu Bajrangi as follows:

- *Tehelka: How many Hindus died in that?*
- *Babu Bajrangi: On this side four Hindus died. Two of the workers who were very close to me died.*
- *Tehelka: Died ...*
- *Babu Bajrangi: Nobody sees.*
- *Tehelka: What happened to their families?*
- *Babu Bajrangi: Sir, no one asks ... I send 2000. ...*
- *Tehelka: They died in police firing?*
- *Babu Bajrangi: I send 2000 per month ... One was my friend. ... he used to work in my team. ... Now nobody asks about him.*
- *Tehelka: So they died in Police firing?*
- *Babu Bajrangi: Miyas cut them. ... eyes ... nose...*
- *Tehelka: How ... ? How did you let them cut?*

- *Babu Bajrangi: arre..... eyes and nose were cut in a trolley and then thrown outside.*
- *Tehelka: Then you people did not do anything about it?*
- *Babu Bajrangi: Of course, then Sir, .. till there was a confrontation Sir ... stone pelting ... he went inside ... tried to get in while speaking ...*
- *Tehelka: Such stupidity should not have been committed?*
- *Babu Bajrangi: What is there about these people. ... it is like this .. slowly slowly it is that ... see it like this .. in the Patiya chapter Patiya is like this ...*

276.31 At this stage he draws a map and gives him a portrayal of the area. While drawing this he said:

- *Babu Bajrangi: This is the S.T. Workshop wall... this is highway etc. .. here there is Patiya Police Chowky. ... so Muslims were staying here ... these are all lanes .. it is like this and there is road here .. this is Patiya, this is a road alright... a person will go inside from here .. then what those people were doing ...when the mob went like this, then these people would go into this lane or that lane or this road and would all go and hide inside..... so what will a person do, will look in the lane .. will look in the lane.*
- *Tehelka: Yes, then they will not know...*
- *Babu Bajrangi: If he looks in the lane, then there is no one ... he will go ahead. Then they will shout loudly "catch, catch" ...then what will happen, the mob which is passing on that side ... half the mob would run back out of fear. ... someone will throw rags and someone will*

throw acid, then half of the mob then fifteen to twenty people alone would remain ...

- *Tehelka : They alone would be saved ...*
- *Babu Bajrangi: They alone remained ... so from this side as well as from that side, they will come from this side to that side, from all sides. There is an attack on him ... In this whoever comes in their hands they would pull him and take him... Thereafter, they would cut him into pieces and throw him.*

276.32 Furthermore, during the course of their talk the following conversation took place:

- *Tehelka: So how were you arrested?*
- *Babu Bajrangi: Arrest. We were told. ... Narendrabhai told us now get arrested...*
- *Tehelka: If Narendrabhai was not there they would have killed you?*
- *Babu Bajrangi: They would have killed .. thereafter our case was there in High Court ... then we kept waiting that today we will get bail, today we will get bail. ... the file of Babu Bajrangi would go and the High Court Judge would throw it ... killed .. said .. yours will be rejected ... another Judge would come and again throw it, in this manner three times it was thrown. ... Then Narendrabhai did such a setting ... said pass ... for four months we were rubbing our heels.... I alone had a car which also was disposed of ... took another car and went around and kept on roaming, roaming, roaming....*
- *Tehelka: When are you coming to Delhi?*

- *Babu Bajrangi : On 21st or 22nd I will be going ...*
- *Tehelka: 21st and 22nd I will also be in Delhi. Shall we sit together there?*
- *Babu Bajrangi: There I will talk openly.*
- *Tehelka: Meet Anandji once. That is my request to you.*

276.33 Prior to this, during the course of conversation he had also told Bajrangi that he would arrange a meeting with Shri Anandji. The witness has told him that Shri Anandji was a senior worker of the RSS. In fact, there was no person having the identity of Shri Anandji and it was imaginary character.

276.34 Thereafter, the following conversation took place:

- *Babu Bajrangi : Arre Sir, that time we came in the evening and we thought that in Hindustan now there will no longer be any Mussalman, ... but Hindus are such traitors ... there are more leaders amongst them ...*
- *Tehelka: at the time when you returned from Godhra?*
- *Babu Bajrangi : What else to say, on that day Narendrabhai had given a free hand ... Ram's name is the truth ... not a single Muslim would remain in Hindustan ... If one jawar had come out, then the entire Haldi Ghati game would have occurred.*
- *Tehelka: But your people betrayed?*
- *Babu Bajrangi: Sir, there was betrayal .. in the whole of India we ... in the entire Patiya we ... the maximum murders took place in Patiya. ... in the entire Patiya and we were ruined in such a manner ... we had financial*

strength ... I had otherwise I would die no....

276.35 Thereafter, he had returned to Mumbai. In July 2007, he had returned to Ahmedabad. Thereafter from Ahmedabad he had also gone to Godhra.....

276.36 Thereafter, in August 2007 he had gone to Ahmedabad. At this time also he had met Shri Babu Bajrangi at his office near Galaxy Cinema. That day the date was 10.8.2007.

276.37 In this meeting he had adhered to what he has said earlier with regard to communal riots and had repeated it and also gave him additional information in the meeting.

- *Babu Bajrangi: I am going to ask him – Togadia once in public .. never asked him ... I will ask him Sir, to me you have .. you are a big leader. Have you slapped any one? ... alright...*
- *Tehelka: Ever beaten any Mussalman?*
- *Babu Bajrangi: Even any Hindi, Mussalman ... have you ever slapped a Hindu? You know how to speak in good language.. ..you talk in effective language in the mike and say do this, do that, so we did it ... then you drove us away...*

276.38 During the course of the entire conversation Babu Bajrangi was continuously expressing his anguish that during the course of communal riots he has done so much work for Hindutva, despite which he was out of the Vishwa Hindu

Parishad and on this issue he had a lot of anger against VHP and Shri Togadia.

276.39 Moreover, on that day there was also conversation that:

- *Tehelka: Whatever you did, you certainly did not do it at the instance of Togadia.*
- *Babu Bajrangi: Not at the instance of Togadia, but in the name of Hindutva... When we went to Godhra, at that time itself we had given challenge ... tomorrow we will show the result of it at Naroda ... We had given challenge on the previous day itself .. at night itself we had collected 23 revolvers from people ... that brother, you have revolver, you have to give it ... if you do not .. then tomorrow (offensive language) first we will shoot you .. (offensive words) .. you are offsprings of miyas*
- *Tehelka: Did people give them?*
- *Babu Bajrangi: They were forced to give it... otherwise we would kill them.. my weight (influence) is so much and I speak openly..... these people do not have strength to (very dirty abuses) ... when I am angry I ... but I my hand never rises against a Hindu this is my weakness. ... Hindus are gods for me and as for the Muslims ... (bad words) by me.....*
- *Tehelka: On the day when Naroda Patiya happened, where was Togadia on that day... was he in Ahmedabad?*
- *Babu Bajrangi: Togadia was not there....*
- *Tehelka: He was at Ayodhya..... he was sitting at*

Ayodhya. He himself. ..

- *Babu Bajrangi: Togadia was not there. Others were there. ... Jaideepbhai ... otherwise Sir, Jaideepbhai was there so...they were all outside ... there used to be conversation on the phone.... it had come in the newspaper no.... it had just come ..*
- *Tehelka : In some papers something had come against the commission ...*
- *Babu Bajrangi : Yes.....it had come ... they said Babu Bajrangi talked so many times ...*
- *Tehelka: So what if you talk?*
- *Babu Bajrangi: That is alright. I, out of all the people against me, in all 14 are Muslims and 16 are policemen.*
- *Tehelka: Why were policemen against you.....*
- *Babu Bajrangi: The policemen let you stand there, then (bad words),..... for a government job ... there was pressure .. at 2.30 at night.*

276.40 The witness has further deposed that he had met him thereafter also. He had given him Prakash Rathod's telephone number of. He had sent him to Prakash Rathod's house with some relatives. In this manner he had gone to Chharanagar.

276.41 Thereafter on 16.8.2007 also he once again had met Shri Babu Bajrangi. At that time there was conversation between them, which was as follows:

- *Tehelka: and Jaideep Patel was continuously*

talking with you on phone on that day?

- *Babu Bajrangi: at that time .. Sir, how many .. so many So many... (offensive abusive language).*

276.42 The witness has stated that the above words were spoken by Babu Bajrangi in Gujarati and as per his understanding had prepared a script.

- *Tehelka: Meaning ...?*
- *Babu Bajrangi: By gesture he indicated that he had cut the people.*
- *Tehelka: How many did you cut?*
- *Babu Bajrangi: Yes.*
- *Tehelka: This Jaideep?*
- *Babu Bajrangi: Yes..... he had talked 11-12 times.... thereafter our battery had become low.*

276.43 In September 2007 Babu Bajrangi came to Delhi. He had come to Delhi for his own work. Upon coming to Delhi he had phoned him and during the course of conversation he had expressed a desire to meet the imaginary character – RSS senior worker, Shri Anandji. Therefore, he had told Shri Tarun Tejpal's paternal uncle, to play Shri Anandji's character. They had placed photographs of ex-workers of RSS in Anandji's house due to which Shri Babu Bajrangi would feel that the house was of an RSS worker. He had gone to the Delhi Airport to pick up Babu Bajrangi. From the airport they had gone to Tarun's paternal uncle's house, viz., Anandji's house.

276.44 In the conversation that took place at Delhi, Shri Anandji had also participated. The conversation that took place

during this time was as follows:

- *Babu Bajrangi: We people ... my work was such that what we did in the Patiya chapter, we were the first and the local people and we were all together ... Patiya is located next to them as a short distance it is half a kilometre far from our house, so the first task that was done.....when the Godhra chapter occurred we had gone There it was unbearable to see on the next day we gave a reply ... thereafter ...*
- *(Uncle) Anandji: What was unbearable to watch there What did you not see in the Godhra incident.....*
- *Babu Bajrangi: At Godhra incident what was worth seeing like..... any person who sees it would feel that there and then he should kill and cut everyonethe situation was such.*
- *(Uncle) Anandji: Did you go?*
- *Babu Bajrangi: Yes. I was there together..... what had happened in the Godhra incident on that day, upon seeing it, only after coming here to Naroda, here we had retaliated. ...*
- *(Uncle) Anandji: How did you organize in such a short time?*
- *Babu Bajrangi: Short at night itself we gathered ... we had gathered a team was of 29-30 people.....they had guns, so we reached there at night; that brother give us your guns... .. he said he will not give ... tomorrow we will shoot you even if you are a Hindu ... tomorrow if it is not given ... then people said take away all the cartridges and guns ... in this manner we collected 23 revolvers and*

then with all these revolvers, no one died then... it so happened that threatening, scaring and frightening them, there was a very huge pit where all of them had gone and hidden and then they were surrounded from all the four sides and whatever was there was licked and finished at that time we said at 7 o'clock.

- *Tehelka: At Patiya .. they called it Patiya no?*
- *Babu Bajrangi : Patiya, Patiya ...*
- *Tehelka: In Patiya, can you show what Patiya is like?*
- *Babu Bajrangi: Patiya one .. there is an S.T. Workshop and next to it there is a compound wall and next to it there is a wall... so that... opposite Patiya there is a masjid.....next to it there is a pit, which is very huge so in that open ground all of them were assaulted..... at 7 o'clock we made a phone call to Home Minister and told him as well Jaideepbhai as regards the number of people we had and now they should take care they did nothing and did not take care and it so happenedat 2.30 at night there was an F.I.R. in my name and after the F.I.R. was made it was said that see, he was there the Commissioner also made an order. ...*
- *(Uncle) Anandji: Narendraji did?*
- *Babu Bajrangi: Yes, the Commissioner gave it.*
- *(Uncle) Anandji: Did you not have influence with Narendraji.*
- *Tehelka: Narendrabhai....*
- *Babu Bajrangi: No. Narendra ... at that time he had also to control ... Narendrabhai stayed with us a lot. ... at that time Commissioner had given the order ... after he gave*

the order we were told that brother, leave your house ... we left our house and fled .. then Narendrabhai kept us at Mount Abu... ..there is Gujarat Bhavan at Mount Abu, where we were kept there for four and a half months. Thereafter, as told by Narendrabhai then we also got arrested after getting arrested we stayed there for six months. .. then Narendrabhai got us released and what Narendrabhai has done in Gujarat no one else can do ... if we did not have Narendrabhai's support, then we could not have been able to give a response to it ... because the police was standing in front of us watching, everything was happening, however, the police had shut their mouths and their eyes.

- *(Uncle) Anandji : (inaudible)*
- *Babu Bajrangi: No. No. Sir ... at that time if the police wanted they would not have let us enter ... they would not have let us enter Patiya..... there was only one entrance. ... there is only one gate like a society has one entrance.... thereafter the whole Patiya starts .. Muslim people start .. if they wanted to stop them then there were 50-60 police standing there. ... they could have stopped us ...*
- *(Uncle) Anandji: (He is lifting his phone)*
- *Babu Bajrangi: If the police has desired Sir, they would not have allowed us to enter inside. ... We had a great deal of support from the police due to Narendrabhai ... and on account of this, whatever happened in the entire Gujarat was good, that there was some peace in respect of these people.... otherwise these people had become very headstrong. ... thereafter, we kept walking ahead. ...*

- *(Uncle) Anandji: By what account did anything good happen?*
- *Babu Bajrangi: It was good that Narendrabhai was there. It was good that those people were cut.*
- *(Uncle) Anandji: Voice is not clear.*
- *Babu Bajrangi: Narendrabhai was happy, the public was happy, we were happy, so thereafter we also went to jail and came back. ...after coming back I kept on doing my work ..*

276.45 Moreover in this very talk the following conversation took place:

- *Tehelka: At least in the Patiya ... as well as in village, at both the places.*
- *Babu Bajrangi: Naroda and Naroda Patiya....*
- *Tehelka: Naroda gam is also there.*
- *Babu Bajrangi: the distance between Naroda and Naroda village is half a kilometre so in both the places many many ... any number... the minimum must not have been cut at Naroda and Naroda Patiya, Sir ... thereafter, they picked up the corpses and threw them....there was a well, they threw them one by one in a well ... earlier I never used to talk to them ... for the first time I have met and talked ... there are many reporters at our place and all kinds of people used to come and ask me about the Patiya chapter... I said that I was not there in Patiya incident, I was admitted in a hospital far away....*

276.46 Furthermore, in this talk the following conversation also took place:

- *Tehelka: Please tell us how?*
- *(Uncle) Anandji: You had taken guns. ... then where from the gas cylinders?*
- *Babu Bajrangi: They were there with them Sir, we entered their house, then took a cylinder and hit it .. they burst... we had revolvers with us... at that time the joy was of a different kind Sir.... four of our workers died in that ... and there was no hearing in respect of them... there is no hearing for them ...*
- *Tehelka: I came from their house.....*
- *Babu Bajrangi: if Pravin Togadia stands in the name of Vishwa Hindu Parishad and does anything in the market, Sir, two hundred people will not come with him today, and I say with a challenge that if he wants to hold any programme of Vishwa Hindu Parishad here, no such programme will take place....*
- *Tehelka: These people ... climbed on the masjid and tied a pig.*
- *Babu Bajrangi: We had taken the whole tanker no ... the Naroda Patiya tanker was full it was thrust inside*
- *Tehelka: the tanker was a petrol tanker no?*
- *Babu Bajrangi: Diesel ... a tanker full of diesel was thrust inside and then set ablaze.....*
- *Tehelka: that means that the Patiya was set ablaze with the tanker?*
- *Babu Bajrangi: In the masjid.*

- *Tehelka: In the masjid?*
- *Babu Bajrangi: Besides at that time it was our leadership. .. we did whatever wanted to do..... we felt that Sir....*

276.47 The witness has deposed that thereafter he has never met Shri Babu Bajrangi. This was his last meeting with Babu Bajrangi.

276.48 Shri Babu Bajrangi had sent his close associate with him who introduced him to Shri Prakash Rathod. In this manner on 11.8.2007 he had also met Prakash Rathod.

276.49 When he met Shri Prakash Rathod the following conversation took place:

- *Tehelka: Now they had taken out the names of Jaideep Patel and Mayaben Kodnani from Naroda chapter.*
- *Prakash: Why did they take off Mayaben's name..., why did they take it off any reason... she threw a lot of money.*
- *Tehelka: She says that she was not there on that day. ...*
- *Prakash: Should I say whether Mayaben was there or not?*
- *Tehelka: Was she?*
- *Prakash: Yes.*
- *Tehelka: Did she come there?*
- *Prakash : She came later on... we were inside the riots, ... kill, we are behind you.... she was saying like this*

...

- *Tehelka:* *On the day when Naroda incident took place?*
- *Prakash:* *Yes.*
- *Tehelka:* *How many hours did she stay?*
- *Prakash:* *She did not roam a lot.*
- *Tehelka:* *an hour or two?*
- *Prakash:* *half an hour to a quarter to an hour.*
- *Tehelka:* *but her name was taken out.*
- *Prakash:* *the Government is in her hands.*

276.50 On this day itself Prakash Rathod took him to the house of Suresh Rathod and he went to Suresh Rathod with Prakash Rathod. He met Suresh Rathod on that day together with Prakash Rathod. On that day he had also talked with Suresh Rathod.

276.51 On 11.8.2007 he met Suresh Rathod. He had the following talk with Suresh Rathod:

- *Tehelka:* *On the day when the Naroda Patiya incident took place, on that day who helped..... did the Vishwa Hindu Parishad not give any help?*
- *Suresh:* *No. ... At that time we did not get any help ... Babubhai had helped us ... and see this is my boy, he is my nephew. ...*
- *Tehelka:* *did he not give you any swords?*
- *Suresh:* *Nothing ... what sword, he got our sticks collected..... pipes from our house ... took them away ...*

and we did not even ... we had also played a role.

- *Tehelka: Jee.*
- *Suresh: We had also acted there.... We had indulged in rioting.....we had done a lot .. if do not have any regrets see.. ...just like there is danger to Babubhai, similarly there is danger to us from the Mohammedans.*
- *Suresh: Listen to me ... when this incident happened...*
- *Sajan: If we were not there no one would have been able to enter inside.*
- *Suresh: Then if we people had not jumped in then the RSS people had come, V.H.P. people, Shiv Sena people ...then they would have finished them ...*
- *Sajan: they could not have entered ... they could not have entered...*
- *Suresh: they lost because the Chharas intervened.*
- *Sajan: If Miyas are afraid, they are afraid of only our caste.*
- *Suresh: One of our ladies has gone to Mohammedans.*
- *Tehelka: Hindu?*
- *Suresh: Hindu, Brother cut her chest ... and she had come totally exposed, so we threw this sack on her*
- *Tehelka: Sack?*
- *Suresh: Yes, gunny bag... then we people ... we entered ... our boys ... we could not see her ... thereafter, many Hindus got stuck inside and we helped them.....*

now we are spending time in jail. ... now they say that you have spend your entire life in jail

- *Sajan: Only our caste is more .. Twenty three of our people are inside for Patiya incident and there are not many others from outside.*

276.52 During the course of his conversation with Suresh Richard another person was sitting with him, who was introduced as Sajan.

276.53 The witness has deposed on 11.8.2007, he had a talk with Prakash Rathod and the following conversation took place:

- *Tehelka: Mayaben Kodnani is saying that she was at Gandhinagar.*
- *Prakash: Why, was Mayaben not giving a speech there ... ?*
- *Suresh: She was no....*
- *Tehelka: Was she there on the day of Patiya incident?*
- *Suresh: Yes. ... listen to me, when after the incident, our brother had come Narendra Modi also ... then he said, big brother said Jay Shri Ram Jai Shri Ram ... he himself said so and went through this road in a vehicle ...*
- *Tehelka: Narendrabhai ...*
- *Suresh: Then saw the chawls. ... He garlanded us here... said sabaash (bravo) ...he said you should be thanked ...now how could we know that these garlands would turn into handcuffs ... this Narendrabhai ... this Mayaben Kodnani was here for the whole day. ...*

- *Tehelka : On the day when Patiya incident took place ...*
- *Suresh: The entire day from morning till around eight o'clock at night.*
- *Prakash: She had gone away no*
- *Suresh: No, she had taken a car and was making rounds... ...she kept making rounds ... she would take a round and say do it properly.....took a mob from here ... this mob had come at No.1 .. No.1 amongst all*
- *Sajan: My paternal uncle's name is also there in Patiya ... Ganpat Chhara.*
- *Tehelka: And on that day the police were told not to do anything today?*
- *Suresh Richard: Yes.*
- *Sajan: All were standing ... no defence ...*
- *Suresh: No. ... At that time the policemen were in our favour.*
- *Tehelka: On the day of Patiya incident they were in your favour .. while getting it done?*
- *Suresh: On that day they were in our favour .. at that time seventy to eighty persons were killed by them through firing ...*
- *Tehelka: Yes. Policemen?*
- *Suresh: They killed Mohammedans ... and thereafter on the next day they joined the opposite party against us.*
- *Sajan : He is also an accused in the Patiya incident ...*
- *Suresh : That also the Patiya incident ...*

276.54 At this time Sajan and Suresh, both of them were

pointing a finger at a person who was coming out of the tenement of the opposite side and were giving his introduction in this manner.

- *Suresh: His wife passed away ... somebody got him released ... he mortgaged his house and properties and got released ... then his son mortgaged his house and got him released.*
- *Tehelka: So Narendrabhai also came out on that day in his vehicle ... Narendra Modi ...*
- *Suresh: He had just come out ... then he went straight towards the Himmatnagar side.*
- *Tehelka: so he said Jai Shri Ram?*
- *Suresh: Jai Shri Ram ... garlanded us ... shook hands with my sister and then went away ...*
- *Tehelka: On the day when the incident was taking place?*
- *Suresh Richard: When the incident had happened ... on the same day in the evening at 5.30 he had come ... then he made a round like this ... SRP ... first he went till the petrol pump ... baithak .. returned from baithak and went in this manner till SRP Quarters ... thereafter till date he is not to be seen ... we see him on TV and in the newspaper.*

276.55 On 12.5.2007, the witness had met Shri Prakash Rathod, Suresh Richard and another person together. Prakash Rathod had given introduction of such other person as Rajesh Kantilal. He first went to Prakash Rathod's house and had a conversation with Prakash Rathod and Rajesh Kantilal.

Thereafter Prakash Rathod took him to Suresh Richard's house and thereafter he (the witness), Suresh Richard and Prakash Rathod had talk together, at that time Suresh Richard's wife was also present there.

276.56. The talk between them was as follows:

- *Tehelka: Jaideepbhai told you at night that you are required to make preparations for tomorrow?*
- *Prakash Rathod: Prakash Rathod shakes his head.*
- *Tehelka: He did not say so?*
- *Prakash Rathod: he did not say anything ... we came to know that the Godhra incident had taken place .. Mohammedan people have burnt train Wherein Ramsevaks died many Hindu people died ... we had thought since there is call for bandh, no one should open their shop.*
- *Tehelka : However, at night you had no idea that such riots would take place ... if they had told you at night, some people could have made their preparations ...*
- *Prakash Rathod: So they would be engaged in their own preparations no*
- *Tehelka: So your Chharas fought only with their hands, legs and sticks*
- *Prakash Rathod:No. Some of them had ... swords ... trishul ...*
- *Tehelka: You had them at that time*
- *Prakash Rathod:They were with these Chharas ... this Suresh Richard, whom you met, he has got all the weapons ... except revolvers.. has everything ...*
- *Tehelka: But was it in such a quantity as could be given*

to every one?

- *Prakash Rathod: No. ... Some make provision for their safety on their own no..... One is Gudda, Gudda.*
- *Tehelka : Guddu ...*
- *Prakash Rathod: Presently he is inside ..*
- *Tehelka: In Patiya?*
- *Prakash Rathod: Yes, in Patiya ... he was granted bail ... then what had happened he had come on parole and had absconded ... so now he is inside because of that .. he killed a lot of people ... he was very daring ... amongst Mohammedans ... he used to reside in front ... otherwise, that boy was dreaded a lot*
- *Tehelka: Did you cut two or four Miyas or not?*
- *Prakash Rathod: our people hands and legs of many people ... we had badly beaten those who were here.*
- *Tehelka: So you broke hands and legs only?*
- *Prakash Rathod : We were not going there ...*
- *Tehelka: Patiya?*
- *Prakash Rathod: We were not going inside ... all other Chharas had gone inside.. ..we people were here ... whoever would come we would beat them and chase them away ... at night ...*
- *Tehelka: then where was Bipin Panchal?*
- *Prakash Rathod: first we were here ... were there ... such riots will not take place ... the crowd started increasing ... then Bipin Panchal came ... his people came with him ... then all his people entered inside ... said Shri Ram, Shri Ram and that brother, they have killed our people, so they have to be taught a lesson ... those people went*

inside, all of them .. then we again came here ... when everything started burning ... from here these people ... the miyas...

- *Tehelka : the miyas ...*
- *Prakash Rathod: then we beat them and chased them ... we threw one or two of them inside.*
- *Tehelka: amongst Chharas Suresh Richard fought strongly?*
- *Prakash Rathod : Very strongly ...*
- *Tehelka: Who else fought strongly?*
- *Prakash Rathod : One Suresh Richard, one Guddu, one Naresh Chhara ... meaning that those people did not get tired ...*
- *Tehelka: You need guts for this kind of work..*
- *Prakash Rathod : What enmity did these people want to take out ... Miyas (dirty abuse) are traitors from the very beginning ... Miyas must also have betrayed them in the same manner ... so then they (inaudible) ... in the tussle he, Richard has kept a Mohammedan's daughter*
- *Tehelka: He was talking about it yesterday.*
- *Prakash Rathod: What exploits of Richard had taken place! ... first he fell in love with the sister of this girl .. he slept with her and ate and drank with her ... then she told him to marry her... he said yes, I will marry you tomorrow.... At night he eloped with her. ...*
- *Tehelka: Did the Miyas raise a hue and cry?*
- *Prakash Rathod: All Miyas are afraid of him.*
- *Tehelka: they are afraid?*

- *Prakash Rathod : All Miyas ... nobody can say anything ... Some of them even give two hoots about policemen (dirty words)...no one goes near him ordinarily.. .. if he was not crippled in his leg, then he alone would have got the entire chawl evicted...*

276.57 Thereafter, on that day Prakash Rathod took him to Suresh Richard's house. There he had talked with both Suresh Richard as well as Prakash Rathod, but mainly he had talked with Suresh Richard which was as follows:

- *Suresh Richard: We came after burning everything ... then the police called us ... then 20 – 25 boys (not understandable) who could drop two to five ... said Mohammedans are hiding in the chawls ... now when we went, the houses were burning fully and now some seven eight were hiding in the gutter ... we shut the lid. ... If we went in then there was danger to us also ... the gutters are big ones .. we put the lid on them and placed bricks on them ... very big bricks ... thereafter, eight to ten dead persons were taken out from the gutter.... they had hidden there to escape, but we closed it from the top, so would not they die because of the gas?*
- *Tehelka: They would die because of the gas.*
- *Suresh Richard: Then the corpses were taken out from the gutter.*
- *Tehelka: This was an incident of the evening....*
- *Suresh Richard: This was the incident of the evening.*
- *Tehelka : That means that after the disturbances throughout had come to end, after that ...*

- *Suresh Richard :the disturbances took place throughout the night till 8:30 ...*
- *Tehelka: So you people went inside for second round ...*
- *Suresh Richard :We were inside only ... thereafter in the evening the atmosphere calmed down ... inside how many ... a person would get tired also ... pelting stones, beating with pipes, with knives, doing all that ... but the manner in which we came out only a person with a very strong heart could come out.*

276.58 Further conversation with him was as follows:

- *Suresh Richard: Mayaben was roaming around the whole day in a jeep and a car.*
- *Tehelka: On the day of Patiya incident?*
- *Suresh Richard: Jai Shri Ram. Jai Shri Ram ... She had tied a saffron band .. Have some tea?*
- *Tehelka: I drink it slightly cold.*
- *Suresh Richard: She kept saying Jai Shri Ram, Jai Shri Ram.... Kept on shouting slogans.. said do do, we are sitting ... said we are sitting ... she was wearing white sari and had tied a saffron band .. we had also tied saffron ...*
- *Suresh Richard: Now cylinders were bursting ... they were putting these gas cylinders ... now they were bursting and nobody had courage.... there were pigs sleeping under the truck ... we killed a pig ... we put a spear in the pig which was sleeping ... then we did not even get up, we were tired and weary.... four or five other Chharas together with us... we tied the pig on the masjid and opened a saffron flag and hoisted the flag. ...*

- *Tehelka : On the day when Patiya incident took place ...*
- *Suresh Richard: During Patiya incident .. the tents which were tied on the masjid, we broke their bamboos and we broke minars and put the flag ... this was a blot on them ...*
- *Tehelka: To Muslims ... ?*
- *Suresh Richard: Yes. .. told (not comprehensible)*
- *Tehelka: There cannot be any bigger task of Hindutva than this.*
- *Suresh Richard: the pig was tied with such a bang ... go from this side and go from that side also ... both parties ... even then we eight to ten youth fought and climbed*
- *Prakash Rathod: We burst many cylinders, but the masjid was not shaken much.*
- *Tehelka : That means that construction of the masjid was so strong that even after bursting cylinders it was not ...*
- *Suresh Richard: What to talk about the cylinders..... entire tanker ... one brother had brought the tanker from Thakkarnagar Cross Road by killing a Mohammedan then reversed it and broke it with the tanker .. it was a kerosene petrol tanker .. the tanker broke the entire road ... take out old newspapers ...the tanker was thrust into the masjid ... like one sprays water ... the Fire Brigade people .. in the same manner petrol was sprinkled and chawls were burnt.*
- *Tehelka: Burnt again.....*
- *Suresh Richard: Chawls were burnt again ... old newspapers which you ... Jaideepbhai must be having*

old newspapers.

- *Tehelka : No, he must not have kept them ...*
- *Suresh Richard: must be having.*
- *Prakash Rathod: Babubhai must be having with him.*
- *Tehelka: Babubhai must be having with him.*
- *Suresh Richard: All old newspapers which otherwise you can get them from the press*
- *Tehelka : Anyway, whatever happened ... who brought the tanker ...*
- *Suresh Richard: One brother had come with the tanker.... he was our brother.*
- *Tehelka: he was of the Vishwa Hindu Parishad?*
- *Suresh Richard: No.. he was a Hindu brother ... he killed four Muslims at Thakkarnagar Cross Roads and brought them ... they took the tanker, thereafter Chharas helped ... Arre we came ... thereafter it was put in reverse and the wall of the masjid was broken and thereafter like one sprinkles water, in this manner it was sprinkled ... so some who had gone inside they were also finished....*

276.59 In the same manner, on that day there was further conversation as follows:

- *Suresh Richard : Our brother is very big ... his designation is very big ...*
- *Tehelka: See, I am bringing ... I will make a phone call at this time I am bringing ... if he comes do not say anything ... you say your own thing, speak comfortably.*
- *Prakash Rathod: Don't want anything, neither money nor*

food and drinks.

- *Tehelka: You know they were saying one thing to me ... said Chharas committed rape there...*
- *Suresh Richard: Now see, there is one thing ... Piyushbhai if the hungry enter then they will eat one fruit or the other no? Tehelka: He will eat ...*
- *Suresh Richard: Now thousands of hungry have entered and if some fruit is found then the poor man will eat the fruit. ...*
- *Tehelka: Two or four people must have done it.*
- *Suresh Richard :Not all of them like 2000, 3500, 1000, like the Chharas entered ... if some intoxicated person is there, if there is a hungry person, then if fruit is lying there, he will eat it ... in any case the fruit is to be trampled and thrown away ...*
- *Tehelka : In any case she was to die ...*
- *Suresh Richard: They were even otherwise burning her, killing, then someone might have eaten the fruit ... it is not as if we are lying ... Mataji is sitting in front....*

276.60 At this time Suresh Richard gestured to Mataji's photographs.

- *Tehelka: Two or four rapes must have taken place ...*
- *Suresh Richard: More may have taken place ... on the next day our brother was also there no, Hindu brother, VHP people also RSS people also.*
- *Tehelka: In any case, Muslim girls are very nice.*
- *Suresh Richard :So anybody would eat ... who will not eat the fruit ...*

- *Tehelka: he was roaming around with a Muslim girl earlier, but now he cannot do so.*
- *Suresh Richard: the number of them that you cut, is still less. ... I have lot of resentment against them.... I would not spare them....*
- *Tehelka: I say, if they have not been raped they should be raped.*
- *Suresh Richard: (?) we were saying ... my wife was sitting, in what manner we ... the fruit was lying so anyone could eat it.*
- *Tehelka: that fruits is very tasty no?*
- *Suresh Richard: above these tin sheets.. of the tin sheets.... I too did at that time... I too ate.... I ate once...*
- *Tehelka: You raped only once.....*
- *Suresh Richard :That only ... then the chance to kill would be lost no....*

276.61 At this time Suresh Richard and Prakash Rathod talked of another girl who was raped and thereafter killed.

- *Suresh Richard: Some scrap dealer's daughter Naseemo ... was plump and full bodied.... on her ...*
- *Tehelka: you climbed on her....*
- *Suresh Richard: yes... legally...*
- *Tehelka: she did not escape no....*
- *Suresh Richard: no thereafter made chhunda of her (crushed her..... made a chhunda pickle of her... threw her from the tin sheets above, then with the bricks of the entire wall and the gutter lids ripped and tore her and*

kept her in such a manner....

276.62 Further conversation was like this.

- *Suresh Richard: After today brother, if you have child ... and I put it in the fire and you see it, then your soul will burn ... then those who escaped would say that this is same langda ... he put my child in the fire ... you may be hiding anywhere ... anywhere like on the tree, you may be hiding or you may have fled into a house or you had put tilak ... majority of Mohammedans escaped like that should I show (not comprehensible)*
- *Tehelka : To be Hindus ...*
- *Suresh Richard: Then you see Hindu mobs, Jai Shri Ram then we are behind you no Piyushbhai, there is an outsider, then brother is a person from there.... We have killed those people.... if there is someone from RSS or Bajrang Dal, you ask them that the Chharas were identifying each one and killing them can we put the blood which has fallen on them....*

[There is no paragraph 58]

276.63 Whenever he met all these people he had a spy camera with him and he used to record the entire conversation. As narrated by him, one camera used to be in his button and the other camera was in his diary. The spy camera had an inbuilt microphone. The files which were recorded were audio video files. The microchip was kept in the spy camera at the time of recording. The microchip was of the type which could be taken out. At the time when he carried out the entire

recording, the microchip was in the camera. He used to transfer the footage recorded by him into the laptop and in this manner, he used to transfer the entire footage recorded in the microchip into the laptop. Thereafter, he used to delete the recorded footage from his microchip and thereafter he used to use the microchip again on the next day for the purpose of recording.

276.64 The original recording which he used to take down from the microchip into his laptop was thereafter saved in his laptop, whereby the original footage remained in his laptop and the microchip was available for other recording. The recording which he had saved was saved by him in a hard disc and after the sting operation was over in September, the entire recording together with the spy camera, laptop, etc. was returned by him to the Tehelka office.

276.65 From the recording which he had saved in the hard disc by his laptop, as many CDs as desired can be prepared. The witness has stated that he can identify the spy camera and the laptop, which he had used for the purpose of the sting operation.

276.66 The witness has deposed that subsequently, he came to know that all the instruments deposited by him had been seized by the CBI from Tehelka. He had heard that thereafter, the same were returned to Tehelka.

276.67 Thereafter, he was required to depose in the Gulbarg case, which was registered with the Meghaninagar Police Station, for which purpose, he had obtained everything

from Tehelka and had produced the same before the court during the course of the Gulbarg trial.

276.68 The witness is shown the muddamal in the custody of the Court Shirestedar.

276.69 The witness is shown a sealed cover, which is a green coloured big size cover, which is sealed with lac and stapled, which is opened in the court and the muddamal, which is taken out is shown to the witness. The witness has identified a black coloured diary with India Today written on it which is a 2007 diary. The witness has stated that one camera was in this diary. The witness has stated that there is a hole in the middle of the pages of the diary and there is a small hole on the outer side of the diary, which is about the size of the head of a pin and on the inner side of the diary, the lens of the camera had been fitted. The witness has stated that the lens is still fitted there. The pages have been cut from the middle in such a manner that a tape recorder can be placed inside.

276.70 The plug with the camera which is with a wire, used to be inserted in the digital camera. The witness has stated that he used to keep the recorder in the diary and upon putting on the switch, the video recording would commence. During the course of the sting operation, at every stage, he used to keep the diary with himself. The number of the camera which was hidden in the diary is 050105148 and the last letter reads like – 3.

276.71 The witness is thereafter shown the spy camera button instrument, which is in a black coloured box. Upon

opening the black box, a button camera is taken out, which bears the number 0701037286. The witness has deposed that at the time of the sting operation, he used to use the button camera as a button in his shirt and on the inner side of his shirt, he had kept the wire for recording and had connected it with the recorder which was kept in his pant and used to switch it on due to which the video shooting would be done from the camera.

276.72 The witness is shown a green coloured cover with a lac seal, which is opened in the court and he is shown the muddamal, which is taken out from it. The witness is shown a charger with an adopter, which he has stated is the charger of the recorder.

276.73 A black box taken out from the same carton is shown to the witness. Upon opening the box and looking, there is a 2 GB Toshiba microchip, one earphone, one battery, one recorder which is a tape recorder upon opening the part meant for placing the battery the number 0601081397 is found to be written thereon, and there is a remote of the recorder which has PB-500 written on it. After seeing all these, the witness has stated that he had used all these for the purpose of the sting operation.

276.74 The witness is thereafter shown a sealed khakhi cover and the seal is opened in the court. The witness is shown a Hitachi company hard disc drive which is taken out from the khakhi cover, which is of 40.01 GB and model No.- H.T.S. 428040 F.9-A.T.O.O. written on it. After seeing it, the witness has stated that this is the hard disc of the laptop, which he

used for the sting operation.

276.75 The witness is thereafter shown a long khakhi cover, which is shaped like a book and which is sealed. After opening the seal, two DVDs are taken out and shown to him, which have Gulbarg written on them. The witness has deposed that he received this CD from Tehelka for producing it before the court.

276.76 The witness has deposed that prior to the sting operation being concluded, he had met three of the accused of the Gulbarg case and he had recorded the conversation with them. Both these DVDs relate to the Gulbarg case.

276.77 The witness has further deposed that if the three persons whose sting operation is carried out, namely, Babu Bajrangi, Suresh Richard and Prakash Rathod are present in the court he can identify them. While standing in the witness-box itself, the witness has identified Babu Bajrangi, Prakash Rathod as well as Suresh Richard.

276.78 The witness has deposed that in the context of the investigation of this case, his statement has been recorded twice on 19.1.2009 and 12.3.2009.

276.79 CROSS EXAMINATION: In the cross-examination of this witness, he has stated that Shri Tarun Tejpal was the Editor-in-Chief of Tehelka. He has admitted that he (Tarun Tejpal) was the owner of Tehelka Magazine. Kumari Harvind Baweja alias Shammi, daughter of G.S. Baweja was serving in

Tehelka at that time. She was holding the post of Editor (Investigation). He has admitted that at that time, he was working under her.

276.80 Tehelka Magazine was started in the year 2004. He has stated that she (Harvind Baweja) was not giving him any other instructions regarding the work that he was required to do, however, he used to remain in touch with her in connection with his work. He has stated that he had obtained orders from Baweja Madam as well as Shri Tarun Tejpal for the purpose of carrying out the sting. He has stated that he had worked for Tehelka from 2004 June to 2005 June. He had joined Aaj Tak from 1st October, 2007. The Director of Aaj Tak News was Shri Q. W. Naqvi. He has stated that he has no personal information about the transaction between Tehelka and Aaj Tak regarding the rights in connection with the sting operation.

276.81 In his cross-examination, it has come out that the muddamal shown to him was given to him in the Tehelka office under the instructions of Shri Tarun Tejpal. He does not remember as to whether any specific person had given it to him. He has no personal information as to whether Tehelka had recorded anything about the muddamal having been given to him, but has stated that they must be keeping some record in the office. It has further come out that upon the sting operation being concluded he had handed over all the muddamal to Baweja Madam. He does not specifically remember, but says that probably when he handed the muddamal to her, he had not obtained any receipt. He has admitted that when he handed over the muddamal to Baweja Madam, he had not noted down the number written on it

anywhere. He has stated that he does not know as to whether the C.B.I. people had obtained the muddamal in the context of Operation Kalank. The C.B.I. had not recorded his statement in connection with the muddamal. The witness has voluntarily stated that the C.B.I. has recorded his statement in connection with the sting operation and that they had also recorded his statement in connection with the muddamal used during the sting operation, wherein he had described the muddamal which he had used during the sting operation. He has stated that the laptop which he has used for the purpose of the sting operation is not part of the muddamal but the hard disc is.

276.82 The witness has denied that apart from the muddamal, which is shown to him, the transcript of the sting prepared by him was also given to the C.B.I. He has stated that he had sent the transcript to Baweja Madam by e-mail and the rest of the muddamal had been personally handed over to Baweja Madam. As and when the transcript was ready, he used to send it to her.

276.83 The witness is shown the muddamal diary, which he has stated that he had taken from Tehelka. He has denied that he had not obtained this diary from Tehelka. He has denied that he had obtained this diary from India Today. He has denied that the India Today diary has not been given to him from Tehelka and that he has colluded with India Today and had obtained the diary from them. The witness has stated that he wants to say that the India Today people sell such diaries every year in the open market and such diaries are available even today. He has admitted that the other muddamal was also being sold in the market; however, the same had been

given to him by Tehelka.

276.84 He had carried out the sting operation from the second week of May, 2007 to the second week of September, 2007. He has stated that he has not calculated the number of hours he had done the sting recording, but has stated that it must be of around 35 to 50 hours and could even be more. He has stated that all the video recording had been done by him in that many hours. The witness has stated that the SIT has recorded his statement in the context of the sting operation on several occasions but in this case his statement was recorded twice. He has admitted that in these two statements he had stated all the facts that he knew.

276.85 In his cross-examination, it has come out that he has not done any reporter's course and that he has not done any course in photography. He has also not done any course in sting operations. He has admitted that when he was appointed by Tehelka, there were many rules of code of conduct which were required to be abided by. However, the main code of conduct was that every task to be performed by him should be in public interest and except that he should not have any other agenda. The entire code of conduct is there in his appointment letter. The witness has stated that he has no objection in producing the appointment letter issued by Tehelka to him before the court.

276.86 The witness has admitted that as per the code of conduct, they are required to report the truth. The witness has voluntarily stated that they are required to present only that truth which is necessary in public interest and for justice.

Moreover, it is his personal belief that as a reporter, he has his personal code of conduct whereby he should present only the truth.

276.87 The witness has stated that the fact that the entire recording has been carried is true. He has stated that he has honestly recorded what has been stated by the accused in the sting operation and that he has done it to the best of his ability. He has further stated as per his duty, he is not required to investigate as to whether what has been stated by the accused in the sting is correct, but whatever is stated by them has been recorded by him.

276.88 The witness has admitted that he has carried out the entire sting operation under the name of Piyush Agarwal and that this Piyush Agarwal is an imaginary character. He has admitted that at the relevant time, he was not a student of Delhi University. The witness has voluntarily stated that, at present, he is a student in the Law Branch of Delhi University. He has admitted that, in fact, he had not obtained any card from Delhi University at that time. He has admitted that during the sting operation he had prepared a forged card of Delhi University, however, for that purpose he had not obtained anything from the Delhi University. He has stated that he had obtained the monogram of Delhi University from the website. At present, he does not have the card. He has stated that if he finds the card he will produce it. He has admitted that through this card, he has created a false identity of Piyush Agarwal. He has denied that he had obtained the confidence of all the people while carrying out the sting operation on the basis of this card. He has stated that a majority of the people had not

asked for this card and whoever had asked for it, he had shown them the card.

276.89 The witness has denied that on whomever he had carried out the sting operation, he had given a false introduction of Anandji. He has stated that only in the case of Babu Bajrangi and three accused in Gulbarg case, he was required to give such introduction of Anandji.

276.90 The witness has admitted that Shri Amrut Tejpal, who is the paternal uncle of Tarun Tejpal, had played the role of Anandji. Shri Tarun Tejpal and Shri Amrut Tejpal had decided that Shri Amrut Tejpal would play the role of Anandji and thus Amrut Tejpal had become Anandji and had come with him to Ahmedabad to meet the accused in the Gulbarg case. He has admitted that the expenses for bringing Shri Amrut Tejpal and for his stay, had been borne by Tehelka. He has stated that he has no personal information that there is actually an R.S.S. pracharak in Delhi by the name of Anandji.

276.91 He has admitted that when he went to Gujarat, he had assumed the name of Piyush Agarwal in the hotel there. The witness has voluntarily stated that at some places, he had also made the entry in the hotel register in the name of Ashish Khetan. He has admitted that when he used to come from Delhi to Gujarat, he used to use the mobile phone. He has stated that he had a sim card in his own name; however, for the purpose of sting operation, he used to use the mobile phone which was given to him by Tehelka. He has stated that this sim card was given to him by Tehelka, but does not know in whose name it was. The witness has stated that he is not

aware as to whether or not the C.B.I. has made any inquiry from him in connection with such sim card.

276.92 The witness has stated that as far as he remembers, he had met Niraj Jain only once. The witness has denied the suggestion that when he went to meet Shri Niraj Jain, he had made a card of Shri Sudarshanji and that he had shown such card to Shri Niraj Jain. The witness has stated that he does not know Shri Sudarshanji. However, as a reporter he is aware that Shri Sudarshanji is a Senior Worker of R.S.S.

276.93 The witness has denied that he had shown Sudarshanji's card or recommendation letter at the time of the sting operation. He has stated that his meeting with Shri Niraj Jain had also been recorded in his spy camera and that he had carried out the recording with this very same camera, which he has shown as a muddamal article, and has voluntarily stated that this was the starting point of the sting operation.

276.94 The witness has stated that he had taken the number of Shri Dhimant Bhatt from Shri Niraj Jain. He has stated that he may have taken more than one telephone numbers from Shri Niraj Jain. He has admitted that he has stated about his talk with Shri Niraj Jain and Shri Dhimant Bhatt to the SIT.

276.95 The witness has admitted that the SIT had read over the statements recorded by them. He has stated that it is possible that the SIT may not have recorded everything stated by him. They might not have found such facts of much importance. The witness has voluntarily stated that he has

observed that every Investigating Officer is anxious for information necessary for his investigation and, therefore, they may not have found some part of what he stated to be necessary. The witness has denied that he has cut or deleted that part of the sting operation which he did not find necessary. The witness is further cross-examined with regard to Shri Niraj Jain and his occupation etc.

276.96 The contents of paragraph 9 of his examination-in-chief are read over to the witness and he has stated that he does not know whether he has verbatim stated such facts before the SIT. The witness has voluntarily stated that the SIT was constituted pursuant to the orders of the Supreme Court and at that time he was called in the presence of all the members of the SIT. At that time, he had handed over all the literature which he had obtained to all the members of the SIT, wherein there was literature regarding Dhimant Bhatt and Shri Niraj Jain also, and hence, he has reason to believe that he has stated facts regarding both of them to the SIT and that the SIT is aware of such facts.

276.97 The witness has denied that before the SIT he had not stated that Shri Damleji was a Senior Worker of R.S.S. The witness has denied that he has not stated the facts stated by him in paragraph 18 of his examination-in-chief wherein he has stated that Haresh Bhatt had a fire cracker factory, wherein he had made weapons which were distributed for the purpose of communal riots to the rioters, before the SIT. The witness has voluntarily stated that in his statement he had stated that Haresh Bhatt had made bombs and distributed them which are included in the word weapon. He has stated that the SIT has

also recorded his detailed statement in a case against Shri Haresh Bhatt. The witness has stated that he does not remember as to whether the facts stated by him in paragraph 20 of his examination-in-chief have been stated by him before the SIT, but has stated that he has informed the SIT about all those facts. The witness has voluntarily stated that in Zakia Jafri's case, the SIT has recorded his detailed statement in the context of the Chief Minister's meeting as well as administration of the State, wherein he has stated all those facts. The witness has stated that he does not remember whether on 31.5.2007 he has gone to Godhra with Shri Haresh Bhatt. The attention of the witness is drawn to the contents of his statement recorded by the SIT in this regard. In the opinion of this court, a statement recorded under section 161 of the Code can be used only to contradict something asserted by a witness in his primary statement, and cannot be brought on record through the process of cross-examination. Therefore, the contents of paragraph 110 of the deposition of this witness are not admissible in evidence.

276.98 The witness has denied that what is stated by him in paragraph 22 of his examination-in-chief, namely, that Shri Rajendra Vyas had told him that he was travelling in the train which had stopped at Godhra on the day of the Godhra incident, have not been stated by him in his statement recorded by the SIT. The witness has voluntarily stated that Shri Rajendra Vyas had told these facts to him and that he had informed the SIT about of all these facts. However, as stated by him, the Investigating Officer was only interested in facts necessary for his own case and was not interested in other facts. He has stated that in Zakia Jafri's case also the SIT had

recorded his detailed statement regarding his talk with Shri Rajendra Vyas. Certain extracts of the statement of this witness recorded by the SIT are put to the witness, however, since the same are not used for the purpose of contradicting any part of the evidence of the witness, the same are not admissible in evidence and the trial court ought not to have permitted such statements to be brought on record.

276.99 The witness is read over the contents of paragraph 24 of his examination-in-chief, wherein there is reference to his meeting Jayantibhai Patel and his stating facts regarding the role to him. The witness has stated that he does not remember whether he has verbatim stated such facts in his statement, but has stated that SIT has recorded several statements of his and that all the facts stated by him in his examination in chief find place in different statements recorded by the SIT.

276.100 The witness has admitted that on the day when he met Shri Babu Bajrangi, he was not a research scholar on the subject of Hindutva. The witness has voluntarily stated that, however, on that day he certainly was a reporter. The witness has denied that on 14.6.2007, when he met Shri Babu Bajrangi, he had not given reference of any person to Babu Bajrangi. The witness has stated that, in fact, when he made a phone call to him for the first time, at that time, he had started a conversation with reference to all the people, due to which, he had called him to meet him at his office. The witness has stated that that the transcripts produced by him with the list Exhibit-2266 are in the same words and in the same manner and in the same format and in the same language. He has also produced such transcripts before the Tehelka. The witness has

admitted that he has not prepared any transcript in Hindi language but has written down the dialogue in the transcript in the English alphabet. His conversations with all of them had been in Hindi, and though the script is in English alphabet, the text is in Hindi, namely, that the conversation is in Hindi.

276.101 The witness has admitted that the transcript produced by him in the court with the list Exhibit-2266 has been given in the same manner to Aaj Tak and Tehelka.

276.102 The attention of the witness is drawn to the facts in the nature of conversation recorded in paragraphs 30 to 58 of his examination-in-chief. He has denied that what is dictated by him as the text of his conversation with the three accused in his examination-in-chief, has not been stated by him in the statement recorded by the SIT. The witness has stated that, in fact, he has stated only the exact text of the main facts of his conversation with the three accused in his deposition before the court. He has given the CD of the entire conversation to the SIT, and over and above that, extracts of the conversation in the sting operation have been stated in his statement also. The witness has voluntarily stated that at the time of recording his second statement, they had opened this CD and seen it in his presence.

276.103 The witness has stated that the CD which he had brought, he brought from Tehelka. He has stated that he had seen the Aaj Tak video. The Tehelka CD is the one which he had given to Tehelka. He has denied that the CD and transcript given by him to Tehelka were of a programme that was anchored by Shri Dipak Chaurasiya and Shri Dipak Sharma.

The witness has voluntarily stated that the transcript of the Aaj Tak programme and CD are different from the CD which he had shot and the transcript.

276.104 The witness has denied that the Aaj Tak people had changed the transcript recorded by him. The witness has voluntarily stated that they cannot do that. However, they can take only that portion of the transcript which they choose. The witness has stated that when the programme is shown in Aaj Tak, at that time together with the transcript, extracts of the video shot by him can also be shown, due to that also they cannot make any change in the transcript.

276.105 Certain parts of his statement dated 19.1.2009 are put to the witness in paragraphs 122, 123 and 124 of his deposition, wherein he has stated facts regarding Babu Bajrangi's visit to Delhi and the preparations made by them in this regard, the manner in which he carried out the recording and his depositing the CDs and the camera etc. with Tehelka and other things stated in his statement which the witness has admitted. In this regard it may be noted that the statement of this witness recorded by the SIT is a statement under section 161 of the Code and in view of the provisions of section 162 of the Code, such statement can be used only for the purpose of contradicting a witness. However, insofar as the contents of the statement of this witness, to which his attention has been drawn in the above referred paragraphs, are concerned, they have not been put to him to contradict any part of his evidence. In these circumstances, what was stated in the statement of this witness could not have been brought on record in this manner, and hence, is not admissible in

evidence.

276.106 The witness has denied that till that date, he did not have any transcript and that he actually has not produced any transcript before the SIT. The witness has voluntarily stated that he had given the entire transcript to the SIT in the form of a CD, but he has certainly given it.

276.107 Certain parts of his statement dated 12.3.2009 are put to the witness in paragraph 126 of his deposition, and he has admitted having stated so. It may be noted that the part of his statement which is put to the witness is not with a view to contradict any part of his evidence, but appears to have been put to him to bring certain facts stated by him before the SIT on record. As discussed earlier, a statement under section 161 of the Code cannot be used for any purpose other than for contradiction such witness in the manner provided under section 145 of the Evidence Act. Therefore, that part of his statement which is brought on record through the cross-examination of this witness is not admissible in evidence.

276.108 The witness has denied that he was required to make a sensational story for Tehelka. The witness has voluntarily stated that they never use the word sensational. He has admitted that certain extracts of this recording has also been printed in the Tehelka Magazine. He has admitted that he has not personally gone to all the places which are mentioned in the sting operation. The witness has voluntarily stated that he has not gone to the scene of offence and has only gone to Chharanagar. The witness has admitted that India Today and Aaj Tak are sister concerns and has stated that he is saying so

on the basis of his general knowledge and that he has no personal information in this regard.

276.109 The witness is questioned as to why ordinarily there are dots in any transcript and he has stated that he does not know. He can only reply in connection with the transcript prepared by him.

276.110 The witness has admitted that in a CD of this type of recording, the opening and closing time can be seen on the screen. He has stated that he cannot say as to whether such time is adjustable in the camera because he is not a technical person and has only operated the camera and the recorder and has not adjusted any timing.

276.111 The witness has denied that if he found that some part of the recording was irrelevant, he had deleted the same. He has denied that he had found the conversation regarding the communal incidents in the entire Gujarat to be irrelevant, and hence, he had deleted the same. He has denied that if anything useless had been spoken by those persons whom he had recorded and he had found it to be useless, he used to delete it.

276.112 He has denied that a meeting was held at Tehelka and it was decided that the unnecessary part of the recording should be deleted. The witness has voluntarily stated that there is no change, amendment, addition or tampering with the recording. He has stated that even as on date, the recording of the entire meeting has been preserved in the Tehelka office.

276.113 The witness has denied that he had offered inducement to Babu Bajrangi that he would be made the President of the Vishwa Hindu Parishad, Gujarat unit, and that Shri Pravin Togadia would be removed from this post and he (Babu Bajrangi) would be made the President. He has denied that during the course of conversation with Babu Bajrangi, he had given him inducement of making a picture. The witness has voluntarily stated that whenever he met him (Babu Bajrangi), from the time he met him and from the moment he entered the place of the meeting, till the time they separated, he used to carry out the recording, and hence, the question of giving any inducement is out of place.

276.114 The witness has denied that for the purpose of giving such inducement to Shri Babu Bajrangi, he, Shri Tarun Tejpal and Shri Arun Puri of Aaj Tak had convened a meeting and after the meeting he was sent to Ahmedabad and by lying to Babu Bajrangi, he had given him an invitation to come to Delhi and had also given him a return ticket to travel by air and, therefore, he had also gone to the airport to receive Babu Bajrangi, and that he had got Babu Bajrangi to speak untruths and by lying, he had recorded the conversation. He has denied that he had carried out a false sting operation by lying to all the accused.

276.115 The witness has denied that he had gone to the house of the other accused and had also lied to them and that he had got them to speak facts which had not happened and had recorded the same. The witness has denied that he has got Babu Bajrangi to speak about what has not actually

happened and recorded it. The witness has admitted that the recording of several meetings was done both by the diary camera as well as the button camera. The witness has voluntarily stated that at the time when there was difficulty in charging the battery, etc., recording was done by only one camera, namely, that in every case recording has not been done by both. He has denied that in certain cases, he had clubbed the recording from one camera with certain talks recorded in the other camera.

276.116 The witness has stated that the battery of both the cameras would run for about one hour and would thereafter be required to be charged. He has admitted that when the battery of one camera gets discharged he has to use the other camera. He has denied that in such circumstances, he is required to club the conversation in one microchip with the conversation recorded in the other microchip. The witness has voluntarily stated that whichever camera he may use, however, the meeting remains the same and hence, he does not accept that there used to be clubbing. The witness has further stated that in the transcript itself he has written as to whether the recording was from the button camera or from the diary camera. He has stated that when the battery of one camera was drained out, he would use the other camera, which is clear from his transcript which he has produced in the court.

276.117 The witness has denied that he, together with the Tehelka people and the Aaj Tak people, has, to lower the esteem of the Gujarat Government as well as the Gujarat police, made the sting operation by connecting false facts.

276.118 Certain parts of his statement dated 19.1.2009 recorded by the SIT are put to the witness regarding his having stayed at different hotels under the name of Piyush Agrawal and having stayed in one hotel under his real name Ashish Khetan, which he has admitted. Once again since this part of his statement under section 161 of the Code has not been used to contradict any part of his evidence, it could not have been brought on record and, is therefore, not admissible in evidence.

276.119 The witness has admitted that he has not produced his hotel bills before the SIT and has voluntarily stated that they have never asked for it; not only that, they had stated that it is not necessary. The witness has denied that whenever he had come, he had stayed with the opponents of the Gujarat Government. The witness has stated that he has called for the appointment letter, which he was required to produce and has produced the same. The same is exhibited as Exhibit-2273.

276.120 The witness has denied that he can close both the cameras whenever he desires and that he can start them from outside. The witness has stated that since the switch of the recorder in the case of the diary camera is also inside the diary, it is not possible. However, in the case of the button camera, he can put his hand in his pocket and can switch the recorder on and off. The witness has stated that ordinarily when he took an interview of a person, it was only after they parted that he would switch off the recorder. The witness has stated that the interview was a part of his reporting and that he had made the same in public interest.

276.121 A question is put to the witness that since the sting operation was for professional purposes, therefore, it was carried out professionally. In response thereto, he has stated that he is neither a videographer nor a recorder by profession, and that he has done this work as a reporter, that much is certain. The witness has admitted that the persons on whom he had carried out the sting operation in the year 2007 were all unknown to him and he was unknown to them. The witness has voluntarily stated that in his entire life when he came, this was only his second visit to Gujarat. He has admitted that whomever he had met for the sting operation, he had talked about Hindutva with them. The witness has voluntarily stated that he had told that he too had faith in the principles of Vishwa Hindu Parishad and that his thoughts were also the same.

276.122 The witness has admitted that he had also told them that he had faith in the thinking of RSS, which was not true. The witness has voluntarily stated that he is a reporter, and hence, he cannot be a person having a particular belief.

276.123 The witness has denied that to the persons with whom he talked during the sting operation, during the course of conversation with such persons, he had projected himself as being anti-Muslim, which he had done to gain their confidence. The witness has voluntarily stated that he has not expressed any such sentiments, however, from his conduct, he had expressed that he too had sympathy for whatever they had done during the communal riots of the year 2002.

276.124 He has further stated that whenever he has gone to talk to any person, such person was in his own atmosphere (domain) and his companions would be with him and that when he (the witness) had gone alone with risk to his life, he was under constant fear that they should not have any kind of suspicion against him and hence, his main concentration was on seeing that they do not doubt him.

276.125 The witness has admitted that to gain the confidence of the persons on whom he had conducted the sting operation, he had also stated certain incorrect facts to them, all of which he has stated in his examination-in-chief. The witness has stated that he has not conducted a sting operation of any victim of the communal riots.

276.126 The witness has admitted that he had informed that he was doing research on a thesis on Hinduism. Shri Tarun Tejpal and Baweja Madam knew that while he was carrying out the sting operation, he was presenting himself as a thesis scholar. The witness has voluntarily stated that they did not know the detailed facts about the action taken by him, namely, that they did not know whom he is meeting and on which person he is conducting the sting.

276.127 The witness has stated that at the time of the interview, he did not keep with him any written questions and has voluntarily stated that the conversation was very natural and spontaneous and the conversation was not on the basis of any specific written questions.

276.128 The witness has denied that all the speakers in the

sting operation had spoken in Gujarati. The witness has voluntarily stated that every person who gave an interview was aware that he was a Hindi speaking person, and hence, they were talking with him only in Hindi. However, they might have spoken certain words in Gujarati.

276.129 The witness has denied that none of those who had given the interview, knew Hindi and that they had not spoken to him in Hindi. The witness has denied that he had given a script to all the speakers about what they are required to speak, and thereafter, he had obtained replies in terms of the script and had recorded the same.

276.130 In his cross-examination, it has further come out that he did not prepare the CDs and send them to Tehelka on a day-to-day basis, however, every few days, out of fear that there might be some technical defect in his laptop; he used to prepare a CD and send it to Tehelka by courier. He has denied that he had not sent the transcript to Tehelka from time to time by e-mail. The witness has voluntarily stated that even today, he has the e-mail with him.

276.131 PW-327 Shri V.V. Chaudhary, the Investigating Officer (SIT) has in his cross-examination admitted that he has recorded the statements of this witness on 19.1.2009 and 12.3.2009. The Investigating Officer has admitted that he has recorded whatever facts were stated by the witness before him. He has admitted that the witness had not stated before him that Niraj Jain to whom reference is made in the statement was at the relevant time an office bearer of the District Unit of the Bharatiya Janta Party. He, however, had stated before him

that he had met Niraj Jain. The Investigating Officer has admitted that the witness has not stated before him that he had met Shri Niraj Jain at the BJP office at Baroda.

276.132 The contents of paragraph 9 of the examination-in-chief of the witness are read over to the Investigating Officer, who has stated that the witness had stated before him that the subject of the riots of 2002 came up and there was a conversation in that regard. The other facts have not been stated before him.

276.133 The Investigating Officer has admitted that this witness has not stated before him that Damleji was a Senior Worker of RSS. He, however, has clarified that the witness had stated before him that he had met Damleji.

276.134 The Investigating Officer has admitted that the witness has not mentioned the word "weapons" as stated in paragraph 18 of his examination-in-chief and that he had mentioned the word, "bomb". The contents of paragraphs 19 and 20 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness before him. He has stated that the witness has stated before him that his contact with Haresh Bhatt continued on the phone and that he too had given reference of the persons named in the statement. That the remaining facts stated in paragraph 19 are not there in his statement.

276.135 The Investigating Officer has admitted that the witness has stated the facts stated in paragraph 20 of his

deposition. The Investigating Officer has further admitted that the witness in his statement dated 19.1.2009 had stated that thereafter on 31.5.2007 in the morning time, he had met Shri Haresh Bhatt and he was talking about many things and had informed him that on the next day, he was going to Godhra and that if he wants to come he can also come along. Therefore, he had given his consent for going to Godhra and as decided, on the next day he had gone to his house to go in his car to Godhra.

276.136 The contents of paragraph 22 of the examination-in-chief of the witness are read over to the Investigating Officer, who has admitted that such facts have not been stated by the witness in the statement recorded by him.

276.137 The Investigating Officer has admitted that in the statement recorded by him, the witness has stated that his contact with Haresh Bhatt continued on phone, he had given him the phone number of Anil Patel of Sabarkantha, which was 9426362256 as well as had given him the reference of Himmatnagar Home Guard Commandant Jayantibhai Patel as well as Babubhai Bajrangi of Ahmedabad and told him to meet them.

276.138 Certain extracts of paragraph 24 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that he had met Shri Jayantibhai Patel. This Shri Anil Patel had introduced him to Shri Dhavalbhai Patel. During the course of conversation with him, Shri Anil Patel and Shri Dhaval Patel had informed him about the role played by them during the

communal riots. The Investigating Officer has denied that the witness had not stated such facts in the statement recorded by him and had stated that the witness had stated before him that he had met the above named persons and that he had a conversation with them and that he had gone to Sabarkantha. The other facts are not stated by him.

276.139 The contents of paragraph 27 of the examination-in-chief of the witness are read over to the Investigating Officer, wherein the witness has stated that after returning to Ahmedabad he had met Shri Babu Bajrangi on 14th June, 2007. He had called him to his office on the upper floor of a mall near Galaxy Cinema. He had met him there. He had introduced himself as a Research Scholar on the subject of Hindutva. To gain his confidence, he had given reference to Shri Babu Bajrangi of all the people whom he had met till that day. He had talked with him for about approximately an hour. He (the witness) had talked with him. He has a transcript of all that.

276.140 The Investigating Officer has denied that the witness has not stated the facts stated in paragraph 27 of his deposition in the statement dated 19.1.2009. The Investigating Officer has admitted that the witness had in his statement before him dated 19.1.2009 had not stated the fact regarding the transcript of his conversation with the accused being in his possession. However, he had told him that he had a talk with the Naroda Patiya incident accused Babu Bajrangi and Suresh Chhara during the course of his sting operation and that he had brought with him a detailed CD with information.

276.141 The contents of conversation recorded in

paragraphs 30 to 58 of the examination-in-chief of the witness are read over to the Investigating Officer by him. The Investigating Officer has stated that the facts stated at pages 15, 16, 25, 31, 22, 26, 27, 28, 33, 34, 31, 32 33, 37, 38, 39, 50, 40, 41, 45, 52, 53, 44, 54, 56, 57 and 61 have been stated by the witness in the statement recorded by him. The other facts have not been stated.

276.142 The Investigating Officer has stated that he had carried out the investigation regarding the conversation referred to by this witness. The Investigating Officer has stated that he cannot say as to whose statements he has recorded for verifying the veracity of the conversation. He has stated that what he wants to say is that whatever he had done during the course of investigation in some way was matching with the facts stated in the conversation. The Investigating Officer has stated that in the context of verifying the conversation, whatever statements were recorded earlier and thereafter, out of them some were included in the chargesheet.

276.143 ANALYSIS: This witness is an important witness as he has conducted sting operations on several persons who have actively participated in the commission of offences in the riots that took place in the year 2002. Insofar as the present case is concerned, the witness has recorded the statements of three of the accused, namely, Babu Bajrangi (A-18), Prakash Rathod (A-21) and Suresh Richard (A-22). All these three accused have talked about their exploits and have also referred to other accused involved in the offence. From the testimony of the witness, it is clearly brought out that the witness has met the accused and gained their confidence by

stating that he is a research scholar doing a thesis on Hindutva and has created an impression that he believes in the principles of VHP and has sympathy for those involved in the riots. The witness comes across as a truthful and credible witness and despite lengthy and searching cross examination, the defence has not been able to even slightly dent his credibility.

276.144 From the deposition of this witness it emerges, that while he had gone to Vadodara to cover some other event, he came to meet certain persons who were closely associated with the accused in the present case as well as other riot case, and after taking permission of the higher ups conducted the sting operation. The witness has recorded the conversation with the accused through spy cameras and in his testimony has referred to the important extracts of what was spoken by the accused and which is relevant for this case. What is stated by the accused to this witness is in the nature of an extra judicial confession, inasmuch as the accused have talked about the background and the manner in which the offence came to be committed.

276.145 The evidence of this witness has been analysed at length at a later stage while discussing the "Sting Operation". Suffice it to state that this witness comes across as a credible and trustworthy witness and his oral testimony supports the prosecution case against the accused on whom who has conducted the sting operation.

277. **PW-320 Nirmalsinh Sevasinh Raju** has been

examined at Exhibit-2257. The witness has deposed that, at present, he is working as DSP, CBI, Economic Offences Wing, Mumbai (EOW wing).

277.1 The witness has deposed that he can understand Gujarati but for the sake of convenience, he would depose in Hindi.

277.2 During the period 16.12.2002 to 13.2.2009, he was working as a Police Inspector at CBI, Special Crime Branch, Bombay. During that period, a preliminary inquiry bearing No.PE-1/2/2008 was registered on 1.10.2008. The preliminary inquiry had been registered pursuant to the order of the National Human Rights Commission. The preliminary inquiry was for ascertaining the veracity of the CDs and DVDs used for broadcasting the program 'Operation Kalank' by the news channel, namely, Aaj Tak on 25.10.2007.

277.3 The preliminary inquiry was entrusted to him by the then SP and the then Dy.SP. and, accordingly, he was required to carry out the investigation. P.I. Shri Ghodeshwar was his companion in the investigation.

277.4 During this investigation, he had recorded the statement of Tehelka Reporter Shri Ashish Khetan, who was with Tehelka.com and had prepared the original CDs/DVDs because Aaj Tak news channel had purchased the CDs/DVDs of operation Kalank from Tehelka and had broadcast the same on television. Moreover, he had also recorded statements of relevant witnesses who were connected with the broadcasting of the original CD/DVD as well as with the CD at Tehelka.

277.5 During the course of investigation, he had recorded the statements of Shri Dipak Sharma and Dipak Chaurasiya of Aaj Tak as well as Shri Tarun Tejpal, Kumari Harinder Baveja and Shri Ashish Khetan of Tehelka. Shri Ashish Khetan had prepared fifteen DVDs of the sting operation from which he had prepared five CDs of Operation Kalank. He had also recorded the statements of all those persons whose sting operation had been recorded in the CDs. After obtaining the CD of Operation Kalank, he too had seen it. He had obtained fifteen DVDs from Tehelka and five CDs from Aaj Tak.

277.6 He, as well as his companion Shri P. K. Ghodeswar, at the relevant time, had come to Ahmedabad and Vadodara cities and had met the persons on whom the sting operation was carried out, namely, Babu Bajrangi (Accused No.18) and had orally examined him. He had also inquired about Suresh alias Richard Chhara and Prakash Chhara (Accused No.22 and 21 respectively), however, he could not find both of them.

277.7 They had also seized the camera used for the purpose of the sting operation, the camera recorder as well as the hard disc of Ashish Khetan's laptop from Tehelka during the course of investigation, for the purpose of obtaining scientific opinion as well as for obtaining the scientific opinion regarding the veracity of the DVDs and CDs.

277.8 The muddamal seized by them for the purpose of such scientific opinion were firstly sent to the Central Forensic Science Laboratory, Chandigarh, however, on account of previous workload they had stated that it would take them one

year to carry out the necessary tests and give the opinion as asked by them, and hence, they had, after following the due procedure, obtained the muddamal and thereafter, sent the muddamal for scientific opinion to the FSL at Jaipur.

277.9 The F.S.L. at Jaipur, Rajasthan had, after carrying out scientific tests, forwarded the opinion to them. In the opinion, it was informed that at the end of scientific tests, it was found that there was no tampering with the fifteen DVDs of Tehelka and five CDs of 'Operation Kalank' and that the same are genuine, namely, that they are authentically recorded. They had further given the opinion that certain parts of the fifteen DVDs are there in the five CDs of 'Operation Kalank' and that the CDs have been prepared from the DVDs, which have been submitted and that during the course of scientific investigation, it was found that the same were genuinely recorded without any tampering.

277.10 Thereafter, he had recorded the statements of the three Scientific Officers, who had carried out the scientific tests during the course of his inquiry. They were: Dr. Shailendra Jha, Dr. Vishwas Bhardwaj and Dr. Mukesh Sharma.

277.11 All these three Officers in their statements had stated the facts in consonance with the opinion sent by them and they had stated that the recording was authentic and true. On the basis of this, they had given a written report dated 13.5.2009 to the National Human Rights Commission.

277.12 Upon receipt of the written opinion from the FSL, Jaipur on completion of the scientific tests, he had returned the

camera and the recorder with the camera to Tehelka as well as the hard disc of Ashish Khetan's laptop, which he had seized during the course of inquiry and had retained the DVDs and CDs with him.

277.13 Thereafter, the SIT had called for the DVDs/CDs as well as certified copy of the FSL report, which he had, after following the due procedure, handed over personally to their representative Shri Gedam at Mumbai. The original opinion of the FSL had been sent by them to the NHRC with their report.

277.14 The witness has further deposed that he had sent a forwarding letter as well as questionnaire as well as five parcels with sample of the seal impression to the FSL Jaipur. The witness has identified his signature on the forwarding letter and the other documents as well as the contents thereof, all of which are collectively exhibited as Exhibit-2258. The witness has further deposed that when he had given the forwarding letter together with the five sealed parcels to the FSL, Jaipur, they had issued a receipt acknowledging receipt thereof.

277.15 Various documents are shown to the witness who has admitted the same and the same are given combined Exhibit No.2259.

277.16 CROSS-EXAMINATION: The witness has admitted that during the course of his investigation, he has not met the then Investigating Officer who was investigating in this offence. The witness has admitted that he has not investigated as to whether the incidents mentioned in the Operation Kalank

CD had in fact occurred, for the reason that it was not subject matter of his investigation. The witness has voluntarily stated that he was only required to investigate regarding the authenticity and genuineness of the CD and DVD, which he had investigated. The witness has admitted that he had examined the persons on whom the sting had been conducted. The witness has stated that during his investigation, the persons shown in the sting operation had informed him that they were the persons shown in the sting operation. The witness has voluntarily stated that, however, they had given different reasons in this regard. Moreover, none of the persons who are seen in the sting operation have denied that they are in the sting CD, but have accepted it. The witness has admitted that during the course of his investigation, he has also recorded the statement of Ashish Khetan. The witness has admitted that in the statement recorded by him, Shri Babu Bajrangi had stated that the voice in the sting operation is his and that the sting is conducted on him, however, he was given a script and at the time of recording, he was speaking in terms of the script. The witness has admitted that he has not seized any script from Ashish Khetan. The witness has voluntarily stated that Ashish Khetan had told him that he had conducted the sting operation.

277.17 The witness has stated that whatever he had seized from Tehelka and Aaj Tak was in terms of his office procedure under a receipt memo. The witness has admitted that he has not made any panchnama in that regard. He has denied that he has not sealed them and taken them.

277.18 The witness has stated that the CDs which were

given to him were sent in the same condition to the FSL. He has not inquired as to whether the data in the DVDs was protected. The witness has stated that to the extent of the authenticity of CDs and DVDs, he had placed reliance upon the FSL report. The witness has denied that except for the FSL report, he has not placed reliance upon any other document during his investigation and has voluntarily stated that he had also placed reliance upon the statements recorded by him.

277.19 The witness has denied that since he was not getting the desired opinion from the Chandigarh FSL and a desired opinion was not likely to be obtained, thereafter he had given the exhibits to the FSL, Jaipur to get the desired opinion and that the fifteen DVDs were not originally recorded, and hence, he had not drawn a panchnama of seizure of the DVDs and in connivance with Tehelka he had given a false report of the investigation. The witness has been examined by the court wherein the witness has stated that he does not have a copy of accused No.18 Babu Bajrangi's statement at present, and that it is on the basis of his memory that he had stated that Babu Bajrangi in his statement had stated that he was given a script.

278. **PW-314 Bhagirathprasad Manilal Pandya** has been examined at Exhibit-2212. The witness has deposed that he has retired as a Director of Ahmedabad City Akashwani Centre on 30.9.2010. While he was on duty on 5.3.2010, he had received a letter from SIT wherein there were names of three persons and the SIT had requested him to record their voices.

278.1 The witness has deposed that the letter was signed by Shri V.V. Chaudhary and he was requested to carry out recording of samples for voice spectrography examination of Babubhai alias Babu Bajrangi, Suresh alias Richard and Prakash Sureshbhai.

278.2 The witness has deposed that after he received the letter, he had carried out the necessary procedure at his office and had written a letter to Delhi and requested for permission from the competent authority for recording the voice samples of the three accused. The witness has identified the letter Mark 1732/35, which was written through his office and bears his signature and has stated that the facts stated therein are correct. The said document is exhibited as Exhibit-2213. The witness has deposed that he has been granted permission from Delhi, as requested vide Exhibit-2213. Therefore, he had addressed a letter to the SIT regarding recording of voices of the three accused and had requested for a fixed date, time etc. The said letter has been exhibited as Exhibit-2214.

278.3 Pursuant to the said letter, the SIT people had come to personally meet him. When they came personally, at that time, the time and date for recording were fixed. 7.4.2010 was the date fixed for sample recording.

278.4 On 7.4.2010, the SIT officers brought the three accused and came to Akashwani Centre at Ahmedabad. They had recorded the voices of the three persons who had come with the SIT Officers. Out of the three persons, the driving licence of Babubhai Bajrangi and zerox copies of election

identity cards of two persons Prakash and Suresh, were given to them by the SIT people, which he has kept in his record and are there in the file which he has brought from his office.

278.5 The recording of voice samples of these three persons was carried out in the presence of the SIT Officers as well as the Program Executive and Senior Engineering Assistant of their studio. A CD of the sample recording of the voices of the three was prepared.

278.6 As per the procedure of their office, a certificate to the effect that the CD of the voice recording of the three accused had been prepared, was prepared. The certificate was prepared on 7.4.2010 bearing the names of the three accused, the time limit of their sample recording, serial of their voice and other details. The witness has deposed that due to typographical error, the date written at the top of the certificate is 7th March, 2010, however, where he has signed, it is written 7.4.2010, which is the correct date. He has also signed below the certificate. In the certificate, the cover of the CD was sealed and he had kept a specimen of that seal.

278.7 Thereafter, the procedure for sealing the CD was carried out in the confidential section of his office and the original of the certificate was kept with the CD and the CD was sealed.

278.8 Thereafter, the CD was handed over the SIT officers for which they had made an endorsement on the certificate to the effect that they had received it. The SIT had received the CD by following the due procedure by drawing a panchnama in

the presence of panchas.

278.9 CROSS-EXAMINATION: In the cross-examination of this witness, he has produced a letter dated 5.5.2010 whereby he had received permission from Prasar Bharti. The original letter has been given Exhibit No.2215. The witness has also produced the original letter from his file which Prasar Bharti had addressed to him which is given Exhibit No.2216. The witness has admitted that when the voices of the three accused were recorded, at that time, he personally was not present there. However, as he was the Head of the Department, the recording was carried out in their office by the Officers deputed by him in the presence of the SIT Officers was in accordance with the procedure of their office. The witness has stated that, at present, he does not remember whether the SIT Officers had sent them any script for recording of voice samples or as to whether the FSL had sent them any script. The witness has stated that upon perusal of the file he has found xerox copies of the script of the three accused. The witness has admitted that they had received the script from the SIT. The witness has stated that as far as he knows, the recording is in terms of the script. The witness has stated that after the recording, he has not compared the CD and the script. The witness has admitted that the certificate which was placed with the CD before it was sealed, was under his signature.

279. **PW-323 Dr. Shailendra Ramkishore Jha** has been examined at Exhibit-2274. This witness has deposed that, at present, he is working as an Assistant Director at the FSL Jaipur. Since the last 27 years he is discharging duties in the

Physics Department of the FSL Jaipur and, at present, he is the Head of the Physics Department. Dr. Vishwas Bhardwaj and Dr. Mukesh Sharma are both working with him as Senior Scientific Officers.

279.1 The witness has deposed that in the year 2002, the CBI had sent a letter to him together with five exhibits which were the hard disc, two cameras, fifteen DVDs and five CDs. All these had been sent to him for investigating and giving his opinion thereon. He was required to investigate and give his opinion and the questionnaire is given vide Annexure-A to Exhibit-2258.

279.2 The witness has deposed that he had examined the exhibits sent to him. While carrying out the examination, two officers from his office Dr. Bhardwaj and Dr.Sharma were also involved.

279.3 The witness is shown the document Exhibit-2259 and he has stated that internal page 1 contains the receipt of having received the five exhibits from the CBI Mumbai, whereas internal pages No.2 and 3 which are typed on both the sides, is the opinion given by them as regards the exhibits, which bear his signature as well as the signatures of his two assistants, who had carried out the tests with him, namely, Dr. Bhardwaj and Dr.Sharma and he has identified all the signatures. The witness has deposed that the opinion was sent to CBI, Mumbai.

279.4 The witness has deposed that out of the five exhibits sent to them, packet-1 had the camera, which also

had the lens. The camera was fitted into the black coloured diary, which also had a lens in it. There was also a button camera.

279.5 Packet-3 contained the recorder and a display screen which had a battery which contained the power adapter, charger, earphone etc. The packet was given as P-III/1 to 6.

279.6 Packet-4 contained the Hitachi brand hard disc drive.

279.7 In packet-5, 15 DVDs and 5 CDs were sent and the details thereof were also recorded in his opinion.

279.8 Based on the examination carried out by them, their opinion was that none of the exhibits had any adulteration, tampering or anything to suspect or to doubt the truth and in this connection, a detailed opinion was given vide pages No.2 and 3 of Exhibit-2259. Their opinion was that the DVDs and CDs which were sent to them were not tampered and did not contain any amendments or any additions or any deletions.

279.9 The witness has deposed that he had made a transcript of the five CDs of 'Operation Kalank" which were sent to him, which transcripts were also enclosed by him with his opinion. Over and above this, they had returned the exhibits to the CBI and all three Examiners had stated their educational qualifications, in short, and in Table-2 they had noted the conversation in the CDs wherever it was in the DVDs. As per their opinion, out of certain extracts of the DVDs

which were sent to them, the CDs were prepared, and hence, during the course of examination, they had made such Table-2. Table-2 is at internal pages No. 7 to 15.

279.10 They had also prepared Table-1, which is at internal pages No.16 to 22 of Exhibit-2259. In this Table No.1 at internal page No.24, which as Serial No.181 till then, there is information with regard to DVD, namely, that there are parts of the details recorded in the DVD.

279.11 In internal pages No.24 to 26 from Serial No.1 to 70, there are details of the information of the footage in the CD, which relates to all five CDs and VCD. In this, wherein there is a video footage, there is reference to Video CD and where there is any voice, it is referred to as CD.

279.12 The witness has further deposed that at internal page No.27 to page No.138, they had prepared a script of the five CDs of 'Operation Kalank', which were sent to them and had kept it with their opinion. They had sent all these to the CBI and had also kept an office copy.

279.13 The witness has deposed that on every page of Exhibit-2258 and Exhibit-2259, a stamp has been put with their true copies of the documents and bears the signature of Shri Kuldeep Sharma, who is a Senior Scientific Officer at the FSL, Jaipur. The witness has identified his signature as well as the stamp of his office on both the documents and has stated that both the documents are true.

279.14 The witness has stated that he, Dr. Bhardwaj as well

as Dr. Sharma have put their signatures certifying the correctness of the contents of all the pages of Exhibit-2259, and that all the facts stated therein are correct.

279.15 The witness has stated that he can identify all the exhibits sent by the CBI. The witness is shown the muddamal articles, namely, audio video recorder, its battery, microchip, Hitachi Company hard disc, spy camera button, the diary in which the camera was hidden, its charger, earphone, remote of the audio video recorder. The witness has stated that all these are the exhibits sent to them by the CBI and that there is reference to them in their opinion and that they have examined all these exhibits.

279.16 The witness has deposed that on 14.4.2010, they had received a letter from the SIT wherein they had sent specimen voice samples of the three accused together with the CD of 'Operation Kalank' and asked them to match the voices and carry out voice analysis. The witness has deposed that the letter Mark 1732/40 is the letter, which he had received from the SIT.

279.17 The witness has deposed that in acknowledgement of receipt of the articles received by them, the FSL, Jaipur had issued a receipt dated 23.4.2010, which has been exhibited at Exhibit-2275.

279.18 The witness has deposed that the SIT had sent five CDs and fifteen DVDs for the purpose of voice analysis. The persons whose voice analysis they had carried out were one Babubhai alias Babubhai Bajrangi Rajabhai Patel, and second

person Prakash Sureshbhai Rathod and the third person was Suresh Langdo Kantibhai Didawala (Chhara). They had come to the conclusion that the voice samples recorded in the CDs and DVDs were one and the same. This opinion was given by him and Dr. Vishwas Bhardwaj.

279.19 The witness has deposed that the voice samples of the three accused which he had received vide Exhibit-A were sealed and returned to Shri Rajesh Sharma of SIT in the course of routine office work.

279.20 The witness has identified his signature at pages No.2 and 3 Mark-1732 and he has identified the same to be his signature and that of Dr. Bhardwaj and has admitted the contents thereof. The same is given Exhibit-2276.

279.21 (The court has made a note below that the Assistant Public Prosecutor wants to show the CDs and DVDs produced by PW-319 Pushpaben Ninama with the list Exhibit-2256. He has specifically stated that the cases which are classified as riot cases, namely, the present case, the Naroda Gam case and Gulbarg case, and in all these three cases, there are common five CDs and fifteen DVDs. In the concerned case, the SIT has sent the same to the FSL, Jaipur for analysis of the voice of the accused. In the present case, the CDs and DVDs were sent and after analysis, the FSL had returned the same and thereafter, fifteen DVDs and five CDs were sent in connection with the Naroda Gam case bearing I-C.R. No.98/02 of Naroda Police Station and that the same are required to be shown to the witness for examination.)

279.22 The witness is shown a white cloth bag, which is sealed and bears the seal of the FSL. The bag is opened and the contents thereof are taken out. He is firstly shown fifteen DVDs and after seeing the same, he has stated that the chit of the FSL had been placed on it and that they have examined all these fifteen DVDs. The witness has thereafter shown five CDs, and a slip, which is placed therein and he has deposed that these are the five CDs, which they have examined.

279.23 The witness has deposed that on the basis of the specimen voices sample received by them and the fifteen DVDs and five CDs, they had carried out the voice analysis and had given their opinion in connection with all the three accused.

279.24 The witness has deposed that in this case the SIT has recorded his statement on 22.12.2009 and he had been sent voice samples of all the three accused in this case in one CD, which he had received and after examination thereof; the same were returned to the SIT in sealed condition.

279.25 CROSS-EXAMINATION: This witness in his cross-examination has admitted that he had given a report to the CBI and a report to the SIT. The witness has stated that the annexures of the report as well as certified photostat copy of the report sent to the CBI, were given to the SIT.

279.26 The attention of the witness is drawn to pages No.2 and 3 of Exhibit-2259. Upon perusing the same, the witness has stated that he had received a microchip in this case which he has referred to as memory card in his report. The witness

has stated that the microchip can be used in either of the two cameras which were sent as exhibits. The witness has denied that he has not mentioned the test which he had conducted in his report. The witness has stated that at the end of the testing, he did not find that there was any editing, alteration or tampering in these CDs and DVDs. They had given the opinion at the end of the analysis.

279.27 The witness has admitted that contextual continuity is very important. The witness has admitted that to obtain the result of contextual continuity he is required to carry out electronic editing and non linear editing tests. The witness has voluntarily stated that he had done this and summary of the total test, and as to which test had been carried out, has been clearly stated in the result of examination at internal page 3 of Exhibit-2250. The witness has denied that he has not conducted any electronic editing and non-linear editing test and that he has not used these words in his opinion. The witness has denied that the conclusion given in internal page-3 part-3 of Exhibit-2259, that the DVDs could be recorded from the exhibit camera would mean that it could be recorded by any other camera.

279.28 The attention of the witness is drawn to the fourth conclusion on the reverse side of page-3 of Exhibit-2259. The witness has stated that the conclusion drawn by him that in certain clips of the CD there was no voice which means that in the Operation Kalank CD only the picture of the speaker was there and the voices were not there. The witness has admitted that certain clips were there in both the DVDs and CDs; however, in the CDs the voice was not there which was there

in the DVDs. The witness has voluntarily stated that he has clearly stated in his report that the five CDs have been made from the fifteen DVDs and that the entire recording, clips and footage of the DVDs is not there in the CDs. The witness has denied that the fact that in some of clipping in the CDs wherein the voice is not there, would be considered as tampering of such CDs. The witness has admitted that he has not examined the hard disc in parcel No.4 and has voluntarily stated that it was not part of the query given by the CBI, and hence, the question of testing it did not arise.

279.29 The witness has stated that the three voice samples received by him were digital samples. The witness has stated that another method for obtaining voice samples is by analog wherein there is a possibility of little variation, which possibility is not there at all in case of digital. The witness has admitted that he is not aware as to how the voice samples of the accused were obtained. The witness has admitted that for the purpose of voice analysis, the words which are analysed must have been spoken. The witness has denied that if more than one word is spoken together, voice analysis cannot be carried out. The witness has denied that in every case where the words which are chosen for spectrography they are always kept in short term memory. The witness has stated that for the purpose of analysis, four to five groups of words can be considered to be sufficient. The witness has denied that a minimum of twenty groups of words are necessary for comparison and has voluntarily stated that in the changed technology twenty words are not necessary now. The witness has denied that if twenty different words are not available for comparison, the opinion becomes worthless. The witness has

stated that in his opinion, three to four words are sufficient. The witness has stated that during the course of the procedure of comparing he had not found dissimilarity in any word.

279.30 The witness has been re-examined wherein a sealed square cloth bag is shown to him wherein there are five lac seals. Upon seeing the seals, the witness has stated that they are the seals of his office. Upon seeing the pack, he has stated that the front side bears his signature, which he has identified.

279.31 This article has been sent from his office to the SIT. Upon opening the sealed cloth bag in the open court, a packet which is secured by cello tape is taken out on which there are signatures of Shri Chaudhary and two panchas and a slip is affixed thereon. Upon opening the packet, the CDs which have come out from it are shown to him. Upon seeing them, he has stated that the CDs bear his signature. The witness has stated that these are the CDs of the voice samples of the accused which had been obtained from the Investigating Officer and which were compared with the CD and DVD and he had given his opinion.

XXI MEDICAL WITNESSES:

280. A brief reference may be made to the evidence of the medical witnesses, namely, the Medical Officers who treated the victims and performed autopsy of the deceased.

281. **PW-39 Dr. Umesh Govindlal Vaishnav** has been examined at Exhibit-275. This witness has deposed that he had

treated a patient named Ahmed Mahammad Hussain who suffered from burn injuries which were possible if some chemical was thrown on his body and then set at fire. The injury certificate has been produced on record and has been exhibited as Exhibit-277 and the medical case papers are exhibited as Exhibit-278.

281.1 This witness has also examined a patient named Soheb Shaikh, a male child, aged about 20 days. The injury certificate has been exhibited as Exhibit-279 and the medical case papers have been exhibited as Exhibited-280.

281.2 The witness has also examined a patient named Shehnazbanu Munawar, a female, aged about 35 years. The injury certificate has been exhibited as Exhibit-281 and the medical case papers have been exhibited as Exhibited-282.

281.3 The witness has further deposed regarding having examined a patient named Raziabanu Mahammad Ayub, a female, aged about 35 years. The injury certificate has been exhibited as Exhibit-283 and the medical case papers have been exhibited as Exhibited-284.

281.4 The witness has also treated a patient named Ahmed Badshah, a male, aged about 20 years. The history given by the said patient is to the effect that assault and burns were caused during riots on 28.2.2002 at 5:00 p.m. by opposite party by throwing flammable material over the body of the patient. According to the record, the patient had also history of bullet injury in left axilla. The injury certificate has been exhibited as Exhibit-285 and the medical case papers

have been exhibited as Exhibited-286. In the testimony of the witness, it further comes out that at page 4 of the certificate pertaining to Ahmed Badshah issued by Dr. P. N. Patel; the history given by the patient is as under:

“A history of assault by opposite party in riots today (1.3.02), history of bullet injury over left side of upper part of chest. History of burns over right side of chest and lower limb. Local 1 cm diameter entry wound present over left side of chest over anterior axillary fold.”

282. **PW-42 Dr. Himmatbhai H. Patel** has been examined at Exhibit-324. This witness was the C.M.O. of the Ahmedabad Civil Hospital. The witness has treated PW-200 Shaukat Nabibhai Mansuri. The injury certificate has been exhibited as Exhibit-327 and the medical case papers have been exhibited as Exhibited-326. The witness has deposed that Shaukatbhai has sustained fracture of the wrist of his left hand.

283. **PW-43 Dr. Parul Rameshbhai Vaghela** has been examined at Exhibit-332. This witness was working as C.M.O. in the Civil Hospital. The witness has treated seven patients, viz. (1) PW-207 Basir Ahmad Dhobi, (2) Shabana Abdulrahim, (3) Kamar Raza (son of PW-191 Mahammadmahu Abdulrauf Pathan), (4) Ayeshabanu, daughter of PW-191, (5) PW-160 Afsanabanu, (6) PW-159 Shabbirahmed and (7) Sufiyabanu, wife of PW-251. The injury certificate and medical case papers of Basir Ahmad Dhobi have been exhibited as Exhibits-334 and 335 respectively.

283.1 The doctor has deposed that the patient named

Shabana Abdulrahim had given history to the effect that others were burning and she was also burnt at 4:00 on 28.2.2002 at Saijpur. The injury certificate has been exhibited as Exhibit-336 and the medical case papers have been exhibited as Exhibited-337.

283.2 The witness has deposed that she had treated Kamar Raza Mahammad Maroo Pathan, a male child, aged about 5 years and the history given to her by the father of the patient was to the effect that the patient was burnt by pouring or sprinkling kerosene, petrol, oil at 6:00 p.m. at Naroda on 28.2.2002. The injury certificate has been exhibited as Exhibit-338 and the medical case papers have been exhibited as Exhibited-339.

283.3 The witness has deposed that she has treated a patient named Ayeshabanu Mahammad Maroo Pathan, a female child, aged about 8 years and the history given to her by the father of the patient was to the effect that burnt on 28.2.202 at 6:00 by pouring or throwing petrol, kerosene or oil. The injury certificate has been exhibited as Exhibit-340 and the medical case papers have been exhibited as Exhibited-341.

283.4 The witness has deposed that she had treated a patient named Afsanabanu Rehman Shaikh and the history given by the patient herself was to the effect that she was burnt by throwing kerosene, petrol or oil at 6:00 p.m. on 28.2.2002 at Naroda, Ahmedabad. The injury certificate has been exhibited as Exhibit-342 and the medical case papers have been exhibited as Exhibited-343.

283.5 The witness has deposed that she had treated a patient named Shabbirahmed Munirahmed Shaikh. The history given by the patient himself was that he was burnt by throwing kerosene, petrol or oil at 6:00 p.m. on 28.2.2002 at Naroda, Ahmedabad. The injury certificate has been exhibited as Exhibit-344 and the medical case papers have been exhibited as Exhibited-345.

283.6 The witness has deposed that she had treated a patient named Sufiyabanu and the patient had given history to the effect that she was burnt by pouring or throwing kerosene, petrol or oil on 28.2.2002 at Naroda.

283.7 The witness had carried out the postmortem of one unknown female dead body brought to the Civil Hospital, Ahmedabad on 4.3.2002 at about 5.10 p.m. It was ultimately learnt that the name of the female was Hajrabanu alias Jadikhala Abdulrahim Saiyed. The postmortem note is exhibited as Exhibit-348.

283.8 In her further examination-in-chief, the witness has deposed that on 28.2.2002 while she was on duty, a patient named Mahammad Maharooof Alikhan Pathan came to the hospital at 11:00 p.m. for treatment and gave history before her that he was burnt by pouring kerosene, oil and petrol at 6:00 p.m. at Naroda Patiya. The medical case papers have been exhibited as Exhibited-2023.

284. **PW-44 Dr. Gautam Vrajlal Nayak** has been examined at Exhibit-360. The witness had treated eight patients, viz., (1) PW-158 Naeemuddin, (2) PW-206 Jetunbibi,

(3) PW-106 Farzanabanu, (4) PW-147 Reshmabanu, (5) PW-214 Saberabanu, (6) PW-163 Usman Valibhai and (7) PW-164 Yasin Mansuri.

284.1 The witness has deposed that he had examined Naeemuddin Ibrahim Shaikh on 28.2.2002 at 11:00 p.m. The injury certificate has been exhibited as Exhibit-363 and the medical case papers have been exhibited as Exhibited-363. The witness has deposed that the injuries sustained by the patient could be caused on account of burns due to kerosene and petrol.

284.2 The witness has deposed that he had examined Jetunbanu Aslammiya Shaikh and she had given history to the effect that she was attacked with sticks at 6 o'clock in the evening at Naroda Patiya. The patient was conscious and had swelling on the left side of her forehead, right lip and lost consciousness for some time. The injury certificate has been exhibited as Exhibit-364 and the medical case papers have been exhibited as Exhibited-365.

284.3 The witness has deposed that he had treated a patient named Farzanabanu Ayubkhan Pathan on 28.2.2002 at 11:25 hours. The patient had given history to the effect that she was burnt with kerosene at 6 o'clock in the evening at Naroda Patiya. The patient was conscious and had sustained first degree to third degree burn injuries. The injury certificate has been exhibited as Exhibit-366 and the medical case papers have been exhibited as Exhibited-367.

284.4 The witness has deposed that he had treated a

patient named Reshmabanu Ayubkhan Pathan on 28.2.2002 at 11:30 hours. The patient had herself given history that she was attacked with sticks at 6 o'clock in the evening at Naroda Patiya. The injury certificate has been exhibited as Exhibit-368 and the medical case papers have been exhibited as Exhibited-369. The witness has opined that the injuries sustained by the patient could be possible on account of stick blows.

284.5 The witness has further deposed that he had treated a patient by the name of Saberabanu Abdulajij Shaikh on 28.2.2002 at 11:35 hours at night. The patient had given history to the effect that she had sustained kerosene and petrol burns at 6 o'clock in the evening at Naroda Patiya and had sustained burn injuries. The injury certificate has been exhibited as Exhibit-370 and the medical case papers have been exhibited as Exhibited-371. The doctor has opined that if this patient had not got treatment in time, the injuries were such as could cause death.

284.6 The witness has further deposed that on 28.2.2002 at 10:55 at night, he had treated a patient by the name of Usmanbhai Valibhai, aged 55 years. The patient had given history to the effect that he was attacked with sticks at 8 o'clock at night at Naroda Patiya. The injury certificate has been exhibited as Exhibit-372 and the medical case papers have been exhibited as Exhibited-373.

284.7 The witness has deposed that he had treated a patient named Yasin Usmanbhai Mansuri, aged 16 years, at 10:50 at night on 28.2.2002. The patient had given history that in the afternoon at 3 o'clock, acid and kerosene was thrown on

him and he had sustained burn injuries. The injury certificate has been exhibited as Exhibit-374 and the medical case papers have been exhibited as Exhibited-375.

284.8 The witness has further deposed that he had treated one Shahjahan Kabirahemad Shaikh on 28.2.2002 at 11:00 hours at night. As per the history given by the patient, he had sustained injuries due to burns. The injury certificate has been exhibited as Exhibit-376. The doctor has opined that if the patient did not get proper treatment in time, injuries were such as would cause death.

284.9 In the cross-examination of this witness, it has been elicited that she had not examined the private parts of patient Farzanabanu. The witness has admitted that except for the injuries reflected in the injury certificate Exhibit-376, the patient had not sustained any other injuries and that the patient had not given any history of rape.

285. **PW-46 Dr.Chandrakant Karamsibhai Tanna** has been examined at Exhibit-388. This witness has deposed that he was a Medical Officer and had performed the postmortem of a male dead body brought to the Civil Hospital on 1.3.2002 at about 1:45 p.m. The dead body was of a male, aged about 22 years and his clothes were burnt. The postmortem report is exhibited as Exhibit-389.

286. **PW-47 Dr. Rameshchandra Bhagubhai Shah** has been examined at Exhibit-392. This witness has deposed that on 1.3.2002 at about 10:10 a.m., an unknown male dead body was brought to the Civil Hospital, Ahmedabad for

performing the postmortem. The dead body was an unidentified dead body with a label "dead body No.56 of unknown male". The postmortem report is exhibited as Exhibit-393. In his cross-examination, the witness is shown an endorsement on the upper part of the postmortem note which reads as under:

"Body No.56, A.C.P., Crime, Ahmedabad City with reference to letter dated 14/11/2002, Abidali Hamidali Pathan, aged 36, resident of Chetandas-ni Chali, Naroda Patia, Sd/- (unidentified), 9/9/04."

286.1 The witness has stated that the endorsement has not been written by him, and that he thinks that these are the handwritings of Police Surgeon Dr. Satapara.

286.2 In his further examination-in-chief, the witness has deposed that he had conducted the postmortem of the dead body of a male, aged about 18 years. As per the inquest, the deceased had sustained injury on his left thigh at about 12:30 p.m. on 28.2.2002 by firing. The cause of death was shock and haemorrhage as a result of bullet injury. The dead body was of Mahammad Safiq Adam Shaikh.

287. **PW-48 Dr. Dharmesh Somabhai Patel** has been examined at Exhibit-399. The witness has deposed that on 3.3.2002, an unknown dead body was brought for autopsy at 10 o'clock in the morning. The dead body was of a person aged about 45 years. The postmortem report is exhibited as Exhibit-400. The inquest panchnama has been exhibited as Exhibit-402.

288. **PW-49 Dr. Kalpesh Hiralal Parikh** has been examined at Exhibit-403. This witness has deposed that on 1.3.2002, an unknown dead body was brought to the Civil Hospital and the postmortem was conducted on 2.3.2002. The dead body was of a male aged 30 years. On the entire dead body, there were third and fourth degree burn injuries and on the right leg, there were fifth and sixth degree burn injuries. The postmortem report is exhibited as Exhibit-404.

289. **PW-50 Dr. Deepak Champaklal Jagani** has been examined at Exhibit-410. This witness has deposed that he had occasion to perform the postmortem of a dead body of Asif Shabbirbhai. The dead body was brought on 4.3.2002 at 6:15 p.m. The postmortem report is exhibited as Exhibit-411.

290. **PW-51 Dr. Vikram Kalidas Parghi** has been examined at Exhibit-420. This witness has deposed that the dead body of Hamid Raja Mahammad Maru, a male child, aged about 10 years, was brought to the Civil Hospital, Ahmedabad on 11.3.2002 at 5:20 p.m. and he had performed the postmortem thereof. The postmortem report is exhibited as Exhibit-421. The witness has deposed that the burn injuries found on the dead body. The witness has opined that the burn injuries were sufficient to cause death in the natural course. The postmortem report is exhibited as Exhibit-422.

291. **PW-71 Dr. Sunil Ramnivas Mittal** has been examined at Exhibit-503. The witness has deposed that he was doing further studies of Post Graduation and while he was at V.S. Hospital, Ahmedabad, he was required to examine some

riots affected patients. He had examined two patients, viz., (1) Babloo Mehboobhai and (2) Yasin A. Majid. The witness has deposed that the male child Yasin has 20% superficial to deep burns. The history given by the father of the patient was “burnt by opposite party at 5:00 p.m. of 28.2.2002, then patient brought to V.S. General Hospital (V.S.G.) at 3:25 a.m. on 1.3.2002. No primary treatment received.” The injury certificate is exhibited as Exhibit-504 and the medical case papers are exhibited as Exhibit-506.

291.1 The witness has deposed that he had examined a patient named Babloo Mehboobhai, aged 7 years and as per the history given by the relative of the patient, viz., Sairabanu, the patient caught fire while escaping from a house which was set on fire. The injury certificate is exhibited as Exhibit-507 and the medical case papers are exhibited as Exhibit-509.

292. **PW-84 Dr. Ajay Krishnan** has been examined at Exhibit-543. The witness has deposed that he was rendering services as Resident Doctor in the V.S. Hospital, Ahmedabad which was part of his further studies. On 1.3.2002 at 2:30 a.m., he had occasion to examine one Zarinabanu Naimuddin, a female patient aged about 25 years. The history given by the patient was “beaten in communal riots, injury over both shoulders and head and no loss of consciousness.” The injury certificate is exhibited as Exhibit-544 and the medical case papers are exhibited as Exhibit-546.

293. **PW-95 Dr. Jayesh Himmatlal Solanki** has been examined at Exhibit-577. This witness has deposed that on 1.3.2002, in the afternoon at 12 o'clock, a dead body of one

Sofiyabanu Mahammadbhai Shaikh was brought for the postmortem. The dead body was of a female aged about 19 years. The witness has deposed that on 2.3.2002, while he was on duty, he was asked to carry out the postmortem of the dead body of an unknown person. The body was of a 40 years old female. The postmortem report is exhibited as Exhibit-579.

294. **PW-96 Dr. Jayendra Ratilal Modi** has been examined at Exhibit-581. This witness has deposed that on 1.3.2002, a dead body of an unknown lady was brought to the Civil Hospital at 1:45 p.m. He had conducted the postmortem of the body. The postmortem report is exhibited as Exhibit-582 except the endorsement on the top of the postmortem report which was not in his handwriting. (The endorsement note at the top of the report is dated 9.9.2002 noting therein that according to the Police Yadi, Reshma Salambhai Qureshi, which bears the signature of the author).

294.1 The witness has deposed that he had conducted the postmortem of the dead body of Zubedabanu Shabirahmed Shaikh, aged about 22 years on 1.3.2002. The postmortem report is exhibited as Exhibit-584.

294.2 The witness has deposed that on 1.3.2002, a dead body of an unknown lady, aged about 35 years, was brought at 1:45 p.m. for postmortem. The dead body had sustained in all eight wounds consisting of one incised wound and remaining seven stab incised wounds. According to the doctor, the cause of her death was head injury and stab injury. The witness has accepted the contents of the postmortem report which is exhibited the contents of the postmortem report which is

exhibited as Exhibit-585 except the endorsement on the top of the report which was not in his handwriting. (The endorsement at the top of the report is dated 2.12.2002 noting therein that *"according to ACP's correspondence dated 1.11.2002, this P.M. is of Zarinabibi, wife of Bundubhai Mahammadbhai Siddiq Qureshi, resident of Jawannagar, Naroda Patiya"* which bears the signature of the author).

295. **PW-97 Dr. Hemant Dahyabhai Patel** has been examined at Exhibit-596. This witness has deposed that on 1.3.2002 at 17:50 hours in the evening, a dead body of an unknown person was sent for postmortem. The dead body was of a male child, aged about 10 years. The dead body had sustained second and third degree burn injuries and had sustained in all 70% burn injuries all over the body. The witness has admitted the postmortem report, Exhibit-597 except for the endorsement thereof which is to the effect that, *"In terms of the police yadi, Samir Salambhai Qureshi. Illegible signature date 9.3.03"*.

296. **PW-98 Dr. Anupsinh Hiraji Thakur** has been examined at Exhibit-600. This witness has deposed that on 1.3.2002 at 13:45 hours, an unknown male dead body was brought to the Civil Hospital, Ahmedabad for performing the postmortem thereof. The postmortem report is exhibited as Exhibit-601. The witness has clarified that the endorsement signed and noted on 9.9.2004 is not in his handwriting. (At the top of the postmortem report, there is an endorsement to the following effect, *"according to police yadi, Siddiq Salimbhai Shaikh, illegible sign 9/9/04"*). The witness has opined that if highly inflammable substance is thrown over a body and if one

is set ablaze, the kind of position of the dead body reducing it to a skeleton is possible.

296.1 The witness has deposed that on 1.3.2002 at about 10.10 hours, an unknown male dead body was brought to the Civil Hospital for performing the postmortem thereof. The postmortem report is exhibited as Exhibit-602. The witness has accepted the contents thereof except the endorsement on the top of the postmortem note which reads thus, *“According to Naroda Police Station, U/K No.12, Name Meraj Salaambhai Abdulla, aged 10 years, illegible signature.”*

296.2 The witness has deposed that on 1.3.2002 at about 10.10 hours, an unknown male dead body aged about 12 years was brought to the Civil Hospital for performing the postmortem. The witness has admitted the contents of the postmortem report which has been accepted as Exhibit-603 except for the endorsement thereon, which reads thus: *“Deputy Police Officer/SIT/65/08/08 U/K 31, As per Yadi dated 18/5/09, name Asif Sarmoddin Shaikh, aged 5 years, residing at Husen Nagar, Naroda Patia, Ahmedabad, illegible signature 18/5/08.”*

296.3 The witness has further deposed that on 1.3.2002 at 10:10 hours, one unknown female body was brought to the Civil Hospital for performing the postmortem. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-604 except for the endorsement thereof which reads thus: *“As per letter dated 31.10.2002 of Assistant Police Commissioner, Crime, Ahmedabad City, Shabnambanu, wife of Mahammad Khurshid Mahammad Nasim Shaikh, aged*

19 years, residing at Hukamsing-ni Chali, Naroda Patia, illegible signature, 13/11/02" U/K 33. The witness has opined that if highly inflammable substance is thrown over a body and if one is set ablaze, the kind of the position of the dead body reducing it to skeleton is possible.

296.4 The witness further deposed that on 1.3.2002 at about 10:10 hours, an unknown male dead body, aged about 35 years, was brought to the Civil Hospital for postmortem. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-605. In the cross-examination of the witness, it has been elicited that in case of Exhibit-601 to Exhibit-604, all the four dead bodies which were in skeleton and were not able to be identified. The witness has admitted that in case of all the dead bodies of P.M. Exhibit-601 to Exhibit-604, private parts of the respective dead bodies were found burnt. The witness has admitted that he did not carry out any special examination to judge the age and sex of the respective dead bodies. The attention of the witness is drawn to Exhibit-604, postmortem report of Shabnambanu. He has admitted that he has not recorded any injuries on her private parts and has explained that it was not possible to note down any injury even if it might have been there, other than the burns, because the position of the dead body of having burns to a large extent.

297. **PW-99 Dr. Kiritkumar Ratilal Shah** has been examined at Exhibit-616. The witness has stated that on 1.3.2002 at 10.10 a.m., an unknown male dead body was brought to the Civil Hospital for postmortem. The witness had admitted the contents of the postmortem report which is

exhibited as Exhibit-617, except for the endorsement which reads thus, *“According to police yadi, Abdulwahab Abdulrashid Shaikh, aged 20 years, illegible signature, 9/9/04”*.

297.1 The witness has further deposed that on 1.3.2002 at 10:10 p.m., an unknown dead body was brought to the Civil Hospital for performing the postmortem. The dead body was of a male of about 32 years and was found in pugilistic position. The witness has accepted the contents of the postmortem report which is exhibited as Exhibit-618 except for the endorsement which reads thus: *“With reference to letter of A.C.P., Crime, dated 11/11/02, Abdulla Abdulgani Shaikh, aged 33 years, residence : Jawan Nagar, Naroda Patia, illegible signature, 9/9/04.”* The witness has opined that if inflammable substance like petrol or kerosene is thrown or poured on one's body, then the kind of injuries the dead body had sustained are possible.

297.2 The witness has further deposed that on 1.3.2002 at 10.10 p.m., an unknown female dead body was brought to the Civil Hospital for performing the postmortem. The witness has deposed that eye sockets of the dead body were empty and the tongue was found between the teeth. The eyes were not found but only two holes in the body where eyes were situated could only be noticed. All over the body, burns injuries of 5th to 6th degree were found, the right hand of the dead body at arm was missing. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-619 except for the endorsement on the top which reads thus: *“According to letter of A.C.P., Crime, Ahmedabad dated 3/11/02, Nasimbanu daughter of Bundubhai Mahammad Siddiq*

Qureshi, aged 17, residence : Jawannagar, Naroda Patia, illegible signature, 2/2/04".

298. **PW-100 Dr. Rakesh Suryakant Bhavsar** has been examined at Exhibit-622. This witness has deposed that on 1.3.2002 at about 10:10 p.m., one unknown human dead body was brought to the Civil Hospital for performing the postmortem. The dead body was of an unknown child of about 7 years of age. The body was totally burnt. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-623 except the endorsement thereof which reads thus: "*Khwaja Hussain Abdulmajid Shaikh, illegible signature 9/9/04*". The witness has opined that if inflammable substance like petrol and kerosene is thrown on the body and if one is set ablaze, the kind of injuries sustained by the dead body are possible.

298.1 The witness is further deposed on 1.3.2002 at about 10:10 p.m., an unknown male dead body was brought to the Civil Hospital for postmortem. The postmortem has been given mark "P", but has not been exhibited as it was a xerox copy. The witness has admitted the contents thereof except for the endorsement on the top which reads thus: "*Shabbir Ahmed Khurshi Ahmed Shaikh, aged about 30 years, Kumbhaji-ni Chali, Naroda Patia, illegible signature, 27/11/02*".

298.2 The witness has deposed that on 1.3.2002 at 10:00 p.m., an unknown male dead body was brought for performing the postmortem. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-624 except for the endorsement on the top which reads thus: "*According to*

letter of A.C.P., Crime Branch, Mahammad Ayub Allabax Shaikh, aged 40 years, residence Jawan Nagar, Naroda Patia, illegible signature, 16/10/02”.

298.3 The witness has further deposed that on 1.3.2002, an unknown human body was brought to the Civil Hospital for performing the postmortem. The dead body was of an unknown child of about 8 years of age. The body was roasted and totally burnt. The witness has accepted the contents of the postmortem report which is exhibited as Exhibit-625 except for the endorsement thereon which reads thus: *“According to letter of A.C.P., Crime, dated 26/11/02, Farhana d/o Ayubhai Qureshi, aged 7 years, residence : Hussainnagar, Naroda, illegible signature, 27/11/02”.*

299. **PW-101 Dr. Dilipkumar Shankarlal Vyas** has been examined at Exhibit-632. This witness has deposed that on 1.3.2002 at about 10:10 a.m., an unknown female body was brought to the Civil Hospital, Ahmedabad for postmortem. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-633 except for the endorsement thereon which reads thus: *“According to yadi of Naroda Police Station, Kherunissa Mahammad Maru Abdulrauf Ali Pathan, body No.5, illegible signature, 9/9/04”.*

299.1 The witness has deposed that on 1.1.2002 at about 10:10 a.m., an unknown female dead body, aged 32 years, was brought to the Civil Hospital for postmortem. There were no clothes on her body. The dead body had sustained Contused Lacerated Wound of 3 cm x 1 cm, bone deep on left half of forehead and had multiple bruises on her face. She had

sustained fracture on her left frontal bone. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-634 except for the endorsement thereon which reads thus: *“According to Naroda police yadi, Bilkishbanu Mohammad Maru Abdulrauf Khan Pathan, illegible signature, 9/9/04”*.

299.2 The witness has further deposed that on 2.3.2002, another dead body was received which was of a male aged 35 years. The witness has admitted the contents of the postmortem report except for the endorsement which reads thus: *“As per letter of A.C.P. dated 17/8/02 Ramsurat Babubhai Verma, aged 40 years, residence: 233, Mafatnagar, Opp. Bhagyodaya, Naroda, illegible signature, illegible date”*.

300. **PW-102 Dr.Mahendra Harjivandas Shanishchara** has been examined at Exhibit-637. This witness has deposed that on 1.3.2002 at 10:00 a.m., dead bodies of two unknown males and two unknown females were brought to the Civil Hospital for performing the postmortem.

300.1 The witness has deposed that he had carried out postmortem of the dead body of an unknown male, aged 30 years. He has admitted the contents of the postmortem report which is exhibited as Exhibit-638 except for the endorsement thereon, which reads thus: *“According to police yadi, Salambhai Abdulla Qureshi, illegible signature, illegible date”*. The witness has deposed that he had performed the postmortem of dead body of unknown female, aged about 35 years, which had no clothes on her body. The female had sustained extensive deep burns all over the body i.e. 100%

burns and at places, bone was also exposed due to burning. The witness has accepted the contents of the postmortem report which is exhibited as Exhibit-639 except for the endorsement thereon, which reads thus: *“As per letter of ACP dated 28/11/02, Shahjahan wife of Sarmoddin Khalid Shaikh, aged 25 years, residence: Husen Nagar, Naroda Patia, illegible signature, Date: 9/9/04”*.

300.2 The witness has deposed that he had performed postmortem of the dead body of unknown male child, aged about 5 years, who had no clothes on the body. The witness has accepted the contents of the postmortem report which is exhibited as Exhibit-642 except for the following endorsement thereon: *“As per police yadi dated 14/08/02, Sohail Ahmed s/o Ayubhai Ladesa Qureshi, aged 5 years, residence: Jawan Nagar, Naroda Patia, illegible signature, Date: 9/__/04”*.

300.3 The witness has also deposed that he had conducted postmortem of the dead body of an unknown female aged about 12 years, who had no clothes on her body which was completely burnt and was black in colour. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-643 except for the following endorsement thereon: *“According to police yadi dated 14/08/02, Zarinabanu d/o Rehmanbhai Shakurbhai Saiyed, aged 12 years, residence : Jawan Nagar, Naroda Patia, illegible signature, Date: 9/(not legible)/04”*.

301. **PW-103 Dr. Jayant Somabhai Kanoria** has been examined at Exhibit-656. This witness has deposed that on 1.3.2002, three unknown dead bodies, out of which two were

of female and one was of male, were brought to the Civil Hospital for performing postmortem. He had performed the postmortem of an unknown female, aged about 25 years. The dead body had sustained first and third degree burns all over the body. The witness has deposed that uterus was noticed to be enlarged, full term male foetus was found, length of foetus was noted to be 45 cms, and weight of foetus has been noticed to be 2500 grams. The witness has clarified that those were days of tremendous rush and since he was overburdened with the work of postmortem assigned to him, instead of 2500 grams, inadvertently he had written it to be 250 grams which is obviously not possible in any case, the foetus being of full term. The witness has accepted the contents of the postmortem report which is exhibited as Exhibit-657 except for the following endorsement thereon: *"According to letter of ACP, Crime, Ahmedabad dated 13/8/04, Kausarbanu d/o Khalidbhai Noormohammad Shaikh, residence: Kumbhaji-ni Chali, illegible signature, 14/8/04"*.

301.1 The witness has further deposed that he had conducted postmortem on the dead body of an unknown male, aged about 20 years. The witness has accepted the contents of the postmortem report which has been exhibited as Exhibit-658 except for the following endorsement: *"As per the police yadi, Mohammad Mashak Qureshi, aged 20 years, illegible signature"*.

301.2 The witness has further deposed that he had conducted postmortem on the dead body of an unknown female, aged about 25 years. The witness has accepted the contents of the postmortem report which is exhibited as

Exhibit-659 except for the following endorsement: *“As per the letter of DCP/SIT/15/08 dated 18/5/08, Gosiabanu wife of Mohammad Harun Shaikh, aged 22 years, residence: Hukamsingh-ni Chali, Naroda Patia, Ahmedabad, illegible signature, date: 18/5/___”*. In the cross-examination of the witness, the witness has deposed that while performing the postmortem of the dead body (Exhibit-657), he had removed the developed foetus from the uterus of the dead body, and then measured the same. Then he had concluded it to be of 2500 grams and had also measured the length of the foetus which as noticed was 45 cms. The witness has admitted that until he removed the foetus from the uterus of the dead body, he did not find any external injuries on the foetus. The witness has admitted that in his opinion, the death of this dead body was only due to burn injuries sustained by the deceased and for no other cause. The witness has admitted that none of the injuries as per his observations noted against column 21 is of penetrated or of incised wound.

302. **PW-118 Dr. Kalpesh S. Kotaria** has been examined at Exhibit-759. This witness has deposed that he had conducted the postmortem of the dead body of one Shakina Babubhai Bhatti. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-760. The witness has opined that if inflammable substance like petrol or kerosene is thrown on the body and if one is set ablaze, then the kind of injuries sustained by the said body are possible.

303. **PW-119 Dr. Tapan Jitendrabhai Mehta** has been examined at Exhibit-761. The witness has deposed that he had conducted the postmortem of a dead body of Shakeenabanu

Mehboobhai, a female aged 12 years. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-762. The witness has further deposed that on 5.3.2002 at about 6:10 p.m., one known dead body of Mehboob Khurshidbhai Shaikh was brought for performing the postmortem. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-763.

304. **PW-120 Dr. Mitesh Bhagwanbhai Patel** has been examined at Exhibit-773. This witness has deposed that he had conducted the postmortem of a dead body of an unknown female, aged about 45 years. No clothes were found on her body. There were third to fourth degree burns all over the body and black ashes of skin all over the body. Abdomen viscera protruded out from right side of burns area of abdomen. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-774.

304.1 The witness has further deposed that he had conducted postmortem of an unknown dead body of a male child, aged about 2 years who did not have any clothes or ornaments on his body. The child has sustained fifth to sixth degree burns over the lower half face, neck, left upper limb, left lower limb, chest and abdomen. It was also noticed that the remaining parts of the dead body were not present. The postmortem report has been exhibited as Exhibit-775.

304.2 The witness has further deposed that he has also conducted the postmortem of the dead body of an unknown female who had no clothes on her body. She had sustained fifth to sixth degree burns over chest, abdomen, and right and

left upper thigh, whereas the remaining parts of the body were not noticed to be present which were missing. The witness has accepted the contents of postmortem report which is exhibited as Exhibit-776.

304.3 The witness has further deposed that he had conducted the postmortem of an unknown dead body of a female child, aged about 7 years, who had no clothes on her body. She had sustained fifth and sixth degree extensive burns over face, neck, chest, abdomen, pelvis, right and left lower limbs, right upper limbs and on left arm alone. The remaining parts of the body were not noticed to be present, which were missing. The witness has admitted the contents of postmortem report which is exhibited as Exhibit-777.

305. **PW-121 Dr. Harshadkumar Kantilal Rathod** has been examined at Exhibit-778. This witness has deposed that on 7.3.2002, one dead body of Supriya Majid was received at the Civil Hospital for postmortem. The postmortem report is exhibited as Exhibit-779. In the cross-examination of the witness, the witness has admitted that he did not find any rape injuries on the dead body.

306. **PW-122 Dr. Dhiren Jagdishbhai Mankad** has been examined at Exhibit-781. The witness has deposed that he had performed the postmortem of the dead body of an unknown female, aged about 35 years whose blouse and upper body were noticed to have been burnt. The witness has admitted the contents of postmortem report which is exhibited as Exhibit-782.

307. **PW-123 Dr. Jayesh Balvantsinh Rupala** has been examined at Exhibit-786. The witness has deposed that he had conducted the postmortem on the dead body of an unknown male, aged about 30 years. The clothes were bloodstained. The witness has referred to various C.L.W. injuries on the right forehead, left forehead and upper limb of the deceased as well as incised wound on the right hand. The witness has admitted the contents of postmortem report which is exhibited as Exhibit-787.

307.1 The witness has further deposed that he had conducted postmortem of the dead body of a female, aged about 25 years. No clothes were found on her body. The postmortem report is exhibited as Exhibit-777.

307.2 The witness has deposed that he had conducted the postmortem of the dead body of an unknown male, aged about 7 years. The postmortem report is exhibited as Exhibit-789.

308. **PW-124 Dr. Bhavin Shyamal Shah** has been examined at Exhibit-794. This witness has deposed that he had conducted the postmortem of a dead body of an unknown male, aged about 40 years. The deceased had sustained third to fourth degree burns all over the body. The witness has admitted the contents of postmortem report which is exhibited as Exhibit-795, except for the endorsement on the top of the postmortem report. The witness has opined that the posture of the dead body mentioned by him as his observation at column No.13 can be due to excessive burns with very high degree of temperature created at the time of the occurrence. He has further opined that this is more possible when the occurrence

takes place and is completed within a very short span of time.

308.1 The witness has further deposed that he had conducted postmortem of the dead body of an unknown female, aged about 30 years. The witness has admitted the contents of postmortem report which is exhibited as Exhibit-796, except for the endorsement on the top of the postmortem report.

308.2 The witness has further deposed that an unknown dead body was brought on 2.3.2002 at 12:00 p.m. for postmortem. During the postmortem, the dead body could be identified as that of a male, whereas prior to performing the postmortem, it was not possible to decide the gender of the dead body. The dead body was of an unknown male, aged about 30 years. This was a case of 100% burns. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-797, except for the endorsement on the top of the postmortem report.

309. **PW-125 Dr. Gitanjali Phukan** has been examined at Exhibit-798. The witness has deposed that she had performed the postmortem of a dead body of an unknown male, aged about 22 years. It was observed that the dead body was fully burnt and roasted dead body. While observing external genital area, it was noted that the male parts were burnt and roasted. Both lower limbs were missing from mid-thigh, left upper limb separated at arm and there were 100% burns with black soot over body. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-799, except for the endorsement on the top of the

postmortem report.

309.1 The witness has further deposed that she has performed the postmortem of a dead body of an unknown child, aged about 8 years, whose clothes were noticed to have been burnt. All the parts of the dead body were noticed to be roasted and to have sustained burns of sixth degree. The witness has admitted the contents of the postmortem report which is exhibited as Exhibit-800, except for the endorsement on the top of the postmortem report.

309.2 The witness has deposed that she had conducted the postmortem of the dead body of an unknown child, aged about 5 years, whose clothes had been burnt. All parts of the dead body had been roasted and it had sustained burns of sixth degree and the body had also been burnt. It was noticed that the dead body was fully burnt and roasted. The postmortem report is exhibited as Exhibit-801, except for the endorsement on the top of the postmortem report.

310. **PW-126 Dr. Deepak Mohanlal Sharma** has been examined at Exhibit-902. This witness has deposed that on 2.3.2002, he had conducted postmortem of the dead body of a male, aged about 14 years. The postmortem report has been exhibited as Exhibit-804.

310.1 The witness has further deposed that on 2.3.2002, he had conducted the postmortem of an unknown male, aged about 22 years, with pieces of burnt clothes over the body. The postmortem report has been given tentative Exhibit-804 as it is a xerox copy.

311. **PW-127 Dr. Pratik Ravjibhai Patel** has been examined at Exhibit-812. This witness has deposed that he had conducted postmortem of a dead body of one Razak Babubhai Bhatti on 12.3.2002. The postmortem report has been exhibited as Exhibit-813.

312. **PW-128 Dr. Rajendrakumar Bhagirathprasad Joshi** has been examined at Exhibit-814. This witness has deposed that he had conducted postmortem of the dead body of an unknown male, whose body was naked, aged about one year, on 2.3.2002. The postmortem report has been exhibited as Exhibit-815.

312.1 This witness further deposed that he had conducted the postmortem of a dead body of an unknown male, aged about 40 years, whose body was naked. The postmortem report has been exhibited as Exhibit-816.

312.2 This witness further deposed that on 5.3.2002, he had conducted postmortem of a dead body of Kudratbibi Khurshidbhai, aged about 45 years. The postmortem report has been exhibited as Exhibit-818.

312.3 The witness further deposed that he had conducted the postmortem of dead body of Sharmuddin Khalid Noormohammad on 5.3.2002. The deceased was aged about 25 years. The postmortem report has been exhibited as Exhibit-819.

313. **PW-129 Dr. Jayeshkumar Maganlal Joshi** has

been examined at Exhibit-820. This witness has deposed that he had conducted postmortem of a dead body of an unknown female, aged about 25 years. The postmortem report has been exhibited as Exhibit-821, except for the endorsement on the top of the first page.

313.1 The witness has further deposed that he had conducted postmortem of a dead body of an unknown male child, aged about 5 years. The right hand of the dead body was missing from the wrist level and both lower limbs were missing at thigh level. The postmortem report has been exhibited as Exhibit-804, except for the endorsement on the top of the first page. The witness has opined that if a live child is thrown in the burning fire and thereby, he is burnt, then the kind of the injuries sustained by the dead body are possible.

313.2 The witness has further deposed that he has also performed the postmortem of an unknown male child, aged about 3 years. The postmortem report is tentatively exhibited as Exhibit-825.

314. **PW-132 Dr. Ajay Mangalbai Patel** has been examined at Exhibit-861. This witness has deposed that he had conducted postmortem on the dead body of an unknown female child, aged about 5 years. The postmortem report has been exhibited as Exhibit-862.

314.1 On 1.3.2002, the witness had also performed the postmortem of a dead body of an unknown female child, aged about 4 years. It was noticed that the left arm and right forearm were missing, left thigh and right leg were missing and

the body was noticed to be completely burnt. The postmortem report has been exhibited as Exhibit-863.

314.2 The witness has deposed that on 2.3.2002, he had performed postmortem on the dead body of an unknown female, aged about 35 years. The deceased had a stab wound over the left side to umbilicus of about 2 cm length over abdomen and depressed fracture was noticed with contusion on left fronto-temporoparietal area. The postmortem report has been exhibited as Exhibit-864.

315. **PW-134 Dr. Chirayu Pamecha** has been examined at Exhibit-876. This witness has deposed that a female patient named Kulsumbanu was brought to him for treatment at the V.S. Hospital. Before examining the patient, the history of the incident was given to him, according to which the patient was beaten by lathi by the opposite party during the riots. The medical case papers including the injury certificates are exhibited as Exhibit-878.

316. **PW-285 Dr. Jayantilal Virjibhai Satapara** has been examined at Exhibit-1941. This witness had carried out postmortem of the dead body of an unknown male on 2.3.2002. This witness has deposed that due to extraordinary work load and unprecedented situation on account of communal riots, they had tremendous pressure of work from 28.2.2002 and in view thereof, in several cases, the original record was untraceable and only xerox copies of the postmortem reports were available which have been produced by him. The postmortem note has been exhibited as Exhibit-1942.

316.1 The witness is shown the postmortem report produced in the testimony of Dr. D.J. Mankad (PW-122) and he has identified his signature thereon. The postmortem report is exhibited as Exhibit-1943. Similarly, the witness has admitted the contents of tentative Exhibit-626 which was produced through the testimony of Dr. R.S. Bhavsar (PW-100) which is given final Exhibit-626. Similarly, the postmortem reports Exhibits-807, 825 and 866 which have been admitted to be genuine xerox of the original postmortem notes, have been exhibited as Exhibits-807, 825 and 866 respectively.

316.2 The witness has further admitted his signature on the document dated 15.3.2010 which is a letter conveying that in spite of diligent and sincere attempts, P.M. No.543/02, viz., original postmortem Exhibit-626 could not be traced from their office. The document is exhibited as Exhibit-1944.

316.3 The witness has deposed that one unknown dead body was brought on 1.3.2002 at 10.10 a.m. for performing postmortem. There were third to fourth degree burns present all over the body with missing right upper limb at elbow and both legs below thigh, scalp hairs were noticed to have been burnt and bone of the scalp were seen. The witness has admitted the contents of the postmortem report which has been exhibited as Exhibit-1945. The postmortem report bears an endorsement at the top. The postmortem was of Wasim Abdulaziz Shaikh. The witness has stated that the endorsement is in his handwriting and bears his signature.

316.4 The witness has deposed that a dead body was

received on 2.3.2002 which was of an unknown sex, but of a person aged about 5 years with extensive burns. The postmortem report has been exhibited as Exhibit-1947. The witness has admitted the endorsement on the top of the postmortem note which indicates that the postmortem was of Nilofarbanu Ibrahim Mansuri.

316.5 The witness has deposed that he had performed postmortem of another dead body of an unknown female, aged about 10 years. Sixth degree burns were noticed over the entire body, part of skull and brain were burnt and shrunked (sic.), lower limb completely burnt and shrunked, both upper limbs and part of pelvis burnt and shrunked, all other parts of the body were missing. The postmortem report has been exhibited as Exhibit-1943. He has admitted his signature on the endorsement at the top of the note which states that the postmortem was of Gulnazbanu Ayubmiya Malek.

316.6 The witness has deposed that he had performed postmortem of another dead body of an unknown male, aged about 10 years with 80% burns over the body, face, chest, abdomen, upper and lower extremities were burnt. The witness has identified the handwriting of Dr. Panchal (since deceased) on the postmortem report.

316.7 The witness has further deposed that one Dr. S. K. Patel had conducted postmortems No.512, 515, 521 and 527 of 2002. The witness has deposed regarding the injuries sustained by the deceased on whom the autopsy had been carried out and has proved the postmortem notes which have been exhibited as Exhibits-1951, 1952, 1953 and 1954

respectively.

316.8 The witness has further deposed that during his tenure in the year 2002, one Dr. M. M. Patel was working in the Civil Hospital and he had performed Postmortems No.513, 516, 522 and 528 of 2002. The witness has deposed regarding the injuries sustained by the concerned deceased persons and has proved the postmortem notes which are exhibited as Exhibits-1961, 1962, 1963 and 1964 as well as injury certificates Exhibits-1965 and 1966.

316.9 The witness has been examined by the court, wherein he has admitted that in none of the cases, the relatives came to identify the dead body at their hospital. In many cases, he had to decide that a particular dead body should be of a particular named person based on his own assessment and thereafter, he had put endorsement on the top of the postmortem report. He did so to help the relatives of the deceased and to enable them to get the compensation as without postmortem note with identification of the dead person, the relative concerned cannot get compensation. He has further stated that they had handed over the dead body to police who have also identified the dead body through the relatives of the deceased in some cases as was reported to him. Certain dead bodies were easily identifiable on account of the description, physical disability, the instrument being used by the handicapped and in one case, since the woman was pregnant and was at the last stage of her pregnancy.

317. **PW-286 Dr. Yogesh Anjanikumar Gupta** has been examined at Exhibit-1974. This witness has deposed that

a patient named Mustaq Razaq came to V.S. Hospital from Civil Hospital for further management for his physical ailment. He had come with a yadi of Naroda Police Station. The patient had alleged history of bullet injury and strangulation. The witness is shown Exhibit-1976 and he has stated that it is the compilation of the case papers of this patient brought from the custody of the V.S. Hospital, which he has produced on record. Since the documents were admitted by the learned advocates for all the accused, it has been exhibited as Exhibit-1976.

318. **PW-287 Dr. Aman Manoharlal Gupta** has been examined at Exhibit-1977. This witness has stated that a patient named Mahammad Khalid came to the V.S. Hospital when he was working there. The patient came on 1.3.2002 at 1:20 a.m. with a yadi from Naroda Police Station. The patient was treated by him and was admitted on the same day and was discharged on 25.3.2002. The patient had alleged history of bullet injury by opposite side.

319. **PW-288 Dr. Pranay Naginbhai Patel** has been examined at Exhibit-1984. This witness has deposed that on 1.3.2002, while he was on duty at the V.S. Hospital, a male patient named Ahmad Badshah was brought for treatment with a yadi form the Naroda Police Station. He was discharged from the hospital on 3.12.2002 as he was an indoor patient. The witness has further deposed that the patient gave history of assault by opposite party in riots on 1.3.2002 and he had history of bullet injury over left side of upper part of chest. The witness has admitted his handwriting and signature on the injury certificate Exhibit-286.

320. **PW-289 Dr. Rajesh Dalpatbhai Patel** and **PW-290 Dr. Dinesh Savjibhai Chandana** both have been examined as production witnesses at Exhibit-1985 and Exhibit-1988 respectively.

321. **FINDINGS:** From the testimonies of the medical witnesses, it emerges that several victims, at the first point of time had narrated history of assault and burns at 4:00 p.m., 5:00 p.m. or 6:00 p.m. on the day of the incident to the Medical Officers. In case of Yasin Usman Mansuri, the history given was that acid and kerosene was thrown on him at 3 o'clock in the afternoon. In one case, the history of the patient having caught fire while escaping from a house which was set on fire has been given. Thus, the witnesses have stated regarding kerosene and petrol being thrown on them as well as injuries being caused with sticks etc. by way of history before the Medical Officers when they were brought to the hospital.

321.1 PW-96 Dr. Jayendra Rasiklal Modi has deposed that he had carried out postmortem of the dead body of an unknown lady, aged 35 years, who had sustained eight wounds consisting of one incised wound and seven stab wounds. Thus, some of the victims have been assaulted with weapons during the course of the incidents that took place in the chawls.

321.2 From the testimony of PW-98 Dr. Anupsingh Hiraji Thakur, it emerges that some of the bodies of which he had conducted postmortem, were reduced to skeletons. The witness has opined that if highly inflammable substance is thrown over a body and it is set ablaze, it is possible for the dead body to be reduced to a skeleton. In the cross-

examination of this witness, he has stated that in case of one of the victims, the burn injuries were so extensive that even if there were injuries on the private parts, it was not possible to note them. From the testimonies of the Medical Officers, it emerges that some of the victims were roasted and totally burnt, some were reduced to skeletons and in case of some of the victims, parts of the bodies were missing.

321.3 PW-129 Dr. Jayeshkumar Maganlal Joshi, who had conducted postmortem of a dead body of an unknown male child, had opined that if a live child is thrown in the burning fire and burnt, the injuries sustained by the dead body are possible.

321.4 Thus, from the evidence of the medical witnesses, it has been established that in the medical history given before the Medical Officers, it was stated that the victims had sustained injuries from 3 o'clock to 6 o'clock in the evening on the day of the incident, which supports the versions given by witnesses that incidents of violence against the human body took place in the afternoon hours also. The evidence further shows that the burn injuries have been caused by throwing petrol, kerosene or oil on the victims and setting them ablaze and in some cases such injuries are so extensive that the bodies have been reduced to skeletons. In many cases, the bodies have been roasted and totally burnt and it was not even possible to decide the gender of the deceased. In several cases, parts of the body are missing. In some cases, the victim has sustained contused lacerated wounds and incised wounds, which indicates use of sharp edged weapons. Thus, the medical evidence supports the

eyewitness account given by most of the witnesses and also gives an insight to the gruesome manner in which the victims have been done to death, whereby children have been thrown in the fire, bodies of victims are completely roasted and burnt, victims have been reduced to skeletons, and in several cases, parts of the bodies are missing.

321.5 PW-285 Dr. Jayantilal Virjibhai Satapara, in his examination by the court, has stated that in many cases, he had to decide that a particular dead body should be of a particular named person based on his own assessment, and thereafter, he had put endorsement on the top of the postmortem note. He did so to help the relatives of the deceased and to enable them to get the compensation as without postmortem note with identification of the dead body, the relative concerned cannot get the compensation.

321.6 From the testimony of this witness it emerges that the dead bodies of unknown persons were not specifically identified before putting endorsement on the post mortem reports naming such dead bodies and that on the basis of his own assessment, the witness had decided that a particular dead body should be given a particular name. Such endorsements have been put for the purpose of helping the relatives of the deceased to get compensation as it was necessary to submit a postmortem note with identification. From the evidence on record there is nothing to establish that the dead body is of the person whose name had been inserted in the postmortem note by making endorsement subsequently. Therefore, except where the postmortem of identified bodies were conducted, in case of unknown bodies it cannot be said

with certainty that such postmortem notes are of the person whose name is reflected thereon. The only fact that is established is that such dead bodies were recovered from the scene of incident and are dead bodies of victims of the offence in question.

321.7 From the testimony of PW-286 Dr. Yogesh Anjanikumar Gupta, it is established that Mustaq Razak had sustained a bullet injury, from the testimony of PW-287 Dr. Aman Manoharlal Gupta, it is established that Mahammad Khalid had sustained a bullet injury and from the testimony of PW-288 Dr. Pranay Nagindas Patel, it is established that Ahmad Badshah had sustained a bullet injury. Thus, these three witnesses have deposed regarding bullet injuries having been sustained by Mustaq Razak, Mahammad Khalid and Ahmad Badshah, which fortifies the testimonies of the eyewitnesses who have deposed regarding firing by the police in the morning wherein these persons had sustained bullet injuries.

321.8 From the testimonies of the medical officers, read with the injury certificates produced and proved by them, the fact regarding several eye witnesses having sustained injuries has also been proved.

XXII PREVIOUS INVESTIGATION:

322. In this case the initial investigation was conducted by the local police and subsequently, upon the Special Investigation Team being constituted in the year 2008, the investigation

came to be transferred to it and further investigation came to be carried out by the SIT.

322.1 Insofar as the investigation conducted by the police is concerned, statements of injured witnesses came to be recorded soon after the incident in the first and second week of March, 2002, at the hospitals where they were admitted. Statements of other witnesses came to be recorded in the months of April, May and thereafter, at the respective relief camps where they were lodged. On a conjoint reading of the testimonies of the police officers who conducted the investigation, it is shocking to note that the police have not sought to record the statements of persons acquainted with the facts and circumstances of the case as contemplated under section 161 of the Code. Instead, the police have visited the camps and recorded statements of persons who came forward for recording their statements. It appears that the concerned Investigating Officer or his assignee officer visited the camp, where it was either announced on the mike or the people were informed that those who want their statements to be recorded should come forward to do so. The police, however, have not attempted to find out as to who are the witnesses of the incident. When an incident of the magnitude like the present one occurs, the real sufferers are likely to be muted on account of the imprint of those incidents in their mind and the trauma they have undergone. They must have been in a state of shock and many of them injured badly. Therefore, it would be too much to expect them to come forward for recording their statements when such announcements are made. It was the duty of the police to find out who the victims were and in case of injured witnesses to

record their statements and in case of persons who had been killed, to find out their family members who had witnessed their killing and record their statements. However, no such exercise was conducted and it was left to the witnesses to come forward to give their statements. Thus, the provisions of section 161 of the Code have been thrown to the winds and instead of the Investigating Officer finding out the victims and witnesses and recording their statements, the onus has been placed on the witnesses to come forward and get their statements recorded. From the testimony of PW-278 Rameshkumar Bhavanishankar Joshi, an assignee officer, it emerges that he had not gone inside the camp. He has parked the vehicle outside the camp and his staff would go inside, call the concerned person and he would record the statement while sitting inside his vehicle. This is the manner in which the statements of the witnesses have been recorded which gives an indication to the kind of treatment the victims of the offence have been meted out.

322.2 Moreover, instead of conducting investigation in the right direction by recording statements of eye witnesses, it appears that the assignee officers mostly spent their time in recording statements regarding the loss and damages sustained by the victims and in drawing panchnamas of the houses of the affected persons to assess the damage caused to them, which is not even the function of the investigating agency because all claims of damage and loss are to be computed by the Collector's officer. Therefore, in effect and substance the investigating agency had taken upon itself the duties of the Collectorate and had neglected to perform its duties by not conducting proper investigation. Thus, precious

time has been lost in this process. In the first place the police authorities were hard pressed for time as they were required to maintain law and order and considering the number of incidents that had taken place in the city, their hands were full. However, instead of concentrating on the investigation, time has been squandered away in drawing panchnamas which hardly have any significance insofar as the prosecution case is concerned. Thus, it appears that the police were reluctant to investigate into the offence and have deliberately wasted their time in this manner.

322.3 Apart from the fact that the statements of eyewitnesses have not been recorded promptly, even the panchnamas drawn during the course of investigation have been made perfunctorily. The main inquest panchnama Exhibit-622 refers to a place called Ramila Sales; however, there is nothing on record to indicate where this place is. Moreover, there is no proper correlation between the dead bodies referred to in the panchnama and the bodies of which postmortem has been carried out.

322.4 Insofar as the scene of offence panchnama is concerned, which though it is a detailed panchnama running into four parts, does not reflect the name of the concerned chawl and does not depict a correct picture of the scene of offence. Consequently, a subsequent panchnama came to be drawn of a limited part of the scene of offence, which to some extent describes such area properly. A video recording of the scene of offence has been carried out; however, the same has also been done in a perfunctory manner. The camera does not move smoothly to give a proper idea of the scene of offence,

but jumps from one place to the other. In the video recording, one can hear voices in the background saying that it will become dark and they have yet to cover half a kilometre and someone else is heard to say that, *"They are hurrying us, but actually if the videography was started at 2:00 or 3:00 p.m....."* and the voice fades away. Thus, it is evident that even while the video recording was being carried out, the concerned persons were aware that it ought to have been done earlier in the day. In the opinion of the court if it was not possible to conclude the video recording on that day, nothing prevented the Investigating Officer from continuing with the recording on the next day, as had been done while drawing the scene of offence panchnama instead of hurriedly recording the scene of offence. However, the Investigating Officer being a reluctant investigator, has just investigated for namesake and has put up a show of investigation being done and video recording being carried out, while at the same time ensuring that the same is not done properly by starting it late so that in a hurry, most part of the scene of offence is not filmed and what is filmed is also done in such a perfunctory manner that it is very difficult to understand the topography of the area. Anyway, something is better than nothing, and if not much, the video recording at least gives an insight of the kind of damage that has been done by the mobs. The manner in which the houses have been damaged gives a clear indication that some extraneous inflammable material has been used to burn down the houses. In some cases, the extent to which the houses have been destroyed lends credibility to the testimonies of the witnesses that gas cylinders were used to blow up their houses.

322.5 A perusal of the testimony of PW 307 Sukhdevsinh Sardarsinh Chudasama, the Investigating Officer who carried out the previous investigation gives an idea about the slipshod manner in which the investigation was conducted by him. In his cross-examination the witness has admitted that he had not sent the cans recovered from the accused to the FSL for testing, for the reason that it is not necessary in every case to send the muddamal to the FSL. The witness has stated that he has not obtained any scientific opinion regarding the contents of the liquid in the cans and has stated that the panchas of the panchnama had been asked to smell the can and he had ascertained that the smell of kerosene was emanating, which is mentioned in the panchnama. The Investigating Officer has also denied that in every case where the muddamal is seized, it is necessary to affix the slips bearing the signatures of the panchas. He has admitted that he had not found it necessary to obtain the signatures of the panchas on the slips affixed on the swords, dharias and cans which he has seized during the course of his investigation and has denied that in every case where the muddamal is seized, it is necessary to affix the slips bearing the signatures of the panchas. Thus, the basic procedure which is required to be followed has been done away with.

322.6 In case of the incident of Hasanali, the brother of PW 135 Hussainabanu, who was burnt to death on a cot in the courtyard of Jadikhala's house, despite the fact that the case papers of the first information report registered vide Naroda Police Station I C.R. No.238/02 which had been lodged in connection with this incident, and was subsequently merged with Naroda Police Station I C.R.No.100/02, contain a

newspaper clipping showing the photograph of a dead body lying on a cot in the courtyard of the house of Jadikhala, the same has not been brought on the record of this case, nor have any efforts been made to get an original copy of the photograph. Surprisingly, though coloured photographs of the burnt body lying on the cot in Jadikhala's courtyard, even with a policeman in the background, are available on the internet, it is only the investigating agencies who seem to be blissfully unaware of the same or have deliberately not brought them on record. Moreover, no proper efforts were made to establish the connection between the mobile phone recovered by Hussainabanu from the scene of offence and accused Ashok Sindhi. No proper panchnama was drawn at the time when the mobile phone was handed over to the Police Commissioner and thereafter to Shri M.K. Tandon, nor were these two police officers examined as witnesses, and thereby an important link was not established. Insofar as the mobile phone is concerned, it was handed over to the then Police Commissioner Shri P.C. Pande; however, when even he did not think it fit to seize the same in accordance with law by drawing a panchnama in that regard and thereby botched the investigation, what can one expect of the subordinate officers!

322.7 Another photograph available on the internet is of an oil tanker reversed into the Noorani Masjid, which also finds mention in the scene of offence panchnama but is not available either among the photographs on record or in the video recording of the scene of offence. Surprisingly though the police witnesses were present on the road throughout the day and there was a police point at the Noorani Masjid, none of them speak about the tanker being rammed into the Noorani

Masjid. Since it is not possible that the police witnesses could not have noticed this incident, one wonders why they have all thought it fit to maintain silence in this regard. Thus, while almost all the police witnesses present at the spot mention the TATA 407 incident where a Muslim youth drove the vehicle rashly, there is not even a whisper about a tanker being rammed into the Noorani Masjid by the Hindu mob.

XXIII INVESTIGATION BY THE SIT:

323. The Investigating Officer (SIT) has recorded statements of witnesses in blatant breach of the provisions of section 161 of the Code, inasmuch he has obtained signatures of the witnesses on such statements and more particularly on the statements of the police officers, which is clearly borne out from the testimonies of the witness and the police witnesses whose statements were recorded by him.

323.1 Section 161 of the Code provides for "Examination of witnesses by police" and inter alia lays down that any officer making an investigation under that Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Section 162 of the Code, bears the heading "*Statements to police not to be signed – Use of statements in evidence*". Sub-section (1) thereof, *inter alia*, provides that no statement made by any person to a police officer in the course of an investigation under the Chapter, shall, if reduced to writing, be signed by the person making it. Thus, section 162 of the Code expressly bars a statement recorded by the police being signed by the person making it. Despite such express provision in the Code,

the Investigating Officer has obtained signatures of the persons whose statements he had recorded on such statements. Even in case of high ranking police officers, such signatures have been obtained. One wonders whether the Investigating Officer (SIT) and such high ranking officers were not aware of these basic provisions of law.

323.2 Upon a query to the learned Special Public Prosecutor as to why such course of action was adopted, the response was that many allegations were being made against the Investigating Officer regarding not recording the statements correctly, thus, out of umpteen caution, their signatures were taken on their statements. In the opinion of this court, fear of such allegations being levelled, is no reason to commit breach of the specific provisions of the Code, more so, when such statements have been recorded by the Investigating Officer of the Special Investigation Team constituted under the orders of the Supreme Court for carrying out proper investigation into the offences. The police officers are expected to discharge their duties in accordance with law, and there can be no excuse from deviating therefrom, more so, when the Supreme Court had reposed faith in the SIT and entrusted the investigation of the case to it. The flagrant breach of the provisions of section 162 of the Code, therefore, cannot be countenanced.

323.3 Moreover, it is during the course of investigation by the SIT that the name of accused No.37 Mayaben Kodnani was revealed. From the evidence of the witnesses who have named Mayaben Kodnani, it emerges that many of them have referred to her having come in a white

Maruti Franti car. However, no efforts have been made to ascertain as to whether the said accused owned any white Maruti car at the relevant time. No investigation has been conducted to establish whether accused No.37 Mayaben Kodnani used to travel in a white Maruti car, nor has any exercise been undertaken to establish that accused No.62 Kirpalsingh Chhabra was her P.A. There are several other shortfalls in the investigation conducted by the SIT, reference to which has been made at the particular stage in the judgment.

XXIV EVIDENTIARY VALUE OF THE PREVIOUS INVESTIGATION:

324. Since the trial court has discarded the previous investigation carried out by the local police except for what has been termed by it as ministerial work, viz. drawing of panchnamas, photographs, videography etc., it would be necessary to discuss the same before entering into any discussion on the merits of the case.

324.1 The trial court in the impugned judgment has found that the police record of the statements recorded during the previous investigation under section 161 of the Code are stated to be unreliable by the learned advocates for the respective parties and that the learned Special Public Prosecutor had also begun with the remarks that since the previous investigation was not reliable and proper, there was need to constitute the SIT. Throughout the trial, the examination-in-chief was based on the statement recorded by

the SIT, if it was recorded for that witness. According to the trial court, both the sides had emphatically submitted that the entire police record of the statements is suspect and unreliable in this case. The trial court was of the opinion that considering the condition of the victims, much importance to non-mentioning of the names in the police statement prior to the SIT cannot be given. The trial court has found various defects in the investigation carried out by the first Investigating Officer Shri K.K. Mysorewala and has noted that he has not taken even elementary and routine steps and has totally avoided to do investigation altogether. The court, however, was of the opinion that in all such cases of negligence or inefficiency, one cannot be labeled to be malice (sic.) or any criminality. According to the trial court, by 1st March, 2002, most of the vital investigation should have been completed by the first Investigating Officer, but if the record is seen, the entire investigation was conducted in a sluggish manner by Shri K.K. Mysorewala. The trial court has observed that the first investigating agency wasted a lot of time right from 28.2.2002 to 8.3.2002 and even wasted available resources by not securing scientific evidence and carrying on investigation only for the purpose of doing so. The court has further recorded that Shri Mysorewala was never involved in the investigation. The trial court has noted that no evidence has been produced to show the genuineness of the firing claimed to have been done on the day of the incident and has further recorded that Shri Mysorewala during the questions put by the court, had simply shrugged his shoulders and had blamed the insufficiency of manpower. The trial court has noted that Shri Mysorewala was aware that bigwigs were present in the mob, but has not paid any heed to this fact while investigating the

crime. The trial court has found that the Jawannagar wall was demolished by the mob on that day due to lapses on the part of Shri K.K. Mysorewala who had not deployed any force to prevent any untoward incident at that entry point for the Muslim area. The trial court has found that it is an admitted position that no one was arrested from the site and was of the opinion that even if a single policeman had been alert and active, he could have at least arrested one person from the mob and if all those who were on bandobust would have at least arrested one rioter, then also, many miscreants from the violent mob could have been arrested from the site itself. The trial court has further found that the police had not resisted, opposed or hindered the violent mobs and had indirectly facilitated the people in the mob, inasmuch as the entry point of Muslim chawls near the gate of S.T. Workshop is such where if the police would have made a chain, then the mob could not have entered inside. The trial court has recorded the inept and inefficient handling by the first Investigating Officer resulted into total lawlessness prevailing on that day, which resulted into mass murders which has which has brought shame upon the entire nation and the secular feature of the Constitution of India. The trial court was of the view that at the initial stage of investigation, the opinion of the FSL should have been obtained regarding the probability of such occurrences below the water tank at the "U" shaped corner between Gopinath and Gangotri. The trial court has recorded several lacuna in the investigation and has further noted that if the accused had been arrested at the site, they could have been arrested with the weapons or the kerosene tins in their hands, and had the police been active and sincere on the day at the site of the offence, then the occurrences might not have taken place. The

trial court has noted that the panchnama of the scene of offence has been drawn after many hours and this delay destroys a lot of evidence. Though according to the police, patrolling duty was assigned, during the course of patrolling, no one had been arrested which clearly shows that the surveillance and vigilance of the police was extremely poor. The trial court has recorded that no attempt was made to arrange for a test identification parade; no attempt was made to call the fire brigade when there was so much fire all around and no attempt was made to arrest the accused whose names have been mentioned in the first information report; if all these faults, carelessness, inefficiency, ineptness is collectively seen, then, the record of this first Investigating Officer is not found dependable, fair and absolutely reliable. The trial court has found that the first investigation was full of lapses, lacking quickness, but it was not to prejudice of the accused, and hence, the accused cannot claim any benefit from it. The trial court has recorded that Shri K.K. Mysorewala had done his duty properly only after many Muslims were found dead at the water tank when he noticed that several Muslims were burnt alive at the site and took them for treatment at the Civil Hospital. The trial court has recorded that had he not taken timely action, the death toll of Muslims could have been higher. According to the trial court, the investigation carried out by Shri K.K. Mysorewala is mockery of the word 'investigation', but taking a balanced view, though prayed for by the victims, he should not be impleaded as accused in the case.

324.2 Considering the findings recorded by the trial court, it appears that the same are self-contradictory. The trial

court has also mixed up the inaction on the part of the concerned police officer in preventing the offence from being committed with the investigation subsequently carried out by Shri K.K. Mysorewala. Insofar as not taking proper steps for preventing the offence from being committed is concerned, the same is a different aspect and the investigation carried out subsequently is a different aspect and ought not to have been mixed up together.

324.3 From the evidence which has come on record, it is found that out of the witnesses who have implicated A-37 Mayaben Kodnani, PW 104 Mohammadsalim Mohammadhussain Shaikh has deposed that a police jeep came, which halted near the S.T. Workshop. Behind this jeep, Kishan Korani, Manoj Videowala and Murli Sindhi came. After a little while, a white Maruti Franti car came there. He saw Mayaben Kodnani in the car. She spoke to the above three accused and the police in an aggressive tone. Mayaben, the above three accused and the police gestured to the mob and called it back. Mayaben discussed something with the mob in an aggressive tone and left. PW 136 Bashirkhan Nanhekhan Pathan speaks about Mayaben coming in white car near a police vehicle which was parked near the S.T. Workshop and talked to the police, after which the police fired at the Muslims. PW 149 Faridabibi Abdulkadar Khalifa has deposed that K.K. Mysorewala was present at the S.T. Workshop with a Government Jeep, when Mayaben Kodnani came out of the mob and spoke to him. After talking with Mysorewala, Mayaben left, whereafter, the police and private firing commenced. Thus, the witnesses have stated regarding the presence of either K.K. Mysorewala or the police near the S.T. Workshop

and Mayaben Kodnani, either alighting from a car, or coming out of the mob, and talking to the police. The trial court, while believing the witnesses to be credible and reliable, has failed to consider that these very witnesses have also implicated the police. Nonetheless, the trial court has given a clean chit to the police and has observed that Shri K.K. Mysorewala should not be impleaded as an accused by taking a balanced view in the matter, overlooking the fact that taking the victims to the hospital after the riots had come to an end was only in the nature of a face saving exercise carried out by Shri Mysorewala and not a laudable act on his part. The fact that the victims were taken to the hospital, would not absolve Shri K.K. Mysorewala from his liability of not having taken proper steps for protecting the residents of the chawls from the mobs who had gathered on the road. The evidence on record clearly indicates that the police on the one hand did not permit the Muslims from the chawls to come out on the highway, but on the other hand facilitated the people in the mob in entering into the chawls and thereafter, turned a blind eye to the happenings in the chawls.

324.4 Insofar as the investigation carried out by Shri P.N. Barot, the second Investigating Officer who was in-charge from 8.3.2002 to 30.4.2002 is concerned, the trial court has found that he has recorded more statements of Hindus than Muslims; he has not carried out any proper investigation to ascertain what kind of inflammable substances had been thrown. Though all the complaints which were tagged along with I-C.R. No.100/2002 were lodged by Muslims, the statements of many Hindus had been recorded and the Investigating Officer had not shown any anxiety to record the

statements of the Muslims at the earliest and wasted precious time in recording the statements of Hindus. The trial court has recorded that the Investigating Officer had hardly done any active and result oriented investigation and has not taken any proper steps to collect the evidence of the occurrence.

324.5 As regards the third investigating agency, viz., Shri S.S. Chudasama and the other Investigating Officers who were in-charge of the investigation from time to time, the trial court has noted that Shri Chudasama was required to complete the investigation within a period of thirty four days and he prepared a large team of SIT Officers, including the Police Inspectors and Police Sub Inspectors. All these assignee officers went to the camps and without carrying out any investigation of the crime, simply made announcement and recorded statements of such persons who came in response to the said announcement. Hence, the entire investigation by the Crime Branch was more or less slipshod. The trial court has further noticed that some statements had been recorded in the presence of police officials whose signatures could not be identified by anyone. At times, even the constables had made the endorsements "before me", and hence, such statements appear to have been recorded by the constables, though on paper the investigation was assigned to Assistant Police Commissioner, considering the gravity of the offence. The trial court has found that the entire investigation was carried out mechanically and was of the view that absence of malice or mala fides against the victims is not the only criteria, but the investigation should have been fair, unbiased, sensitive, with all seriousness, quick, effective and able to logically connect the accused with the crime. Most of these qualities were sadly

lacking in all the three Investigating Officers.

324.6 The trial court has noted that the investigation done before the SIT was constituted does not inspire confidence of the court as far as the fairness, faithfulness of the record etc. is concerned which could be in an anxiety to see to it that certain bigwigs should not be involved in the crime. The trial court has thereafter referred to the testimony of PW-236 who had stated that the police had refused to record the name of Mayaben as an accused. The trial court has referred to various police statements and certain discrepancies in such statements in recording the name and age etc. of the witness. After referring to various instances wherein such discrepancies have been found, the trial court has recorded thus:

“(e-16) How it can be believed that in all other cases also the statements reflect only genuine account of what the witnesses spoke, as even many of the PWs have disowned much part of their so called statement hence, the only just and proper remedy to the situation is to hold the record of the statements of the previous investigation even of Investigating Officer No.II to be not reliable.

(e-17) In some of the statements, it seems that the description given by the PW was heard hurriedly and halfheartedly and reduced into writing at leisure by the police. It can safely be inferred that the police might not have even invested time and waited for the PW to narrate his entire tale. Therefore, the say of some of the PWs that they have shown and stated on involvement of many accused but police has written names of some of them, is absolutely probable and credible.”

324.7 After opining as above, the trial court has, thereafter, recorded that it cannot forget to mention the

situation prevalent then when a number of cases of serious offences were registered on the books and serious incidents were happening every minute, serious law and order threat was faced by the police. It was practically impossible for police to elicit all detailed information from the victims at that time. It is obvious that in such a situation whatever the strength of police force is there, it is found less looking to the workload. Hence, it is improper and unjust to impute any malice or mala fide to police or any bias for Muslims.

324.8 These findings of the trial court are self-contradictory, inasmuch as on one hand, the trial court finds that the concerned Investigating Officers have not paid proper attention to the investigation and most of the statements have been recorded through the assignee officers. That attempts have been made to create a bulk of the record rather than to properly investigate the case. The trial court has also found that had the police thought it fit, they could have arrested people at the site and could have prevented the riots from having escalated to this extent; and that no proper steps were taken to ensure that the investigation is carried out properly, despite which, the trial court finds that it is improper and unjust to impute any malice or mala fides to the police or any bias against the Muslims.

324.9 The evidence on record clearly indicates that till the mobs of Hindus were resorting to vandalism and arson on the national highway, the police, except for attempting to disperse them, made no serious efforts to see that the crowds are actually dispersed. It was only when the mobs attempted to enter inside the chawls and the Muslim residents of the

chawls, came out at the corner of the S.T. Workshop and resisted the mob, that the police firing was ordered and though the aggressors were the Hindus, it was the Muslims who were the victims of the police firing. One Hindu and one Muslim died in the police firing and several Muslims were injured. Though several persons were injured in the police firing, no attempts were made by the police to take them to the hospital, despite a specific request having been made on behalf of the Muslims to take the victims to the hospital. As against this, though it was the Hindu mob which was the aggressor, when the Hindus came forward to complain that two Hindus had been dragged inside the chawls, Shri K.K. Mysorewala made it a point to comb the chawls together with his staff to ascertain this fact, however, no steps whatsoever were taken by the police officers and the police personnel posted there to come to the rescue of the Muslim residents when they were attacked by the mobs. Though not a single person was arrested on the road despite curfew having been clamped, Shri K.K. Mysorewala immediately followed the Tata 407 vehicle which was driven by a Muslim youth and he immediately seized the vehicle and brought the driver to the police station. Thus, while all action has been taken against the Muslims, there was no will to take any action against Hindus, who, in fact, were the aggressors at the site. Despite such conduct on the part of the police, it is difficult to fathom as to how the trial court has formed the opinion that no malice or mala fides can be attributed to the police.

324.10 The trial court, after recording the shortcomings in the previous investigation, has come to the conclusion that the contradictions in the statements of the concerned

eyewitnesses recorded by the previous investigating agency, as compared with the statements recorded by the SIT, should not be allowed to affect the credibility of those witnesses because it is clear that all previous Investigating Officers did not faithfully record the statements of those witnesses. Such finding of the trial court is very vague, without considering the actual statement of each witness as recorded by different Investigating Officers and assignee officers. When every individual statement is considered, one finds that certain statements have been recorded mechanically as per the whims of the concerned Investigating Officer/assignee officer which deserve to be discarded and ignored; however, not all statements have been recorded in this manner and many statements are true to the record and give a proper version of what the witness has stated, including the names of the accused. While the trial court has stated that the police may have attempted to prevent the names of certain bigwigs from coming on the record, the trial court has not mentioned as to actually who these bigwigs are and the reason for it coming to this conclusion. From the record of the case, the only bigwig amongst the accused is Mayaben Kodnani (A-37), who was an M.L.A. at the time when the incident took place and a Minister when she came to be arraigned as an accused after the SIT came into the picture. Insofar as the remaining accused are concerned, it is not clear as to whom the trial court has referred to as being a bigwig, inasmuch as the names of most of the accused have been recorded by the police in the statements of the witnesses.

324.11 Besides, the findings with regard to the kind of investigation carried out have been recorded prior to the

appreciation of the evidence of the individual witnesses, therefore, the trial court could not have blindly relied upon the statement of PW-236 who had stated that though he had given the name of Mayaben before the Naroda Police Station, they had not recorded the same without first discussing regarding the credibility of the concerned witness as to whether he comes across as a credible and reliable witness.

324.12 The trial court, while coming to the conclusion that the previous statements have to be ignored and it is only the statements recorded by the SIT that should be taken into consideration, has not given any legal basis for such conclusion. It is settled legal position that it is the first version which comes on record which is most significant. Therefore, for the purpose of discarding the statements recorded by the police, a specific finding is required to be given qua the individual statement recorded by the concerned Investigating Officer/assignee officer. No general finding could have been given that all statements recorded by the Investigating Officers/assignee officer have not been properly recorded. It is only those statements which are found to have been not properly recorded which could have been discarded or accepted to the extent the same have been recorded correctly. However, all the statements recorded under section 161 of the Code by the previous investigating agencies could not have been discarded and ignored, as has been done by the trial court.

324.13 Besides, one cannot lose sight of the fact that the SIT came into picture in the year 2008, after a period of more than six years. In the intervening period, various agencies

came into the picture, like Non-Government Organizations and other organizations which had helped the witnesses. Many of the witnesses who have come forth before the SIT have not sustained any injuries or suffered any loss of life. Therefore, merely because the witnesses come forth and say that their statements were not recorded correctly, is no reason to discard the earlier statements, more so, when majority of the witnesses have stated that they were not aware of the contents of the statements recorded by the police. If the witnesses were not aware of the contents of the statements recorded by the police, there was no question of them being dissatisfied about the investigation as they would have no means of knowing that the names of the accused given by them were not recorded by the police. Therefore, when several agencies have come into play after the previous investigation was carried out, it would be very hazardous to rely upon the statements of the witnesses recorded after six and a half years by the SIT and discarding the previous statements recorded by the police.

324.14 While it may be true that the previous investigation may be defective or that the statements may not have been correctly recorded, however, the damage done is such which cannot be undone merely by recording the statements at a subsequent stage, which are different from the statements recorded previously, without any further investigation to corroborate the version of the witnesses.

324.15 From the evidence of the witnesses even in terms of the statements recorded by the SIT, all that most of them say is that they had seen a particular accused in the mob without

attributing any overt act to them. Considering the overall evidence which has come on record as well as the investigation carried out by the SIT, which too, does not inspire much confidence for the reasons that shall be recorded hereafter, the court is of the view that the prior investigation carried out by the police and the statements recorded by them cannot be discarded and ignored while considering the credibility of a witness. It would depend upon the manner in which such statement was recorded as to whether or not the same should be considered for the purpose of bringing out the omissions and contradictions in the testimony of the witness. This court, therefore, is not in agreement with the view taken by the trial court that all the statements of witnesses recorded under section 161 of the Code by the investigating agencies prior to the SIT should not be taken into consideration for the purpose of bringing out the omissions and contradictions in the testimony of the concerned witness. Each statement recorded by the investigating agency has to be considered on its own merits and all the statements recorded by the previous investigating agency cannot be discarded and ignored in this manner. The court has, therefore, appreciated the evidence of the witnesses in the light of the manner in which the individual statement of the witness was recorded. Where the court has found that the statement was not recorded truthfully, the same has been ignored. But in every case, the statements recorded by the previous investigating agency have not been discarded and ignored.

XXV RECORDING OF EVIDENCE BY THE TRIAL COURT AND THE QUALITY OF PROSECUTION BEFORE THE TRIAL COURT:

325. Since both these issues are closely intertwined, it is deemed fit to deal with them together.

325.1 In this case, the testimonies of the witnesses at times run into more than a hundred pages. On a close reading of the depositions it has been found that a considerable portion of the evidence so recorded, is inadmissible in evidence. It appears that during the course of recording of the evidence, the trial court has permitted the learned counsel for the defence to put almost any question to the accused, whether or not it was permissible in law.

325.2 At this stage it may be apposite to refer to certain decisions rendered in the context of the provisions of section 162 of the Code.

325.3 In ***Raghunath Krishna Mujumale and others v. the State of Maharashtra***, 1987 (2) CRIMES 454, a Division Bench of the Bombay High Court held thus:

“17. According to Shri More, the complainant has not referred to this particular aspect even in her statement recorded by the police later on. Similar omission is attributed to Laxmibai also in her police statement. We do not agree with Shri More, or the Sessions Judge that these omissions actually exist in the aforesaid statements of the two witnesses. In her Police Statement complainant Indubai specifically states, 'Baban, Raghunath and Leelabai (appellants Nos. 3, 1 and 4) and so Popat (appellant No. 2) came running towards the well

with sticks and iron bars.' So also after naming all the four appellants, Laxmibai has stated in her police statement that appellant No. 1 had a stick in his hands and the others had iron bars with them. Had the learned Judge taken due care, he would have seen that these so-called omissions did not amount to contradictions as contemplated by the Explanation to section 162 Cr.P.C. As our experience goes, quite a few Magistrates and even Sessions Judges are not fully alive to the implications of this provision and admit a number of omissions which do not amount to contradictions. We would discuss the correct legal position in this regard at some length.

18. *The Explanation to section 162 Cr.P.C. runs: 'An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to a contradiction, if the same appears to be significant and otherwise relevant, having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.'*

In order attract this provision, an omission must in the first place appear to be 'significant'. Then it must be otherwise relevant, having regard to the context in which it occurs. Lastly any question whether an omission amounts contradiction in the particular context has to be decided by the trial Judge as a question of fact on a plain reading of the Explanation. It is evident that it is only when all these requirements are fulfilled, that the omission can be treated as a contradiction and allowed to be proved.

19. *To appreciate why this Explanation was incorporated in the Criminal Procedure Code of 1973 we have to go to Tahsildar Singh's case, AIR 1959 SC 1012. Before this decision, there was a difference of opinion amongst the High Courts in the country, whether an omission amounts to a contradiction, merely because it is a material one. Some High Courts took the view that if the omission was material, it amounted to a contradiction and could be brought on the record as a contradiction. Other High Courts took a strict view that an omission, howsoever material, could never amount to a contradiction. In*

Tahsildar Singh, the Supreme Court by a majority of 4 to 1 endorsed the latter view and held that an omission, unless by necessary implication can be deemed to be part of an express statement, cannot be treated as a contradiction. The Supreme Court pointed out three possible situations in which an omission could by fiction amount to a contradiction. These situations are listed below with illustrations:

“(i) when a recital is necessarily implied from the recital or recitals found in the statement: illustration: in the recorded statement before the police the witness states that he saw. A stabbing B at a particular point of time, but in the witness-box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word ' only can be implied i.e. the witness saw A only stabbing B;

(ii) a negative aspect of a positive recital in a statement: illustration in the recorded statement before the police the witness says that a dark man stabbed B, but in the witness-box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexion man but also that he was not of fair complexion; and

(iii) when the statement before the police and that before the Court cannot stand together: illustration : the witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e., at the same point of time, towards the northern lane, as well as towards the southern lane, if one statement is true, the other must necessarily be false.”

20. The consequence of this decision was that unless an omission fell under one or other of these three descriptions, it could not be brought, on record, although it was material in itself. To mollify the rigour of this interpretation and put the law on an even keel, the Explanation was added to section 162. Now the materiality of an omission decides whether it amounts or

does not amount to a contradiction. All the same, in order to decide the materiality, even now the Court has to be satisfied that the omission is significant, and that it is otherwise relevant having regard to the context in which it occurs. In other words, if an omission is insignificant it simply does not amount to a contradiction and should just not be allowed to be brought on record. If and only if a particular omission appears to the trial Judge to be 'significant' and otherwise relevant in the context in which it appears, should he allow it to be proved. Only thereafter the question will arise at the final stage of the appreciation of the evidence, as to what extent, such significant omission casts doubt on the credibility of the witness. This then would be the approach while dealing with omission in police statements."

325.4 In **Heramba Lal Ghosh v. Emperor, [1945]** *Indian Law Reports* 326, a Division Bench of the Calcutta High Court observed thus:

"The selection of the parts of the recorded statement, which require to be put to the investigating officer while he is in the witness-box, is a matter which necessitates care on the part of the defence lawyer and vigilance on the part of the Judge. To put too little might be unfair to the witness and to put too much might prejudice the accused. Of course, in practice the selection must be done when the witness is under cross-examination. Later, when the investigating officer is in the witness-box, and is being cross-examined by the defence lawyer, he should be allowed to give evidence with regard to those portions of the recorded statements to which the attention of the witness has been called."

325.5 The trial court while considering the question of "Number of omissions and contradictions" has recorded that in temptation to create more numbers of omissions, the defence kept on adding what in law can never be termed to be omission. In the opinion of this court, if the trial court was itself of the opinion that something which was put to the witness

was not an omission or a material contradiction, it was at that stage itself that it ought to have disallowed such questions or suggestions from being put to the witness. Section 162 of the Code is clear and ambiguous; no part of the statement recorded under section 161 of the Code can be used for any purpose. The only exception is that it can be used for contradicting a witness in the manner provided under section 145 of the Evidence Act. Therefore, parts of the statements recorded under section 161 of the Code, which are not referred to for the purpose of contradicting a witness ought not to have been brought on record by the trial court. It has been noticed that during the course of cross-examination, various extracts of the statements under section 161 of the Code were put to the witnesses without suggesting any contradictions and the omissions and contradictions are put to the witness at a much later stage. Moreover, the defence has been permitted to contradict the witness as to all the facts stated in the examination-in-chief, even without any material contradiction being brought out. Had the trial court ensured that the evidence is recorded strictly in compliance with the provisions of section 162 of the Code read with section 145 of the Evidence Act, the evidence would not have been so lengthy. The record of the case has been unnecessarily burdened with a considerable portion of the evidence of many witnesses being inadmissible in evidence. It has been noticed that at the initial stage an objection was raised by the learned Special Public Prosecutor against permitting certain omissions to be put to the witness, which was turned down by the trial court on the ground that it is a matter of appreciation of the evidence. Unfortunately, the matter rested at that and the learned Special Public Prosecutor gave in and subsequently permitted

such inadmissible evidence to come on record without raising any objection. Not only that, the learned Assistant Special Public Prosecutors had actively participated in bringing such inadmissible evidence on record. It was shocking to note that when the learned counsel for the defence was putting omissions to a witness and had not referred to a particular paragraph of the examination-in-chief of the witness as an omission, it was the learned Assistant Special Public Prosecutor who pointed out that there was an omission even qua that paragraph. In such a situation, the court wondered whether there was any prosecution at all.

325.6 It may be noted that during the course of the cross-examination of several witnesses, his/her previous statement came to be shown to such witness and the contents thereof were brought on record, without seeking to contradict the witness qua any part of his/her primary statement. First, a question was put to the witness, and thereafter, he/she was sought to be contradicted by the statement recorded by the investigating agency qua what was elicited in the cross-examination. It appears that during the course of recording the testimonies of the witnesses, both the bar and the bench have adopted the path of least confrontation: the trial court, to avoid confrontation with the advocates, and the advocates, to avoid confrontation with the court. This escapist mentality on the part of both, to avoid trouble, rather than strictly follow the path of law, has resulted in delaying the matter and volumes of unnecessary and inadmissible evidence coming on record. This pernicious practice, which has been seen mainly in cases which are under the scrutiny of the media, needs to be

urgently resolved.

325.7 It has also been found that in case of some witnesses, though they have admitted the omissions as to their previous statements, the concerned assignee officer/Investigating Officer has still been examined to prove such omissions. It is only when a witness denies any omission or contradiction as to his previous statement that such omission or contradiction is required to be proved through the testimony of the Investigating Officer, but when the witness has already admitted the omissions, there was no question of proving such omissions through the testimony of the Investigating Officer. It, however, appears that all these aspects have been thrown to the winds and the testimonies of the witnesses are recorded perfunctorily without adherence to legal principles as well as to facts. It appears that the testimonies of the witnesses have been recorded at leisure as the prosecution did not object to such unnecessary cross-examination.

325.8 Another aspect of the matter is that when several statements of a witness are recorded, the subsequent statements are further statements wherein the witness would normally state what he or she wants to say in addition to what has already been stated by him or her in the previous statement. Therefore, non-mentioning what has already been stated in a previous statement cannot be said to be an omission or contradiction qua the subsequent statement. Despite this clear legal position, during the course of the cross-examination of the witnesses, the learned counsel for the

defence have sought to bring out omissions and contradictions qua subsequent statements, even though there is no such omission or contradiction in the previous statement, thereby creating a lot of confusion and unnecessarily increasing the volume of the evidence. At this stage it was the duty of the prosecution to object to such questions being asked, however, (for reasons not far to seek, presumably because the remuneration of the prosecutors is fixed on a per day basis), it appears that the learned Special Public Prosecutor and the Assistant Special Public Prosecutors have not thought it fit to curtail the cross-examination to only that part which is admissible in evidence.

325.9 Similarly in paragraph 11(5) of the judgement the trial court has referred to the working method for the trial of giving complete liberty to the defence..... In the opinion of this court, whether the trial is of a sensitive riot case or an ordinary case, the recording of evidence has to be in accordance with law, and it is only those questions which are permissible in law that can be allowed to be put to the witness. The defence cannot be given complete liberty to bring on record inadmissible evidence as has been done in the present case.

325.10 Though the order passed by the trial court on the application made by the applicant under section 311 of the Code is not subject matter of challenge before this court, a copy thereof is produced along with the application made by accused No.37 under section 391 of the Code. A disturbing aspect which emerges on a reading of the said order is that the

court in paragraph (4) (i) of the order has observed thus: *“It needs a special note that the defence was permitted to cross-examine the witnesses even from the statement of the witnesses of the I.O. who have not been examined by the prosecution and that the defence was given a free-hand to use any material produced by the prosecution whether the prosecution then after relies on it or not.”* A perusal of the testimony of Shri V.V. Chaudhary shows that despite the fact that he had not recorded the statements of the above persons, extracts of their statements recorded under section 161 of the Code have been brought on record, in complete violation of the provisions of section 162 of the Code which completely bar the use of any statement recorded under section 161 of the Code except to the extent provided there under, viz. to contradict a witness in the manner provided under section 145 of the Evidence Act. Accordingly, the Investigating Officer can only prove that part of the statement by which the witness is contradicted. It goes without saying, therefore, that if a witness has not been examined by the prosecution, the question of the Investigating Officer proving the statement of such witness would not arise. The course permitted to be adopted by the trial court therefore is not legally permissible. The learned counsel for the applicant has relied upon that part of the evidence of the said Investigating Officer, whereby he has admitted the statements recorded under section 161 of the Code by another Investigating Officer in another case, of persons who are not examined as witnesses in the present case.

325.11 At this juncture it may be germane to refer to the following extract from the decision of the Bombay High Court in **Raghnath Krishna Mujumale and others v. the State of Maharashtra**, (supra) which aptly describes the situation in the present case:

“21. We would like to stress that Public Prosecutors also owe a duty to trial courts in this regard, to raise legitimate objection to the admission of insignificant or otherwise irrelevant omissions. Most often than not, the job is left exclusively to the trial Judge who may also-consciously or unconsciously be tempted to choose the path of least resistance by admitting all sorts of omissions on record. Needless to point out, such expedients often cause miscarriage of justice, apart from being against the provisions of law. We would also like to advert to the last part of the proviso to section 162(1) Cr.P.C. which empowers a Prosecutor to use any part of the police statement in the re-examination of a witness, for the purpose of explaining any matter brought forth by the defence in cross-examination by providing a contradiction. It is worthwhile to reproduce the proviso in full, with emphasis on the concluding portion.

“Provided that when any witness called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.”

22. We have seldom come across any case in which this salutary provision has been availed of by a Prosecutor, in order to restore the right perspective to a contradiction brought forth in the cross-examination of a prosecution witness. Obviously the sense in which the Court reads the testimony of such a witness, often gets distorted. At

times, this may jeopardise the course of justice-particularly, where the contradiction is in the form of an omission. Such occasions might be rare. But then this palliative would not justify rendering the wholesome provision a dead letter. We hope the Prosecutors in trial Courts shall practise more alertness while dealing with omission and contribute their due share in sound dispensation of justice."

325.12 Another aspect of the matter is that the trial court while recording the evidence of cross-examination of the witnesses in respect of their previous statements, has made elaborate notes below recording whether or not the witness had in fact stated such fact in the previous statement, without waiting for the contradiction to be proved through the testimony of the concerned police officer who recorded such statement. At times, when the note brings out the correct nature of the contradiction, the same is justified. Otherwise it was not permissible for the trial court to take into consideration the previous statement without the concerned Investigating Officer having proved the contradictions. The trial court has commented that it has adopted this course of action considering the nature of the case. In the opinion of this court, the principles of the Evidence Act apply equally to small and big cases and ordinary and sensitive cases and should be strictly adhered to.

325.13 Another notable aspect of the matter, which strictly speaking does not relate to the recording of evidence, but still needs to be mentioned, is that the trial court while considering the complicity of the accused has taken into consideration inadmissible evidence like complaint applications forming part of the C-Summaries filed by the investigating agency, despite

observing that these complaints were neither investigated nor tried before the court and hence the defence had not got any opportunity to cross-examine those complainants. The trial court has recorded that it is only after marshalling all the available evidences on record against the accused, when the conscience of the court was satisfied that the guilt of the accused stands proved beyond all reasonable doubts, this circumstance of mention of the name of the accused in the complaints, lying in the record of 'C-Summary', has been called into aid. In the opinion of this court, when the record of the 'C-Summaries' had not been proved in accordance with law, and it was not even brought on record as to who had recorded the complaints which formed part of the C-Summaries, the trial court was not justified in relying upon such inadmissible evidence considering the mention of a name as a circumstance. For consideration of any evidence, whether weak or strong, while determining the complicity of an accused, such evidence has to be admissible in nature. The trial court was, therefore, not justified in taking into consideration inadmissible evidence.

325.14 Insofar as the nature of prosecution is concerned, as noticed earlier, there are various lacunae in the manner in which the matter has been prosecuted before the trial court. Apart from the fact that the learned Special Public Prosecutor has not objected to inadmissible questions being put to the witnesses, important eye-witnesses who had named the accused in their previous statements recorded by the police have been dropped and a large number of witnesses who had not named any accused have been examined.

325.15 The most important witnesses who have not been examined by the prosecution before the trial court are Tarun Tejpal and or Harvinder Baveja from Tehelka to prove that the CDs and DVDs seized by the CBI, in which the sting operation was copied, had been copied from the laptop submitted by PW 322 Ashish Khetan. In view of this important link not being established, the connection between the CDs/DVDs and the recording done by Ashish Khetan could not be established. To make matters worse, even the CDs and DVDs, which contained important electronic documentary evidence insofar as the prosecution is concerned, were not proved in accordance with the provisions of the Evidence Act, and no steps were taken by the prosecution to bring them on record. Had it not been for the trial court passing an order to produce the CDs/DVDs through a production witness, the same would not have been found on the record of the case even in the form of muddamal. Of course the bringing of such CDs/DVDs on record in this manner is of no avail to the prosecution, inasmuch as, unless the contents of the electronic record are proved, the CDs/DVDs are not admissible in evidence and cannot be looked into. Thus, a large part of the evidence of the sting operation has been rendered useless as it was not proved in accordance with law.

325.16 In the incident relating to the death of Hasanali, his sister PW 135 Hussainabanu had recovered a mobile phone of an accused from the scene of offence which came to be handed over to the Police Commissioner Mr. P. C. Pande, who in turn had handed it over to Mr. M. K. Tandon. However, neither of the police officers has been examined as witnesses. While Mr. P.C. Pande has not even been cited as a witness and

Mr. M.K. Tandon, though cited as a witness, has been dropped to avoid repetition of evidence. From the evidence of the witnesses, it is manifest that many witnesses who are not witnesses to any of the incidents have been examined, however, unfortunately an important witness like Shri Tandon, whom it was absolutely necessary to examine to prove the chain of events has been dropped by the prosecution. To make matters worse, no inquest panchnama of the dead body of Hasan Ali has been pointed out to the trial court during the course of trial to show that the dead body of Hasan Ali was recovered from an upside down cot. It may be noted that an inquest panchnama Exhibit 402 is found in the case papers, which has been brought on record at the instance of the defence. The panchnama has been drawn on 2.3.2002 at 16:00 hours. The said panchnama is of the corpse of a male person lying in the compound of the last house in lane No.4 of Hussainnagar. As per the panchnama, a dead body is lying in the open compound of a house and the description of the dead body is given. This panchnama clearly is the inquest panchnama of deceased Hasan Ali; however, this fact has not been brought to the notice of the trial court. Before this court also, the learned counsel for the appellants had asserted that no dead body has been recovered from Jadi Khala's house, which has been tied to an upside down cot. Even at that time, the learned Special Public Prosecutor assisted by the learned Assistant Special Public Prosecutor who had conducted the case before the trial court, was not in a position to point out to the court that in fact an inquest panchnama had been drawn, despite the fact that such a panchnama in fact existed on the record. It is only when the court, on a perusal of the case papers, and the inquest panchnamas, noticed that there was

an inquest panchnama which matched with the description with Hasan Ali's incident, and the same was pointed out to the learned counsel for the respective parties, that the learned counsel became aware of the existence of such a panchnama. This reflects the sorry state of affairs as regards the manner in which the entire case was prosecuted before the trial court and also reflects upon the perfunctory manner in which the SIT has prosecuted the case.

325.17 At this juncture reference may be made to the decision of the Supreme Court in **NHRC v. State of Gujarat**, (2009) 6 SCC 767, wherein the court had issued various directions in connection with the investigation and conduct of trial in cases relating to riots that took place in the aftermath of the Godhra incident. Insofar as appointment of Public Prosecutors is concerned, the Supreme Court directed thus:

“(v) Experienced lawyers familiar with the conduct of criminal trials are to be appointed as Public Prosecutors. In the facts and circumstances of the present case, such Public Prosecutors shall be appointed in consultation with the Chairman of SIT. The suggestions of the State Government indicate acceptance of this proposal. It shall be open to the Chairman of SIT to seek change of any Public Prosecutor so appointed if any deficiency in performance is noticed. If it appears that a trial is not proceeding as it should, and the Chairman of SIT is satisfied that the situation calls for a change of the Public Prosecutor or the appointment of an Additional Public Prosecutor, to either assist or lead the existing Public Prosecutor, he may make a request to this effect to the Advocate General of the State, who shall take appropriate action in light of the recommendation by SIT.”

325.18 Since the appointments of the learned Special Public Prosecutor as well as the learned Assistant Special Public Prosecutors have been made pursuant to the above directions of the Supreme Court in consultation with the Chairman of the SIT, it can be safely presumed that they are all experienced lawyers familiar with the conduct of criminal trials. Therefore, it is difficult to believe that they would not be aware of the provisions of section 65B of Evidence Act regarding admissibility of electronic records. Consequently, it is unfathomable as to why no efforts were made to prove the information contained in the CDs and DVDs of the sting operation as envisaged in section 65B of the Act. If the learned Special Public Prosecutor and his Assistant Special Public Prosecutors were not aware of these basic provisions of law, the Chairman of the SIT has not taken care to ensure that the directions of the Supreme Court in connection with the appointment of Public Prosecutors are complied with in letter and spirit. If the learned Special Public Prosecutor was aware of the provisions of law, but still did not take any steps to ensure that the electronic record is proved in accordance with law, it would give rise to a belief that either for reasons best known to the learned Special Public Prosecutor, such evidence has deliberately not been proved or that the learned Special Public Prosecutor and Assistant Special Public Prosecutors have been grossly negligent in the discharge of their duties. As one stage the court was contemplating sending the matter for retrial, however, considering the volume of the case as well as the fact that delay in the trial has already adversely affected the prosecution case, it was thought fit in the interest of justice to decide the case on the basis of the available evidence.

XXVI SPECIFIC INCIDENTS REFERRED TO BY SEVERAL WITNESSES:**INCIDENT PERTAINING TO THE DEATH OF AYUB:**

326. Mr. Y. S. Lakhani, learned counsel for the appellants submitted that the incident pertaining to the death of Ayub is stated by multiple prosecution witnesses, namely, No.140, 143, 149, 156, 213, 224, 226 and 231. It was submitted that on a conjoint reading of the evidence given by the said witnesses pertaining to the said incident, there are multiple discrepancies and contradictions which cast a serious doubt over such witnesses being actual eyewitnesses to the incident.

326.1 Reference was made to the relevant parts of the testimonies of the above witnesses to submit that from the statements made by the witnesses in their depositions, it transpires that there is no consistency pertaining to the evidence on record about the said incident, more particularly, about the involvement of the accused, place of incident, manner of incident, etc. amongst the so-called eyewitnesses nor is the same supported by other evidence on record being the postmortem report of Ayub Exhibit-624 produced on record by medical witness PW-100, inquest report below Exhibit-622 as well as the panchnama of rickshaw below Exhibits 950 and 952.

326.2 Mr. B. B. Naik, learned counsel for the appellants submitted that so far as the incident of Ayub is

concerned, six prosecution witnesses have deposed in this regard before the court. There is great variance between the testimonies of these witnesses about the time of incident, place of incident and the accused involved in the incident.

326.3 As pointed out by the learned counsel for the appellants, in all, eight witnesses have referred to the incident relating to the death of Ayub.

(i) PW-140 Shakurbhai Tajubhai Shaikh has stated that at around 5 o'clock in the evening he had seen Ayub jump from the terrace and upon his jumping, Guddu Chhara had struck him with a dharia (scythe) and other persons had also hit Ayub with rods, and kerosene and petrol were sprinkled on him. Ayub was then put in a rickshaw belonging to the witness, which was lying near the S.R.P. Quarters and set ablaze.

In his cross-examination, a contradiction has been brought out which has been proved through the testimony of PW-278 Shri R. B. Joshi, the assignee officer, to the effect that this witness had stated that Ayub, son of Allabax who was residing in their chawl was burnt in a rickshaw and that since it was evening time, he could not see anybody's face.

Thus, this witness has been consistent insofar as the occurrence of the incident is concerned, he, however, has improved upon the original version and implicated Guddu in the incident.

(ii) PW-143 Dildar Umrao Saiyed had stated that after 5:30 to 6:00 while trying to flee, somebody struck him on his right leg

with a sword due to which, his leg was bruised. At that time, he went and sat on a nearby staircase. In this incident, out of fear, Ayub jumped from the terrace and both his legs were fractured. Dataniya, Bipin, Murli and Guddu lifted Ayub and put him in a rickshaw lying there and from a kerosene can brought by Tiniyo, they poured kerosene on the rickshaw and set it ablaze with Ayub. The witness has stated that this incident had taken place at around 6:15 to 6:30.

While appreciating the evidence of this witness, the court has taken note of the fact this version did not form part of this earlier statement and has come up for the first time before the SIT and therefore, it is doubtful whether the witness has seen the incident of Ayub.

(iii) PW-149 Faridabanu Abdulkadar Khalifa has deposed that after the breaking of the Jawannagar wall, a boy named Ayub upon seeing the mob near his house at Jawannagar, out of fear, jumped from the terrace and sustained injuries on both his legs. Ayub could not stand due to his injuries and the people in the mob lifted him and put him in a rickshaw and set it on fire. She had seen them burning Ayub alive with her own eyes.

From the cross-examination of this witness an omission has been brought out that in her statement dated 12.5.2002, she had not referred to this incident. Under the circumstances, reference to this incident at a subsequent stage is in the nature of improvement and cannot be relied upon.

(iv) PW-156 Abdulmajid Mahammadusman Shaikh has stated

that he does not remember the exact time; however, they had gone to a terrace of Gangotri Society in the afternoon. From the terrace of Gangotri Society he saw Guddu Chhara, Guddu Chhara's two brothers Tiniyo and others all of whom had swords, sticks and kerosene cans in their hands. They had attacked Ayub, Allabax's son. They put him in a rickshaw near the compound wall of the S.R.P. Quarters and near Abeda's house in the last lane of Jawannagar and had burnt him.

Insofar the statement dated 15.4.2002 of this witness is concerned, the omission is regarding not having stated about the spot where Ayub was set ablaze as well as the fact regarding Ayub being put in a rickshaw and burnt. However, there is no omission regarding the witness having stated that from the terrace of Gangotri Society he had seen Guddu Chhara and his two brothers, Tiniyo and others and all of them had swords, sticks, kerosene cans etc. in their hands and they had attacked Allabax's son Ayub. Therefore, this witness has in fact referred to the incident of Ayub having taken place after 3 o'clock in the afternoon. The witness has identified Guddu's brother accused No.10 in the court whereas accused No.1 Naresh had filed an exemption application and is deemed to have been identified. Therefore, through the testimony of this witness, the involvement of these two accused in the incident of killing Ayub is established.

(v) PW-213 Hasibkhan Achchankhan Pathan has deposed that at around 4:00 to 5:00 in the afternoon he ran and climbed a staircase and hid on the terrace. At this time, in the pushing and pulling that was going on on the terrace, a boy of their locality named Ayub fell down and injured his legs and he

could not walk. Upon his falling down somebody had made him sit in a rickshaw. Bipin Panchal, Guddu and Bhavanisingh came near his rickshaw where Ayub was sitting in the rickshaw and set the rickshaw on fire. He could see all this from the terrace where he was and he had witnessed all this with his own eyes.

While bringing on record the omissions and contradictions as to the statement dated 17.7.2002 of this witness, his attention has not been drawn to specific parts of his examination-in-chief, but a general suggestion has been made that none of the facts stated by him in his examination-in-chief had been stated in his statement dated 17.7.2002. Thus, the provisions of section 145 of the Evidence Act have not been strictly complied with. Subsequently, a specific omission in connection with this incident is sought to be proved through the testimony of the concerned assignee officer. Thus, the omission cannot be said to have been proved in accordance with law.

(vi) PW-224 Chandbhai Abdulrasid Shaikh has deposed that they were standing near the S.R.P. Quarters. The mob came to their chawls and started assaulting, hacking and burning. The mob burnt a boy named Ayub near the S.R.P. compound wall.

On behalf of the appellants it was submitted that the witness has stated that the mob had set Ayub on fire. It was submitted that if he had seen the incident, he would have stated two facts. Firstly, regarding Ayub jumping from the terrace and receiving injury and secondly, Ayub being set on fire in a rickshaw. It was submitted that these facts are prominently missing and, therefore, even if the witness says

so, for the first time before the court, he is not to be believed.

This court after considering the testimony of this witness has found that insofar as reference to the incident of a boy named Ayub being set ablaze near the S.R.P. compound wall is concerned, such fact was not mentioned by the witness in his previous statement, and hence, is a subsequent improvement.

(vii) PW-226 Salim Allabax Shaikh is the brother of deceased Ayub. He has stated that before his brother was set on fire, two to three persons had brought him and made him sit near a lane and he had come to know that his brother had sustained a fracture and upon coming to know where he was sitting, he took his younger brother and went and saw his elder brother Ayub and came to know that his legs had been fractured. He and his younger brother lifted his elder brother Ayub and seated him in a house where other people were also sitting. After they had seated his brother and mother at that place, Guddu had seen them and gone away. Thereafter, he took his younger brother and went to inquire about his family members who were sitting in Gangotri Society. When he went to Gangotri Society, he learnt that his elder brother had been burnt to death.

This court after appreciating the evidence of this witness, has found that the testimony of this witness with regard to the incident of Ayub does not inspire confidence inasmuch as majority of the witnesses have stated that after Ayub jumped/fell from the terrace, some of the accused had assaulted him, put him in a rickshaw and set him ablaze, whereas as per the version given by this witness, Ayub had

fractured his leg, thereafter he and his brother lifted him and took him to a house and subsequently the accused had burnt him. Even otherwise, this version given by this witness has come for the first time in his statement recorded by the SIT.

(viii) PW-231 Zulekhabibi Mohmmad Ayub Shaikh is the wife of deceased Ayub. She has deposed that when the mob entered her house and placed a gas cylinder and set it on fire, her husband was at home. At this time, her husband who was on the terrace of his house fell down from the terrace and fractured both his legs. Thereafter, in the evening she saw from the terrace that Guddu Chhara had pulled her husband and taken him to the last lane of Jawannagar where Bhavani was present. Guddu, Suresh and Bhavani hacked her husband and put him in a rickshaw and poured inflammable substance and set him ablaze.

To prove the omissions as to her previous statement recorded by the police, the defence has cross-examined the concerned assignee officer, who has admitted that the witness had stated the facts regarding her husband being burnt, but had not stated as to who had set him ablaze and had also not stated the names of the accused before him.

Insofar as this witness is concerned, the version given by this witness is contrary to the version given by the other witnesses, who have stated that the incident of Ayub falling down from the terrace and being assaulted and put in a rickshaw and burnt, took place sequentially at a time, whereas this witness has referred to her husband falling and after a considerable time thereafter, the above three persons having

brought him there and put him in a rickshaw and set him ablaze. The witness has admitted that in her police statement, she had stated that she does not know the persons who have killed her husband and cannot recognise them even if they are shown to her.

Nonetheless, on an overall appreciation of the evidence of this witness, it is found that she is consistent insofar as her husband being burnt to death near the S.R.P. Quarters compound wall is concerned.

326.4 FINDINGS: Thus, in respect of the manner in which Ayub died many versions have come forth in the testimonies of different witnesses. However, there is a common thread in the testimonies of majority of the witnesses, viz., that upon seeing the mob, out of fear, Ayub jumped from the terrace and fractured his legs and some people from the mob had assaulted him and put him in a rickshaw and poured inflammable substance on him and set him ablaze.

326.5 On behalf of the appellants it has been submitted that the witnesses have referred to a rickshaw in which the incident of Ayub is stated to have taken place; however, no such remnants of a human body are found in any rickshaw near the S.R.P. Quarters compound wall, nor is there any scientific investigation made by the prosecution to prove this fact beyond reasonable doubt.

326.6 At this juncture reference may be made to the Inquest Panchnama Exhibit 1333 (Volume 97) drawn at 11:30 on 1.3.2002. The said panchnama refers to an auto rickshaw

No.G.J.-7.V-9913 lying in front of bungalow No.32 of Gangotri Society. On the backseat of the auto rickshaw the dead body of a small male child aged about 10 years is lying. The dead body is lying upside down. On the body there is a soiled white bush shirt and blue shorts. Upon turning the dead body and examining it, it is badly burnt and the skin has peeled. Eyes are closed and saliva is coming out of his mouth, which is the dead body of an unknown child.

326.7 Thus, while there is no evidence on record to show that there was a dead body seen in a rickshaw near the S.R.P. compound wall, one dead body in a rickshaw has been found in front of a bungalow in Gangotri Society. Since during the course of investigation, it has not been established as to whether this rickshaw was standing anywhere near the S.R.P. Quarters compound wall and no correlation has been established between the body found from the rickshaw and the post mortem report, it is not possible to establish the connection with the dead body in the rickshaw with the incident of Ayub. Nonetheless, from the testimonies of the witnesses as discussed above, to the extent found credible, insofar as the occurrence of the incident is concerned, the same cannot be doubted inasmuch as majority of the witnesses are consistent in their version about Ayub having jumped from the terrace and injured his legs and having been put by the mob in a rickshaw and set ablaze. The fact that the investigating agencies have not collected evidence to corroborate such version cannot be given undue importance considering the perfunctory manner in which the investigation has been conducted in the face of the ocular evidence that has come on record. While the involvement of the accused named

by some of the witnesses in this incident may not be believed in view of the discrepancies in the testimonies of such witnesses, insofar as PW 156 Abdulmajid Mahammadusman Shaikh is concerned, he has been consistent in his previous statement as well as in his testimony before the court regarding the involvement of Guddu Chhara's two brothers, viz. accused No.1 Naresh Chhara and accused No.10 Haresh Chhara.

RANJIT INCIDENT

327. From the testimonies of the police witnesses, it emerges that a representation came to be made by the Hindus that a Hindu youth was dragged into the chawls and had been done to death. A badly mutilated body of a Hindu boy was found from the Jawannagar pit and an ambulance was called and the dead body was sent to the hospital. The name of the youth is stated to be Ranjit.

327.1 It is the consistent case of the police witnesses that one of the reasons for the mob becoming aggressive was the finding of this mutilated body of a Hindu youth. In this regard, it may be noted that a first information report came to be lodged in connection with the death of Ranjit. Subsequent thereto, a charge-sheet came to be filed and trial came to be conducted. The trial court, by judgment and order dated 31.8.2004 passed in Sessions Case No.241 and 242 of 2003, wherein one Ismail Chhotubhai Kacharia and Hasibkhan alias Asif Raju Achankhan Pathan were arraigned as accused in connection with the death of Ranjitsingh Nathusingh, acquitted both the accused. The judgment has been produced on record

as Exhibit-1532. A perusal of the said judgment reveals that the trial court has found that the body was not identified to be that of Ranjitsingh; the first information report was lodged belatedly on 10.3.2002, though the first informant, namely, the brother of Ranjit had visited the hospital on the same day; there was no evidence to show that Ranjit was killed by a Muslim; the sole eyewitness had stated that he had named the accused at the instance of the police; as per the eyewitnesses, there was no violence between the mobs in the khada at 12:00 in the afternoon. A perusal of the judgment reveals that there is no reference therein as to how the body was taken to the Civil Hospital and who took it.

327.2 Thus, the version given by the witnesses on the record to a youth named Ranjit being killed by Muslims does not find support in the judgment passed by the trial court.

INCIDENT PERTAINING TO THE DEATH OF KAUSARBANU:

328. Another incident which has been referred to by several witnesses is the incident relating to the death of a pregnant lady named Kausarbanu.

328.1 Mr. Y.S. Lakhani, learned counsel for the appellants submitted that the incident pertaining to the death of Kausarbanu has been stated by multiple witnesses, viz., PW-142 Zannatbibi Kallubhai Shaikh, PW-147 Reshmabanu Nadeembhai Saiyed, PW-158 Naeemuddin Ibrahim Shaikh, PW-225 Firoz alias Babakhwaja Moyuddin Shaikh and PW-228 Javed Ismail Shaikh. It was submitted that on a conjoint perusal

of the evidence adduced by the said witnesses and more particularly, the incrimination of the accused post the telecast of the sting operation, casts a serious doubt about the evidence pertaining to the said incident and involvement of the accused persons.

328.2 It was pointed out that PW-142 Zannatbibi Kallubhai Shaikh states that between 16:00 to 16:30 hours, in the by-lanes between Gopinath and Gangotri Society, accused No.18 had given a sword blow and had removed the foetus from the womb of Kausarbanu and thereafter, both of them were burnt after kerosene was poured over her by Bhavani and his daughter. PW-147 Reshmabanu Nadeembhai Saiyed states that sometime between 17:00 to 17:30 hours, near the S.R.P. Quarters, Kausarbanu was killed with a sword and was thereafter burnt by Guddu, Bhavani and Suresh (A-22). PW-158 Naeemuddin Ibrahim Shaikh states that the incident of killing Kausarbanu had taken place near the water tank at around 19:00 hours, however, this witness does not implicate any accused person in any manner whatsoever. PW-225 Firoz alias Babakhwaja Moyuddin Shaikh, who is the husband of Kausarbanu, has deposed that at around 16:00 hours, certain persons who had covered their faces with cloths, had killed Kausarbanu with sword at Jawannagar khada and PW-228 Javed Ismail Shaikh states that sometime between 18:30 to 19:00 hours, accused No.18 had killed Kausarbanu with a sword near the water tank and thereafter, had removed the foetus from the womb with a sword.

328.3 It was pointed out that there is a post-mortem

report (Exhibit-657) of a pregnant lady on the record of the case which was prepared by PW-103 Dr. Jayant Somabhai Kanoria. It was submitted that a perusal of the post-mortem report shows that the foetus is intact. Therefore, from a perusal of the medical evidence on record it is evident that the ocular evidence is not in consonance therewith and therefore, the entire version of a sword blow having been inflicted on Kausarbanu's stomach and the foetus having been taken out on its tip appears to be incorrect and the result of tutoring. It was submitted that there are material discrepancies pertaining to the involvement of accused No.18 in the alleged offence and pertinently, this accused is sought to be involved only in the year 2008 after the sting operation came to be conducted and "Operation Kalank" came to be telecast.

328.4 As regards the accused alleged to be involved in the incident, it was submitted that Reshmabanu Nadeembhai Saiyed (PW-147), who has stated that she had seen the incident, has implicated only Guddu Suresh and Bhavani and she does not implicate Babu Bajrangi. Zannatbibbi Kallubhai Shaikh (PW-142) in all her statements does not name Babu Bajrangi and she has made allegations against Guddu, Bhavani, Suresh and Manu and for the first time in the court, the name of A-18 Babu Bajrangi is brought in, which clearly indicates that A-18 is specifically targeted for his apparent false implication and the witnesses were so tutored to name him and identify. It was, accordingly, urged that it is absolutely not believable that any such incident has taken place at the hands of A-18 Babu Bajrangi. It was submitted that if the mob had killed Kausarbanu on the side of Gopinath, it is highly

improbable that PW-228 Javed Ismail Shaikh could have seen the incident from where he was hiding. It was submitted that if he was hiding, he could not have seen the incident even if it took place on the road outside the passage as there were many people in the passage.

328.5 In the backdrop of the above contentions, reference may be made to the relevant part of the testimonies of the witnesses who have referred to this incident.

(i) PW-142 Zannatbibi Kallubhai Shaikh has deposed that a little while after 4:30 in the evening Bhavanisingh caught and brought Kausarbanu in a passage between the Gopinathnagar and Gangotri Society. She was shouting "*I am in the last stage of my pregnancy, for the sake of Allah, please spare me.*" However, they did not spare her and at that time, Babu Bajrangi came and struck her with a sword on her stomach and took out her foetus and thrust the sword into it and lifted it and told her "*Look, before it could come into the world, your child has been killed.*" Thereafter, Bhavanisingh's daughter brought some kerosene for him and Kausarbanu and her child were burnt on the spot.

In her cross-examination she has stated that the sword blow inflicted on Kausarbanu was on her stomach. She has denied that when Kausarbanu fell the foetus fell out of her womb. She has stated that the foetus was taken out on a sword. She has admitted that after taking out the foetus on the sword, it was lifted up and twirled. She has stated that the foetus was then burnt with its mother. She has admitted that both Kausarbanu and the foetus were fully burnt in the incident

on the spot.

This witness has not given the name of Kausarbanu in her police statement. In the opinion of this court, insofar as non-reference to the name of Kausarbanu in her police statement is concerned, it may be that the witness may not be aware of her name at that time but may have subsequently heard that the pregnant woman who was killed at the passage of the water tank was Kausarbanu. However, not naming Kausarbanu would not detract from the fact that the witness, at the first point of time, has referred to a pregnant woman whose womb was slit with a sword and the foetus was taken out on the tip of the sword and swirled around. There is a discrepancy in naming the accused person to whom this role is attributed. Before the police she had named Guddu, before the SIT she had named Jai Bhavani and before the court she had named Babu Bajrangi. Thus, while there is no discrepancy in narrating the incident, there is a discrepancy in naming the accused. Therefore, to the extent the witness has improved upon her original statement recorded by the police and named other accused persons, the evidence of the witness cannot be said to be consistent, so as to rely upon the same to incriminate those accused.

(ii) PW-147 Reshmabanu Nadeembhai Saiyed: This witness has deposed that at around 5:00 to 5:30 in the evening Guddu Chhara, Bhavanisingh and Suresh Langdo and their friends brought her friend Kausarbanu by pulling her. She was screaming "*let me go, let me go*". At this time, Kausarbanu was struck with a sword on her stomach and the foetus was taken out of her womb. Kausarbanu fell down there, whereafter, the foetus was thrown on her and they were set

ablaze there, and were burnt.

From the testimony of this witness, it emerges that before the police while she had narrated the incident of a pregnant woman's stomach being slit with a sword and the foetus being taken out and the woman being thrown in the fire, she had not named the woman or the perpetrators of the offence and had merely referred to them as belonging to the Sindhi and Chhara communities. However, in her affidavit dated 17th November, 2003, the witness has stated that the woman's name was Kausarbanu and has also named all the three persons named by her in her examination-in-chief. She has stated therein that Bhavani Singh killed her by prodding the sword in her stomach and taking out her foetus. In her examination-in-chief the witness has not named the person who had inflicted the sword blow, but in her cross-examination it has been brought out that in her affidavit while such role is attributed to Bhavani Singh, in fact, it was Guddu Chhara whom she had named. Since the name of Guddu Chhara has been elicited in her cross-examination, it cannot be said that the witness has improved her version, though there is a material omission insofar as naming the victim is concerned. It may be noted that though the name of the victim is not mentioned in the police statement, the witness has named her soon thereafter, in her affidavit dated 17th November, 2003. In any case, to the extent the witness has stated that a pregnant woman's stomach was slit and the foetus was taken out, she is consistent throughout.

(ii) PW-158 Naemuddin Ibrahim Shaikh: This witness has

deposed that Kausarbanu's mother and her maternal aunt died at the water tank spot. Kausarbanu was pregnant; she also died on the spot. This witness does not refer to the manner in which Kausarbanu was killed but does say that she died at the spot near the water tank.

(iii) PW-225 Firoz alias Baba Khwajamoyuddin Shaikh: This witness is the husband of deceased Kausarbanu. He has deposed that at around 4 o'clock in the afternoon he saw his mother-in-law and his wife in the Jawannagar Khada (pit). His wife was pregnant and the time for her delivery was very near. He saw that the people in the mob had surrounded his mother-in-law and his wife and a person with a cloth tied over his face inflicted a blow with a sword on his wife.

While appreciating the evidence of this witness, this court has found him to be a chance witness, who appeared to be at the spot by chance. It was further noticed that the statement of this witness was not recorded at the relevant time when the incident took place and the belated version of the incident as given by this witness, is contrary to the version given by other witnesses. From the evidence on record it emerges that Kausarbanu, the wife of this witness, was killed near the passage of the water tank and not a single other witness has narrated any such incident having taken place Jawannagar Khada. This witness has not been found to be a credible or trustworthy witness.

(v) PW-228 Javed Ismail Shaikh: This witness has deposed that the incident took place at around 6:30 to 7:00 in the

evening. He saw that his maternal aunt's daughter Kausarbanu, wife of Khalid Noormahammad Shaikh was also there at the time of the incident. She was trying to save herself from the mob. At that time, four people had caught hold of her. He saw Babu Bajrangi striking a blow with a sword on her stomach and cutting it open. Babu Bajrangi took out her foetus on the tip of the sword and swirled the foetus and threw it into the fire. Like other people were thrown into the fire, these people also threw Kausarbanu in the fire.

This witness is a cousin of Kausarbanu. Upon appreciation of the evidence of this witness, this court has found that while the narration of the incident of Kausarbanu by this witness appears to be truthful and credible, the naming of the accused at a belated stage cannot be accepted.

Inquest Panchnama and Postmortem Report: In the inquest panchnama Exhibit 662, which is a common panchnama of the fifty eight persons who died in the passage of the water tank, at item No.7, there is reference to the dead body of a woman aged about 40 years in a naked condition whose hands and legs are in a foetal position and burnt. The skin of her body is turned black as the entire body has been burnt. She appears to be a pregnant. The nails of her left leg are burnt and the mass of muscle has come out. The post-mortem report No.575, which is alleged to be of the deceased, is exhibited as Exhibit 657. It may be noted that at the relevant time when the autopsy was conducted the identity of the deceased was not revealed. Subsequently, by virtue of a communication of the Assistant Police Commissioner Crime, Ahmedabad dated 13.8.04; the name of Kausarbanu came to be inserted in the

post-mortem report. Dr. J.S. Kanoria, the medical officer who conducted the post mortem, has admitted the contents of the report except for the endorsement at the top whereby the name of Kausarbanu has been written on the basis of the above referred communication. The P.M. Report has been exhibited as Exhibit 657 except for the endorsement on top. Therefore, the said post mortem report cannot be read into evidence as the post mortem report of Kausarbanu. The Medical Officer, however, has deposed that while performing the postmortem of the dead body (Exhibit-657), he had removed the developed foetus from the uterus of the dead body, and then measured the same. Then he had concluded it to be of 2500 grams and had also measured the length of the foetus which as noticed was 45 cms. The witness has admitted that until he removed the foetus from the uterus of the dead body, he did not find any external injuries on the foetus. The witness has admitted that in his opinion, the death of this dead body was only due to burn injuries sustained by the deceased and for no other cause. The witness has admitted that none of the injuries as per his observations noted against column 21 is of penetrated or of incised wound. Based on the testimony of the Medical Officer, the learned counsel for the appellants has contended that the medical evidence falsifies the ocular evidence and that no such incident has taken place.

328.6 FINDINGS: From the evidence of the witnesses as referred to hereinabove, while the involvement of any accused in the incident has not been established, the prosecution has proved beyond doubt the place and manner in which Kausarbanu was killed, viz. the incident took place near

the passage of water tank and a sword was struck on her stomach, the foetus was taken out on the tip of the sword and swirled around and thrown and both Kausarbanu and the foetus were set ablaze. Insofar as the medical evidence is concerned, it may be germane to refer to the decision of the Supreme Court in **State of U.P. v. Krishna Gopal**, (1988) 4 SCC 302, wherein it has been held thus:

“24. It is trite that where the eyewitnesses’ account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial process. Eyewitnesses’ account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the ‘credit’ of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

328.7 This decision was subsequently followed by the Supreme Court in **Gangadhar Behera v. State of Orissa**, (2002) 8 SCC 381. On a cumulative evaluation of the evidence of the witnesses this court is of the view that in the face of the reliable ocular evidence, the medical evidence which is contrary thereto, and more so, when it is not established that the post-mortem report is of deceased Kausarbanu, cannot be given primacy.

INCIDENT PERTAINING TO THE DEATH OF JADIKHALA:

329. Mr. Y.S. Lakhani, learned counsel for the appellants submitted that four witnesses have referred to the incident of the killing of Jadikhala, viz., PW-72 Shakinabanu Firozahmad Ansari, PW-158 Naeemuddin Ibrahim Shaikh, PW-198 Harun Mahammadbhai Shaikh and PW-219 Noorbanu Zakirhussain Saiyed. It was submitted that however, there are material discrepancies in relation to the said incident as deposed by the above witnesses. It was contended that it is trite rule of law that if an alleged incident is witnessed by multiple witnesses, it ought to have a similar role being attributed to the accused involved in the alleged incident as well as the manner, time and place pertaining to the said incident. However, in the present case, the implication of the accused as well as the manner, time and place varies from witness to witness, which casts a serious doubt about the trustworthiness of the witnesses as well as the involvement of the accused in the alleged incident. It was pointed out that PW-72 Shakinabanu Firozahmad Ansari has referred to the incident pertaining to Jadikhala; she, however, is not an eyewitness, but is merely a hearsay witness. She has categorically stated that she had heard people talking that Jadikhala had been burnt. It was submitted that PW-158 Naeemuddin Ibrahim Shaikh also stated that the incident of Jadikhala had occurred near the water tank at around 17:00 hours, but the witness has not involved any particular accused in the commission of the incident. It was pointed out that PW-198 Harun Mahammadbhai Shaikh has stated that the incident of Jadikhala had taken place on the ground near Teesra Kuva at

around 16:30 hours. According to the said witness, the body of Jadikhala was thereafter thrown in the well; however, upon examination of the well by witnesses like PW-284, PW-307 and PW-269, the assertion of PW-198 is falsified. Therefore, the fact regarding him being a witness to the incident of Jadikhala is not proved and rather casts a serious doubt about the authenticity of the evidence given by the said witness. It was pointed out that PW-219 Noorbanu Zakirhussain Saiyed has also stated about the incident of Jadikhala. However, again the narration as given by the said witness varies in material parts from the narration given by the other witnesses who claim to have witnessed the said incident. It was pointed out that this witness has stated that the incident had taken place near the house of Jaybhavani wherein Jaybhavani and his daughter had given kerosene soaked mattresses and Guddu had burnt the same, however, the said version is contrary to the other evidence on record.

329.1 It was submitted that there is variation in the evidence of each witness insofar as time, place, manner and involvement of each accused person is concerned. In fact, the case put forth by the prosecution is to the effect that Jadikhala was killed at the passage of the water tank, whereas the body of Jadikhala was found four days after the incident from a closed house in Jawannagar and no explanation pertaining to the same has been put forth by the prosecution. It was urged that the prosecution case is not in consonance with the other material on record as the incident of Jadikhala has not been proved beyond reasonable doubt, much less the involvement of the accused persons in the commission of the said incident.

329.2 One of the victims stated to have been killed in the incident that took place near the passage of the water tank is Hajrabibi, who was also known as Jadikhala. In all four witnesses have deposed about the incident in which Jadikhala died.

(i) PW-72 Shakilabanu Firozahmad Ansari has deposed that she was hiding on a terrace where there were other Muslim persons also and they were talking and saying that Jadikhala and Hasanbhai Golawala of their mohalla had also been burnt alive. Thus, this witness has no personal knowledge about the incident and her evidence is based on hearsay.

(ii) PW-158 Naemuddin Ibrahim Shaikh has deposed that a mob comprised of the people of Gangotri and Gopinath Society and others, including four women, poured kerosene over his entire family, namely, his mother Abedabibi, his sister Saidabanu, Saidabanu's daughter Gulnazbanu, Jadikhala and Kudratbibi's family and set them ablaze. His sister Saidabanu was severely burnt. Jadikhala and her two grandsons also died in the incident. Thus, this witness talks about Jadikhala having been killed in the incident near the passage of the water tank.

After appreciation of the evidence of this witness, the court has found that this witness is an injured eyewitness and to the extent he has deposed about all the persons referred to hereinabove being with him and being killed or injured in the incident that took place at the passage of the water tank, he is consistent right from the beginning, and therefore, through the

testimony of this witness it is established that the main massacre took place at the passage of the water tank and the persons named by him either died or were injured in the incident that took place there.

(iii) PW-198 Harun Mahammadbhai Shaikh: This witness has not referred to the incident of Jadikhala in his examination-in-chief. However, in his cross-examination it has been elicited that he knows Jadikhala and that he had not seen the Jadikhala incident at 4:30 in the evening near the water tank. He has stated that he has seen Jadikhala's incident near the open ground, near Teesra Kuva and has denied that the Jadikhala incident took place at Jawannagar. He has admitted that Jadikhala was assaulted near Teesra Kuva. He has denied that she was set ablaze and has clarified that she was killed and hacked on the open ground and set ablaze and thereafter she was thrown in the well. He has admitted that he has seen this incident himself. The witness has asserted that he has seen Jadikhala being killed and hacked as well as burnt and he had seen her being thrown in the well in a burning condition. After appreciating the evidence of this witness the court has found that he does not come across as a credible and truthful witness.

(iv) PW-219 Noorbanu Zakirhussain Saiyed this witness has deposed that she was hiding under a paan-cabin and saw a mob outside Jaybhavani's house. Guddu and other people were there in the mob. They used quilts on which kerosene had been sprinkled and set Jadikhala, Noori and Jadikhala's grandson on fire. In the act of burning them in this manner, Jaybhavani and his younger daughter had also participated.

The witness has stated that in the mob which was burning her maternal aunt Jadikhala, her grandson and Noori, a boy named Suresh was also present. In her cross-examination an omission amounting to a contradiction has been brought on record that in her statement dated 17.5.2002, she has not stated any fact regarding her having seen the incident of Jadikhala, Noori and Jadikhala's grandson or named the accused or the role played by them. The omission has been proved through the cross-examination of the concerned assignee officer who had recorded her statement. Thus, this version has come on record for the first time before the SIT. This court after appreciating the evidence of this witness has found that she could not have seen the incident from under the paan cabin as claimed by her. Considering the overall testimony of this witness, this court has found that she does not come across as a truthful witness and her testimony is full of improvements, exaggerations and embellishments.

329.3 FINDINGS: From the testimonies of the four witnesses referred to hereinabove, PW 72 has referred to the incident on the basis of hearsay. PW 198 who says that the incident took place in the Jawannagar Khada and 219 who has stated that the incident took place at a spot near Jaybhavani's house have not been found to be credible and trustworthy witnesses. The court has found the version given by PW 158 regarding the incident having taken place near the passage of the water tank to be consistent and reliable. Therefore, through the testimony of this witness, the prosecution has established that Jadikhala was burnt in the passage of the water tank, though the identity of the culprits has not been established.

INCIDENT PERTAINING TO THE DEATH OF MAIYUDDIN:

330. Several witnesses in their testimonies have referred to the death of a handicapped boy named Maiyuddin.

330.1 Mr. Y.S. Lakhani, learned counsel for the appellants submitted that the incident pertaining to the death of Maiyuddin is stated by multiple witnesses being PWs 72, 149, 167, 177, 181, 234 and 261. From the conjunctive perusal of the evidence given by the said witnesses pertaining to the said incident there are inter se contradictions between these witnesses, and, therefore, the prosecution has not been able to prove such incident as well as the involvement of the accused persons in the said incident beyond reasonable doubt.

330.2 Adverting to the testimonies of the individual witnesses, it was submitted that, PW 72 Shakinabanu Firozahemad Ansari is a hearsay witness who has categorically stated in her deposition that she had heard about the incident of Maiyuddin while she was on the terrace. This witness has no knowledge pertaining to the time and place of incident as well as involvement of accused persons. PW167 Mohammad Hussain Kaiyumbhai Shaikh has stated that Maiyuddin was killed somewhere between 13:00 to 13:30 hours outside the second lane of Hussainnagar in a paan shop. This witness had seen the burnt body of Maiyuddin at around 13:30 hours on 28.2.2002 near a paan shop. This witness does not involve any accused person in the said incident. PW 177 Ishratjahan Parvezhussain Saiyed has stated that she had seen the burnt body of Maiyuddin in the night hours on the road while she was

going towards the police vehicle. She, however, does not appear to be an eye-witness to the said incident and does not involve any accused person in the said incident. PW 181 Apsarabegum Kabirali Shaikh has stated that she had seen the body of Maiyuddin at around 16:00 hours; however, no other assertion pertaining to the said incident has been made by the witness. PW 229 Sairabanu Khwajahussain Shaikh has stated that the incident of Maiyuddin had taken place at Lane No. 1 of Hussainnagar and she had seen his dead body lying near Lane No. 1 of Hussainnagar with his tricycle lying on his side sometime between 17:00 to 17:30. It was submitted that pertinently even this witness does not involve any accused person. PW 234 Mohammad Shaikh Yunus Basir Ahemad has stated that when he was being taken to the relief camp by the police, at that point of time he had seen the burnt body of Maiyuddin. This witness is not an eyewitness of the alleged incident nor does he involve any accused person. PW 261 Mariyambibi Hasanbhai Saiyed has stated that her son Maiyuddin was dragged out by the mob from their own house and was forced to recite Hindu slogans; however when he refused to do so, he was attacked with weapons and burnt alive. This witness has implicated Murli (A-2), Suresh (A-22), Sahejad (A-26) and Guddu in the said incident; however, these accused have not been involved by other witnesses.

330.3 It was submitted that as per the case of prosecution the post mortem report of Maiyuddin is below Exhibit 1952; however, the age of the deceased as stated in said PM Report is 32 years whereas Maiyuddin is stated to be 18 years. Therefore, there are material inconsistencies pertaining to medical evidence as regards the death of

Maiyuddin.

330.4 Since several witnesses have referred to Maiyuddin in their testimonies, reference may be made to the relevant part of their testimonies in this regard.

(i) PW-72 Shakilabanu Firozahmad Ansari has stated that after the mob had killed her family members, she had taken shelter on a terrace, where she came to know from other persons that a handicapped boy from their mohalla was told by the mob that if he says *Ram*, they would spare him, when the handicapped boy stated that even if he dies, he would not say *Ram*, they poured kerosene over him and burnt him alive.

(ii) PW 149 Faridabanu Abdulkadar Khalifa has stated that at 2 o'clock in the afternoon, while she was going to have a look at her house, she saw Mullaji's handicapped son, burning near his house. In her cross-examination, it has been elicited that the incident of Mullaji's crippled son had taken place at Hussainnagar at around 2:00 in the afternoon. She does not remember exactly in which lane of Hussainnagar the incident had taken place, but the boy was lying on the road side. She has admitted that at that time she had not seen any person there. She has voluntarily stated that she has seen that a boy was lying there and was burning and his tricycle for the handicapped was lying beside him. In her cross-examination as well as through the testimony of the assignee officer who recorded her statement dated 12.5.2002, an omission has been proved that this witness has not stated about the incident of Mullaji's handicapped son before him.

(iii) PW 167 Mohammad Hussain Kaiyumbhai Shaikh has deposed that there is a paan cabin outside the second lane of Hussainnagar, which was run by a boy called Modin, whose leg was affected by polio. This boy was put in his paan cabin and set ablaze by the mob. He could hear his screams for help from the terrace. It must have been around 1:00 to 1:30 in the afternoon. He has further stated that they were on the terrace till 1:30 at night, thereafter a police vehicle came. When they got down from the terrace, Modin's dead body was lying near the paan cabin and the paan cabin was completely burnt. The dead body was charred. When the police took them to the road for boarding the bus, he had seen the charred dead body. In the cross-examination of this witness an omission has been brought out that in his statement dated 12.5.2002, he had not stated any fact regarding the incident of Modin.

(iv) PW 177 Ishratjahan Parvezhussain Saiyed has stated that at night, a police vehicle came, in which they were taken to the Shah Alam camp. On the road, she had seen two dead bodies which were lying in a burnt condition. Out of the two, one dead body was of a handicapped boy. This witness, therefore merely refers to having seen the dead body of a handicapped boy.

(v) PW 181 Apsarabegum Kabirali Shaikh has deposed that at 4 o'clock in the evening, her employer took her and Kalubhai Shaikh, who was working with her, on his scooter and dropped them near the S.T. Workshop. When they got down on the road, there were police vehicles. Both she and Kalubhai were going towards their lane. At that time, she saw two dead bodies lying there. Out of the two dead bodies which were burning, she could see the face of one of them, which was of

Mullaji's son who used to live next door. This boy was handicapped. She had seen the dead body of the handicapped boy burning and at that time, she was with Kalubhai.

(vi) PW-229 Sairabanu Khwajahussain Shaikh has deposed that she had seen a dead body was burning in Lane No.1 of Hussainnagar. It was Maiyuddin's dead body. The witness has stated that she is saying that the dead body was of Maiyuddin because he was handicapped and a vehicle for handicapped persons was lying next to this dead body. Upon seeing his dead body, they were frightened and hence, they returned to the Pinjara's house and hid there again.

(vii) PW-234 Mahammadyunus Basirahemad Shaikh, this witness has deposed that he had gone with other people on the terrace of a house in *Kumbhaji-ni-Chali* and hidden there. From the terrace he saw the people in the mob had pulled out a boy named Moin who was residing opposite the Fair Price Shop in Hussainnagar from his house. This boy was handicapped. The mob stuffed a cloth in his mouth and tied his hands and legs, poured kerosene on him and set him on fire. He has further deposed that at night they came out of the house and went near the S.T. Workshop. At this time, he saw on the road that the dead body of the person named Moin who was burnt alive, was lying in the middle of the road. The statement of this witness has been recorded after a considerable delay of more than six years and no plausible reason has been advanced as to why his statement was not recorded at the relevant time. This court after considering the evidence of this witness, has found that he is not a credible and truthful witness.

(viii) PW-261 Mariyambibi Hasanbhai Saiyed, who is the mother of deceased Maiyuddin, has deposed that at the time of the incident she used to reside in *Lane No.2, Hussainnagar*. Due to the disturbances she has taken all her children and gone to Abdulbhai Ghadiyali's house; however, her handicapped son Maiyuddin who was on the terrace of madressa refused to come and was watching the incidents taking place during the riots. By the time she left her family members there and returned to the madressa to fetch Maiyuddin, the Hindu mob came, whereupon Maiyuddin told her to hide in the madressa as the mob of Hindus had come. After saying this to her, Maiyuddin went inside her house. Thereafter, she sat on the staircase of the madressa. Two to three other boys were also there. At this time, the Hindu mob started wrecking and plundering their houses. This mob of Hindus broke the door of her house and brought her son outside. The persons, who broke the door of her house and took her son Maiyuddin out of the house, were Murli Sindhi (A-2), Suresh Langda (A-22), Suresh Mama (A-26) and Guddu Chhara (deceased), whom she had seen. They told her son to say "Shri Ram" and when her son Maiyuddin said that he would not say "Shri Ram", they assaulted him with swords, sticks, pipes, etc. and poured kerosene or petrol over him and burnt him alive, which she had seen. She had seen all this from the window of the madressa.

Certain omissions as to her previous statement dated 12.5.2002, have been brought out in the cross-examination of the witness and proved through the testimony of the assignee officer, who has admitted that the witness had not stated

before him that she was in the madressa and that she had seen the incident of her son Maiyuddin from the window of the madressa; and that this witness has not stated before him that the mob of Hindus had broken the door of her house and had taken her son out; and that she had not stated regarding her son Maiyuddin refusing to say "Shri Ram". However, no omission has been proved as regards the core of her testimony regarding the involvement of the accused in assaulting her son with swords, sticks, pipes, etc. and pouring kerosene or petrol over him and burning him alive.

In her cross-examination the witness has stated that Maiyuddin's incident took place in the evening at around 5:30 to 6:00. In the opinion of this court, much stress cannot be laid on the time stated by the witness in her cross-examination, inasmuch as, it is bound to be based upon approximation. Since the residents of the chawls were running from one place to another throughout the day to save their own lives, the witnesses cannot be expected to state the time of a particular incident with exactitude. The witness is also bound to be confused about the sequence of events; therefore, much significance cannot be attached to the same. Since this witness had taken shelter in the godown at Gangotri Society after the incident, it is probable that this incident took place around 4:00 p.m. in the afternoon.

After appreciating the evidence of this witness, this court has recorded that insofar as the submissions regarding the exact location from where the witness saw the incident not having been proved is concerned, at the cost of reiteration it may be stated that in this case, neither of the investigating agencies

seem to be really interested in bringing the culprits to book. Consequently, either the statements of the witnesses have not been recorded properly or no efforts have been made to bring on record evidence to corroborate what the witness has stated. If the evidence of the witnesses were to be discarded on this ground alone, it would amount to playing into the hands of the investigating agencies. In the case of this witness, at the first opportunity she has named the above four accused. The statement recorded by the assignee officer is not very coherent, but it is clear that the witness has implicated the four accused in the murder of her son. Thus, insofar as the accused and their involvement in the killing of her son are concerned, the witness is consistent right from the beginning. Therefore, the witness is consistent insofar as the core of her testimony is concerned and there is no reason to disbelieve her claim of having seen the incident in question and the named accused.

330.5 A post-mortem report Exhibit 1952 of an unknown male refers to callipers joined on the right leg. This part which refers to the callipers is in Gujarati, whereas the entire post mortem note is in English, which gives reason to believe that the insertion has been made subsequently. An endorsement has been made on the report on the basis of the letter dated 14.9.2002 of the Assistant Commissioner Crime Branch whereby the name of Maiyuddin son of Hasanbhai Abdul Saiyed, age 18 years has been inserted. A panchnama Exhibit 1303 is on record wherein one Razakbhai Usmanbhai has identified a dead body where the right leg was joined with a steel strip to be that of Moinkhan whose father's name he does not know. The person who identified the dead body has

not been examined as a witness. Thus the panchnama is not proved.

330.6 FINDINGS: Considering the testimonies of the witnesses referred to hereinabove, insofar as PW 234 is concerned, he is not found to be a credible and truthful witness. Insofar as PW 149 and 167 are concerned, in their cross-examinations omissions have been brought on record that they had not mentioned the fact regarding Maiyuddin in their statements recorded by the police. The testimony of PW 261 who is the mother of the deceased has been believed as discussed hereinabove. Insofar as the other witnesses are concerned, their testimonies in no manner contradict the testimony of PW 261. Thus, the prosecution has proved that Maiyuddin, the handicapped son of PW 261, was done to death in the afternoon on the day of the incident and the involvement of the accused named by PW 261 in the incident is also established.

XXVII POLICE FIRING/PRIVATE FIRING:

331. In this case, between 10:00 to 12:00 in the morning hours, the police had resorted to firing to disperse the violent mobs that had gathered on the highway opposite the Noorani Masjid and the S.T. Workshop. Some witnesses have also deposed regarding firing by private individuals. In the firing on the road, two persons have died and six persons sustained bullet injuries. The point to be decided is whether the deaths and injuries were caused during the course of firing by the police or by private individuals.

331.1 Mr. Y.S. Lakhani, learned counsel for the appellants submitted that in this case the accused persons are neither charged under the provisions of Arms Act nor convicted under any provision of the Arms Act. There is no recovery or discovery of firearms from any of the accused persons. As regards the victims who suffered bullet injuries, majority of the witnesses have stated that such injuries were sustained due to police firing while a few witnesses state that they were due to private firing. It was submitted that no bullet marks or empty cartridges were found from the scene of offence. The police have categorically denied to there being any private firing. It was urged that the allegation of firing by persons other than the police has surfaced for the first time in the year 2008. It was urged that the overall evidence on record clearly establishes that it was on account of firing by the police that two persons died and six persons were injured in the firing that took place on the road in the morning.

331.2 Mr. B.B. Naik, learned counsel for the appellants drew the attention of the court to paragraph (2) of Part B, which starts at page 1767 and ends at 1771 of the impugned judgment, wherein the trial court has recorded a finding that there was private firing on the day of the incident. It was submitted that such finding of private firing has been recorded without there being any scientific evidence on the record of the case. It was submitted that pertinently, out of 121 witnesses of the morning incident, only 15 witnesses have stated about private firing in their evidence before the court, but most witnesses have not stated a word about private firing in their police statement. In such circumstances, to record a finding without there being cogent evidence is not legal, just

and proper.

331.3 Before adverting to the merits of this point, reference may be made to the findings recorded by the trial court in this regard.

331.4 The trial court in the impugned judgment has observed that PW-165 Pirmohammad Allabax Shaikh has given a history in the hospital that the bullet injuries sustained by him were on account of attack by the opposite party which also supports the case of private firing. In this regard, it may be noted that the witness in his testimony before the court has stated that when he came to the road near the water tap to search for his daughter, a bullet came from somewhere and struck him on his right leg and he fell down on the spot. The time must have been about quarter to ten. Thus, the witness has not stated anything regarding his being injured in private firing. It cannot be gainsaid that the substantive evidence is what is deposed by a witness before the court and what is recorded in the medical history, unless proved by the witness, is not admissible in evidence as the version of the witness.

331.5 The trial court has also observed that the testimony of PW-105 Hussainbhai Valibhai Kaladiya also probabalises private firing. If one peruses the testimony of PW-105 what has been stated by him is that there was stone pelting at the corner; at this time a second mob came from the direction of Krushnanagar; his nephew Mustaqali was also on the road; when his nephew went on the road, teargas shells were released from the opposite side and in a little while there was firing; a bullet injured his nephew Mustaqali Razakali and

at that time, another boy named Abid was also injured by a bullet on the road. From the testimony of this witness, there is nothing which would lead to an inference that both those persons were injured in private firing.

331.6 PW-255 Mahammadkhalid Saiyadali Saiyed has been injured in the firing. This witness has deposed that when he went and stood near the S.T. Workshop, immediately thereafter, he was injured by a bullet in the firing. The bullet hit him on the vertebrae of his waist. In his cross-examination, he has stated that since there was police firing, he had felt that he might have been injured by a police bullet; therefore, he must have stated so. The witness has admitted that in his statement recorded by the SIT, he has stated that he was injured in the police firing in the incident that took place on 28.2.2002 and he had also availed of treatment. PW 294 Shri Gondia has deposed that during the course of police firing which had to be carried out during the entire day at Naroda Patiya, two persons had died and five persons were injured. Thus, from the testimonies of the injured witnesses, it emerges that they have stated that they were injured by bullets in firing without specifying whether it was police firing or private firing. Since both, PW 165 and PW 255 were caught unawares and were suddenly struck by bullets; it is quite probable that they may not have been aware as to who fired such bullets. However, PW 294 is a high ranking police officer who was present at the scene of offence when the police had resorted to firing and he has stated that two persons had died and five persons were injured in police firing. Therefore, the evidence on record leans towards the theory that it was due to police firing that two persons died and other persons who were

injured by bullets.

331.7 The evidence on record shows that at the time when the charge-sheet came to be filed in the year 2002, there was no material on record to show that there was any private firing. All the statements recorded by the police at the relevant time refer to firing by the police.

331.8 In the sting operation accused No.18 Babu Bajrangi is heard saying that they had collected 23 revolvers on the previous night. It appears that to establish use of said revolvers, the subsequent statements which are recorded by the SIT indicate firing by private persons, namely, some of the accused. This serves two purposes; (i) it furthers the prosecution case against Babu Bajrangi and implicates certain accused persons in the firing, and (ii) it absolves the police of their liability of having killed and injured the Muslims on the morning of the day of the incident. Thus, subsequent to the sting operation, the witnesses may have been tutored to refer to firing at the instance of certain accused to fortify what was stated by the accused in the sting operation or it could be that the officers of the SIT, have done their best to ensure that their counterparts in the police department are not harmed in any manner, which is fortified by further circumstances which shall be recorded at a later stage.

331.9 PW-230 Mohammadrafiq Abdulkarim Shaikh has alleged that Manoj Videowala (A-41) was present in the mob and had fired with a revolver wherein Mohammad Abid was injured in the waist and Pirubhai was injured on his right leg. From the overall evidence which has come on record, the

police had resorted to firing in the morning, wherein Mohammad Abid, Pirubhai and several others were injured. This witness in his original statement has not referred to any firing by Manoj nor has he named him in such statement. Subsequently, at a belated stage, when his statement came to be recorded by the SIT on 18.6.2008, he has implicated Manoj and stated that Manoj had snatched a revolver from the police and fired towards where they were standing. Thus, for the first time in his statement before the SIT, the witness has named Manoj and has alleged that he had fired from a revolver. The evidence of this witness is, therefore, contrary to the evidence of the other witnesses who had come out on the road in the morning. Moreover, as noticed earlier, it appears that after the SIT came into the picture, a version is sought to be put forth whereby certain accused are roped in and are alleged to have fired at the Muslims, wherein certain Muslims were injured.

331.10 PW 52 Aminaben Abbasbhai Belim has deposed that she had seen that Mayaben had something like a pistol in her hand and she also was firing. After firing, Mayaben told the mob that they should continue and thereafter, she returned in the same car in which she had come. The witness has further stated that she had gone to Masjid-ni-Chali, which is situated behind the masjid, on the Dhanurdhari Mata Road and was standing on that road when she saw Bipinbhai shooting. Bipinbhai's garage is situated on the Bombay National Highway, at Dhanurdhari Mata Na Road on the front side. This Bipinbhai was shooting from the top of his garage and he was on the terrace. Insofar as the version given by this witness is concerned, the trial court has not believed the witness insofar as the allegation regarding Mayaben having

resorted to firing is concerned. This witness has stated these facts at a highly belated stage after a period of more than six years when her statement came to be recorded by the SIT. This court after appreciating the evidence of this witness has not believed the version regarding Bipinbhai shooting from the top of his garage and has further found that this witness is not a credible and truthful witness.

331.11 PW 104: Mohammadsalim Mohammadhussain Shaikh has deposed that while he was going in his rickshaw on the highway, he saw that the mob was armed with weapons wherein Kishan Korani had a sword, Murli Sindhi and Manoj Videowala had revolvers. At around 9:30 to 10:00, he had seen that Manoj Videowala had resorted to private firing due to which, a rickshaw driver named Abid was hurt by a bullet on his private parts. At this time, he had seen Murli Sindhi also resorting to private firing due to which, Mustaq Razakbhai Kaladiya had sustained a bullet injury on his shoulder. At that time, other persons were also injured. This witness has implicated Kishan Korani and Manoj Videowala and Murli Sindhi at a highly belated stage after a period of more than six years before the SIT.

331.12 At this juncture, reference may be made to the sanction order made under section 196 of the Code (Exhibit-212) which refers to the death of eighty three Muslims and says, *“with a view to dispersing the violent mob and bringing the situation under control, the police lobbed 171 T.G. shells and fired 91 rounds wherein two persons were killed and six were injured. Eight policemen sustained injuries due to stoning. Police party rescued five hundred to six hundred*

Muslims and shifted them to the safe places/relief camps”.

331.13 Exhibit 1583: vardhi given by Dr. D.C. Jagani CMO Civil Hospital that a person by the name of Gulabbhai Kalubhai Vanzara age 18 years resident of Bhagirath Bungalow Krushnanagar, Naroda was injured in the firing at Naroda Patiya on 28.2.02 and is brought for treatment to Civil Hospital at 14:00 hours and upon examination by the CMO on duty, he is declared to be dead.

331.14 Thus, at the relevant time, even as per the investigating agency, two persons were killed and six persons were injured in police firing.

331.15 The record of the case shows that a large number of witnesses, whose statements were recorded at the relevant time in the year 2002, have stated that the police had resorted to firing on the highway in front of the Noorani Masjid and the S.T. Workshop, in the morning on the day of the incident. Several witnesses have alleged that the police had fired at the Muslims and had facilitated the entry of the mob inside the chawls. Thus, there are two versions that have come on record. The original version is firing by the police wherein one Abid and a Hindu died and six others viz. Mohammadkhalid, Mahammadhussain, Pirmohammad, Mustaqmahammad, etc. were injured. Those injured witnesses who have been examined by the prosecution, have not implicated any accused in the firing and have merely stated that they were struck by bullets. The other version has come on record in the statements of witnesses recorded by the SIT in the year 2008. This court while considering the testimonies of the witnesses

has not found any of the witness who had deposed anything regarding firing on the highway by private persons to be cogent and credible. Moreover, considering the manner in which the deaths and injuries in the firing that took place on the road are sought to be attributed to private parties at the stage of recording of statements by the SIT, there appears to be a concerted effort to attribute the deaths and injuries to private parties to exonerate the police. The finding recorded by the trial court that the casualties were on account of private firing is, therefore, not borne out from the record of the case. The record of the case establishes beyond any doubt that two persons were killed and six persons were injured in the police firing in the morning on the day of the incident.

XXVIII THE STING OPERATION:

332. All the accused have been charged with and the convicted accused have been convicted of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code. To prove the charge of criminal conspiracy, the prosecution have also relied upon the sting operation conducted by one Ashish Khetan and the extra judicial confessions made during the course of such sting operation. Therefore, before examining the charge of criminal conspiracy, it would be necessary to evaluate the evidentiary value of the sting operation and the extra judicial confessions made during the course of such operation.

332.1 One Ashish Khetan of Tehelka Magazine conducted a sting operation on several accused of different riot cases that took place in Gujarat in the year 2002. To prove the

veracity thereof, the prosecution has examined several witnesses. PW 322 Ashish Khetan has, through his testimony proved that he had in fact conducted the sting operation on three of the accused viz. accused No.18, 21 and 22 and had recorded the sting by using two cameras: (i) a button camera and (ii) a camera fitted into his diary. The witness has deposed that from the microchip of the camera he had copied the sting on his laptop and had deleted the sting from the microchip. He had further made copies of the sting from his laptop and sent them to Tehelka from time to time and upon conclusion of the sting, he had handed over all the equipment including the laptop to Tehelka. The prosecution has also examined one Nirmalsinh Sevasinh Raju PW 320 who is a CBI Officer who was directed by the National Human Rights Commission to carry out an inquiry into the veracity of the sting operation. This officer had recovered the DVDs and CDs of the sting from Tehelka and Aaj Tak and sent them to the FSL Jaipur for analysis. PW 323 Dr. Shailendra Ramkishore Jha, Assistant Director, FSL Jaipur who had examined the DVDs, CDs and the equipment forwarded to the said laboratory by the CBI, has also been examined by the prosecution. Subsequently, the Investigating Officer (SIT) obtained samples of the voices of the accused for the purpose of ascertaining as to whether the voices in the sting operation were in fact their voices. The recording for voice spectrography analysis was done by PW 314 Bhagirathprasad Manilal Pandya, Director of the Akashwani Centre at Ahmedabad, who has also been examined by the prosecution. PW 323 Dr. Shailendra Ramkishore Jha has also carried out testing of the voice specimen together with the fifteen DVDs and five CDs. It may be noted that the DVDs and CDs have been brought on record

through a production witness PW 319 Pushpaben Jivabhai Ninama, who has not been examined as a witness but has merely produced the DVDs and CDs on record pursuant to an order passed by the trial court below Exhibit-2250. The DVDs and the CDs have not been exhibited and form part of the record as muddamal.

In the above background, reference may be made to the submissions advanced by the learned counsel for the respective parties.

332.2 SUBMISSIONS: Mr. N.D. Nanavaty, learned counsel for accused No.37 Mayaben Kodnani, submitted that the sting operation was conducted sometime in May 2007 to September, 2007. It was submitted that if the transcript of the sting operation is seen, it will rule out the possibility of any conspiracy having been hatched. It was emphatically argued that in this case, the main instrument on which the sting was recorded was not retained and was not produced before the court as evidence. The camera had a micro chip which was used for recording the sting, after which, according to PW 322 Ashish Khetan, he had copied it on his laptop. It was submitted that the DVDs in question, therefore, are in the nature of secondary evidence as the main instrument where the sting was recorded does not form part of the record.

332.3 Reference was made to the testimony of PW 320 Nirmalsinh Sevasinh Raju, a CBI Officer, to point out that pursuant to an order passed by the NHRC he had made an inquiry and collected fifteen DVDs and five CDs from Aaj Tak,

which were initially sent to Chandigarh for testing and thereafter to the FSL Jaipur. It was submitted that the DVDs and CDs being in the nature of secondary evidence require strict compliance with the provisions of section 65B of the Evidence Act and it is only after compliance of these provisions, that the genuineness of the secondary evidence can be considered and appreciated. It was pointed out the DVDs had been seized from Tehelka by the CBI, but there is no certificate under section 65B (4) of the Evidence Act on the record. According to the learned counsel, in the absence of compliance of the provisions of sub-section (4) of section 65B of the Evidence Act, the entire sting would fail. Reliance was placed upon the decision of the Supreme Court in **Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473**, for the proposition that any documentary evidence by way of an electronic record under the Evidence Act, in view of sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under section 65-B. The very admissibility of such a document, that is, electronic record which is called as computer output, depends on the satisfaction of the four conditions under section 65-B(2) of the Evidence Act. It was pointed out that in view of the provisions of sub-section (4) of section 65-B of the Evidence Act, there must be a certificate which identifies the electronic record containing the statement; such certificate must describe the manner in which the electronic record was produced; such certificate must furnish the particulars of the device involved in the production of that record; the certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device; etc. It was submitted that in the facts of the present case no certificate has been produced in terms of section 65B(4) of the

Evidence Act, and hence, the entire sting operation loses its efficacy as the same has not been proved in accordance with law. It was contended that therefore, no part of the evidence of the sting operation can be used in the trial.

332.4 Mr. Y.S. Lakhani and Mr. B.B. Naik, learned counsel for the remaining accused (except accused No.62), submitted that the sting operation carried out by PW 322 cannot be termed as a confession, much less, an extra-judicial confession for the reason that the six ingredients for relying upon an extra-judicial confession as laid down by the Supreme Court in the case of ***Sahadevan v. State of Tamil Nadu***, (2012) 6 SCC 403, are not satisfied in the present case. Moreover, the sting operation is based on deception. It was submitted that in the above decision the Supreme Court has stated principles which would make extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused and has held that the following precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of

cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

332.5 It was submitted that the Supreme Court has time and again held that extra-judicial confession by itself is a weak piece of evidence, and in the facts of the present case, the prosecution has failed to prove the chain of events surrounding the same beyond reasonable doubt.

332.6 Next, it was submitted that the original microchip of the two cameras on which the alleged sting came to be recorded (i) fitted in a diary, and (ii) used as a button camera, does not contain any data, that is to say, electronic record as the recording was deleted from the microchip as admitted by PW 322. In any case, there is no examination of this microchip by the FSL nor is there any report sought from or given by the FSL. It was submitted that the electronic data which was transferred from the original microchip to the hard-Chaudhary drive of the laptop from which the copies were made is also not examined by the FSL nor is any data recovered from it nor is any opinion sought from or given by the FSL. The DVD's and the CDs made from the DVDs cannot be said to be primary evidence as admittedly they are copies, and, therefore, in the absence of a certificate as required under section 65B (4) of the Evidence Act, the same cannot be proved as secondary

evidence and is inadmissible in evidence.

332.7 It was submitted that PW 322 himself, before recording the sting has impersonated himself, admitted that he had forged documents, admitted that by giving false information he wanted to win the confidence of the accused on whom he made the sting, admitted that he had created a false character at Delhi and also a fake atmosphere to win their confidence, and, therefore, the entire sting operation cannot be said to be voluntary and inspiring the confidence of the court.

332.8 It was submitted that the sort of questions and the sort of conversation as projected in the script fully or partly, clearly indicates that intentional questions were put in a way that the person answering is enticed and instigated to give answers which may not be true. The so called facts which are said to have been elicited during the course of such sting conversation indicate that they are facts on which there is absolutely no evidence as admitted by the Investigating Officer PW 327 or that they are facts which have either not taken place or the witnesses have not deposed to. For example, getting twenty three revolvers; staying at Mount Abu for four months; dead bodies being thrown in the well; diesel tanker having been pushed inside the masjid and by sprinkling kerosene therefrom; setting the masjid on fire, tying a pig on the Masjid; waving a saffron flag; the Chief Minister coming there as garlanding some Hindus; shaking hands with the sister of the accused and moving forward to Himmatnagar; Mayaben the MLA moving around in a jeep for the whole day till late in the evening; eight to ten persons having hidden in a

gutter and the accused having put a man-hole cover on the gutter and such people having suffocated and died and their dead bodies being taken out of the gutter; etc., police having killed seventy people in police firing; are facts which have no support from any corner including the investigation.

332.9 It was urged that in view of the fact that the original electronic record being primary evidence has not come on record, oral evidence to support the contents thereof being purely in the nature of secondary evidence is not permissible under the Evidence Act. It was further submitted that PW 322 has deposed only the selected part and that too in a broken form of the sting operation. In his statement before the SIT most of such facts contained between paragraphs 30 to 58 of his deposition are not stated by him as proved by the Investigating Officer PW 327. It was contended that even if it is supposedly taken to be an extrajudicial confession of the accused, it in no way satisfies any of the basic ingredients of extrajudicial confession as propounded by various decisions of the Supreme Court. The attention of the court was drawn to the fact that the DVDs and CDs pertaining to this case are not shown to PW 322 and nothing is connected with the record. The CBI Officer, Nirmalsinh Raju PW 314 has not made any panchnama while recovering the DVDs and CDs from Tehelka, then while sending them to Chandigarh for testing and then to Jaipur. No panchnama was drawn when it was handed over to the SIT. It was submitted that reference to Mayaben, Guddu and Bipin Panchal in the sting operation cannot be used against the said co-accused. These CDs or DVDs, even if they are copies, before they were sent to the FSL, they changed hands and there is nothing to show that they were in a

protected condition. It was pointed out that insofar as accused No.21 Prakash Rathod is concerned, there is no other evidence against him, except the sting. It was submitted that none of the DVDs or CDs are exhibited in this case. Therefore, apart from the admissibility of the electronic record under the Evidence Act, even such electronic record in a copied form has also not been exhibited in the present case. It was pointed out that through PW 319 Pushpaben Jivabhai Ninama, the CDs/DVDs from FSL Jaipur in a sealed condition have been taken on record. It was pointed out that this witness is not even examined, but it has been recorded that she has produced these DVDs and CDs. The attention of the court was drawn to the suo motu order dated 25.1.2012 passed by the trial court at Exhibit 2555, wherein the trial court has recorded that the prosecution has put forth its case of Sting Operation having been done on all the three accused by PW 322, Mr. Ashish Khetan. The prosecution has also put forth its case through PW 323, the Scientist of FSL to the effect that recording of the entire Sting Operation and the C.D. named as "Operation Kalank" which is part of the Sting Operation were genuine and were without any kind of tampering. The court has further recorded that the fifteen DVDs which contain the entire sting operation have been in fact brought from the muddamal record of the Gulbarg Case; it needs to be returned to the court where the trial of Gulbarg Case is going on. The court has expressed the opinion that these fifteen DVDs should be kept in the record of the court as the DVDs may be required to be viewed to arrive at a just decision, the same being the source of "Operation Kalank" relied upon by the prosecution. The court, accordingly, thought it fit to appoint Court Commissioners to copy the fifteen DVDs as well as the five CDs

of Operation Kalank for the record of the court which if needed could be seen and appreciated, and issued directions accordingly. The learned counsel for the appellants submitted that there is no report of the FSL Gandhinagar as to what they did pursuant to the directions issued by the court and that the FSL Gandhinagar officer has not been examined. It was submitted that even after making such copies, these DVDs and CDs are not exhibited in this case nor are the contents proved in accordance with law. It was submitted that the DVDs which were shown to Mr. Khetan were relating to the Gulbarg case and the DVDs and CDs forming part of the record of this case have not been proved by any witness, and, therefore, are not admissible in evidence.

332.10 It was submitted that the trial court has not taken into consideration the provisions of section 65B of the Evidence Act while determining the admissibility of evidence of sting operation. Reference was made to the provisions of section 65B of the Evidence Act to submit that under that section, a certificate to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of relevant activities, whichever is appropriate, shall be evidence of any matter stated in the certificate and for the purposes of the sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. It was submitted that, in the present case, the sting operation was carried out and audio and video of sting operation was recorded in a microchip from where it was transferred to a laptop of PW 322 Ashish Khetan. Thereafter, the hard disc of the said laptop was

utilized for preparing the DVDs of the said sting operation which were seized by the CBI without preparing any panchnama and all the materials including camera, recorder, microchip, hard Chaudhary, laptop and DVDs were sent to the Forensic Science Laboratory, Jaipur, for testing. From the above-referred facts, which are stated by witnesses, it becomes amply clear that the DVDs were prepared in the computer of the office of Tehelka Magazine at Delhi and, therefore, a certificate, as required under sub-section (4) of Section 65B of the Evidence Act, is necessary to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities. It was submitted that a three-Judge Bench of the Supreme Court in the case of **Anvar P.V. v. P.K. Basheer**, (2014) 10 SCC 473, has clearly laid down that the provisions of section 65B more particularly sub-section (4) are mandatory and non-compliance of sub-section (4) of Section 65B of the Evidence Act will render the said secondary evidence inadmissible in evidence and cannot be relied upon for any purpose.

332.11 Next it was submitted that, as per the provisions of the Evidence Act, the evidence of electronic record in the form of CD, DVD, etc. is documentary evidence and, as per section 59 of the Evidence Act, contents of documents or electronic records cannot be proved by oral evidence. It is, therefore, submitted that, once there is an electronic record containing facts, which cannot be proved by oral evidence, the contents of sting operation stated by P.W. 322 in his oral evidence are not admissible in evidence.

332.12 On behalf of the prosecution, Mr. Prashant Desai, learned Special Public Prosecutor submitted that there was a TV news item in Aaj Tak named as "Operation Kalank" about the incident that happened in Gujarat after the Godhra train carnage. When this fact came to the notice of NHRC, it made an inquiry and it was found that this operation Kalank was the result of a sting operation carried out by Tehelka, more particularly, one Ashish Khetan. The NHRC called for all the DVDs and CDs from Tehelka and Aaj Tak channel and sent them to Mumbai CBI for carrying out inquiry as regards the truthfulness of those DVDs and CDs. The CBI, Mumbai collected the material like camera, chips, hard Chaudhary, etc. and sent all the material to the Forensic Science Laboratory, Jaipur for verifying about its truthfulness and whether there was any tampering in the CDs or not.

332.13 It was submitted that the fifteen DVDs out of which the five CDs were prepared and the evidence in that regard was also produced of Mr. Khetan (PW 322) who recorded the original, that was examined by the FSL and found to not have been tampered with and even voice test was done in accordance with law and the same was found to be the voice of accused No.18, 21 and 22 and that evidence is also produced before the court. It was submitted that even in his cross-examination no question or suggestion has been put to PW 322 that he has not met these three accused or that he has not recorded the sting operation. It was submitted that even in the cross-examination, the suggestion was that he had given the script and accordingly, they had been prompted by him. This suggestion is first in the form of an admission that there was a recording, but only that it was prompted by PW 322.

Even in the section 313 statement, except that this has been done to produce false evidence against them, it is not the say of the three accused that they have not given any interview. It was urged that the evidence of PW 322 read with other evidence should be believed and the contents of the DVDs and CDs are required to be believed in toto. It was submitted that the argument that the CDs and DVDs were not brought on record in accordance with law and cannot be believed, will not hold good since there was an order passed by the trial court which has not been challenged at any stage. Referring to Exhibit 2245, it was submitted that the defence has put an endorsement of having received a copy, but no objection has been raised. It was submitted that there is no submission by the defence on the application Exhibit 2245 and no objection was raised to such application nor was the order made therein challenged by the defence. Therefore, the evidence should be taken into consideration.

332.14 It was submitted that insofar as Naroda Patiya is concerned, there are three accused namely accused No. 18, 21 and 22 who had conversations with Ashish Khetan. Their voice samples were also recorded by the All India Radio and were compared with the original DVDs. The FSL, Jaipur gave a report that there is no tampering, the voices are the same and about its truthfulness the prosecution has examined PW 322 Ashish Khetan, the signatory of the report from FSL, Jaipur, and also the persons who had recorded the voice samples at the All India Radio and all these witnesses have been cross examined by the defence. It was submitted that all these facts are on record, and therefore, the evidence regarding DVDs and CDs should be believed and accepted in toto.

332.15 Insofar as non-compliance of the provisions of sub-section (4)(a) of section 65B of the Evidence Act is concerned, it was submitted that the FSL Jaipur report identifies the electronic record and certifies that the same is not tampered with. It was submitted that on a reading of sub-section (4) of section 65B of the Evidence Act, firstly, if there is a dispute about recording of such statements by the accused or the defence, then in that case only section 65B would be attracted; secondly, in this case, the person who recorded the statement has been examined it is not as if only is the computer device has been produced before the court without examining any witness; and thirdly, these equipments were scientifically checked and not found tampered with has been stated so in the certificate and hence, the contents of the CDs and DVDs are required to be looked into.

STAND OF THE ACCUSED IN THEIR STATEMENTS UNDER SECTION 313 OF THE CODE:

333. At this juncture, reference may be made to the stand of the concerned accused in relation to the sting operation in their statements recorded under section 313 of the Code.

333.1 BABU BAJRANGI: Accused No.18 Babu Bajrangi has submitted written submissions together with his further statement, wherein he has stated that in this case, the evidence of Ashish Khetan who has conducted the sting operation has been recorded before the court. The evidence of the FSL officers as well as the Investigating Officers has also

been recorded. Out of the evidence of all these three witnesses, the prosecution does not get support to prove the Exhibit-65 charge against him beyond reasonable doubt from the evidence of any of those witnesses. Moreover, Ashish Khetan, the person who carried out sting operation has, during the course of his entire testimony, stated that whatever he had done was wrongly got up and that he had stated incorrect facts and conducted the sting operation; in these circumstances, he does not have any evidence that the other person has not stated incorrect facts. The so-called recording done by this witness, is in fact against the legal rules and by making additions and omissions, he has kept the facts as per his desire which has been clearly proved. In these circumstances, the evidence of this witness is not believable. Moreover, in this case, as per the FSL officer, a group of words should be recorded in the voice spectrograph, whereas in the present case, only words have been taken. In these circumstances as well as keeping in view the facts of the cross-examination, their evidence does not in any manner support the case of the prosecution to prove the Charge, Exhibit-65 against him. Moreover, the leaders and politicians of the complainant side, have colluded with Ashish Khetan and hatched a conspiracy and have made false representations to him and created a false sting operation.

333.2 In his further statement under section 313 of the Code, Babu Bajrangi in response to the evidence of Ashish Khetan, wherein the text of his conversation with the accused has been stated by him, has stated that he does not know anything about the incident stated in the text and has not taken part in the riots and does not know as to who has played

which role. A conspiracy has been hatched against him and through deceit, he has been wrongly involved and false evidence has been created.

333.3 PRAKASH RATHOD: Accused No.21 Prakash Rathod has given an identically worded response in his statement under section 313 of the Code. Accused No.21 Prakash Rathod in his written arguments, has stated that in this case, the leaders and politicians of the complainant side have colluded with witness Khetan and hatched a conspiracy and making false representations to him, have got up a false sting operation.

333.4 SURESH RICHARD: Accused No.22 Suresh Richard has in response to the above facts, stated that it is not true and that in a wrong manner, a conspiracy has been hatched against him to implicate/trap him. Accused No.22 Suresh Richard in his written response, has not at all referred to the evidence of PW-322 Shri Ashish Khetan. He has referred to the evidence of several witnesses and has stated that except for the above witnesses, no other witnesses have deposed against him. He, therefore, has not dealt with the testimony of PW-322 Ashish Khetan and the sting operation conducted against him.

333.5 FINDINGS: In the aforesaid backdrop the evidentiary value of the sting operation is required to be evaluated. At the outset it would be necessary to set out the relevant extract of the contents of the sting operation as contained in the deposition of PW 322 Shri Ashish Khetan.

333.6 Ashish Khetan, in his testimony, has deposed that during the course of the sting operation Babu Bajrangi has said that he had gone to Godhra on the previous day and had seen the corpses, they had given a challenge on that day itself that they would fell four times as many corpses at Patiya. He has further said that they had forcibly collected twenty three revolvers from Hindus on the previous night by threatening to shoot them in front of their children. He has further talked about four Hindus out of whom two were his close associates, having died at Patiya and that he used to send Rs.2000/- to their families every month. He has further talked about maximum number of murders having taken place at Patiya. Ashish Khetan has also deposed regarding Babu Bajrangi having come to Delhi and met one Anandji (an imaginary RSS character created by them, which role was played by Tarun Tejpal's paternal uncle). At Delhi, Babu Bajrangi, during the course of conversation with them, said that when the Godhra incident took place, he had gone there and could not bear to see it and on the next day they had given their response. Upon seeing what had happened at Godhra, they had retaliated at Naroda. Upon a query as to how they had organised things within such a short time, he had stated that they had gathered a team of twenty nine to thirty persons and had forcibly collected 23 revolvers from the residents of that area.

333.7 He has further said that at that time if the police so desired they would not have let them enter inside Patiya. There was only one entrance, there was only one gate, like there is only one entrance to a society, and then the whole

Patiya starts. Muslim people start. If they wanted to stop them, then there were fifty to sixty police standing there, they could have stopped them. If the police so desired, they would not have let them enter. The police had supported them a lot, on account of Narendrabhai, and that because of this, whatever happened in Gujarat was good as there was some respite from these people. Otherwise they had become very head strong. Thereafter they kept advancing forward. He has further stated that they had thrust a whole diesel tanker from Naroda Patiya into the masjid and then set it ablaze.

333.8 Ashish Khetan has also deposed regarding his conversation with accused No.21 Prakash Rathod during the course of the sting operation. Prakash Rathod that told him that Mayaben's name was removed from the Naroda incident, because she threw a lot of money. Upon Tehelka saying that she was saying that she was not there on that day, Prakash has said that she was there. He has stated she came later on. They were inside in the riots and she used to say "*kill! We are behind you*". He has stated that she did not roam around much, but must have come for half an hour to three quarters of an hour. As to why her name was removed, he says the Government is in her hands. Prakash Rathod took him to Suresh Richards's house and he also talked to him.

333.9 Suresh Richard has said that at the time of the Naroda incident they did not get any help from VHP but Babubhai had helped. He talks about Narendra Modi coming, seeing and praising them and going away. He has stated that Mayaben was there from the morning till 8:00 in the night. One

Sajan who is also present there has stated that his paternal uncle Ganpat Chhara's name is also there in the Patiya incident. Suresh has stated that at that time the police were in their favour and that on that day the police fired at the Muslims and that on the next day they changed sides and joined the opposite party. He also stated that Narendra Modi went from that side in a vehicle and went straight to Himmatnagar. He took a round and then went away and thereafter is not seen till date. They see him on the TV and in the newspaper.

333.10 Prakash Rathod has said that on that day some of the Chharas had swords and trishuls. He has also said that Suresh Richard has all kinds of weapons except revolver. He also refers to Guddu as being at the Patiya. He has said that they did not go inside and that all the other Chharas were inside and they had stayed there and they used to beat whoever came there and chase them away.

333.11 Prakash also refers to Bipin Panchal having come, bringing people along with him. They all went inside. He says that some of the Chharas strongly fought they were Suresh Richard, Guddu, Naresh, they did not tire.

333.12 Suresh has said that they were inside and in the evening the situation calmed down. He says Mayaben was roaming around the whole day in a jeep. He talks about destroying the masjid and tying a dead pig on the top and also hoisting a saffron flag on it, which is a blot on the Muslims. Suresh Richard talks about a whole tanker being brought and

breaking the masjid by putting the tanker in reverse. It was a petrol tanker.

333.13 Suresh has stated that if hungry people get inside and find some fruit, they are going to eat it no? When thousands of hungry people have entered and a fruit is found the poor guy is going to eat it. He says that even otherwise they were killing them and burning them, then, if such fruit is lying there he will eat it. In any case the fruit would be crushed/trampled upon and thrown. In any case they were burning them and killing them, then, someone may have eaten a fruit. He talks of having raped one Naseemo, the daughter of the scrap dealer and making chhundo (pickle made of grated mangoes) of her. He also says that if it is your child and he throws it in the fire, upon seeing it your soul will burn .. so when they escape they will say that it is the very langda.... He threw my child in the fire.

333.14 This part of the sting has been deposed by the witness in his examination-in-chief. Thus, all these statements made by the accused have been proved by him through his testimony. Additionally, he has also recorded these conversations and the extracts which form part of what was telecast in Operation Kalank and as well as the full DVDs of the recording have been produced on the record. Pursuant to directions issued by the Human Rights Commission, the CBI has investigated into the veracity of the contents of the DVDs and the CDs and the Forensic Science Laboratory, Jaipur has certified that it is possible to record the sting operation by means of the cameras used by this witness.

333.15 From the cross-examination of PW 322 Ashish Khetan it emerges that he had recorded the sting operation in the microchip fitted in the cameras, thereafter he has copied the same in the hard Chaudhary of his laptop and prepared CDs from the same. Also after some recording, he used to make CDs and send them to Tehelka to protect against the risk of the data getting destroyed. The attention of the witness is drawn to the facts in the nature of conversation recorded in paragraph 30 to 58 of his examination-in-chief. He has denied that what is dictated by him as the text of his conversation with the three accused in his examination-in-chief, has not been stated by him in the statement recorded by the SIT. The witness has stated that, in fact, he has stated only the exact text of the main facts of his conversation with the three accused in his deposition before the court. He has given the CD of the entire conversation to the SIT, and over and above that, extracts of the conversation in the sting operation have been stated in his statement also. The witness has voluntarily stated that at the time of recording his second statement, they had opened this CD and seen it in his presence.

333.16 The witness has stated that the CD which he had brought, he brought from Tehelka. He has stated that he had seen the Aaj Tak video. The Tehelka CD is the one which he had given to Tehelka. He has denied that the CD and transcript given by him to Tehelka were of a programme that was anchored by Shri Dipak Chaurasiya and Shri Dipak Sharma. The witness has voluntarily stated that the transcript of the Aaj Tak programme and CD are different from the CD which he had shot and the transcript.

333.17 The witness has denied that if he found that some part of the recording was irrelevant, he had deleted the same. He has denied that he had found the conversation regarding the communal incidents in the entire Gujarat to be irrelevant, and hence, he had deleted the same. He has denied that if anything useless has been spoken by those persons whom he has recorded and he has found it to be useless, he used to delete it.

333.18 In his cross-examination, it has further come out that he did not prepare the CDs and send them to Tehelka on a day-to-day basis, however, every few days, out of fear that there might be some technical defect in his laptop; he used to prepare a CD and send it to Tehelka by courier. He has denied that he had not sent the transcript to Tehelka from time to time by e-mail. The witness has voluntarily stated that even today, he has the e-mail with him.

333.19 He has denied that a meeting was held at Tehelka and it was decided that the unnecessary part of the recording should be deleted. The witness has voluntarily stated that there is no change, amendment, addition or tampering with the recording. He has stated that even as on date, the recording of the entire meeting has been preserved in the Tehelka office. The testimony of this witness regarding the confession made before him is coherent and has not been in the slightest degree shaken in the cross-examination.

ADMISSIBILITY OF EVIDENCE OF STING OPERATION:

334. In the aforesaid backdrop, the first question that arises for consideration is as regards the admissibility or otherwise of the evidence of the sting operation conducted by PW 322 Mr. Ashish Khetan. It has been emphatically argued on behalf of the appellants that the electronic evidence in this case has not been proved as laid down in section 65B of the Evidence Act and, is, therefore, inadmissible in evidence. Reference may, therefore, be made to the provisions of section 65B of the Evidence Act, which read thus:

“65-B. Admissibility of electronic records.—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the

computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of

this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]”

334.1 Thus, under section 65B of the Evidence Act, information contained in an electronic record, which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. The Supreme Court in **Anvar P.V. v. P.K. Basheer** (supra) has held thus:

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B (2). Following are the specified conditions under Section 65-B (2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) *The certificate must describe the manner in which the electronic record was produced;*

(c) *The certificate must furnish the particulars of the device involved in the production of that record;*

(d) *The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and*

(e) *The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

16. *It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.*

17. *Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence.*

18. *The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.”*

334.2 In **J. Yashoda v. K. Shobha Rani**, (2007) 5 SCC 730, the Supreme Court held thus:

“6. *In order to consider rival submissions it is necessary to take note of Sections 63 and 65(a). Sections 63 and 65(a) read as follows:*

“63. *Secondary evidence.—Secondary evidence means*

and includes—

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

* * *

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(a) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the court, or

of any person legally bound to produce it, and

when, after the notice mentioned in Section 66, such person does not produce it;”

7. Secondary evidence, as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.

8. Essentially, secondary evidence is an evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given. The definition in Section 63 is exhaustive as the section declares that secondary evidence “means and includes” and then follow the five kinds of secondary evidence.

9. The rule which is the most universal, namely, that the best evidence the nature of the case will admit shall be produced, decides this objection. That rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the

proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided (sic proved) by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section."

334.3 Thus, in view of the principles propounded in the above decisions, it is mandatory that the requirements of section 65-B of the Evidence Act be complied with for electronic evidence to be admissible in evidence. The question that therefore, arises for consideration in the present case, is whether the requirements of section 65-B of the Evidence Act have been complied with. The evidence adduced by the prosecution to prove the contents of the DVDs and CDs is through the testimonies of PW 322 Mr. Ashish Khetan, PW 323 Dr. Shailendra Ramkishore Jha, the FSL Officer who analysed the DVDs and CDs to examine as to whether they were tampered and also conducted the voice spectrography of the three accused to ascertain whether the voices in the DVDs and CDs were theirs. The prosecution has also examined PW 320 Nirmalsinh Sevasinh Raju, CBI, Mumbai, who had collected the DVDs and CDs from Tehelka and sent them to the FSL, Jaipur for analysis. The prosecution has also examined PW 314 Mr. Bhagirathprasad Manilal Pandya, the then Director of Akashwani Centre, Ahmedabad City, who recorded the voice samples of the three accused.

334.4 PW 322 Ashish Khetan has in his testimony has deposed regarding the sting operation conducted by him. During the course of his testimony the DVDs forming part of the record of the Gulbarg Case were shown to him and he has stated that when his testimony was recorded in the Gulbarg Case he had obtained them from Tehelka and produced them before the court. It may be noted that the equipment used by this witness for the purpose of recording the Sting Operation was shown to him and he has duly identified the same. However, insofar as the DVDs and CDs are concerned, he has stated that he had obtained the same from Tehelka and produced them before the court. From the testimony of this witness, there is nothing to establish that the DVDs and CDs produced before the court had been prepared by him. Moreover, the DVDs and CDs produced before the court were from the Gulbarg Case and were returned to that court and copies of such DVDs and CDs came to be prepared and produced on record as muddamal pursuant to the order passed by the trial court at Exhibit 2555. These DVDs and CDs have merely been kept as muddamal, and no efforts have been made to prove the contents thereof and get the same exhibited. PW 322 has deposed regarding the sting operation conducted by him and produced on record transcripts of the sting carried out by him together with a list Exhibit 2266. However, the transcripts produced on record do not appear to have been admitted in evidence and exhibited, which clearly reflects on the lack of ability or gross negligence on the part of the learned Special Public Prosecutor appearing on behalf of the prosecution before the trial court.

334.5 PW 323 Dr. Shailendra Ramkishore Jha, Scientific Officer of FSL, Jaipur has deposed that the extracts of the sting as shown in Operation Kalank are untampered and are extracts from the DVDs. In the examination-in-chief of this witness, the DVDs and CDs as well as voice samples of the three accused are proved to be the same as given to the FSL Jaipur by the CBI. This witness had also made a transcript of the five CDs of Operation Kalank and had forwarded them with his report. All the three examiners had marked that portion which is found in the CDs in the DVD. He has deposed regarding having compared the voices in the voice sample and in the CDs and DVDs, he had found them to be the same. He is shown the muddamal DVDs and CDs and has stated that these are the same DVDs and CDs which were sent to them for testing. In the cross-examination of the witness, it has come out that they had not carried out any testing of the hard Chaudhary, as it was not part of the query of the CBI. Thus, while this witness has testified regarding the voices in the sting operation being that of the accused and has also testified regarding the DVDs and CDs being un-tampered, there is nothing on record to establish as to who prepared the DVDs and CDs and that the same were copied from the laptop used by Ashish Khetan wherein he had transferred the data from the microchip. While the hard Chaudhary of the lap top did form part of the equipment forwarded to the FSL Jaipur for testing, since the CBI Officer had not requested the FSL to analyse the contents of the hard Chaudhary, no such analysis was carried out.

334.6 PW 320 Nirmalsinh Sevasinh Raju, CBI, Mumbai, has deposed that a preliminary inquiry came to be entrusted to the CBI by the NHRC for verifying the truthfulness of the CDs and DVDs used in the programme Operation Kalank which was broadcast on Aaj Tak new channel on 25.10.2007. The witness has deposed that Ashish Khetan had made fifteen DVDs of the sting operation, from which the five CDs of Operation Kalank had been made. He had obtained fifteen DVDs from Tehelka and five CDs from Aaj Tak. He has also seized the equipment used for recording the Sting Operation and had sent the same to the FSL Jaipur for analysis. He had also recorded statements of those persons on whom the sting had been conducted. He had met Babu Bajrangi at Ahmedabad but Suresh Richard and Prakash Rathod were not found. The report received by him from the FSL, Jaipur was sent to the NHRC on 13.5.2009. The sealed cloth bag containing the DVDs and CDs produced by PW 319 are shown to the witness who has stated that it is not the sealed packet that he had obtained and hence he cannot identify the sealed packet. [The trial court has made a note that the learned Assistant Special Public Prosecutor has informed the court that the fifteen DVDs and five CDs had been sent to the FSL Jaipur together with voice samples of the accused to match the voices in the context of Meghaninagar Police Station I CR No.67/02 and a report in this regard had been obtained. Thereafter, the DVDs and CDs were returned to the SIT and in the case of Naroda Police Station I C.R. No.98/02 also, the DVDs and CDs were sent to Jaipur FSL and after receipt of the DVDs and CDs, I C.R. No.98/02 it is written by hand on the cloth bag. It has been further pointed out that these DVDs and CDs are common in all the three cases.]

334.7 In his cross-examination, the witness has admitted that Babu Bajrangi in the statement recorded by him had admitted that the voice in the sting was his and that the sting was conducted on him, but had stated that he was given a written script and that at the time of the recording he has spoken as per the script. PW 320 has also admitted that he has not seized any script from Ashish Khetan and has voluntarily stated that Ashish Khetan had told him that he had conducted the sting operation. He has further stated that whatever was seized from Tehelka and Aaj Tak was under a receipt memo as per their office procedure. In his cross-examination, it has further come out that he had seized the fifteen DVDs from Tehelka and had sent them to FSL Jaipur. He has further stated that the DVDs which had been given to him had been sent by him in the same condition to the FSL Jaipur. In the cross-examination of this witness, it has come out that during the course of his investigation, he had orally examined the persons on whom the sting was carried out. At this time the persons shown in the sting operation had informed him that they were the persons shown in the sting. The witness has voluntarily stated that they had given different reasons in this regard. Moreover, none of the persons seen in the sting operation had denied that they were in the sting C.D. but had admitted it. The witness has further admitted that Babu Bajrangi had in the statement recorded by him, stated that the voice in the sting operation was his and that the sting was on him but he was given a script and at the time of recording he had spoken as per the script. The witness has admitted that he has not recovered any script form Ashish Ketan and has voluntarily stated that Ashish Khetan had told him that he had carried out

the sting operation.

334.8 PW 323 Dr. Shailendra Ramkishore Jha has stated that the lac seal on the white coloured bag is a seal of the FSL. Upon opening the sealed bag, a paper bag secured with cello tape with a seal is shown to him and he has stated that the cello tape has been applied at their office. The fifteen DVDs and CDs are taken out of their respective cloth covers and shown to the witness who has stated that there are FSL chits placed inside all the DVDs and CDs, and that they had tested these very fifteen DVDs and five CDs.

334.9 Thus, while the FSL Officer has identified the DVDs and CDs to be the very DVDs and CDs that came to be tested by him, and the equipment used for the purpose of the sting operation has been identified by PW 322 before the court, the origin of the DVDs and CDs has not been brought on record, as to who prepared the DVDs and CDs and as to whether these DVDs and CDs had been copied from the laptop used by Ashish Khetan for copying the Sting Operation from the microchips of the cameras used by him. Moreover, the contents of the DVDs and Cds, which are in the nature of electronic documentary evidence, have not been proved in the manner provided under section 65B of the Evidence Act. What is a matter of concern is that the contents of the DVDs and CDs have not been sought to be proved before the trial court and the same merely form part of the muddamal of the case. It is difficult to believe that the learned Special Public Prosecutor who conducted the case did not possess the elementary knowledge about how documentary electronic evidence is required to be proved.

Thus, while there is important evidence in the nature of the Sting Operation on record, the same is not admissible in evidence as it has not been proved in accordance with law. Sub-section (4) of section 65-B of the Evidence Act mandates that if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

334.10 In the present case there is a total non-compliance of the provisions of sub-section (4) of section 65-B of the Evidence Act and no certificate as contemplated therein has been produced on record. The learned Special Public Prosecutor has made a faint attempt to show that there is compliance with the provisions of section 65-B(4) of the Evidence Act by submitting that the FSL Jaipur report has identified the electronic record and certified that the same is not tampered with. According to the learned counsel, on a reading of sub-section (4) of section 65B of the Evidence Act,

firstly, if there is a dispute about recording of such statements by the accused or the defence, then in that case only section 65B would be attracted; secondly, in this case, the person who recorded the statement has been examined it is not as if only is the computer device has been produced before the court without examining any witness; and thirdly, it has been stated in the certificate that these equipments were scientifically checked and not found tampered with and, hence, the contents of the CDs and DVDs are required to be looked into. From the evidence as emerging from the record, while the contents of the Sting Operation had been copied by PW 322 from the microchip to his laptop, there is no evidence whatsoever to establish as to who made the DVDs and CDs and as to whether the DVDs were prepared by copying the contents of the laptop used by PW 322. While PW 322 has deposed that he had handed over all the equipment along with the laptop to Tehelka, though two officers from Tehelka viz. Tarun Tejpal and Harinder Baveja have been cited as witnesses in the charge-sheet, they have been dropped from the list of witnesses on the ground of reiteration of evidence. It appears that had these two witnesses been examined by the prosecution, they might have been in a position to explain as to how the DVDs and CDs came to be prepared and could have provided the important missing link in the evidence to connect the DVDs and CDs with the Sting Operation conducted by PW 322. A perusal of the recording contained in the DVD reveals that right from the time the person who is recording the sting enters, till he leaves the place the recording is continuous. The conversation is so natural that it leaves no scope for any doubt as regards its authenticity. However, in view of the non-compliance with the provisions of sub-section (4) of section 65-

B of the Evidence Act, the electronic documentary evidence contained in the DVDs and CDs is not admissible in evidence and cannot be looked into. Consequently, the contents of the DVDs and CDs wherein the Sting Operation has been recorded cannot be relied upon for the purpose of proving the charge against the accused.

334.11 If the contents of the DVDs and CDs cannot be looked into, is the entire evidence of the sting operation inadmissible in evidence? In the opinion of this court the answer is in the negative. While it is true that the DVDs and CDs have not been proved in accordance with law and the contents thereof are not admissible in evidence, in the present case, the extra judicial confession of the accused is not sought to be proved only through the electronic record, but a significant part of what has been spoken by the accused before the witness has also been deposed by the witness in his testimony. The accused have made extra judicial confession before PW 322 Ashish Khetan, who has clearly deposed regarding the same, including facts stated by the accused to him. Since, everything has been recorded by the witness, he has prepared transcripts based on such recording and has deposed on the basis of such transcripts. The entire transcripts prepared by the witness have been produced on record vide list Exhibit 2266. It is not the case of the accused, that there is anything in their statements/recording which is favourable to them and that such part has not been deposed to by the witness. This witness is not inimical to the accused. He had gone to Vadodara to cover some other incident and upon meeting the concerned persons, got a link about the riots

related to the Godhra incident and found that it was worth uncovering, accordingly, with the permission of the higher ups, he went ahead with the sting operation, covering those persons whose names were disclosed during the operation. The witness, in his deposition, comes across as a truthful witness. He had no specific agenda when he embarked upon the sting operation, except to unearth the truth. Having regard to the details provided by the witness with accompanying clarity, he comes across as a truthful witness.

334.12 It may be pertinent to note that this is not a case where electronic record is simpliciter being read into evidence as a document. In this case, this witness before whom the accused had made statements amounting to extra judicial confessions has been examined, and he, in his oral evidence, has extracted parts of what was stated by the accused before him. In the cross-examination of the witness, this part of his testimony has not been challenged. The entire cross examination is more on the aspect of inducement, and the fact that the witness had carried out the sting under an assumed identity by using a fabricated identity card. Therefore, through the evidence of this witness itself the extra judicial confession to the extent stated in the examination-in-chief stands proved. The documentary evidence which is in the nature of electronic recording would therefore be in the nature of corroborative evidence to support the testimony of the witness. Therefore, even if the documentary evidence is not accepted in view of non-compliance of the provisions of section 65B of the Evidence Act, the evidence adduced by the witness before whom the confessional statement was made, and whose

testimony has not been dislodged by the defence despite lengthy cross-examination, can certainly be taken into consideration while considering the complicity of the accused in the offence in question. In this regard it may be apposite to refer to the decision of the Supreme Court in **State of Punjab v. Gurdeep Singh, (1999) 7 SCC 714**, wherein the court has held thus:

“3. Confession in common acceptation means and implies acknowledgment of guilt — its evidentiary value and its acceptability however shall have to be assessed by the court having due regard to the credibility of the witnesses. In the event however, the court is otherwise in a position having due regard to the attending circumstances to believe the witness before whom the confession is made and is otherwise satisfied that the confession is in fact voluntary and without there being any doubt in regard thereto, an order of conviction can be founded on such evidence.

4. The observations of this Court in the case of State of U.P. v. M.K. Anthony, (1985) 1 SCC 565, seem to be rather apposite in this context.

5. In para 15 of the Report, this Court observed as below:

“15. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extra-judicial confession a weak piece of evidence. ... If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a

rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

6. Incidentally, this Court in the case of *Narayan Singh v. State of M.P.*, (1985) 4 SCC 26, expressly observed that it is not open to any court to start with a presumption that an extra-judicial confession is a weak type of evidence. In para 7 of the Report this Court observed:

"7. Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extra-judicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak of such a confession. In the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds."

7. In *Baldev Raj v. State of Haryana*, 1991 Supp (1) SCC 14, this Court further stated the law as below:

"9. An extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by

the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime. The confession of the appellant was voluntary. The testimony of PW 4 and PW 5 being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. The very presence of the appellant and his father with the party of Ishar Dass throughout the operation up to lodging of complaint at the police station dispel any suspicion against the prosecution case and clearly point to the truthfulness of the same. We are, therefore, unable to find any infirmity in the confession which has been accepted and relied upon by the courts below."

8. *While it is true that in Narayan Singh case (supra) this Court expressly observed that it is not open to any court to start with a presumption that an extra-judicial confession is a weak type of evidence, a later decision of this Court in Kavita v. State of T.N., (1998) 6 SCC 108, stated that in the very nature of things it is a weak piece of evidence. In para 4 of the Report this Court in Kavita case (supra) observed:*

"4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the court to decide on the acceptability of the evidence having regard to the credibility of the witnesses."

9. *Apparently there may seem to be some expression of*

divergence but on the totality of the situation, the question of there being any difference of expression of opinion does not arise, since Kavita case (supra) in no uncertain terms laid down that the evidentiary value of the extra-judicial confession depends upon the veracity of the witnesses to whom it is made and it is for the court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.” [Emphasis supplied]

334.13 In the facts of the present case, the witness before whom the extra-judicial confession has been made is a trustworthy and credible witness and, therefore, the extra judicial confession to the extent deposed before the court, deserves to be accepted.

334.14 However, the inept manner in which the investigation has been carried out both by the police as well as the SIT and the equally inept manner in which the prosecution has been conducted, speaks volumes about the intentions of all concerned, in diligently prosecuting the case. It is a matter of great regret and concern that the prosecution though represented by a Special Public Prosecutor and two Assistant Special Public Prosecutors who according to the order passed by the Supreme Court were required to be experienced lawyers familiar with the conduct of criminal trials, have failed to understand the basic proposition of law that the information/sting in the DVDs and CDs is in the nature of documentary evidence and has to be proved in accordance with section 65B of the Evidence Act. It is quite surprising that despite the fact that in his cross-examination PW – Rahul Nanheshwar Sharma, has clearly stated that he had not made any panchnama of the CDs of the mobile companies, for the reason that the same are in the nature of documentary

evidence and not muddamal, the learned Special Public Prosecutor still did not understand this clear position of law. As noted earlier, in this case the DVDs and CDs form part of the muddamal and have not been proved through the evidence of any witnesses. Though there is ample supporting evidence on record, the primary task of proving the documentary evidence has not been undertaken, and the CDS and DVDs remain merely muddamal, and, therefore, cannot be looked into as evidence. It is learnt that the learned Special Public Prosecutors are paid very handsomely on a day to day basis, despite which this is the manner in which the matter has been prosecuted before the trial court. It's about time the Government rethinks whether it should be squandering away public money in this manner for this level of prosecution. It appears that the Public Prosecutors were either incompetent or deliberately did not prosecute the matter diligently. The Supreme Court in the very same order has also observed that it would be open for the Chairman of SIT to seek change of any Public Prosecutor so appointed if any deficiency in performance is noticed. However, it appears that even the SIT has not noticed any deficiency in the performance of the learned Special Public Prosecutors despite there being noticeable deficiency in their performances. Even before this court, considering the nature of the assistance rendered to it in this appeal, one wonders why the SIT needed to engage a team of five lawyers headed by a senior advocate. Though the learned counsel was assisted by the learned Assistant Special Public Prosecutor who appeared in his case before the trial court, in respect of any query on facts, it took days for the prosecution to reply to the court and in some cases, no reply was forthcoming.

WHETHER THE PROVISIONS OF SECTION 24 OF THE EVIDENCE ACT WOULD BE APPLICABLE:

335. Another argument advanced on behalf of the appellants is that the accused were wrongly induced by Ashish Khetan to make the statements/confessions recorded by him and therefore, such confessions are hit by section 24 of the Evidence Act, and are not admissible in evidence. Under section 24 of the Evidence Act, a confession made by an accused is irrelevant in a criminal proceeding if the making of it appears to the court to have been caused by any inducement, threat, etc. As to what is the nature of the inducement referred to in section 24, the Supreme Court in **State of Rajasthan v. Raja Ram**, (2003) 8 SCC 180, has held thus:

“18. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in

authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See R. v. Warickshall, 168 ER 234.) It is not to be conceived that a man would be induced to make a free

and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

19. *An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the*

witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

20. *If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law."*

335.1 Thus, in terms of section 24 of the Evidence Act, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the

proceedings against him. Thus, a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Therefore, the inducement held out to the accused must relate to the offence itself and it is not any kind of inducement that would render the confession involuntary. Reverting to the facts of the present case, even if the defence of accused No.18 were to be accepted that the witness had offered inducement to him by saying that he would be made the President of the VHP, such inducement (a) does not have reference to the charge against the accused; (b) does not proceed from a person in authority; and (c) it is not sufficient to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference of the proceedings against him. Under the circumstances, the so-called inducement offered to the accused No.18 Babubhai Bajrangi, clearly would not fall within the ambit of such expression as contemplated in section 24 of the Evidence Act. It may be that the confession may have been extracted through trickery, but that by itself would not diminish the efficacy of such evidence.

335.2 FURTHER FINDINGS: It may be apposite to note that the accused, except for a denial simpliciter, have not strongly denied the sting operation. However, in the cross-examination of PW 322 Ashish Khetan, it is sought to be suggested that they were reading from the readymade script, which is the defence put forth by them. In the entire cross examination it is not even suggested to the witness that the transcript prepared by him was not a true transcript of what was recorded by him.

335.3 Reference may be made at this juncture to the following observations made by the Supreme Court in **R.K. Anand v. Delhi High Court**, (2009) 8 SCC 106: (2010) 2 SCC (Cri) 563:

“138. Mr Ahmed further submitted that the audio and the video recording on the basis of which the NDTV telecast was based and that was produced before the High Court was done by Kulkarni and it was he who was the maker of those materials. The Court never got Kulkarni brought before it either for the formal proof of the electronic materials or for cross-examination by the contemnors. The finding of the High Court was thus based on materials of which neither the authenticity was proved nor the veracity of which was tested by cross-examination.”

“142. Keeping this in mind when we turn to the facts of this case we find that the correctness of the sting recordings was never in doubt or dispute. R.K. Anand never said that on the given dates and time he never met Kulkarni at the airport lounge or in the car and what was shown in the sting recordings was fabricated and false. He did not say that though he met Kulkarni on the two occasions, they were talking about the weather or the stock market or the latest film hits and the utterances put in their mouth were fabricated and

doctored. Where then is the question of proof of authenticity and integrity of the recordings?"

"155. R.K. Anand thus accepts the entire recordings in both the stings. For, it is absurd even to suggest that the sting recordings are true and correct if those are seen as supporting his explanations (which, in any event, are quite unstatable!) but are otherwise false and fabricated.

156. In a rearguard action Mr Altaf Ahmed took us one by one through all the paragraphs in different affidavits filed by R.K. Anand in which the sting recordings were described as false, fabricated, doctored, morphed and manipulated. But those allegations are simply not compatible with the other statements in his affidavits as noted above and his responses in regard to the sting operations at different times. The denials in the affidavits are nothing more than ornamental pleas."

"160. On a careful consideration of the materials on record we do not have the slightest doubt that the authenticity and integrity of the sting recordings was never disputed or doubted by R.K. Anand. As noted above he kept on changing his stand in regard to the sting recordings. In the facts and circumstances of the case, therefore, there was no requirement of any formal proof of the sting recordings." (Emphasis supplied)

335.4 The upshot of the above discussion is that while the "Sting Operation" as recorded in the DVDs and the CDs produced on record by way of muddamal is not admissible in evidence, the oral evidence adduced by PW 322 Mr. Ashish Khetan regarding the extra-judicial confession made before him is admissible in evidence.

EXTRA JUDICIAL CONFESSION:

336. The next question that therefore arises for consideration is the evidentiary value of such extra-judicial

confession.

336.1 SUBMISSIONS: On behalf of the appellants it has been submitted that the sting operation cannot be termed as a confession, much less, an extra-judicial confession, for the reason that the six ingredients for relying upon an extra judicial confession as laid down by the Supreme Court in **Sahadevan v. State of T.N.**, (2012) 6 SCC 403, are not satisfied and the same is based on deception. The court in the above case held thus:

“15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1. *In Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259, this Court stated the principle that:*

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

15.2. *In Pakkirisamy v. State of T.N., (1997) 8 SCC 158, the Court held that:*

“8. ... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”

15.3. *Again in Kavita v. State of T.N., (1998) 6 SCC 108, the Court stated the dictum that:*

“4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the [witnesses] to whom it is made.”

15.4. *While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, stated the principle that:*

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court further expressed the view that: “19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....”

15.5. *In Alope Nath Dutta v. State of W.B., (2007) 12 SCC 230, the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed:*

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; and (iii) corroboration.

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.”

15.6. *Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan, (2010) 10 SCC 604, held that:*

“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore, (1970) 2 SCC 105, Mulk Raj v. State of U.P., AIR 1959 SC 902, Sivakumar v. State, (2006) 1 SCC 714, Shiva Karam Payaswami Tewari v. State of Maharashtra, (2009) 11 SCC 262 and Mohd. Azad v. State of W.B., (2008) 15

SCC 449]

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.”

15.7. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat*, (2009) 5 SCC 740, held as under:

“53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”

15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. (Ref. *Sk. Yusuf v. State of W.B.*, (2011) 11 SCC 754 and *Pancho v. State of Haryana*, (2011) 10 SCC 165.)

The principles

16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by

itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

336.2 Reliance was also placed upon the decision of the Supreme Court in **Pancho v. State of Haryana**, (2011) 10 SCC 165, wherein it was held thus:

18. *Besides, in his evidence PW 4 Nathi Singh has stated that his village is about 35 km to 40 km from the village of A-1, Pratham and none of his relatives stay in that village. He has stated that he knew A-1, Pratham; that he had come to his village at about 7.30 to 8.00 a.m. and stayed with him for 2.00 to 2.30 hours. It does not stand to reason that A-1, Pratham would go voluntarily to PW 4 Nathi Singh, who stayed in another village which is about 35 km to 40 km away from his village and make a confessional statement to him. The prosecution evidence does not indicate that A-1, Pratham and PW 4 Nathi Singh knew each other intimately. It is, therefore, difficult to accept the prosecution case that A-1, Pratham made any extra-judicial confession to PW 4 Nathi Singh. It may be stated here that in his statement recorded under Section 313 of the Code, A-1, Pratham has denied that he made any such statement. This retraction further makes a dent in the alleged extra-judicial confession.*

23. *As against A-2, Pancho, the prosecution is relying mainly on the extra-judicial confessional statement of A-1, Pratham. The question which needs to be considered is what is the evidentiary value of a retracted confession of a co-accused?*

24. *The law on this point is well settled by a catena of judgments of this Court. We may, however, refer to only two judgments to which our attention is drawn by Mr Lalit, learned Senior Counsel. In Kashmira Singh v. State of M.P., AIR 1952 SC 159, referring to the judgment of the Privy Council in Bhuboni Sahu v. R., (1949) 50 Cri L.J. 872 and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty, ILR (1911) 38 Cal 559, this Court observed that the proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid.*

25. *This Court further noted that:*

“10. ... cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept.”

(emphasis in original)

26. *In Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184, the Constitution Bench of this Court was again considering the same question. The Constitution Bench referred to Section 3 of the Evidence Act, 1872 and observed that confession of a co-accused is not evidence within the meaning of Section 3 of the Evidence Act. It is neither oral statement which the court permits or requires to be made before it as per Section 3(1) of the Evidence Act nor does it fall in the category of evidence referred to in Section 3(2) of the Evidence Act which covers all documents produced for the inspection of the court. This Court observed that even then Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused. Thus, though such a confession may not be evidence as strictly defined by Section 3 of the Evidence*

Act, "it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way".

27. This Court in Haricharan case (supra) further observed that Section 30 merely enables the court to take the confession into account. It is not obligatory on the court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right.

28. This Court in Haricharan case (supra) clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

336.3 Reference was made to the decision of the Supreme Court in **Sarwan Singh Rattan Singh v. State of Punjab**, 1957 SCR 953: AIR 1957 SC 637: 1957 Cri LJ 1014, wherein it has been held thus:

"10. That takes us to the case of Accused 3 Sarwan Singh. We have already pointed out that the order of conviction passed against Sarwan Singh is in the words of the judgment of the High Court based on the fact that "there is the evidence of the approver and it is

corroborated in every particular by his own confessional statement". Besides, there is other circumstantial evidence to which reference has already been made in narrating the prosecution story at the beginning of this judgment. It would at once be noticed that, if we come to the conclusion that the approver is an unreliable witness, the basis of the evidence of the approver on which the learned Judges of the High Court proceeded even while dealing with the case against Sarwan Singh has been shaken. If, in our opinion, the approver is unworthy of credit, then it would not be possible to consider the question of the corroboration that his evidence receives from the confessional statement made by Sarwan Singh himself. It is, however, true that Sarwan Singh has made a confession and in law it would be open to the court to convict him on this confession itself though he has retracted his confession at a later stage. Nevertheless usually courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case. In the present case, the learned Sessions Judge has considered the question about the voluntary character of the confession made by Sarwan Singh and has found in favour of the prosecution. The judgment of the High Court shows that the learned Judges agreed with the view of the learned trial Judge mainly because the evidence of the Magistrate who recorded the confession appeared to the learned Judges to show that the confession was voluntary. It is this view which is seriously challenged before us by Mr Mathur on behalf of Sarwan Singh. Prima facie whether or not the confession is voluntary would be a question of fact and we would be reluctant to interfere with a finding on such a question of fact unless we are satisfied that the impugned finding has been reached without applying the true and relevant legal tests in the matter. As in the case of the evidence given by the approver, so too unfortunately in the case of the confession of Sarwan Singh the attention of the learned Judges below does not appear to have been drawn to some salient and grave features which have a material bearing on the question about the voluntary character of the confession. Sarwan Singh was arrested on November 25. His clothes were found bloodstained and he is alleged to have been

inclined to help the prosecution by making the statement which led to the discovery of incriminating articles. All this happened on the 25th itself and yet, without any ostensible explanation or justification, Sarwan Singh was kept in police custody until November 30. That is one fact which is to be borne in mind in dealing with the voluntary character of his confession. What happened on November 30 is still more significant. On this day he was sent to the Magistrate to record his confessional statement. The evidence of the Magistrate Mr Grover shows that the accused was produced before him at about 2.30 p.m. He was given about half-an-hour to think about the statement which he was going to make and soon thereafter the confessional statement was recorded. It is true that the Magistrate did put to the accused the questions prescribed by the circulars issued by the High Court of Punjab. Even so, when the learned Magistrate was asked why he did not give more time to the accused before his confessional statement was recorded, his reply was frank and honest. He said that the accused seemed to insist upon making a statement straightaway.

The Police Sub-Inspector who had taken the accused to the Magistrate was apparently standing in the verandah outside in the Magistrate's office. The doors of the office were closed but the fact still remains that the Sub-Inspector was standing outside. The evidence of the Magistrate also shows that, soon after the statement was finished, the Sub-Inspector went to the Magistrate's room again. The person of the accused showed some injuries and yet the learned Magistrate did not enquire how the accused came to be injured. It is in the light of these circumstances that the question falls to be considered whether the confession made by the accused can be regarded as voluntary. It is hardly necessary to emphasize that the act of recording confessions under Section 164 of the Code of Criminal Procedure is a very solemn act and, in discharging his duties under the said section, the Magistrate must take care to see that the requirements of sub-section (3) of Section 164 are fully satisfied. It would of course be necessary in every case to put the questions prescribed by the High Court circulars but the questions intended to be put under sub-section (3) of Section 164 should not be allowed to become a matter of a mere mechanical enquiry. No element of

casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary. Incidentally, we may invite the attention of the High Court of Punjab to the fact that the circulars issued by the High Court of Punjab in the matter of the procedure to be followed, and questions to be put to the accused, by Magistrates recording confessions under Section 164 may be revised and suitable amendments and additions made in the said circulars in the light of similar circulars issued by the High Courts of Uttar Pradesh, Bombay and Madras. The whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in Section 24 of the Indian Evidence Act. There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In our opinion, in the circumstances of this case it is impossible to accept the view that enough time was given to the accused to think over the matter. Indeed, any Magistrate with enough criminal experience would have immediately decided to give longer time to Sarwan Singh in the present case for the obvious reason that Sarwan Singh appeared to the learned Magistrate to be keen on making a confession straightaway. The learned Magistrate himself has fairly stated that he would have given him longer time but for his insistence to make a confession without delay. This insistence on the part of Sarwan

Singh to make a confession immediately should have put the learned Magistrate on his guard because it obviously bore traces of police pressure or inducement. Unfortunately, the effect of the failure of the learned Magistrate to grant enough time to the accused to consider the matter has not been considered by the learned Sessions Judge and has been wholly ignored by the learned Judges of the High Court. Besides, in neither court below has any attention been paid to the fact that Sarwan Singh appeared to have been kept in police custody without any justification between November 26 and November 30. We have carefully considered all the relevant facts bearing on this question and we see no escape from the conclusion that the failure of the learned Judges of the High Court to take into account these material facts has introduced a serious legal infirmity in their conclusion that the confession made by Sarwan Singh is voluntary. That is why we think we must reverse this conclusion.

11. *There is, besides, another fact which is equally fatal to the prosecution case. Even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities in the case. In our opinion, some material points mentioned in the confessional statement are not shown to be true. Sarwan Singh says that when Gurdev Singh was assaulted he and his brother Harbans Singh were walking together. On the other hand the prosecution story is that Harbans Singh had first contacted his accomplices and had told them that he would send Gurdev Singh towards the spot where the accomplices would lie in wait for him. The story further is that when Gurdev Singh suspected that there were some people near about he shouted to Harbans Singh and before Harbans Singh came on the spot assault had begun. This part of the prosecution story as deposed to by the approver is inconsistent with the material statement in the confession. According to the confession, Dial Singh gave a Dang blow to Gurdev Singh on the head from the front. This statement is not borne out by medical evidence. There does not appear to be a corresponding injury on the head of the victim. Sarwan*

Singh says that he took the kirpan which was first used by Harbans Singh and gave two blows to Gurdev Singh on his thigh. This statement again is not borne out by the medical evidence about the injuries on the body of the victim. Similarly, the statement of Sarwan Singh that the handle of the kirpan was broken and he got his finger injured with it is not easily reconcilable with the medical evidence about the injury itself. Unfortunately these discrepancies between the confessional statement and the main prosecution evidence given by the approver have not been noticed by the learned Judges of the High Court. Indeed, after having found that the confession was voluntary it appears to have been assumed by the learned Judges that the confession was true and that, in our opinion, is another infirmity in the conclusion reached by the High Court”

336.4 Strong reliance was placed upon the decision of the Supreme Court in **Haricharan Kurmi v. State of Bihar**, AIR 1964 SC 1184 :(1964) 2 Cri LJ 344, wherein it was held thus:

“11. The question about the part which a confession made by a co-accused person can play in a criminal trial, has to be determined in the light of the provisions of Section 30 of the Act. Section 30 provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The basis on which this provision is found is that if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so Section 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession. There is no doubt that a confession made voluntarily by an accused

person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted. With that aspect of the problem, however, we are not concerned in the present appeals. When Section 30 provides that the confession of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals. It is clear that the confession mentioned in Section 30 is not evidence under Section 3 of the Act. Section 3 defines "evidence" as meaning and including—

"(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the court; such documents are called documentary evidence."

12. Technically construed, this definition will not apply to a confession. Part (1) of the definition refers to oral statements which the court permits or requires to be made before it; and clearly, a confession made by an accused person is not such a statement; it is not made or permitted to be made before the court that tries the criminal case. Part (2) of the definition refers to documents produced for the inspection of the court; and a confession cannot be said to fall even under this part. Even so, Section 30 provides that a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the court, it is the duty of the court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the court. But a court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the court in dealing with a confession, because Section

30 merely enables the court to take the confession into account.

13. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerburty*, ILR (1911) 38 Cal 559 a confession can only be used to "lend assurance to other evidence against a co-accused". In *Periyaswami Moopan* Reilly. J., observed that the provision of Section 30 goes not further than this: "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence". In *Bhuboni Sahu v. King*, (1949) 50 Cri L.J. 872, the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that "a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence".

*It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh*, AIR 1952 SC 159 where the decision of the Privy Council in *Bhuboni Sahu case*, (1949) 50 Cri L.J. 872 has been cited with approval.*

14. *In appreciating the full effect of the provisions contained in Section 30, it may be useful to refer to the position of the evidence given by an accomplice under Section 133 of the Act. Section 133 provides that an accomplice shall be a competent witness against an accused person; and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to Section 114 of the Act brings out the legal position that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Reading these two provisions together, it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of significance is that when the court deals with the evidence by an accomplice, the court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is*

evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.

15. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against and accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with these two types of evidence is thus clear, well understood and well-established. It, however, appears that in Ram Prakash case, 1959 SCR 1219, some observations have been made which do not seem to recognise the distinction between the evidence of an accomplice and the statements contained in the confession made by an accused person. "An examination of the reported decisions of the various High Courts in India," said Imam, J., who spoke for the Court in that case, "indicates that the preponderance of opinion is in favour of the view that the retracted confession of an accused person may be taken into consideration against a co-accused by virtue of the provisions of Section 30 of the Act, its value was extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars". The last portion of this observation has been interpreted by the High Court in the present case as supporting the view that like the evidence of an accomplice, a confessional statement of a co-accused person can be acted upon if it is corroborated in material particulars. In our opinion, the context in which the said observation was made by this Court shows that this Court did not intend to lay down any such proposition. In fact, the other evidence against the appellant Ram Prakash was of such a strong character that this Court agreed with the conclusion of the High Court and held that the said evidence was satisfactory and in that connection, the confessional statement of the co-accused person was considered. We are, therefore,

satisfied that the High Court was in error in this case in taking the view that the decision in Ram Prakash (supra) was intended to strike a discordant note from the well-established principles in regard to the admissibility and the effect of confessional statements made by co-accused persons.

16. *Considering the evidence from this point of view, we must first decide whether the evidence other than the confessional statements of the co-accused persons, particularly Ram Surat, on whose confession the High Court has substantially relied, is satisfactory and tends to prove the prosecution case. It is only if the said evidence is satisfactory and is treated as sufficient by us to hold the charge proved against the two appellants, that an occasion may arise to seek for an assurance for our conclusion from the said confession. Thus, considered, there can be no doubt that the evidence about the discovery of bloodstains on which the prosecution relies is entirely insufficient to justify the prosecution charge against both the appellants. In our opinion, it is impossible to accede to the argument urged before us by Mr Singh that the said evidence can be said to prove the prosecution case. In fact, the judgment of High Court shows that it made a finding against the appellants substantially because it thought that the confession of the co-accused persons could be first considered and the rest of the evidence could be treated as corroborating the said confessions. We are, therefore, satisfied that the High Court was not right in confirming the conviction of the two appellants under Section 396 of the Indian Penal Code.*

17. *It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be*

allowed to take the place of proof. As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals."

336.5 The learned counsel for the appellants further placed reliance upon the decision of the Supreme Court in the case of **State of Punjab v. Gurdeep Singh** (supra), wherein the court held that an extra-judicial confession is admissible in evidence and the court in appropriate cases can rely thereon to the extent of even basing conviction of the accused. The settled position of the present day is that the extra-judicial confession by itself, if otherwise in conformity with the law, can be treated as substantive evidence, and in appropriate cases it can be used to punish an offender. The court however hastened to add that this statement of law stands qualified to the extent that the court should insist on some assuring material or circumstance to treat the same as a piece of substantive evidence. In the facts of the said case the court further expressed the opinion that the delay in recording an extra-judicial confession before a person wholly unconnected with the police is always a matter of great suspect and held

that the High Court was right in rejecting the confessional statement. The learned counsel for the appellants submitted that in the present case the so-called confession has been made several years after the incident and therefore, such a delayed confession cannot be taken into consideration. It was argued that in this case, so many factors in the confession are not corroborated by any evidence. It was pointed out that while the accused No.18 is stated to have said that they had collected petrol from the petrol pump, no investigation has been made from any petrol pump regarding the purchase or procurement of such petrol. It was submitted that as per the so called extra judicial confession of the accused, they had collected 23 fire arms on the previous night; however, no evidence has been collected as to from whom such fire arms were collected and to what use they were put. It was submitted that in the police statement of the witness, there is no reference to any private firing, nor is there any scientific evidence to prove private firing and last but not the least, there is no charge of any offence under the Arms Act. It was submitted that it has time and again been held by the Supreme Court that extra-judicial confession by itself is a weak piece of evidence and in the facts of the present case the prosecution has failed to prove the chain of events surrounding the same beyond reasonable doubt.

336.6 Apart from the above decisions cited by the learned counsel for the appellants, reference may also be made to the decision of the Supreme Court in **Sahoo v. State of U.P.**, AIR 1966 SC 40, wherein it has been held thus:

“5. Before we consider whether the circumstances narrated above would stand the said rigorous test, we

*will at the outset deal with the contention that the soliloquy of the accused admitting his guilt was not an extra-judicial confession as the courts below held it to be. If it was an extra-judicial confession, it would really partake the character of direct evidence rather than that of circumstantial evidence. It is argued that it is implicit in the concept of confession, whether it is extra-judicial or judicial, that it shall be communicated to another. It is said that one cannot confess to himself: he can only confess to another. This raises an interesting point, which fails to be decided on a consideration of the relevant provisions of the Evidence Act. Sections 24 to 30 of the Evidence Act deal with the admissibility of confessions by accused persons in criminal cases. But the expression "confession" is not defined. The Judicial Committee in *Pakala Narayana v. R.*, LR 66 IA 66, has defined the said expression thus:*

"A confession is a statement made by an accused which must either admit in terms the offence or at any rate substantially all the facts which constitute the offence."

A scrutiny of the provisions of Sections 17 to 30 of the Evidence Act discloses, as one learned author puts it, that statement is a genus admission is the species and confession is the sub-species. Shortly stated, a confession is a statement made by an accused admitting his guilt. What does the expression "statement" mean? The dictionary meaning of the word "statement" is "the act of stating, reciting or presenting verbally or on paper." The term "statement" therefore, includes both oral and written statements. Is it also a necessary ingredient of the term that it shall be communicated to another? The dictionary meaning of the term does not warrant any such extension; nor the reason of the rule underlying the doctrine of admission or confession demands it. Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence, presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in

evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be. The following illustration pertaining to a written confession brings out the said idea: A kills B; enters in his diary that he had killed him, puts it in his drawer and absconds. When he places his act on record, he does not communicate to another; indeed, he does not have any intention of communicating it to a third party. Even so, at the trial the said statement of the accused can certainly be proved as a confession made by him. If that be so in the case of a statement in writing, there cannot be any difference in principle in the case of an oral statement. Both must stand on the same footing. This aspect of the doctrine of confession received some treatment from wellknown authors on evidence, like Taylor, Best and Phipson. In *A Treatise on the Law of Evidence* by Taylor, 11th Edn., Vol. I, the following statement appears at p. 596:

“What the accused has been overheard muttering to himself, or saying to his wife or to any other person in confidence, will be receivable in evidence.”

In *The Principles of the Law of Evidence* by W.M. Best, 12th Edn., at p. 454, it is stated much to the same effect thus:

“Words addressed to others, and writing, are no doubt the most usual forms; but words uttered in soliloquy seem equally receivable.”

We also find the following passage in ‘*Phipson on Evidence*’, 7th Edn., at p. 262:

“A statement which the prisoner had been overheard muttering to himself if otherwise than in his sleep, is admissible against him, if independently proved.”

These passages establish that communication to another is not a necessary ingredient of the concept of “confession”. In this context a decision of this Court in *Bhogilal Chunilal Pandya v. State of Bombay*, (1959) Supp 1 SCR 310 may usefully be referred to. There the question was whether a former statement made by a

witness within the meaning of Section 157 of the Evidence Act should have been communicated to another before it could be used to corroborate the testimony of another witness. This Court, after considering the relevant provisions of the Evidence Act and the case-law on the subject came to the conclusion that the word "statement" used in Section 157 meant only "something that is stated" and the element of communication was not necessary before "something that is stated" became a statement under that section. If, as we have said, statement is the genus and confession is only a sub-species of that genus, we do not see any reason why the statement implied in the confession should be given a different meaning. We, therefore, hold that a statement, whether communicated or not, admitting guilt is a confession of guilt.

6. But, there is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion; a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. The tone may be soft and low; the words may be confused; they may be capable of conflicting interpretations depending on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. Generally they are mutterings of a confused mind. Before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence.

336.7 In **Shiva Karam Payaswami Tewari v. State of Maharashtra**, (2009) 11 SCC 262 as well as in **Ajay Singh v. State of Maharashtra**, (2007) 12 SCC 341, the Supreme Court held thus:

“8. We shall first deal with the question regarding claim of extra-judicial confession. Though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. While dealing with a stand of extra-judicial confession, court has to satisfy [itself] that the same was voluntary and without any coercion and undue influence. Extra-judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by the accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra-judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the court to judge credibility of the witness’ capacity and thereafter to decide whether his or her evidence has to be accepted or not. If court believes witnesses before whom confession is made and is satisfied that confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous.

** * **

10. The expression ‘confession’ is not defined in the Evidence Act. ‘Confession’ is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the

offence. The dictionary meaning of the word 'statement' is 'act of stating; that which is stated; a formal account, declaration of facts, etc.' The word 'statement' includes both oral and written statement. Communication to another is not however an essential component to constitute a 'statement'. An accused might have been overheard uttering to himself or saying to his wife or any other person in confidence. He might have also uttered something in soliloquy. He might also keep a note in writing. All the aforesaid nevertheless constitute a statement. If such statement is an admission of guilt, it would amount to a confession whether it is communicated to another or not. This very question came up for consideration before this Court in Sahoo v. State of U.P., AIR 1966 SC 40. After referring to some passages written by well-known authors on the 'Law of Evidence' Subba Rao, J. (as he then was) held that 'communication is not a necessary ingredient to constitute confession'. In para 5 of the judgment, this Court held as follows:

5. ... Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be. ... If, as we have said, statement is the genus and confession is only a sub-species of that genus, we do not see any reason why the statement implied in the confession should be given a different meaning. We, therefore, hold that a statement, whether communicated or not, admitting guilt is a confession of guilt.' "

336.8 PRINCIPLES: On a conspectus of the above decisions, the following principles emerge:

(i) A confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

(ii) Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility.

(iii) Cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept.

(iv) Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to

the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right.

(v) In dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

(vi) Usually courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.

(vii) Even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities in the case.

(viii) There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence

criminal courts generally require some corroboration to the said confession particularly if it has been retracted.

(ix) When evidence as defined by the Act is produced before the court, it is the duty of the court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the court. But a court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the court in dealing with a confession, because section 30 merely enables the court to take the confession into account.

(x) A confession cannot be treated as evidence which is substantive evidence against a co-accused person.

(xi) Though confession may be regarded as evidence in that generic sense because of the provisions of section 30, the fact remains that it is not evidence as defined by section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

(xii) The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory.

(xiii) It has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

(xiv) The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of

oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be.

(xv) Where there is material to show animosity, court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by the accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra-judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repeat exact words and there may be many who are possessed of normal memory and do so. It is for the court to judge credibility of the witness' capacity and thereafter to decide whether his or her evidence has to be accepted or not. If court believes witnesses before whom confession is made and is satisfied

confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous.

336.10 FINDINGS: Reverting to the facts of this case, PW 322 Ashish Khetan has deposed regarding his meetings with Babu Bajrangi and has further stated that he had recorded the conversation between them by using spy cameras. The witness has prepared a transcript which he had brought along with him and had sought the permission of the court to refer to the same. He has produced six transcripts of his talk with Babu Bajrangi (A-18), two with Prakash Rathod (A-21) and three with Suresh Richard (A-22) together with a list which is exhibited at Exhibit 2266. The witness has deposed that he had prepared a complete transcript of certain part of the conversation and transcripts of extracts of significant part of some of the conversation for Tehelka. The witness had deposed regarding the date and the place where such conversation took place and has referred to the significant part of the conversation in his examination-in-chief. From the extracts of the conversation with Babu Bajrangi as deposed before the court, it emerges that the said accused had gone to Godhra on the previous day, that is, on 27th February, 2002 and on seeing the corpses had decided to give a fitting reply at Naroda Patiya on the next day to drop four times the number of dead bodies at Naroda Patiya. For this purpose, on the night of 27th they had forcibly collected twenty-three revolvers from Hindus, threatening to shoot them first in the morning if they did not hand over the revolvers. He has stated that in response to the incident that took place at Godhra they had retaliated at Naroda. It further comes out that

he had said that to organise everything, he had a team of twenty-nine to thirty persons, who had gone to collect the revolvers; however, there is nothing in this conversation to indicate as to who those persons are. This accused talks mostly about Jaydeep Patel and also talks about getting support from Narendrabhai saying that he had got arrangements made for them in Gujarat Bhavan at Mount Abu. He also speaks about the complicity of the police and how the police could easily have prevented them if they so desired. He talks of several people being cut and thrown into the well as well as of a tanker being thrust into the masjid.

336.11 Prakash Rathod talks about Jaydeep Patel and Mayaben's names being removed from the Naroda incident. He talks about Mayaben having thrown a lot of money for this purpose. He talks about her presence at Patiya and says that when she came, they were inside in the riots she used to say "kill, we are with you". She did not roam about a lot, must be for half an hour to a quarter of an hour. Prakash Rathod has talked about Suresh Richard having all kinds of weapons with him except revolvers. He has also mentioned Guddu's presence. He also refers to Bipin Panchal with his men having come there. He refers to Suresh, Guddu and Naresh having fought strongly.

336.12 Suresh Richard says that at that time they did not get help from anyone, they got help from Babubhai. He says that Mayaben was there on the day of the incident. He also talks about Narendra Modi having come there after the incident and having garlanded them and thanked them. He

says that Mayaben was there right from the morning till 8:00 in the night. She used to roam about in her car. He talks about the police being in their favour at that time. Suresh talks of having tied a pig on the minar of the masjid. He also talks about the manner in which the masjid was set on fire. He speaks about a tanker being brought and reversed into the masjid to break its wall. [It may be noted that while none of the witnesses speak about it, the photographs of the scene of offence show a tanker reversed into the masjid]. He also talks about raping a girl called Naseemo who was a scrap dealer's daughter.

336.13 In his cross-examination, PW 322 Ashish Khetan has stated that it is true that he had done all the recording and that he had honestly/faithfully recorded what was spoken by the accused during the sting operation to the best of his ability. Suggestions are put to him that he had given a false identification of Anandji to all those on whom he had conducted the sting. He has denied that he has deleted the part of the sting that he found was unnecessary. The witness is sought to be contradicted as to his statements recorded by the SIT, but no material contradiction has been brought on record and the witness has been in a position to explain any contradiction put to him. From the suggestions put to the witness, the defence does not appear to have disputed the fact that the witness had met the accused. In paragraph 117 of his evidence, reference is made to the transcript prepared by him. The witness is cross-examined as regards his having offered inducement to Babu Bajrangi. It has been suggested to the witness that he had gone to the homes of the other accused

and had lied to them and got them to speak facts that had not happened and recorded the same. A suggestion is put to the witness that all those on whom the sting was conducted had spoken in Gujarati. Thus in the entire cross-examination, it has not even been sought to be suggested that the witness had not conducted the sting on the accused or that the recording is not genuine. All that is suggested is that whatever part the witness thought was irrelevant has been deleted. Thus, the veracity of the sting is not in dispute at all.

336.14 Examining the facts of the present case, in the light of the principles laid down by the Supreme Court as referred to hereinabove, PW 322 Ashish Khetan comes across as a witness who is unbiased and is not even remotely inimical to the accused. From the entire cross-examination of the witness, there is nothing to indicate that he may have a motive of attributing an untruthful statement to the accused. The extra-judicial confession appears to be voluntary and have been made by the accused in a fit state of mind. However, the confession must also be established to be true having regard to the rest of the prosecution evidence, which shall be discussed hereinafter. The proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be. In the present case, while the sting operation as recorded in the DVDs and CDs has not been proved in accordance with law, nonetheless, the witness before whom the extra-judicial confession has been made has himself deposed such facts before the court. Therefore, the inadmissibility of the electronic documentary evidence would not diminish the veracity of the extra-judicial

confession, when the person before whom it was made has himself deposed regarding such facts.

336.15 On behalf of the appellants it has been contended that as per the provisions of the Evidence Act, the evidence of electronic record in the form of CD, DVD, etc. is documentary evidence and, as per section 59 of the Evidence Act, contents of documents or electronic records cannot be proved by oral evidence. It was submitted that, once there is an electronic record containing facts, which cannot be proved by oral evidence, the contents of the sting operation stated by PW 322 in his oral evidence are not admissible in evidence. In the opinion of this court, this contention needs to be stated to be rejected inasmuch as in the facts of the present case, apart from there being electronic record in the form of DVDs and CDs, there is also first hand evidence of PW 322 Ashish Khetan who conducted the sting operation, who has deposed regarding what was stated by the accused before him. Therefore, this is not a case where a witness is proving the contents of the electronic record by way of oral evidence. Here the witness is proving an extra judicial confession made before him by adducing oral evidence. Therefore, merely because the electronic evidence has not been proved in accordance with law, there is no reason to discard the oral testimony of the witness. More so, as it would amount to playing into the hands of a dishonest prosecution, which has not taken care to see that such important evidence is proved in accordance with law. However, the downside of the matter is that only that part of the sting operation to the extent deposed before the court can be taken into consideration and not all the contents thereof, which would exclude a considerable portion of the

sting, including portions relied upon by the trial court for basing a conviction.

XXIX CRIMINAL CONSPIRACY:

337. In the above background, the charge of criminal conspiracy under section 120B of the Indian Penal Code may be examined.

338. SUBMISSIONS: Mr. Y.S. Lakhani, learned counsel for the appellants, submitted that to prove the charge under section 120B of the Indian Penal Code, it is incumbent upon the prosecution to prove meeting of minds amongst the conspirators. It was submitted that PW 104, 176, 149, 192, 198, 236, 156, 227, 52 and 143 have all deposed against accused No.37 Mayaben. It was submitted that PW 227 and 236 have seen Mayaben at the Natraj Hotel. PW-52 has seen Mayaben at the Noorani Masjid. PW-143 has seen Mayaben at Jawannagar Khada. Most of the witnesses have seen Mayaben at the S.T. Workshop gate. Thus, different witnesses have seen Mayaben at different places at more or less the same time. Reference was made to the findings recorded by the trial court to submit that there is no evidence on record from where even an inference can be drawn that two or more accused met prior to the incident and hatched a conspiracy. The evidence on record shows that the different accused were in different mobs, there is no evidence to show that these accused who are convicted as conspirators, met at the same place at the same time.

338.1 It was further submitted that the evidence of

call records also does not indicate that any conversation took place between any two accused prior to the incident. Therefore, there is no meeting of minds and there is no pre-concert, and, therefore, even on the basis of circumstances, the conclusion that there was a conspiracy cannot be arrived at. It was submitted that merely because accused No.37 came there in the morning and some of the accused were seen with her cannot be said to be indicative of hatching of a conspiracy. It was submitted that there is no evidence worth the name from where an inference of conspiracy can be drawn. It was submitted that there is evidence on record of the witnesses that people continued to come and join the mob and there is no cogent and unimpeachable evidence to prove as to which accused came at what time and at which place. It was submitted that gathering of people may not be a consequence of a conspiracy already hatched. According to the learned counsel, when the incident is a spontaneous reaction to Godhra incident, particularly when the incident of the very nature of pelting stones, damaging properties, burning properties, injuring the people of the Muslim community, and ultimately causing them injuries, either by burning them or by killing them, have taken place in various cities of Gujarat and such broad identical set of facts in different cities, small towns or even remote villages are not alleged to be and they cannot be a part of any conspiracy. That means even as per the evidence on the record of this case, thousands of people from the near vicinity had gathered at the religious place of Muslims, viz., the Noorani Masjid as a very natural and obvious reaction of the people at large in the context of a major communal incident which has taken at Godhra on the previous day, which was also associated with the arrival of kar sevaks

who were returning from Ayodhya, and thus, the gathering of the people was not a result of conspiracy nor has it been proved even by cogent and reliable evidence by the prosecution in this case.

338.2 It was submitted that even hatching of a conspiracy on the spot, is also not coming out from the evidence on record and the evidence as regards the identified persons on the road in the morning hours from Krushnanagar to the Noorani Masjid as well as at the Natraj Hotel and the S.T. Workshop are found to be inconsistent and contradictory with reference to the time and place. It was urged that in such a situation, it is not possible to even infer any such conspiracy, particularly when, the time gap between the presence of the accused in the morning incident and the incident of late evening, when the mass killing had taken place was a considerable one. Reference was made to the decision of the Supreme Court in ***State (NCT of Delhi) v. Navjot Sandhu, 2005(11) SCC 600***, to was submit that there is no direct evidence for drawing an inference and that there has to be a chain of circumstances which can lead to infer that there is a conspiracy. Reference was made to the decision of the Supreme Court in ***Lennart Schussler v. Director of Enforcement, AIR 1970 SC 549*** for the following proposition of law:

“The first of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy

unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act.”

338.3 The decision of the Supreme Court in **Baldev Singh v. State of Punjab**, 2009 (6) SCC 564, was cited for the proposition that it is well settled that a conspiracy is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration circumstantial evidence. However, while doing so, it must be borne in mind that meeting of the mind is essential; mere knowledge or discussion would not be sufficient. Reference was made to the decision of the Supreme Court in **P.K. Narayanan v. State of Kerala**, 1995 (1) SCC 142, wherein it was held thus:

“The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the

alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation."

338.4 It was submitted that from the evidence adduced by the prosecution, it is amply clear that none of the circumstances relied upon by the prosecution have been established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation.

338.5 The decision of the Supreme Court in ***Param Hans Yadav v. State of Bihar***, AIR 1987 SC 955, was cited for the proposition that it is difficult to support the charge of conspiracy with direct evidence in every case but if the prosecution relies upon circumstantial evidence, a clear link has to be established and the chain has to be completed, otherwise it would be indeed hazardous to accept a part of the link as a complete one and on the basis of such incomplete evidence, the allegation of conspiracy cannot be accepted. It was submitted that the prosecution has failed to establish by circumstantial evidence the complicity of any accused in hatching a conspiracy to kill the Muslims and destroy their properties. In these circumstances, the conviction of the accused for the charge of criminal conspiracy is not sustainable.

339. Mr. B. B. Naik, learned counsel for the appellants, submitted that there is no evidence or investigation by any agency to bring on record from the officers of these organizations, viz. VHP, Bajrang Dal, etc., to show which

accused is a member of which organization. No investigating agency has done any investigation in this direction. It was submitted that all the organizations to which the accused are alleged to belong, are registered. The investigating agency could have collected the evidence and that merely on the basis of bare words of the police and other occurrence witnesses, a conclusion cannot be arrived at that the accused were members of different organizations when there is a possibility to bring in the evidence in the form of documents from the offices of these organizations.

339.1 It was submitted that there are more than sixty witnesses out of one hundred and twenty witnesses of the morning incident who have not stated about any accused having wielded any weapon. It is on record that the mobs came from three sides and different accused were in different mobs, so to say that the accused gathered at one place is also not correct. It was submitted that the mobs were increasing by the passage of time and there is no evidence to show as to at what time which accused joined the mob. It was submitted that when the mobs have gathered, the people have come on their own and there is no definite evidence as to which accused came from which side. It was submitted that on account of the incident that took place at Godhra on the previous day, sentiments were running high; fuel was poured in the fire by some politicians and what was done at Godhra was by the Muslims was broadcast on television as well as reported in the newspapers on 27.2.2002, which instigated the people at large to come out on the road, and more particularly to the Noorani Masjid, which is a religious place of the Muslims.

339.2 Next it was submitted that no reliance can be placed on the evidence of the sting operation for the purpose of establishing the conspiracy. It was submitted that in view of the provisions of section 10 of the Evidence Act, the sting operation which has been carried out several years after the conspiracy, cannot be relied upon as evidence against any of the co-accused. In support of such submission, reliance was placed upon the decision of the Supreme Court in the case of ***State (NCT of Delhi) v. Navjot Sandhu alias Afzal Guru, (2005) 11 SCC 600***. It was submitted that Supreme Court in the case of ***Mukesh and another v. State (NCT of Delhi)***, (supra) would not be applicable to the facts of the present case. It was submitted that it was in the facts of the said case and considering the manner in which the offence was committed, that the Supreme Court had held that conspiracy could be hatched even on the spur of the moment. It was submitted that even in the said decision, it has been held that in a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act is a sine qua non and that to convict a person of conspiracy, the prosecution must show that he agreed with others that they would together accomplish the unlawful object of the conspiracy. However, in the present case, the prosecution has miserably failed to establish that there was any meeting of minds amongst any of the accused. Reference was made to the evidence of PW-104 Mohammadsalim Mohammadhussain Shaikh to submit that this witness has stated that Mayaben was speaking in an aggressive tone and the others were hearing. It was submitted that the mobs had gathered and had started rioting before she had arrived. Therefore, this theory of on the spot conspiracy is not tenable as nothing is coming out of this that they have

agreed to do something. It was submitted that considering the contradictions in the testimony of the witness who implicates Mayaben Kodnani, the version given by this witness becomes highly doubtful. It was submitted that other witnesses who claim to have seen Mayaben have stated differently.

339.3 It was urged that the basic elements of a conspiracy are that there should be an agreement between two or more persons to commit unlawfully any act or a legal act by illegal means. It was submitted that meeting of minds has to be proved, in the absence of which, there cannot be conspiracy. Reliance was placed upon the decision of the Supreme Court in ***Kehar Singh v. State (Delhi Admn.)***, (1988) 3 SCC 609, for the proposition that generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on the evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence, direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former, does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor is it necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

339.4 It was submitted that there is nothing to suggest a larger conspiracy and large scale planning and that particular persons were behind them. It was submitted that none of the people from the mob which had come from Teesra Kuva have been identified by anyone, which clearly indicates that there was no planning by the accused who were prosecuted. It was submitted that the evidence of burning people in the lane of the water tank is there in the statements of the witnesses; however, no evidence has been collected by the investigating agency to establish the exact spot where such incident has taken place. It was submitted that the SIT was constituted to investigate the suspects which the police has not investigated, and this was a relevant aspect which should have been investigated, but has not been done. It was submitted that there is no evidence to complete the chain and the basic requirement for the offence of conspiracy, namely, meeting of minds is totally absent in this case.

339.5 The learned counsel for the appellants invited the attention of the court to paragraphs (h) and (i) at page 1582 of the impugned judgment and order to submit that the trial court has recorded a finding that putting all the above and what has been discussed in the previous parts of the judgment together then, it is proved beyond all reasonable doubt that, the accused who were identified by different victim witnesses had assembled near the Noorani Masjid and near the Muslim Chawls, they were possessing deadly weapons, shouting provoking and exciting slogans, etc. at about 9.00 a.m. to 9.30 or 10.00 a.m. of 28.2.2002, which all continued for the whole day. The common time at which all the accused had

assembled is proving an agreement to have already been arrived at among the accused before meeting there, which circumstances strongly suggest existence of conspiracy among the accused – agreement to do illegal acts. It was submitted that there is no evidence to show that all the accused have gathered at the Noorani Masjid at the same time. On the contrary, the evidence shows that the mob gathered at Krushnanagar and Natraj Hotel and then proceeded to the Noorani Masjid. It was further submitted that it is also pertinent to note that, in all, 121 witnesses have given evidence about the morning incident, out of whom, there are around 60 witnesses who have not referred to any weapons in the hands of the named accused. It was further submitted that there is also no evidence that all the accused had gathered either at Krushnanagar or the Noorani Masjid at the same time. Therefore, the conclusion drawn by the trial court that all the accused gathered at a fixed time at the Noorani Masjid is contrary to the record and the inference drawn by the court about hatching of conspiracy amongst them is also without any basis.

339.6 Referring to the findings recorded by the trial court in paragraphs (j) and (k) (page 1582 to 1583), it was submitted that such findings are contrary to the settled principles for recording a finding by drawing inference from the circumstances about conspiracy. It was submitted that mere presence of the accused with weapon in the mob cannot prove premeditation or pre-concert or meeting of minds, which are the basic ingredients of conspiracy. This fact also does not prove the common object or common intention and oneness and/or commonness, which are basic ingredients of conspiracy.

It was submitted that an individual might have the same intention and pursuing the same intention in a different manner can never become a conspiracy unless there is evidence to show that there was a meeting of minds to arrive at an agreement to commit an illegal act or legal act by illegal means.

339.7 It was pointed out that in paragraph (q) (page 1589), the trial court has recorded that it is an admitted position that the accused were workers of B.J.P., V.H.P., R.S.S., etc., and their affiliation, intimacy and relationship with one another is inferred as their organizational belonging is common. It was submitted that it is the mere say of the witnesses that the accused persons were belonging to B.J.P., V.H.P., R.S.S., Bajrang Dal, etc., but there is no any evidence on record to prove this fact, except the oral assertion of the witnesses. It was submitted that the list of members of each organization is available in the office of the said organization, but the investigating authority has never taken any trouble to find out the same as they might have had an apprehension that accused might not be members of those organizations and the case of the prosecution might become weak on this aspect, and, therefore, they have not included this aspect and they have not brought on record concrete evidence to prove that the accused were workers of the above-stated organizations. It was further submitted that, on the contrary, there were mobs on that day consisting of more than ten thousand people and it is hardly possible that there may be any conspiracy amongst those more than ten thousand people constituting the mob.

339.8 Referring to paragraph (h) (page 1601) of the

impugned judgment, it was pointed out that the trial court has recorded a finding that, except accused No.37, all the remaining conspirators have joined in the unlawful assembly for executing the conspiracy in the morning itself, and thus, they all are punishable for the offences committed as members of unlawful assembly also. It was submitted that there is no evidence to show that accused No.34, accused No.39 and accused No.47 are seen by any witnesses after the morning incident, that is, in the incident which has taken place in the chawls in the afternoon and in the incident in the lane of the water tank in the evening. Thus, it becomes very clear that the findings recorded by the trial court are not based on relevant evidence. Not only that, but, the findings are contrary to the evidence on the record of the case.

339.9 The attention of the court was drawn to paragraph [A-3], (page 1857) of the impugned judgment and order, to point out that the trial court has recorded that the numbered accused (27) shall be punished for the offences committed read with section 120B of the Indian Penal Code for their acting in pursuance to the conspiracy hatched for their instigation to one another to the other accused and for their abetment and as emerges on record that role of accused No.18 is the highest, accused No.37 is the second highest as, being not member of the assembly accused No.37 deserves some consideration being a woman. The role of accused No.1, accused No.2, accused No.10, accused No.22, accused No.25, accused No.26, accused No.41, and accused No.44 is different as leading persons and the role of the twenty two remaining accused was merely as followers of principal conspirators and leaders, hence, the all deserve different treatment in imposing

punishment. The learned counsel submitted that followers of principal conspirators can never be held to be conspirators as per the law laid down by the Supreme Court of India. It was submitted that if one person is in command and others are obeying his commands, then, the persons who are obeying the command of that one person, can never be treated as conspirators with the person who was giving the command. It was submitted that it is essential for a conspiracy that there should be agreement between two or more persons for doing an illegal act. Unless that is proved, any person cannot be held guilty of charge of conspiracy. In case of one person giving commands, there is no meeting of minds. Obedience by others to the command of one person does not amount to meeting of minds and agreement between the person giving the command and the persons who are obeying it.

340. Mr. N.D. Nanavaty, learned counsel for accused No.37 Dr. Mayaben Kodnani, submitted that insofar as accused No.37 is concerned, she has been convicted for the offence under section 120B, IPC, but has been acquitted for the offence under section 149, IPC and there is no appeal against her acquittal. It was submitted that eleven prosecution witnesses have deposed against her. It was submitted that it may be that the narration of the incident by one witness may differ from the narration given by another witness; however, the location itself would not differ. It was submitted that the evidence on record is self-contradictory evidence and nullifies the prosecution case against her. It was submitted that those who have come forward have given their statements belatedly and such witness are self-styled witnesses and in fact, they are not witnesses. It was submitted that having regard to the

nature of the evidence which has come on record, assuming that an element of suspicion remains, the accused is entitled at least to the benefit of doubt, though this is a case of acquittal clean and clear. It was submitted that the evidence which has come on record is not credible and convincing so as to convict the accused. It was submitted that the call details of the accused indicate her absence from the scene of offence. Moreover, it has been established that the accused was at Gandhinagar in the morning and it was not humanly possible for her to reach the scene of incident at the time indicated by the witnesses. It was submitted that the prosecution has not discharged the burden of proving the presence of this accused. According to the learned counsel, if there is self-contradictory evidence, the entire evidence has to be discarded as the contradictions nullify each other. It was submitted that while the court has to sift the wheat from the chaff, in this case, there is no wheat and only chaff and it is difficult to find even the grains of truth. It was argued that almost all the witnesses are merely chance witnesses, and, therefore, a close scrutiny of their evidence is required.

340.1 It was submitted that the evidence collected by way of sting operation is not saved by the provisions of section 10 of the Evidence Act as the sting operation has been conducted after the offence. It was submitted that therefore, it can be styled as an extra-judicial confession of such accused, which cannot be used against the other co-accused. It was submitted that in the facts of the present case, the provisions of section 65B of the Evidence Act have not been complied with and therefore, the sting operation is not admissible in evidence.

340.2 It was submitted that the prosecution has not dealt with the contentions raised on behalf of the accused and that there are important aspects on facts on which there is no reply forthcoming. It was submitted that subject to judicial scrutiny by the appellate court, the contentions advanced on behalf of the appellants should be considered as well taken. It was submitted that there are eleven prosecution witnesses involving this accused, at the same time, twenty-one prosecution witnesses who have seen the mob at same time are not involving her. This is another aspect on the touchstone of which the evidence of those eleven prosecution witnesses is required to be appreciated. It was submitted that this assumes significance while appreciating the evidence of the eleven witnesses who are coming forward after six years as self-styled witnesses.

340.3 It was submitted that two police witnesses, namely, Mr. K. K. Mysorewala and Mr. K. P. Makwana have specifically denied the presence of accused No.37 at the scene of offence and neither of the witnesses have been declared hostile to the prosecution case. Therefore, one set of eleven witnesses refers to her presence, whereas the other set of witnesses does not refer to them, though equally present and the third set of witnesses says that she was not there. This is contradictory evidence. Therefore, it would be very hazardous to rely on one version and discard another, to attach credibility to one set of statements and to discard another. It was further submitted that none of the witnesses has stated that Babu Bajrangi and Mayaben Kodnani were present together at the time of the incident. There is no evidence to establish

conspiracy. It was submitted that on the facts and the evidence on record, the appellant is entitled to a clean acquittal or at least benefit of doubt.

340.4 While summing up, the learned counsel submitted that some witnesses who belatedly got their statements recorded by the investigating agency or their statements were recorded by the investigating agency and after a lapse of about six years or more, state for the first time, that accused No.37 came at around 9:00 to 9:30 in the morning; some witnesses say near the Noorani Masjid; some witnesses say near the S.T. Workshop gate; some say near Natraj Hotel; one of the witnesses has said near the Panchvati area; some witnesses said that she came in Maruti car, dressed in white saree and thereafter interacted with some police personnel including one Mr. Mysorewala and then she left; some have exaggerated the version and said that in a small Maruti car some five to six persons came and lethal weapons were distributed in the presence of accused No.37; one witness has gone to say that she fired shots from a pistol like weapon; some witnesses out of the eleven, have stated that she was a part of the mob near the S.T. workshop; while one of the witnesses has seen her at 11 o'clock.

340.5 It was submitted that these witnesses are interested witnesses; they were aided and assisted by political opponents of the accused No.37. It was submitted that their versions have come on record at belated stage, and it is only after the investigation was transferred to the SIT by the Supreme Court, that they, for the first time, have made themselves available to the investigating agency. It was

emphatically argued that during the course of investigation by the SIT, a converse fact had emerged that accused No.37 was not present and that she was at some other place, quite a distance away from the scene of occurrence. It was argued that though such evidence was collected and available, it was withheld by the prosecution and not brought on record. Therefore, a fair trial has not been conducted against the accused.

340.6 Referring to the call details produced on record, it was submitted that the mobile phone of the accused No.37 was on all throughout, however an effort has been made to show that for about couple of hours, it was switched off. But in fact, the call details produced by the prosecuting agency indicates that it was working, there were calls which were received on the mobile phone and she had also used by mobile phone to call some parties. It was submitted that the important factor in the call details is the location of the accused, which is quite far away from the scene of occurrence.

340.7 The second limb of argument was that this accused has been convicted of the offence of criminal conspiracy under section 120B of the Indian Penal Code, but there is no evidence worth the name as to why, when and with whom she has conspired. There is not even an iota of evidence on the conspiracy part. It was submitted that none of the eleven witnesses whose evidence is recorded and relied upon to establish the charge of conspiracy against the accused have been declared hostile, whereas all police officers like Mysorewala and two others have categorically stated in their cross-examination that they have not seen the accused at the

scene of occurrence in the morning or late in the evening nor any has anyone had any conversation with her on the fateful day. It was, therefore, urged that examining from any angle, the conviction of the appellant recorded by the trial court is not sustainable and deserves to be quashed and set aside and this appellant is entitled to acquittal with or without benefit of doubt.

341. Mr. Prashant Desai, learned Special Public Prosecutor submitted that accused No.37 and other accused were charged for the offence of criminal conspiracy under section 120-B of the Penal Code. Unlike other evidence, a criminal conspiracy, in most of the cases, has to be proved only on the basis of circumstantial evidence. The attention of the court was invited to the provisions of section 120A of the Penal Code, which define criminal conspiracy as well as to the provisions of section 120B thereof, which provides for the punishment for criminal conspiracy.

341.1 It was submitted that the underlying purpose for the insertion of sections 120A and 120B of the Penal Code was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means, punishable under law. The criminal thoughts in the mind when take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal by illegal means than even if nothing further is done an agreement is designated as a criminal conspiracy.

341.2 Reference was made to the law relating to conspiracy in England and put forth in Halsbury's Laws of

England, 5th Edition, Vol.25, Page 73, which reads as under:

*“73. Matters common to all conspiracies. There are statutory common law offences of conspiracy. The essence of the offences of both statutory and common law conspiracy is the fact of combination by agreement. The agreement may be expressed or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is therefore the agreement for the execution of the unlawful conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. **It is not, however, necessary that each conspirator should have been in communication with every other.**”* (emphasis supplied)

341.3 Reference was also made to the English Law on ‘conspiracy’ as explained in Russell on Crimes (12th Ed. Vol.1 Page-202), which reads thus:

“The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough.

In the case of R.V. Murphy, (1837) 173 ER 508 explained ‘conspiracy’ in the following words:

“.....I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it

into execution. This is not necessary, because in any cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'had they this common design, and did they pursue it by these common means the design being unlawful?'".

341.4 It was submitted that it is required to be noted that criminal conspiracy is required to be proved by way of circumstantial evidence. The Supreme Court has in the case of **State (NCT of Delhi) v. Navjot Sandhu**, (2005) 11 SCC 600, observed that "*.....The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.*"

341.5 Reference was made to the decision of the Supreme Court in **Yash Pal Mittal v. State of Punjab**, (1977) 4 SCC 540, wherein the court has laid down the object of criminal conspiracy, as under:

“10. The main object of the criminal conspiracy in the first charge is undoubtedly cheating by personation. The other means adopted, inter-alia, are preparation of causing to be prepared spurious passports; forging or causing to be forged entries and endorsements in that connection; and use of or causing to be used forged passports as genuine in order to facilitate travel to persons abroad. The final object of the conspiracy in the first charge being the offence of cheating by personation, as we find, the other offences described therein are steps, albeit, offences themselves, in aid of the ultimate crime. The charge does not connote plurality of objects of the conspiracy. That the appellant himself is not charged with the ultimate offence, which is the object of the criminal conspiracy, is beside the point in a charge under Section 120-B IPC as long as he is a party to the conspiracy with the end in view. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial Court.

11. The principal object of the criminal conspiracy in the first charge is thus “cheating by personation”, and without achieving that goal other acts would be of no material use in which any person could be necessarily interested.....”

341.6 Reliance was placed upon the decision of the Supreme Court in the case of **Kehar Singh v. State (Delhi Administration)**, (1988) 3 SCC 609, wherein the court stressed upon the relevancy of circumstantial evidence. The court observed thus:

“....Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The

prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Not actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."

341.7 It was submitted that the ingredients of the offence of criminal conspiracy are:

- an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not legal in itself but is done by illegal means.

Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution viz. meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. It was submitted that the courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took

part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication.

341.8 Reference was made to the decision of the Supreme Court in the case of **Ram Narayan Popli v. Central Bureau of Investigation**, (2003) 3 SCC 641, wherein it has been observed thus:

“The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence, Vol. II, Sec. 23, p. 559.) For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has

its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means."

".....For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means."

".....In the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

341.9 Reliance was placed upon the decision of the Supreme Court in **State v. Nalini**, (1999) 5 SCC 253, wherein the court summarised certain broad principles. The court held thus:

"583. *Some of the broad principles governing the law of*

conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category.

It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against

each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

341.10 The learned Special Public Prosecutor submitted that from the above principles, it emerges that in the present case there was a criminal conspiracy between accused No. 37, 18, 20, 21, 22, 24, 19 and 62 to take revenge of the Godhra train carnage and to teach a lesson to the Muslims. It was submitted that there was a call for bandh given by the Vishwa Hindu Parishad. The bandh call was given in the context of the Godhra incident. In the Godhra incident, some Hindus were killed. Pursuant to the bandh call, large mobs gathered and came to the Noorani Masjid from the Krushnanagar side and the Naroda side. Accused No.37 Mayaben Kodnani was an M.L.A. of that area. During a bandh call, the only purpose of the bandh is to close down the shops and admittedly, there were no shops near the Noorani Masjid. When the mobs came out, they came out in defiance of the order under the Bombay Police Act and they also took the law in their hands by pelting stones. It was submitted that so far as a conspiracy is concerned, from the following circumstances, viz., fifty eight persons were killed in the Godhra carnage on 27th February in a coach of the Sabarmati Express. The Vishwa Hindu Parishad and the Bajrang Dal had given a bandh call on 28th February in view of the Godhra incident. Some of the accused were either members of the Vishwa Hindu Parishad or the Bajrang Dal and some were members of the Peace Committee. On the day of

Gujarat bandh, large mobs came out from Krushnanagar side and Naroda side and gathered at the Noorani Masjid. The said gathering was not for the purpose of implementing the bandh, which is evident from the fact that there is no market place near the Noorani Masjid. The evidence shows that some of the members of the mob had weapons in their hands. The evidence also shows that there was an attack on the Noorani Masjid which is a religious place of the Muslims, by the people in the mob, who, as narrated by the witnesses, were chanting slogans. Therefore, the purpose of the said gathering was evident, viz., to attack the masjid as well as the residential premises of the Muslims in different chawls. Significantly, from a particular place, namely, the "khaccha" [passage of the water tank], fifty eight dead bodies were recovered, which is synonymous with the fifty eight deaths that occurred in the Godhra train carnage.

341.11 It was submitted that it is the case of the prosecution that some of the accused, who were leading members of that locality, came out at that place with the purpose of giving inspiration to the members of the mob to fulfill the object of various attacks. It is the case of the prosecution that accused No.37 came to the place and supported the action of the mob by gestures or by words. The said incident is also supported by the statement made by accused No.21 and 22 in the sting operation as they are also co-conspirators. So far as the other accused are concerned viz., accused No.18, 19, 20, 21, 22, 24 and 62, some of them are the members of the Peace Committee formed by the Naroda Police Station and when they visited the spot, they did not take any steps to calm down the situation and on the

contrary, they supported the mob.

341.12 So far as the other accused are concerned, they are co-conspirators who may have joined late, viz., accused No.1, 2, 10, 25, 26, 27, 30, 33, 38, 39, 40, 41, 44, 56, 58 and 61. It was submitted that they also joined in the conspiracy and they were part of the overt act committed by those accused and other accused. It was submitted that in the Godhra incident, fifty eight persons were burnt alive and from the passage of the water tank, fifty eight dead bodies were recovered. The choice of place was not such that nobody could come out from those chawls, nor was there any other way to escape from that place. The incidents took place from the morning to the evening. In the evening, as is revealed from the evidence, a mob came from the Teesra Kuva side and was responsible for killing the people, which is also part of the conspiracy, where the conspirators saw to it that the mob should come from the other side. There is no evidence on record to show that when these incidents were going on, the first named accused took any steps to stop such massacre. Moreover, if they were not party to it, they also did not have any communication with the police about curbing such massacre. It was submitted that there is no evidence on record to show that any message was sent by the so called members of the Peace Committee and accused No.37 and they were silently watching the entire incident. It was submitted that even as per the Supreme Court decision, even if a person silently supports the conspirator and does not commit any unlawful act himself, he is guilty of conspiracy. Therefore, accused No.37 and the other named accused are guilty of conspiracy even after the incident was over. It was argued that no attempt was made to show that

any steps were taken by the accused to alleviate the agony of the victims. It was contended that assuming that the evidence does not support their presence, even then it is not necessary so far as the charge of conspiracy is concerned, that they should be present at that time. The only thing that is material is the meeting of minds, which can be proved by circumstantial evidence. Therefore, as far as the first named accused are concerned, they are conspirators and all the others present at the first stage or who joined them later on are liable for the offence punishable under section 120B of the Penal Code.

341.13 It was submitted that even if there is no overt act attributed to some of the accused, even then, standing by and supporting the other persons in committing the crime would also make them equally liable for that offence, as section 120B of the Penal Code is an independent offence. Therefore, those accused whose names have appeared either for having committed any overt act or their presence is established in evidence, are also liable to be punished under section 120B of the Penal Code. It was submitted that the fact regarding meeting of minds to kill the Muslims and avenge the Godhra massacre, is to be inferred from the incident itself. Besides, there were ninety four dead bodies and three persons were missing, therefore, in all ninety seven people had died in the incident. It was further submitted that as regards the accused No.22, 21 and 18, from the sting operation, the fact regarding they having hatched a conspiracy being members of the conspiracy, stands established, as is borne out from the record, which is also binding on the co-conspirators.

341.14 Insofar as the applicability of the provisions of

section 10 of the Evidence Act is concerned, reference was made to paragraph 39 of the deposition of PW-322 Ashish Khetan to submit that this witness is also relevant for the purpose of proving the existence of conspiracy and also to show that these accused were party to it.

341.15 Reference was made to the provisions of section 30 of the Evidence Act to submit that if either accused No.21 or accused No. 22 says anything, it will be binding on accused No.37 also. Reference was made to paragraphs 97 to 100 of the Nirabhaya case's decision, to submit that once the electronic evidence is certified, there is no reason to doubt it. Reference was made to the decision of the Supreme Court in the case of **R. K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106** (paragraphs 134, 304 and 328) to submit that here, the court has accepted the evidence of sting operation as true and correct mainly on the ground that at no point of time, Mr. Anand challenged the meetings with Kulkarni or challenged the contents of conversation. Similarly, there is no challenge to the meeting being held and there is no challenge that the conversation took place, in that view of the matter, the evidence of PW-322 should be accepted. It was pointed out that the only defence taken in the section 313 statement is that to falsely implicate them, this witness has been created and that except for this, there was no other evidence. It was submitted that the another defence suggested in the cross-examination is that they have given a false promise to accused No.18 and thereby, recorded all these conversations by misrepresenting or by fraud. Another suggestion in the cross-examination is that he had given a written script and according to the written script, the answers

were given and therefore, it is not admissible in evidence. Reliance was placed upon the decision of the Supreme Court in ***Vikram Singh alias Vicky Walia and another v. State of Punjab and another***, AIR 2017 SC 3227, and more particularly paragraphs 23 and 24 thereof. It was submitted that from the conversation between Mr. Ashish Khetan and accused No.18, two things are clear, (1) the intention or motive, and (2) the planning in the entire episode starting from the evening of 27th February. It was submitted that in the conversation with accused No.21 and 22, the actual implementation and presence of accused No.37 is stated. It was submitted that if the totality of the conversation is taken into consideration, then in that case, the conspiracy is established and the involvement of at least four persons in the hatching of the conspiracy is established beyond reasonable doubt. As regards the question as to whether there was any meeting of minds, it was submitted that the fact that the accused had remained present and did not ask the mob to stop the activities, but encouraged their illegal activities is sufficient to prove the meeting of minds.

341.16 As regards the complicity of the individual accused, the learned Special Public Prosecutor submitted that as far as accused No.37 is concerned, at least ten witnesses have given evidence regarding her presence and so far as the co-accused are concerned, two of them have stated about her presence at the site in the sting operation. So far as the other five accused persons who are named in the FIR are concerned, they being members of Vishwa Hindu Parishad and Bajrang Dal which had given a bandh call, is not seriously disputed. It was submitted that insofar as accused No.18 is concerned, five other

witnesses have deposed having seen the accused. Not only that, from the testimony of PW-322, it is apparent that he has admitted the participation in the whole incident and there is no other evidence produced by A-18 in his defence. According to the learned Special Public Prosecutor, so far as accused No.18 is concerned, the prosecution has proved beyond reasonable doubt his participation and presence at the place of incident.

341.17 As regards accused No.19, it was submitted that only police witnesses have named him, but there is no reason to disbelieve them as regards the presence of the said accused, since he was also a member of VHP which had given a bandh call. It was submitted that the prosecution has proved beyond reasonable doubt about his presence and participation.

341.18 Insofar as accused No.20 is concerned, it was submitted that, apart from the police witnesses, eight other witnesses have named him as being present in the mob and participating, instigating the mob and one witness (PW-104) has seen him talking to accused No.18, accused No.37 and other persons and also the police witnesses, four in number, who have also identified his presence apart from the other witnesses. Therefore, the prosecution has proved beyond reasonable doubt about the presence and participation of accused No.20 in the whole incident. It was submitted that it is also proved that accused No.20 was an active member of the VHP and the ruling party and was also a member of the Peace Committee and they were, therefore, leading public figures in the Naroda Police Station area. It was submitted that there is nothing on record to show that they had taken any steps to stop the untoward incidents on 28.2.2002 and on the contrary,

the evidence on record shows that he had instigated the mob to attack the Muslims. Therefore, the prosecution has proved beyond reasonable doubt the involvement and participation of accused No.20.

341.19 As regards the complicity of accused No.24, it was submitted that apart from the police witnesses, PW-236 has named him as present in the mob and participating in the commission of the offence. Therefore, his presence cannot be doubted at the place of incident and the prosecution has proved beyond reasonable doubt his presence in the mob and participation.

341.20 Insofar as accused No.43 is concerned, it was submitted that PW-262 Mr. Delvadiya alone has named him.

341.21 It was submitted that insofar as these five accused are concerned, their presence and participation is proved beyond reasonable doubt. The fact regarding the said accused being leading public figures in the area and some of them being members of the Peace Committee stands established, inasmuch as, they themselves say so in their statement under section 313 of the Code. It was submitted that accused No.37 in her statement under section 313 and further statement has stated that she was not present at the scene of offence and that she was present elsewhere. It was submitted that the prosecution has proved beyond doubt by leading evidence of as many as ten witnesses and statements of co-accused about her presence. It was submitted that if the accused is taking a defence that she was not present and that she was present elsewhere, it is for her to bring evidence as this is a plea of

alibi. In support of such submission, the learned counsel place reliance upon the decision of the Supreme Court in the case of **Vijay Pal v. State**, AIR 2015 SC 1495, (paragraph 23) and **Darshan Singh v. State of Punjab**, AIR 2016 SC 253 (paragraph 17). It was submitted that insofar as accused No.18, 21 and 22 are concerned, assuming without admitting that their statements qua the other accused are not during the period of conspiracy, in that case also that will be binding to the concerned accused treating it to be a confession under section 30 of the Evidence Act. In support thereof, the learned counsel placed reliance upon the decision of the Supreme Court in the case of **Siddharth v. State of Bihar**, AIR 2005 SC 4352 and **Sucha Singh v. State of Haryana**, 2013 (14) SCC 552.

341.22 Next, it was submitted that the motive can be decided from the extra-judicial confession itself. It was submitted that if the evidence of PW 322 Shri Ashish Khetan, before whom, all the three accused made extra-judicial confession is analysed, the motive is clearly established by the statement made by accused No.18 about taking revenge for the Godhra incident. It was submitted that preparations were made by the said accused for the day of the incident; the said accused were in contact with the higher ups in the Vishwa Hindu Parishad and Bajrang Dal, which proves a part of conspiracy. Reference was made to the sting operation to point out that accused No.21 has stated that he was supported by Babubhai (A-18) and about his acquaintance with Babubhai. It was submitted that conspiracy can be inferred from the statements made in the evidence of accused No.18, accused No. 21 and accused No.22, that they are known to each other.

It was submitted that collecting of the weapons on the previous day was not only by accused No.18 but also by accused No.22. It was submitted that both, accused No.18 and 22 had weapons, which is a circumstance showing meeting of minds and the preparation made before the incident took place. Referring to the evidence of PW-322, it was pointed out that from his evidence, it emerges that there was a meeting of minds before the actual incident took place and there was preparation in furtherance of this conspiracy and ultimately action was taken, which is duly proved by the prosecution.

341.23 It was argued that insofar as the present case is concerned, to take the revenge for the Godhra Train Carnage incident, the accused conspired to ransack the properties of the Muslim community and also damage the religious place of Muslims, and accordingly, came at a particular place in an unlawful assembly and continued to be members of unlawful assembly with the purpose of sub-serving the object as mentioned hereinabove.

341.24 It was further submitted that it is not unknown that a conspiracy can be hatched on the spur of the moment if there is meeting of minds before the action is taken. Similarly, the accused and other persons came in an unlawful assembly and started damaging the properties of Muslims to take avenge the Godhra incident and attacked the area of Naroda Patiya where the Muslims were residing and had their religious place and shops. After damaging the properties, they looted the houses and took away the belongings of the Muslim community, killed many persons, which is narrated in the

charge, and also committed rape on Muslim girls, and thereby committed the offences as described in the charge. To fortify such submission, the learned Special Public Prosecutor placed reliance upon the decision of the Supreme Court in ***Mukesh v. State (NCT of Delhi)***, (2017) 6 SCC 1, for the proposition that meeting of minds for committing an illegal act is sine qua non of the offence of conspiracy. Meeting of minds, thereby resulting in formation of a consensus between the parties, can be a sudden act, spanning in a fraction of a minute. It is neither necessary that each of the conspirators take active part in the commission of each and every conspiratorial act, nor is it necessary that all the conspirators must know each and every detail of the conspiracy. Essence of the offence of conspiracy is in agreement to break the law.

341.25 It was submitted that accused No. 18, 19, 20, 21, 24 and 37 have denied that they were members of an unlawful assembly and that they have committed acts which amount to a criminal offence. It was submitted that all above accused were leading personalities of the area in question. Accused No.37, being the MLA of that area and the other accused being members of the Peace Committee and leading members of the society in that particular area, did not take steps to calm down the situation. Not only that, the accused No. 18, 20, 21, 22, 41 and 40 are persons who were connected with the Vishwa Hindu Parishad or Bajrang Dal, who gave the bandh call and, therefore, it is to be inferred that all these persons hatched the conspiracy to bring the mob at a particular place during the bandh call and attack the Muslims and loot the properties of Muslims and after the initial conspiracy, other accused also

joined the conspiracy, and attacked the properties of the Muslims, killed the Muslims and committed criminal acts as narrated in the charge and thereby all accused are the part of the conspiracy having the same set of mind to take revenge of the Godhra Train carnage by killing Muslims.

341.26 It was further submitted that there is ample evidence on record which shows that while attacking, the members of the mob including the accused, were chanting slogans, from which it is very clear that there was a conspiracy to kill the Muslims to take revenge of Godhra incident.

342. FINDINGS: In the backdrop of the above facts and contentions, the existence or otherwise of a criminal conspiracy is required to be examined. In the light of the decisions of the Supreme Court in this regard, the basic ingredients of a criminal conspiracy which the prosecution is required to prove by adducing evidence are: (i) the accused agreed to do or caused to be done an act; (ii) such act was illegal and was done by illegal means within the meaning of the Penal Code; (iii) irrespective of whether some overt act was done by one of the accused in pursuance of the agreement. While normally there would not be any direct evidence of a conspiracy being hatched, the circumstantial evidence should be cogent and credible and the chain of circumstances should be completed.

342.1 The trial court in the impugned judgment and order has discussed the credibility of certain witnesses who were examined by the prosecution to prove the existence of a

conspiracy. Notably, in all, eleven such witnesses are witnesses who have named accused No.37 Mayaben Kodnani as an accused. Insofar as the other witnesses referred to by the trial court viz. PW 112 Fatimabibi Mohammadyusuf Shaikh, PW 219 Noorbanu Zakirhussain Saiyed are concerned, the trial court has merely placed reliance upon the evidence of such witnesses wherein they have stated regarding people having assembled in that area and the presence and participation of the accused with deadly weapons on that day and burning of houses etc. for coming to the conclusion that this was possible only if there was meeting of mind, agreement, pre-meditation, pre-concert and preparation among the accused.

343. The first such witness is **PW 104 Mohammadsalim Mohammadhussain Shaikh**. The trial court has found that this witness has proved the presence and participation of accused No.2, accused No.20, accused No.37 and accused No.41 beyond all reasonable doubt in the morning occurrence. Accused No.58 though not named, has been identified as a person in the mob, which is a strong circumstance against him. A conspiracy was hatched among the accused to do away with Muslims, to destroy and damage properties of Muslims. Accused No.2 has a hotel near Natraj. Accused No.41 does business in this area. Accused No.2, accused No.20 and accused No.41 are canvassers of accused No.37 and workers of BJP. The homicidal deaths of Mohammad Shafiq Adam Shaikh and Abid in the morning occurrence, bullet injury to Mustaq Kaladia in the morning occurrence stands proved.

344. The reason for arriving at the conclusion that a

criminal conspiracy was hatched is that the accused had preplanned and there was preconcert as the members of the mob and accused No.37 had talked. Accused No.37 conveyed fiery communication after which the mob executed objects and intentions (sic.) to damage and destroy property of the Muslims and to do away with Muslims. According to the trial court, this conduct strengthens the lawful inference of having hatched conspiracy.

345. As already discussed while considering the credibility of this witness, his statement has been recorded only in the year 2008 after the SIT came to be constituted. Therefore, it would be very hazardous to rely upon the version given by such witness which has come at a highly belated stage. However, even if the testimony of the witness is taken at face value and accepted to be true, a perusal of the examination-in-chief of the witness reveals that the witness had deposed that at about 9:00 to 9:30 in the morning, an empty army truck passed from the road and the people in the mob who were engaged in pelting stones and setting the houses and *lari gallas* near the masjid on fire, ran towards Natraj Hotel. Thereafter, a police jeep came, which halted at the S.T. Workshop gate. Behind this jeep, Kishan Korani, Manoj Videowala and Murli Sindhi came. After a little while, a white Maruti Franti car came there. He saw that MLA Mayaben Kodnani was there in the car, whereafter she spoke to Kishan, Murli, Manoj and the police. While talking, Mayaben's voice was aggressive. She was gesturing towards their area and was saying something. All these people, that is, Mayaben, Kishan, Murli, Manoj and policemen gestured their hands to the mob which had run away towards Natraj Hotel and called it back.

Mayaben discussed something with the mob in an aggressive tone. Thereafter, she sat in the very car in which she had come, and left.

346. Now if one reads the evidence of this witness closely, what clearly emerges is that apart from the people in the mob, Mayaben had also talked with the police and apart from Mayaben and the three named accused, the police had also gestured to the mob and called it back. From the testimony of this witness, it is evident that the police were also a party to whatever Mayaben said. However, insofar as the involvement of the police is concerned, the trial court is totally silent. The testimony of the witness has to be read as a whole and part of it cannot be accepted and the remaining part discarded, more so, when insofar as the involvement of the police as per the version given by this witness is not severable from that of the accused. When any part of the evidence is not severable from each other, either the entire part has to be accepted or discarded. Besides, one fails to understand how merely talking to the crowd or even instigating it, without anything more, would lead to the conclusion that there was pre-planning and preconcert amongst the accused.

347. Insofar as the homicidal death of Mohammad Shafiq Adam Shaikh is concerned, this witness has not mentioned having seen him being injured in the firing. Merely because in the inquest panchnama Exhibit 2021, it has been recorded that in the riots that erupted on 28.2.2002 at 11:30 on the Naroda Patiya road a person by the name of Mahammad Sharif Adam Shaikh aged 18 was wounded in firing on his left thigh and his brother Maheboob Adam Shaikh resident of Naroda Patiya next

to the Noorani Masjid has brought him to the hospital in a dead condition on 1.3.2002 at 5:00 a.m. in the morning, and the postmortem report Exhibit 2020, states that the cause of death is due to shock and haemorrhage as a result of bullet injury, the trial court, without any other evidence on record to show that Mahammad Sharif Adam Shaikh had actually died in the firing on the road, has held that through the testimony of this witness, the homicidal death of Mahammad Sharif Adam Shaikh had been proved. It may be noted that as per the inquest panchnama, the brother of the deceased had brought him to the police station and had identified the dead body. However, the brother has not been examined to prove the manner in which the deceased had sustained the bullet injury. In the opinion of this court, the inquest panchnama cannot be read into evidence in this manner, without the facts mentioned therein being proved by the person who has so stated. The trial court was therefore, not justified in holding that the homicidal death of Mohammad Shafiq Adam Shaikh in the morning occurrence stands proved.

348. The next witness is **PW 136 Bashirkhan Nanhekan Pathan**. This witness also speaks about Mayaben (A-37) coming in a white car near a police vehicle which was parked near the S.T. Workshop gate and talked to the police after which the police fired at the Muslims. The witness further claims to have seen accused No.26, accused No.44 and Guddu in the mob near the S.T. Workshop. The trial court has recorded that in his cross-examination the witness has stated that he does not know exactly what time he saw accused No.37's white car, but he saw it before the disturbances started and he has reconfirmed that he saw Mayaben getting

out of the car. On the basis of this evidence, the trial court has formed the opinion that the disturbances started after the arrival of accused No.37 and that it is clear that she is the kingpin of the riots and that conspiracy was hatched. The trial court has accordingly recorded findings to the effect that this witness has established the presence and participation of accused No.37 as kingpin of the riot along with accused No.26, accused No.44 and deceased Guddu in the morning incident on that day beyond reasonable doubt; the witness himself was injured in the firing on that day at 10:00 a.m; the criminal conspiracy is proved to have been hatched among the accused; the disturbances at the site started after the arrival of accused No.37; and Mustaq died in the firing in the morning incident.

349. From the evidence that has come on record, insofar as the witness claims to have seen Mayaben near the S.T. Workshop in the morning is concerned, in all his prior statements recorded by the police, the witness has not named this accused. For the first time, the name of Mayaben has cropped up in the statement dated 27.5.2008 recorded by the SIT. Before the SIT as well as before the court, all that the witness has stated is that Mayaben alighted from a car and talked with some police officers standing near the corner of the S.T. Workshop, whereafter the police started firing indiscriminately at the mob. The witness does not refer to Mayaben having spoken to the mob or having instigated them. The witness does not refer to any interaction between Mayaben and accused No.26, 44 and Guddu (deceased). Thus, all that emerges from the testimony of this witness insofar as Mayaben (A-37) is concerned, is that she came to the corner of

the S.T. Workshop in the morning and talked to some police officers standing there. No criminal act has been attributed to her. On the basis of such slender evidence, which too, has come on record after a period of more than six years of the incident, one fails to understand as to how the trial court has come to the conclusion that Mayaben is the kingpin and that the disturbances started after she arrived. Significantly, what is attributed to Mayaben is that she talked to the police and thereafter the police started firing indiscriminately, however, none of the police are arraigned as accused and on the contrary the trial court has given a clean chit to the police and has held that there was no mala fide or malice on the part of the police. The trial court, unfortunately, has not discussed as to how and why when a local MLA comes and talks to the police, the act amounts to a criminal act. Therefore, even if the evidence of the witness is taken at face value and accepted to be true, the same would not justify the findings arrived at by the trial court.

350. Section 120-A of the Penal Code defines “criminal conspiracy”. In terms of this section, the offence of criminal conspiracy which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence, the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in

the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot, they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord with and in furtherance of the object for which they entered into the agreement.

351. Therefore, before coming to the conclusion that a criminal conspiracy has been hatched by the accused, the court is required to arrive at a finding that there is a meeting of minds in doing the illegal act. For the offence of conspiracy to be complete, it has to be established that two or more conspirators have agreed to do or cause to be done an act which is itself an offence. From the findings recorded by the trial court, there is nothing to indicate that the trial court has applied its mind to the above parameters. The trial court appears to have presumed the guilt of accused No.37 and that she is the kingpin and that a conspiracy has been hatched and has thereafter has tried to find out one or the other reason to justify such a conclusion without an objective, independent and impartial analysis or assessment of the materials, before recording a finding on the guilt of the accused.

352. Before jumping to the conclusion that accused

No.37 is the kingpin and that a conspiracy has been hatched, the trial court ought to have first discussed the evidence of each witness who has deposed against her and thereafter on a overall appreciation of the evidence of the witnesses given its findings on the complicity or otherwise of the said accused. Unfortunately, without even discussing any meeting or minds or common object of the accused, without arriving at any finding to indicate any connection of accused No.37 with the other accused, the trial court on the basis of the evidence of each individual witness has recorded a finding that accused No.37 is the kingpin and that a conspiracy has been hatched.

353. The next witness is **PW 176 Zulekhabanu Sardarahemad Sarmuddin Chaudhary**. It may be noted that this witness in her previous statement recorded by the police at the relevant time when the incident took place, has not named any accused, and has named the accused for the first time in her statement recorded by the SIT. Apart from the fact that the accused have been named at a highly belated stage, insofar as this witness is concerned, at the end of her examination-in-chief she has stated that in the mob which she saw between 9:00 to 9:45 in the morning on the road, she had seen Mayaben Kodnani also and she had recognized her. Thus, except for a passing reference at the end of her examination-in-chief, wherein she has stated that she had also seen Mayaben in the mob in the morning, nothing has been stated as regards the place and time when she had seen her, and no role has been attributed to her.

354. However, on the basis of the above evidence, the

trial court has recorded that the presence and participation of accused No.37 stands proved in the morning occurrence beyond reasonable doubt and that from the facts and circumstances, the probability of the accused having hatched a conspiracy to commit the crime stands proved.

355. Considering the fact that in the examination-in-chief of the witness, except for a passing reference at the end that she had seen Mayaben in the mob in the morning, one wonders as to how the mere presence of the accused in the mob without anything more, would prove the probability of the accused having hatched a conspiracy to commit the crime.

356. The next witness examined by the prosecution to prove the charge of conspiracy is **PW 149 Faridabibi Abdulkadar Khalifa**. This witness in her examination-in-chief has deposed that she and her children were having breakfast in the morning, when at around 9:00 to 9:30, there was commotion outside. Hearing the sounds, she came outside and saw that a mob was coming from Krushnanagar and Natraj Hotel towards the Noorani Masjid. At that time, she was standing next to the S.T. Workshop compound wall near the Noorani Masjid. The people in the mob were breaking the handcarts, stalls and rickshaws nearby. Some of the persons in the mob were wearing saffron bands on their foreheads. At that time, the policemen and S.R.P. personnel were present near the Noorani Masjid and Shri. K. K. Mysorewala was also present at the S.T. Workshop with a Government jeep. At this time, Mayaben Kodnani came out the mob and went near K. K. Mysorewala and spoke to him.

357. In the mob in which Mayaben was, certain other persons were also present, namely, Kishan Korani (A-20), Babu Bajrangi (A-18), Murli (A-2), Manoj Videowala (A-41), Ashok Paan Gallawala, Bipin Panchal (A-44), Jaybhavani (deceased), Dalpat Chhara (deceased), Dalpat Chhara's son-in-law Tiniyo Chhara, Sahejad Chhara (A-26), Sahejad Chhara's son-in-law Vijay Chhara, Suresh Langdo (A-22), Guddu (deceased), Hariyo (A-10), Nariyo (A-1), Tiniyo Marathi, Subhash Ramesh.

358. After talking with Mysorewala, Mayaben left, whereafter the police firing and private firing as well as arson near the Noorani Masjid also commenced. In this firing, Abid and Hasan Kureshi were injured by bullets and both of them died in the incident, whereas Mahammad, Piru, Khalid and Majid had sustained bullet injuries.

359. Thus, according to this witness, Mayaben was in the mob with the other accused named by her in her examination-in-chief. The witness says that Mayaben came out of the mob and went near K.K. Mysorewala and spoke to him. The witness further says that after talking to Mysorewala, Mayaben left, whereafter the police firing and private firing as well as the incidents of arson commenced near the Noorani Masjid.

360. On the basis of this evidence, the trial court has recorded that the presence and participation of accused No.1, 2, 5, 18, 20, 22, 26, 37, 41, 44, 45, 46 and deceased accused Guddu, Bhavani, Dalpat and Ramesh stands proved beyond reasonable doubt in the morning incident. The trial court has further held that the conspiracy seems to have been hatched

amongst the accused. For the purpose of arriving at this conclusion, the trial court has also recorded that this witness has seriously complained about the conduct of the police stating that the police remained with the Hindus, were protecting the Hindus and when she went to Shri Mysorewala after firing took place, she was given baton blows. According to the trial court, the witness seems to be very much annoyed with the police according to whom, the private firing took place even in the presence of police; she has grievance against Shri Mysorewala who said that he has orders to beat (or may be kill) the Muslims and not to save them, she confronted Shri Mysorewala as he was supporting the Hindus and not stopping the Hindus, at this time being angry, Shri Mysorewala gave three to four baton blows to the witness; according to this witness, Shri Mysorewala was involved in the crime as the police and private firing started after talk with Mysorewala and after accused No.37 left, Shri Mysorewala spoke "*Are you going or shall I shoot?*". The trial court was of the opinion that even if the occurrence of Mr. K.K. Mysorewala is believed as stated, then also, at the most what Mr. Mysorewala did is absolutely improper and uncultured way to deal with any woman and that his attitude was not befitting a Senior P.I. of the area, but merely from the said conduct and attitude, it cannot be concluded that he has any bias or he has aided the crimes, that he allowed the miscreants to commit the offences. The trial court has further recorded that what clearly emerges on record is the situation that was totally beyond his control. It is true that he ought to have taken stern actions right from 27th February, 2002, his management on 28.2.2002 is not appreciable, but all these points go to suggest that he has not acted efficiently and as per the expectation, but there is

nothing to join him with the offences. The trial court was of the opinion that there is nothing to believe that he has caused hurt to this witness and that it seems that on account of uncontrollable disturbances, tense situation and pressure from different authorities and then pressure from the witness and the other two women to arrange for ambulance, etc., he might not have behaved courteously, but then since it cannot be called voluntary and after all his duty is to maintain law and order, his action gets benefit of doubt as it could be bona fide action and not bias against the witness.

361. The trial court has further observed that as revealed from the testimony of the witness, Mysorewala played a leading role in taking the injured to the Civil Hospital who were below the water tank or were victims of the khancha incident near Gangotri and Gopinath; this act of Mr. K.K. Mysorewala is a reason not to believe that he was party to the conspiracy and his lethargy and inefficiency was his connivance with the other conspirators. The trial court observed that it is unfortunate that he was not sensitive enough to properly respond to the calamities being faced by Muslims on that day and has, accordingly, recorded that it believes that it is not proper to hold that Shri Mysorewala was a party to any conspiracy and his act and omission is a proof to the said conspiracy.

362. With due respect to the trial court, this court is not able to bring itself to agree with the findings recorded by the trial court. From the consistent testimony of this witness, it emerges that when the Muslims were injured in the police firing, she had approached the police for assistance, but was given blows with a baton and driven away. Insofar as

implication of Mayaben (A-37) in the offence in question is concerned, the same has come at a belated stage at the time when the statement of the witness came to be recorded by the SIT.

363. Even if the evidence of the witness is taken at face value and accepted as true, then also, all that the witness has stated is that at around 9:00 to 9:30, there was commotion on the road and when she came out, she saw mobs on the road. The policemen and the S.R.P. personnel were present near the Noorani Masjid and Shri K.K. Mysorewala was present at the S.T. Workshop with a government jeep. At that time, Mayaben Kodnani came out of the car and went near K.K. Mysorewala and spoke to him. After talking with Shri Mysorewala, Mayaben left, whereafter police firing and private firing as well as incidents of arson commenced near the Noorani Masjid. Therefore, what comes out from the testimony of this witness is that Mayaben came out of the car, talked with Mysorewala and left and thereafter, there was police firing and private firing. In the testimony of this witness, the role attributed to Mayaben is intertwined with the role attributed to Mysorewala and the same are not severable. It may be noted that in her statement before the police, the witness had neither named Mysorewala as the police officer who had given her baton blows, nor has she named accused No.37 Mayaben as being in the mob. The names of Mysorewala and Mayaben have cropped up only in the statement recorded by the SIT. If the statement of the witness is read as a whole, the complicity of Mysorewala in the incident is writ large and cannot be ignored while considering the complicity of Mayaben. The only overt act attributed to Mayaben is that she came out of the car,

talked to Mysorewala and left, whereafter there was police firing.

364. In these circumstances, the clean chit given by the trial court to Shri Mysorewala is not warranted. It may be noted that Shri Mysorewala in his testimony, does not refer to the presence of Mayaben at the scene of incident. The trial court has brushed aside such omission on the ground that the police may not name an influential person. In the opinion of this court, the police are bound to discharge their duties in accordance with law, whether the person is a common person or an influential person. There can be no excuse for a policeman not to implicate an influential person if such person is present. Therefore, the reasoning given by the trial court that though Mayaben may have been present, the police may not have named her does not merit acceptance. Besides, the reasoning given by the trial court that Mysorewala had taken the injured to the Civil Hospital which gives reason to believe that he was not a party to the conspiracy, also does not merit acceptance for the reason that the incidents that took place throughout the day on the road as well as in the chawls, took place in the presence of Shri K.K. Mysorewala. Shri K.K. Mysorewala has throughout the day not taken any steps against any of the miscreants. However, when the Hindus who were the aggressors made a representation to him that two Hindus had been dragged by the Muslims into the chawls, he made it a point to go through the lanes of the chawls on foot to ascertain such fact. However, the same Shri Mysorewala did not deem it fit to give any protection to the Muslims or to call an ambulance to take the injured to the hospital. If the situation was as tense as discussed by the trial court that Shri

Mysorewala may have got agitated upon a request being made to call an ambulance, one fails to understand the readiness of Shri Mysorewala to go into the lanes of the chawls to find out whether two Hindus had been dragged inside by the Muslims. While trying to protect the Hindus, Shri Mysorewala has not shown any willingness to extend the same benefit to the Muslims who were the victims in the incident. Insofar as taking the injured to the hospital is concerned, Shri Mysorewala came to the scene of offence only after the offence had been committed and taking the injured to the hospital was merely a face saving exercise. From the evidence that comes on record, the police played an active role in aiding and facilitating the Hindu mobs in attacking the Muslims in the chawls. All the police personnel who were deputed at various points on the highway and in whose jurisdiction the chawls wherein the incident took place also fell, have turned a totally blind eye to the happenings in the chawls. Not only that, in the presence of the police, the properties of the Muslims were burnt and even the Noorani Masjid, their religious place was ransacked and set ablaze, while the police stood there as a mute spectators.

365. In the incident where a Muslim youth drove a Tata 407 vehicle through the mob, the very same Shri K.K. Mysorewala thought it fit to follow the vehicle and apprehend the driver and bring him to the police station, but did not think it fit to apprehend a single Hindu who was indulging in violence and arson in the incidents throughout the day. This clearly shows the complicity of the police in the offence in question and their unwillingness to protect the Muslims. Therefore, the clean chit given by the trial court to the police, in the opinion of this court, is contrary to the record of the case. The trial

court has observed that it is the duty of Shri Mysorewala to maintain law and order and his actions get benefit of doubt as it could be bona fide action and not bias against the witness. However, from the conduct of the police, it is evident that they have totally failed in their duty to maintain law and order and there is no question of their action getting the benefit of doubt, inasmuch as the actions of the police officers in siding with the Hindus against the Muslims cannot in any manner be said to be bona fide and are clearly vitiated by bias against the Muslims. In the opinion of this court, if the trial court thought it fit to believe the testimony of the witnesses qua Mayaben (A-37), it could not have ignored the testimony of the very same witnesses implicating Shri K.K. Mysorewala also.

366. Besides as noted hereinabove, all that the witness has stated is that Mayaben Kodnani came out of the car and went near K.K. Mysorewala and spoke to him. After talking with Shri Mysorewala, Mayaben left, whereafter police and private firing commenced. In the opinion of this court, even if the testimony of the witness is accepted at face value, talking with Mysorewala and leaving the place can hardly be said to be a criminal act, more so, indicate hatching of a criminal conspiracy.

367. The next witness examined by the prosecution for the purpose of proving the charge of conspiracy under section 120B of the Penal Code is PW 192 **Rasidabanu Imtiazhussain Momin**. This witness has deposed that the people in the mob, which had come from the direction of Krushnanagar, were pelting stones at the masjid as well as at them and were also throwing bottles. The mob which had

come from the direction of Natraj was also pelting stones and bottles at them. Mayaben Kodnani was in this mob. Manoj was also in this mob. As per her knowledge, his name is Manoj Videowala. In the mob which came from the direction of Natraj, Bipin Autowala was also there. Moreover, Santosh Dudhwala was also there. Santosh Dudhwala has a shop next to Kamla Welding on the way to Kubernagar. In the mob from the direction of Natraj, she has also seen Guddu Chhara, Naresh Chhara, Suresh Langdo and Suresh Langda's younger brother. Mayaben was in this mob and was instigating the public by saying "*come forward*" and "*kill*". At this time, the police had also come there. The police had resorted to firing and lobbed tear gas shells at the Muslims standing at their corner due to which, four or five Muslim youths were injured by bullets.

368. In her cross-examination, the witness has stated that she does not know that Mayaben is a doctor and as to whether her hospital is situated at Saijpur Bogha road. In her cross-examination, it has come out that when for the first time on the day of the incident she saw Mayaben, she was standing in front of her, but diagonally. She has admitted that she was standing in the line of the Noorani Masjid. She has admitted that all the accused whom she has identified before the court were in the Hindu mob on the side of the Noorani Masjid.

369. Thus, according to this witness, Mayaben came in the mob that came from the direction of Natraj. The time when she saw the accused was from 9:00 to 9:30.

370. On the basis of the above evidence the trial court has *inter alia* recorded the following findings:

“[a] The PW involves A-37, A-58, A-22, Guddu, A-41, A-1 and A-44 in the morning incident as leaders for charged offences beyond reasonable doubt with the fact that they were in the mob throwing stones, glass bottles, etc. (not for A-37).

[c] A-37 was provoking, instigating and leading the mob.

[d] Conspiracy seems to have been hatched among the accused.”

371. It may be noted that this witness has named Mayaben only in her statement recorded by the SIT after a period of more than six years. It may further be noted that the trial court while appreciating the evidence of the witnesses has totally ignored the delay on the part of the witnesses in naming Mayaben (A-37) and has merely shrugged aside the contention that there was a delay in naming the accused on the ground that she being an influential person, it is natural that the police would be reluctant to arraign her as an accused. Even if the testimony of the witness is taken at face value and accepted as true, what the witness has stated is that Mayaben was in the mob and was instigating the public by saying, come forward and kill. On the basis of this evidence, one fails to see as to how the trial court could have arrived at the conclusion that a conspiracy had been hatched amongst the accused.

372. The next witness examined by the prosecution for

the purpose of proving the charge of conspiracy under section 120B of the Penal Code is PW 198 **Haroon Mahammadbhai Shaikh**. As per the testimony of this witness, after he woke up in the morning at around 8:00 to 8:30, he heard sounds coming from chawl saying, "*mobs have come, mobs have come*", whereupon he came out on the road at the corner of the S.T. Workshop. At that time, the police had come in a jeep and were getting the stalls and cabins shut down. Subsequently, the mobs gathered near the S.T. Workshop as well as the S.R.P. Quarters gate. The witness says that in the mob, he saw Mayaben, Babu Bajrangi, Sachin Modi, Ashok Pangallawala, Manoj Videowala, Suresh Langdo, Haresh, Guddu and Bipin Autowala in the morning at around 9:30 on the day of the incident. According to the witness, they were leading the mob.

373. On the basis of the testimony of this witness, the trial court has come to the conclusion that the presence and participation of accused No.18, 22, 37, 41, 44, 45 and 52 as well as deceased Guddu in the morning occurrence stands proved and that from the facts and circumstances, probability of the accused to have hatched the conspiracy (sic.). Apart from the fact that this witness has named accused No.37 after a period of more than six years; at the time when his statement came to be recorded by the SIT, all that the witness has stated is that he saw Mayaben in the mob along with other accused and that they were leading the mob. On the basis of the evidence of this witness, it is difficult to believe as to how the trial court has come to the conclusion that there is a probability of the accused having hatched a conspiracy.

374. The next witness examined by the prosecution to prove the charge of criminal conspiracy under section 120B of the Penal Code is **PW-236 Siddiquebhai Allabax Mansuri**. This witness has deposed that at around 8:30 to 9:00 in the morning, he came out of his house and went near Natraj Hotel, where there was a mob of around five to ten thousand people. While he was present there, Mayaben came in a Maruti Franti car together with her P.A./Assistant. Both of them alighted from the car at the spot where he was standing. Upon seeing them, the people standing there in the mob started chanting, "*Jay Shri Ram*". Mayaben gave a provocative speech to the people there and told them that she had gone to Godhra and had seen the dead bodies of the kar sevaks and that they, *Rambhaktas* should kill and hack dow the miyas. Just like the Babri Masjid had been demolished, they should also demolish the masjid here. She also said that she and Narendra Modi were with them and they would not have to face any problems. After saying this, she went away.

375. According to this witness, after Mayaben went, the public was aroused and they advanced towards the Muslim area as well as towards the Noorani Masjid. The police were with the mob. The witness has further stated that at around 11 o'clock, Mayaben came in a white coloured Maruti Franti car near the S.T. Workshop gate, which was followed by a TRAX jeep. Both the vehicles came from the direction of Krushnanagar and halted near the S.T. Workshop and were parked facing the S.T. Workshop gate. Mayaben alighted from the Maruti car. After getting down, she gestured towards the mob standing near Natraj. She gestured to the mob and called them to the S.T. Workshop gate. At this time, around one

hundred leaders including Mayaben's P.A., came there. Mayaben talked with those people and discussed something. Thereafter, she gestured to her P.A. and gave him instructions. Whereupon, Mayaben's P.A. took out weapons from the TRAX jeep, which were comprised of swords, spears, tridents and something which looked like a revolver from far. Under Mayaben's instructions, her P.A. gave all these weapons to the leaders of the mob. Thereafter, Mayaben's vehicle and the jeep started going towards Krushnanagar and while going, the vehicles turned in the lane of Uday Gas Agency. After Mayaben went away, the people in the mob in which her P.A. was also there, attacked the Noorani Masjid.

376. The trial court from the evidence of this witness, recorded findings to the effect that from this witness, active involvement, presence and participation of accused No.26, accused No.37 and accused No.62 stand proved in the charged offences beyond all reasonable doubt for the morning incident. The trial court has further held that accused No.37 has been attributed a role of delivering provoking speech and instigating the members of the mob (morning); attempt to file complaint against accused No.37 in the year 2002 had failed; at about 11:00 a.m., accused No.37 came in her car, she gave signals to the mob, hence, the mob came close to her, she talked with the mob wherein about hundred leaders were present; after Mayaben went away, the mob attacked Noorani. The trial court has also recorded a finding that accused No.37 came twice in the morning in the area.

377. A perusal of the testimony of this witness shows that insofar as accused No.37 Mayaben Kodnani is concerned,

the witness has stated that he had seen her on two occasions on the day of the incident. On one occasion he had seen her between 8:30 to 9:00 near Natraj Hotel. Insofar as the presence of Mayaben at Natraj Hotel between 8:30 to 9:00 is concerned, there is material on record to show that she being an MLA, was present at the Vidhan Sabha at Gandhinagar and was present there till around 8:45 a.m. and left thereafter. In these circumstances, even if she had come to the spot straight from Gandhinagar, she could not have reached there on or before 9:00 a.m. Insofar as the second incident is concerned, it may be noted that there is ample evidence on record in the nature of testimonies of police officers, which indicates the presence of high ranking officers near the S.T. Workshop gate between 10:30 to 12:00 in the morning. Therefore, it is highly doubtful that in the presence of all these officers who have deposed that they were making all efforts to quell the riots, Mayaben would have been able to distribute weapons to the mob. Moreover, none of the officers have mentioned the presence of Mayaben at the S.T. Workshop gate at that time. It cannot be gainsaid that Mayaben being the MLA of the area was a public figure, and hence, her presence at the spot would not have gone unnoticed by the police. It is highly unfortunate that on the one hand the prosecution seeks to implicate Mayaben Kodnani in the offence in question, but none of the police officers support the prosecution case. Moreover, several witnesses who were at the corner of the S.T. Workshop in the morning on that day have been examined by the prosecution. Most of the witnesses have not referred to Mayaben having come there and no other witness has stated that she came there twice, and more particularly, no witness has stated facts regarding the arrival of a TRAX Jeep and distribution of

weapons. Thus, the prosecution has led two sets of evidence, one which shows the presence of this accused at the scene of offence and another which negates her presence. It is settled legal position that when two sets of evidence are led by the prosecution, one against and one favouring the accused, the view in favour of the accused has to be adopted.

378. The prosecution has also examined **PW-156 Abdulmajid Mohammadusman Shaikh** to prove the charge of conspiracy against the accused. According to this witness, the mobs started coming at 9:00 a.m. Two police vehicles came near the S.T. Workshop and unloaded two black trunks. Thereafter, a white car came and everyone started taking Mayaben Kodnani's name. Mayaben got down from the car and said "*Maro Salao Ne*". The witness has stated that thereafter, the mob had attacked them, whereupon they had asked the police to help, but were told to go away as they would also be beaten. The mob attacked them and the police also fired and lobbed tear gas cells.

379. Insofar as reference to the presence of Mayaben Kodnani on the national highway in the morning is concerned, such version has come up for the first time in the year 2008 in the statement recorded by the SIT. Prior thereto, the witness has not named Mayaben before the investigating agency despite the fact that several statements of the witness were recorded by different Investigating Officers. A general grievance has been voiced that at the relevant time, considering the fact that Mayaben was an influential person, the police were not ready and willing to record her name in the array of accused. However, in the case of this witness, in the

year 2003, he had made an affidavit for the purpose of filing the same before the Supreme Court in petitions for further investigation and transfer of investigation from the State of Gujarat. At that time, the witness was assisted by legal minds and nothing prevented him from stating the name of Mayaben Kodnani in the affidavit. In fact, not recording the name of Mayaben as an accused by the police would have been one of the focal points in the affidavit made by the witness; however, the affidavit is totally silent as regards the involvement of Mayaben in the incident in question. Under the circumstances, considering the fact that the witness has named other accused in his previous statements and the police have recorded the names of such accused, and more particularly, when in his affidavit filed before the Supreme Court, the witness has not named Mayaben, it would be hazardous to rely upon the testimony of this witness against accused No.37 when her involvement has been brought on record after a period of more than six years in the year 2008.

380. The trial court after appreciating the evidence of this witness, has arrived at the conclusion that if the examination-in-chief is taken in the light of the overall impression created in the mind of the court about the witness, it is felt that it would be extremely unsafe to rely upon this witness completely as far as involvement of the accused persons is concerned. The trial court has thereafter observed that the witness has stated about the attack on the Noorani Masjid and other things about the morning occurrence. He has seen accused No.37 in the morning occurrence, provoking the members of the mob which is also seen and deposed by many of the witnesses. Moreover, upon scrutiny of this part of the

evidence, since it is supported by many prosecution witnesses, it seems that even this part of the evidence of the witness is acceptable. The trial court has also found the witness to be truthful as regards the occurrences of the morning and noon. The trial court after appreciating the evidence of this witness, has found that the witness proves the hatching of conspiracy amongst the accused is probable. He proves the participation of accused No.37 in the morning occurrence, accused No.1, accused No.10 and Guddu in the noon occurrence and accused No.22 and Bhavani in the evening occurrence.

381. Thus, while the trial court has not found this witness to be very credible, it has accepted the version of this witness insofar as the presence of accused No.37 on the road in the morning is concerned, despite the fact that such version has come on record only at the stage when the SIT came into the picture. Insofar as the morning incident is concerned, the trial court has believed the presence of only accused No.37 from amongst the accused named by this witness, despite which, the trial court has come to the conclusion that the witness proves that hatching conspiracy amongst the accused is probable. When the trial court has not believed the testimony of this witness qua any other accused in the morning incident, one fails to understand as to how and between whom the hatching of conspiracy could be inferred.

382. The prosecution has also examined **PW-227 Zuberkhan Ismailkhan Pathan** for the purpose of establishing the charge of conspiracy under section 120B of the Penal Code. According to this witness, he had gone to Milan Hotel, near the Noorani Masjid at around 9:00 to 9:15 in

the morning, at which point of time, the mobs had started coming from the side of Natraj Hotel as well as Krushnanagar. The witness has stated that he went towards Krushnanagar to watch and upon seeing the mobs, he returned to the Milan Hotel. At that time, in the mob from the side of Krushnanagar, he had seen Bipin Panchal (A-44), Guddu Chhara and Babu Garagewala (A-33) armed with weapons. Thereafter, he had gone to Natraj Hotel and in the mob from the side of Natraj Hotel, he had seen Mayaben Kodnani (A-37) on the road. She was telling the people in the mob that they should go forward and that she was with them. According to this witness, he had seen Mayaben in the mob which came from the side of Natraj Hotel and she was encouraging the mob. Based upon the testimony of this witness, the trial court has held that he proves the presence and participation of Guddu, accused No.37 and accused No.44 beyond reasonable doubt in the morning occurrence and the presence and participation of Guddu and accused No.22 in the noon occurrence. According to the trial court, the witness proves that hatching conspiracy amongst the accused is probable.

383. As is evident from the evidence of this witness, all that he has stated is that he had seen three accused, viz., Bipin Panchal, Guddu Chhara and Babu Garagewala in the mob from the side of Krushnanagar and in the mob from Natraj Hotel, he had seen Mayaben on the road. Mayaben was encouraging the people telling them that they should go ahead and she was with them. It may be noted that the statement of this witness has not been recorded at the relevant time and for the first time, his statement was recorded by the SIT in the year 2008. It appears that the witness had made a complaint

application on 6.3.2002 wherein he had named Bipin Panchal and Babu, but had not named Guddu, Suresh and Mayaben. From the findings recorded by the trial court, there is nothing to indicate as to on what basis, the trial court has found that the witness proves the hatching of conspiracy amongst the accused is probable.

384. The prosecution has also examined **PW-52 Amina Abbas Belim** to prove the charge of conspiracy under section 120B of the Penal Code. According to this witness, she was dressed in a khakhi coloured saree and blouse, which was a uniform given to her by the company in which she was working. The witness has deposed that she had gone out in front of the Noorani Masjid and had seen the mob standing there. From the midst of the mob, a white car came from the direction of Natraj Hotel towards the Noorani Masjid. The white car came from the direction of the ice factory which is situated on the left side of the Noorani Masjid towards the Noorani Masjid. This white car halted near the masjid and Mayaben and her assistant got down. Mayaben was wearing a white saree and after both of them got down from the car, Mayaben started talking with the people in the mob. Mayaben was standing near the masjid and the people in the mob were coming near the masjid where Mayaben was standing, and she was gesturing with her hands to show the Muslim area. Within hearing distance, Mayaben told the mob that the masjid and the Muslim area should be destroyed. The witness has stated that as she was wearing khakhi clothes for attending her job, nobody recognized her as a Muslim woman and thinking that she was a police personnel, they were talking in her presence. The witness has stated that thereafter, the mob started pelting

stones and vandalizing the houses. The people in the mob were wearing something like shorts, which were half pants and they had tied saffron bands around their heads. All these persons were raising slogans like, "Jay Shri Ram", and "the Godhra incident has to be avenged". The mob had started pelting stones near the Noorani Masjid and thereafter, the damage and destruction escalated. There were police personnel near the masjid. The witness has further deposed that the police got up and released tear gas at them and were shooting. Thereafter, she had seen that Mayaben had something like a pistol in her hand and she also was firing. After firing, Mayaben told the mob that they should continue and thereafter, she returned in the same car in which she had come.

385. The trial court, based upon the evidence of this witness, has arrived at the finding that the arrival and the active participation of accused No.37 added to the objects and intentions of the mob, which has added tremendous confidence in the mob. Accused No.37 came, talked with the mob and then the mob became violent. This proves provocation, instigation and/or abetment by accused No.37 to the mob. The disturbances started after arrival of accused No.37. The presence and participation of Guddu, accused No.37 and accused No.44 at the time of the morning incident stands proved beyond reasonable doubt. The witness proves that hatching conspiracy amongst the accused is probable.

386. A perusal of the reasoning given by the trial court reveals that according to the trial court, it can be safely inferred that accused No.37 being a VIP of the area and then

current MLA, in the facts and circumstances of the case, either the witness may not dare to spell the name and role of accused No.37 in the offence and/or the police would not have dared to record such statement of the witness. The trial court has observed that even if it is believed that the witness was unable to overhear the instructions given by accused No.37 to the mob, in the facts and circumstances of the case, where before accused No.37 arrives, countless Hindus belonging to different Hindu Organizations with dress code revealing peculiar identity, shouting the slogans like "Jay Shri Ram" and other slogans, wearing saffron headbands, saffron mufflers etc. were present, is clearly suggesting that the Hindu mob was fully prepared.

387. The trial court has further observed that if accused No.37 would give any instructions, any direction, or any guideline to remain peaceful or not to do illegal acts or refrain from beating, killing, cutting or burning of Muslims as suggested by the defence to PW-104, then the tempo of the mob can apparently be inferred to be such wherein they would first of all attack such adviser even if such adviser was none other than the then present M.L.A. of the constituency, hence, the talk of accused No.37 with the mob was bound to be provoking, instigating and of the mood the mob had. The trial court has further observed that it is, therefore, just, proper, correct and suiting with the facts and circumstances of the case that accused No.37 has instigated and provoked the Hindus to do illegal act and that it can also be inferred from the conduct of the members of the mob, with whom accused No.37 had talked, which mob after her arrival had committed tremendous violent acts including taking lives of Muslims by

burning them alive. The trial court was of the view that accused No.37 was the then current M.L.A., hence, it can be inferred that she must have ambition to go ahead in politics and she cannot leave the temptation of taking political mileage by being kingpin in the series of events that took place on that day. Thus, the entire findings of the trial court insofar as accused No.37 are concerned, are based upon inferences drawn by it without any basis whatsoever.

388. This court after appreciating the testimony of this witness has noticed that the statement of the witness was not recorded by the police at the relevant time in the year. After the riots, the witness appears to have shifted to Maharashtra and it was only six years after the incident that the witness travelled from Bhiwandi in Maharashtra to Ahmedabad for giving her statement before the SIT. As to how she came to know that her statement is required to be recorded is also not very clear. In her testimony the witness has referred to various incidents, which do not find any corroboration from the evidence on record or support from the testimonies of other witnesses. This witness claims to be roaming around freely in the area where throughout the day there was violence, ransacking and arson by Hindu mobs without being harmed, only because she was wearing a khaki uniform. The fact regarding her having put on a khaki uniform is also doubtful because whereas in her examination-in-chief she has stated that she had put on her uniform to go to her workplace, in her cross-examination it has been elicited that on the previous day, that is, 27th February, 2002 they were told that in view of the call for Gujarat Bandh they should not come on the 28th and hence, as rightly submitted by the learned counsel for the

appellants, there was no reason for her to put on her uniform.

389. It is the case of the witness that after Mayaben and her assistant got down from the car; Mayaben was talking with the people in the mob. Mayaben was standing near the masjid and upon the people in the mob coming near, she gestured with her hands and showed the Muslim area and that she had heard her telling the mob to destroy the masjid and the Muslim area. According to the witness as she was wearing a khaki saree and blouse she was not identified as a Muslim and was taken to be police personnel, and hence, she (Mayaben) spoke in her presence. Thereafter the mob resorted to violence. She has also stated that she saw Mayaben firing from a pistol. Firstly, the fact regarding the witness wearing a khaki dress is doubtful in view of the contradiction brought out in her cross examination. Moreover, the witness has stated that she saw a truck full of gas cylinders being brought and cans of kerosene in the hands of the people in the mob and upon this being brought to the notice of the police by her, they had told her that it was their holiday and that they (the Muslims) had to die today. It may be noted that on the one hand, the witness says that she being in a khaki uniform, people thought she was a policewoman and on the other hand she says that the police had told her that they had to die today, which clearly belies the version given by the witness regarding her being in a khaki dress. Thus, the testimony of the witness is self contradictory. The entire story that she could stand close to Mayaben because she was wearing a khaki dress, therefore, does not appear to be credible.

390. The witness has stated that she has seen the whole

family of the watchman of Mahavir Hall, in all four persons, being done to death by the mob and cut into pieces and thrown on the road, however, there is no evidence to corroborate her say. From the evidence coming on record, there is nothing to suggest that any person was killed on the national highway on the date of the incident. All incidents of killing are stated to have taken place inside the chawls, except in case of Abid where some witnesses say that he died due to bullet wounds in police firing and was burnt by the mob.

391. The witness also claims to have witnessed the killing of Vermaji Panwala. She also claims to have seen the mob looting her house. She further claims that Bipinbhai Autowala had climbed on his shop and was firing from there. Apart from the fact that this version does not find corroboration from any other witness, it is difficult to believe that Bipinbhai would fire from the terrace of Bipin Auto, inasmuch as from the testimonies of the witnesses it emerges that there were mobs of Hindus on both sides of the national highway, in which case it would be Hindus who would be injured in such firing. Her version of having made telephone calls to the police also does not inspire confidence. The witness also claims to have gone to Jawannagar and having seen that in the houses that were looted, there were ornaments and money which the S.R.P. jawans were putting in their pockets. She further claims to have seen Chharas taking away goats in rickshaws. The fact regarding use of rickshaw is totally contrary to the evidence which has come on record. Furthermore, the witness also claims to have seen a woman lying in a burnt condition asking for water. Thus, the witness claims to have seen multiple incidents during the entire day,

however, none of this was disclosed by her at the relevant time and after a period of six years she has come all the way from Maharashtra and has narrated the same before the SIT. This witness has named accused No.37 Mayaben, her assistant (who as per the prosecution is accused No.62 Kirpalsingh), accused No.44 Bipinbhai, Guddu (deceased) and accused No.22 Suresh. Out of the accused named by her, she has identified accused No.37, she has identified accused No.44 Bipinbhai but has stated that she cannot remember his name at present and has thereafter identified accused No.38 as Mayaben's assistant and has not identified accused No.22 at all. Thus, the witness could not identify accused No.62 and 22, and has identified accused No.44 by his face and not by his name. Thus, the only accused whom she has fully identified is Mayaben Kodnani (A-37), who being a public figure, her photographs and posters would be easily accessible, moreover, in this case there is no other female accused of her age, and therefore, it is very easy for anyone to identify her. Insofar as accused No.62 Kirpalsingh is concerned, there is nothing on record to show as to how he is sought to be implicated as the witness has only referred to a person, who according to her was Mayaben's assistant, as having accompanied her, but nothing has been brought on record to show that accused No.62 is in fact Mayaben's assistant, nor has any test identification parade carried out to establish his identity. The witness, therefore, appears to have come up with a highly exaggerated version of the incident, that too, for the first time after six years. Considering the overall testimony of this witness she does not come across as a truthful or credible witness. Her entire testimony does not inspire any confidence and therefore, no part of her testimony can be relied upon to

convict the accused named by her.

392. The next witness examined by the prosecution to prove the charge of conspiracy under section 120B of the Penal Code is **PW-143 Dildar Umrao Saiyed**. From the testimony of the witness as deposed before the court, briefly stated, the witness has stated that at around quarter to twelve, the Muslims were shouting "*Mari nakhya*" ("have been killed") and he climbed on the Jawannagar compound wall and saw the Muslims from Hussainnagar fleeing towards Jawannagar. At that time, he could see flames and smoke in Hussainnagar. The witness has thereafter stated that while he was standing near his Eicher vehicle near Panchvati Estate, Mysorewala had come in a jeep and parked his jeep near Panchvati Estate. Together with him, four to five policemen had also got down. After ten minutes, a white coloured Maruti car came from which their MLA Mayaben Kodnani, Bipin Panchal, Murli Sindhi and Guddu Chhara alighted. The mob followed the car. Thereafter, the door of the car was opened and swords were taken out and distributed. Bipin Panchal saw him and chased him, whereafter he fled and went to a Maratha's house. Thereafter, the mob tried to start his vehicle, but could not. They pushed the vehicle and broke the Jawannagar compound wall and thereafter, set the vehicle ablaze.

393. After appreciating the evidence of this witness, the trial court has come to the conclusion that by using the vehicle of this witness, Jawannagar wall was broken. The witness is an eyewitness to the noon occurrences wherein the houses of Muslims were burnt and gas cylinders were burst. The trial court has held that the witness has been threatened by

accused No.2 to strike out names of accused No.2 and accused No.37. The active presence and participation of accused No.2, accused No.37, accused No.44, accused No.55 and deceased Guddu at the site has been proved beyond all reasonable doubts in the morning incident. The presence and participation of accused No.2, accused No.44 and accused No.55 stands proved in the evening occurrence. As accused No.37 was the leader and it is only after she came on that day the disturbances started, she needs to be held as kingpin. Accused No.37 and many other accused are held to have hatched the criminal conspiracy as mentioned in the charge.

394. The trial court, while appreciating the evidence of the witness, has observed that *"It is true that in the examination-in-chief itself, the witness has not alleged against any accused as to who opened the car and who distributed the swords, but the fact remains that when the M.L.A. of the area is coming out from this car, she would not keep swords in the car and that too, number of swords which then somebody would be publicly distributing. It is probable that there may be distribution of some material or some other non-incriminating thing, but it cannot be believed that from the car in which M.L.A. is travelling, there may be stock of the swords being carried and then being distributed publicly. Upon strict scrutiny, what can be believed for sure for A-37 is, she did instigate others to commit crimes or to enter into criminal conspiracy with the co-accused to commit offences. All these activities can be done secretly and without exposing herself publicly, which in fact she did, as it also stands proved by other PW."* The trial court has noted that the witness has mentioned the presence of Mr. Mysorewala and that in his

presence, swords were distributed. However, the trial court was not ready to believe the public distribution of swords, that too, the stock being taken out from the car of accused No.37, and has found that this part of the testimony was not found safe to act upon. The trial court has further found that the current M.L.A. of the area, viz., accused No.37, talking with Shri Mysorewala on that day also seems very natural, he being the Senior P.I. of the police station, it is but natural that if the M.L.A. of the area would come at the spot, he would be talking to her, but then it is not crime.

395. Thus, the trial court has partly believed the testimony of the witness and partly disbelieved the testimony of this witness. While the trial court believes the witness when he says that Mayaben came in a white coloured Maruti car with Bipin Panchal, Murli Sindhi and Guddu Chhara and that ten minutes prior thereto, Mysorewala had come in a jeep together with four or five policemen, the mob followed the car, it disbelieves that the door of the car was opened and swords were taken out and distributed, and believes that thereafter the witness was chased by Bipin Panchal and he fled from there. Thus, the overt act attributed by the witness to Mayaben Kodnani is that she came in a car with three other accused and the mob followed the car. Thereafter, the door of the car was opened and the swords were taken out and distributed. The witness also refers to the presence of Shri Mysorewala at the spot.

396. The trial court while disbelieving the part where the witness says that the swords were distributed, still says that the active presence and participation of accused No.2, accused

No.37, accused No.44 and accused No.55 is proved in the morning incident beyond reasonable doubt.

397. From the evidence of the witness, the overt act attributed to the accused is that the swords were brought in the car and were distributed to the mob. Other than that, no other overt act is attributed to them. Therefore, if the act of distributing the swords is discarded, no other overt act has been attributed to the accused. Therefore, there would be no basis for the trial court to arrive at the conclusion regarding the presence and participation of the accused in the morning incident.

398. From the tenor of the judgment of the trial court, it appears that the trial court was too keen to give a clean chit to the police, despite the fact that the witnesses have duly implicated them. The trial court has chosen to accept the testimonies of the witnesses qua the accused, while discarding what is stated by the very same witnesses against the police. It may be noted that the trial court finds it very natural that Shri Mysorewala being a Senior P.I. of the police station would come to the spot where the M.L.A. of the area had come; however, it does not find anything unnatural about Mysorewala not deposing about such fact. It may be noted that not only Shri Mysorewala but several police officials were present at the scene of incident in the morning on that day. However, not a single police officer has mentioned about the presence of Mayaben Kodnani in the morning on the road on the day of the incident. It cannot be gainsaid that Mayaben Kodnani was a well known figure in the area and therefore, had she been present at the scene of offence, more particularly near the S.T.

Workshop, her presence would not have gone unnoticed by several other Muslims who were standing near the corner of the S.T. Workshop. According to the trial court, it is but natural that the police would not name a VIP in their statement or deposition. This conclusion of the trial court has no basis whatsoever, inasmuch as, for the police the law applies equally to all, be it a common man or a VIP. Therefore, if a VIP had in fact been present and had participated in the offence, there can be no excuse for the police not to name him/her. Moreover, if the trial court found there was nothing wrong in Shri Mysorewala coming to the spot where Mayaben had come, there was no reason for Shri Mysorewala to suppress such fact.

399. It may be noted that none of the witnesses whose statements were recorded in the year 2002 have mentioned the name of Mayaben as being present on the road and instigating the mob. All the witnesses who have named her have done so in the year 2008, after the SIT came to be constituted. While some such witnesses have stated that though they had named Mayaben, the police had not written down her name, the other witnesses who were present at the scene of incident, have neither named her nor have stated that the police had not recorded her name at the relevant time. It may be noted that the witnesses have stated that Mayaben came in a white Maruti Franti car together with other accused and alighted either at the S.T. Workshop or near the Noorani Masjid. On that day, there were hardly any vehicles moving on that road. Therefore, if a vehicle had come and Mayaben had indeed alighted from it, most of the witnesses present there would have noticed it. The fact that none of the other witnesses of the morning incident whose statements were

recorded at the relevant time, have mentioned the presence of Mayaben in the morning incident, gives reason to doubt the subsequent versions of the witnesses which have come on record.

400. Apart from the above witnesses who have referred to the presence of accused No.37 and other accused, the trial court has also referred to the testimony of **PW-112 Fatimabibi Mahammad Yusuf Shaikh**. The trial court has observed that this witness supports the prosecution case of conspiracy amongst the accused to commit the crime as she says in paragraph 6 that the mob came with deadly weapons and with arrangement of diesel, petrol, etc. The trial court has further observed that numerous occurrence witnesses, witnesses who involve dead accused in the crime, and in fact, out of a total of 173 witnesses about 150 witnesses very clearly and firmly bring on record the fact about the presence and participation of the accused with deadly weapons on the day. According to the trial court, this fact is possible only if there is a meeting of mind, agreement, pre-meditation, pre-concert and preparation amongst the accused and that when so many accused behaved in a similar manner at similar site and time, it itself speaks about the conspiracy at a large level. The trial court has, accordingly, held that the conspiracy having been hatched amongst the accused stands proved. The trial court has also referred to the testimony of PW-219 and other witnesses who had stated that there was tremendous hue and cry on the road in connection with the tragedy of the Godhra carnage at about 9:00 or 9:30 p.m. near Natraj Hotel, the people had assembled and were shouting slogans of Jay Shri Ram and were screaming and burning the tyres, cars,

cabins, dwelling houses etc. According to the trial court, there was ample material on record to draw the inference of existence of conspiracy on record. The trial court was of the view that this attitude shows that the accused and others had made up their minds to do away, destroy and damage Muslims, they were apparently charged and provoked as their action so speaks and even this has to be treated as preparation and pre-concert. The witnesses proved hatching of conspiracy amongst the accused.

401. The trial court has thereafter taken support of certain complaints which formed the record of "C" summary of the learned Metropolitan Magistrate. The trial court has referred to a complaint tagged on page 2 of Exhibit-1776/1 filed by one Shri Rahim Shaikh. The court has further referred to the contents of the complaint of the year 2002 and was of the view that the same pointed to the existence of criminal conspiracy. In this regard, it may be pertinent to note that it is settled legal position that any documentary evidence on record has to be duly proved in accordance with law. The document which has been referred to by the trial court at Exhibit-1776/1 has not been proved by any witness. Shri Rahim Shaikh has not been examined as a witness. Under the circumstances, in the absence of such document having been proved, the trial court was not justified in referring to it, much less, relying upon it for the purpose of establishing the charge of criminal conspiracy. Based upon such complaint, the trial court has observed that the complaint made in black and white shows a very strong circumstance of pre-meditated, pre-planned commission of offence, wherein all the accused were conspirators and/or co-conspirators. Thus, the trial court, while

recording its findings, has also placed reliance upon inadmissible evidence.

402. The trial court has also referred to the first information report Exhibit-1773, lodged by P.S.I. Shri Solanki. Based upon the contents of the FIR, the trial court has observed that it was alleged there that active members of B.J.P. were present in the mobs and were instigating the mobs. The trial court was of the opinion that in any area, normally none can be more active leader than the M.P. or M.L.A. It is not only undisputed but even admitted fact that accused No.37 is the M.L.A. of B.J.P., the then ruling party, from Naroda Constituency, hence, it is clear that she hails from and she is on the date of occurrence in B.J.P. Now, if she cannot be termed to be active leader of B.J.P., that too in Naroda Constituency, then who else can be called the leader of B.J.P. in that area. It can, therefore, be inferred that accused No.37 was present at the site. The police officer has very specifically stated that the active leaders were instigating the mobs. Therefore, it can be safely inferred that accused No.37 was instigating the mob, that too in the morning hours, at the site of offence, but the police has made conscious efforts to screen her presence.

403. The above findings recorded by the trial court are to say the least, shocking. The trial court has read into a complaint what has not been stated by the complainant. The P.S.I., Shri Solanki has been examined by the prosecution and cross-examined by the defence. The trial court itself has examined some of the police officers and put questions to them. If the trial court was under the impression that when the

complainant says the active leaders of B.J.P. in his complaint, it would also include accused No.37 Mayaben Kodnani, nothing prevented it from putting such questions to the witness. One fails to understand as to how the trial court could stretch the matter to this extent by reading into the first information report, something which is not stated therein. This clearly indicates the mindset of the trial court which has first assumed the guilt of accused No.37 Mayaben Kodnani and come to the conclusion that she is the kingpin, and has thereafter sought to find reasons to support such belief.

404. According to the trial court, when the occurrence had flared up and resulted into so many casualties, no policeman would involve the M.L.A. of the area and even if the police desire to involve, the police normally would not be successful in doing so. The trial court has further stated *“that the attempt is not to say that every police officer is influenced by the politicians, but it is not impossible as well. The trial court has observed that no police officer would be aware on the date of writing the complaint that there would be any order for the further investigation and that too, by Special Investigating Team. The fact remains that whatever stand once the police has taken, that too in the complaint itself, the police has no option, but to maintain the same stand. It is different that the police are projecting five persons named in the first information report as being present in the mob. In the peculiar facts and circumstances, since the name of biggest leaders, viz. accused No.37 was not possible to be written down in the complaint, the names of others have been written.”*

405. With due respect to the trial court, in the opinion of this court, there is no basis for such findings recorded by the trial court, viz., that though accused No.37 was present, instead of her name, the names of others have been written. It is settled legal position that in a criminal trial, the trial court is required to base its findings upon an appreciation of the evidence on record and the guilt of the accused is required to be based upon substantive evidence and not on inferences. However, in the present case, the trial court has stressed upon inferences rather than the substantive evidence for the purpose of holding accused No.37 guilty for the offence of criminal conspiracy under section 120B of the Penal Code.

406. In the findings of conspiracy, the trial court has observed that *“the witnesses have proved beyond reasonable doubt that A-37 was present at the site of offence near Noorani Masjid, S.T. Workshop, Opposite Noorani Masjid and Jawannagar Khada close by to Panchwati Estate, Uday Gas Agency etc. in the morning. She seems to have visited the site twice. All these places are extremely close by to one another”*. *“It is proved that A-37 had even visited in the evening when she was near the S.T. Workshop along with A-44 which is supported by extra judicial confession of the co-accused about the visit of A-37 in the evening also. The presence of co-accused like A-41, A-44, A-45, etc. is also on record”*. Thus, the trial court has relied upon the extra-judicial confession of the co-accused for the purpose of coming to the conclusion that accused No.37 was present at the scene of offence in the evening hours also.

407. The trial court has observed that *“the minutes*

produced by A-37 of the proceedings of the Legislative Assembly of Gujarat State read with the deposition of PW-310 and upon perusal of Exhibit-2190 and more particularly, the presence register wherein A-37 has signed, it becomes clear that on the day of the incident, she had attended the Legislative Assembly, but then the Legislative Assembly has worked on that day from 8:30 a.m. to 8:40 a.m. only". The trial court has held that it stands proved that accused No.37 was at the Legislative Assembly, viz., at Gandhinagar till 8:40 a.m.

408. The trial court has further observed that *"there is no cogent, convincing or reliable evidence to conclude that the presence of A-37 was not at the site in the morning hours, as has been testified by the witnesses. Even no reasonable doubt is created against the versions of the witnesses who have stated that A-37 was at the site in the morning. As comes up in sting operation, she was even present in the evening. The evidence speaks of the presence of A-37 at the site from about 9:30 onwards and from 11:45 a.m. onwards, therefore, her presence becomes more credible than the defence put up regarding absence of A-37".*

409. The trial court has expressed the view that *"another important aspect which is required to be kept in mind is that the accused being M.L.A. of the Naroda Constituency and since it was a tense day and when there was call for bandh by Vishwa Hindu Parishad, A-37 would obviously be inclined first of all to reach her constituency which is quite natural tendency of any person in political life. Even the facts and circumstances of the case are strong and capable enough from which only one inference can be drawn that the first priority of A-37 must*

be to reach Naroda after the Assembly was over". The trial court has further observed that "as already proved beyond reasonable doubt, there was a large crowd of Hindus who had weapons in their hands who were very much excited and angry and were out to settle the accounts with Muslims and to do away the Muslims. Keeping in mind the above situation which is hard reality, it cannot be believed that the leader of the area, viz., elected M.L.A. of the area would address the gathering otherwise than the mood of the mob. The mood of the mobs would be such that first of all, such mob would attack her if she preaches or advises not to do illegal acts, which has not happened. This shows that she has not played any positive role of pacifying agent as suggested to PW-104. Secondly, the temptation to take political mileage from such situation can easily be inferred qua A-37 and in such situation and in the facts and circumstances of the case, and when she was found amongst the Hindus and addressing the Hindus, the said words cannot be anything else, but provocation and instigation to Hindus to attack the Muslims". The trial court was also of the view that "it cannot even remotely be perceived that the M.L.A. of the Constituency would talk to majority (Hindus) in the atmosphere of the day to pacify as because of that, they would be displeased".

410. Thus, from the reasoning adopted by the trial court, insofar as accused No.37 Mayaben Kodnani is concerned, she is in a no win situation. According to the trial court, accused No.37 being the M.L.A. of the area, her first priority on a day like this, when there was a call for bandh, would be to reach her constituency; once she comes to the constituency, she would address the gathering according to the mood of the

crowd; having regard to the mood of the mob on that day, this accused could not have tried to pacify them and therefore, it has to be inferred that she was instigating them. If this reasoning of the trial court is taken to its logical end, every M.L.A. of any area where riots have erupted would be guilty of the charge even if no witness has implicated him as accused inasmuch as according to the trial court, the concerned M.L.A. has to be present at the spot; and has to address the mob in accordance with its mood; which ultimately is an offence. It is, therefore, not possible to agree with the view adopted by the trial court which is based merely upon inferences, conjectures and surmises, and not on substantive evidence led by the witnesses.

411. Insofar as reliance placed by the trial court on the extra-judicial confession of a co-accused for coming to the conclusion that accused No.37 Mayaben Kodnani was present at the scene of offence in the morning as well as evening hours is concerned, on behalf of the appellants it has been contended that the evidence of sting is not admissible for coming to the conclusion that there was a conspiracy under section 10 of the Evidence Act as the same has been done long after the conspiracy was over. It was pointed out that the trial court, in Chapter II, Part-3, at page 750, has referred to a sting operation carried out by a reporter, viz. Shri Ashish Khetan of Tehelka Magazine on accused No. 18, 21 and 22, to submit that the said evidence of sting operation which was conducted in the year 2007, is not admissible for coming to the conclusion of conspiracy under section 10 of the Evidence Act, as the same has been done long after, that is, more than five and half years, after the conspiracy was over. It was submitted that the

sting operation was carried out in the year 2007, whereas, even if it is assumed, without admitting, that there was conspiracy, the same has come to an end on 28.2.2002 in the evening. According to the learned counsel, in **State (NCT of Delhi) v. Navjot Sandhu** (supra), the Supreme Court of India is very clear on this aspect as to when the provisions of section 10 of the Evidence Act would apply to 'confession'. It was further submitted that under section 30 of the Evidence Act, if a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession when more persons than one are tried jointly for the same offence. Thus, it is apparent from this provision of Evidence Act, the court can only take into consideration the confession of co-accused implicating other accused persons. It was further submitted that, as per the law laid down by the Supreme Court of India, extra-judicial confession is very weak piece of evidence and it cannot be used as substantive evidence against the co-accused. The court can rely upon the substantive evidence against the accused on which the court can base its conclusion of guilt and then only the confession of co-accused can be used as a corroborative evidence to lend assurance to the finding of guilty recorded by the trial court on substantive evidence.

412. At this juncture, it may be apposite to refer to the decision of the Supreme Court in **Yakub Abdul Razak Memon v. State of Maharashtra**, (2013) 13 SCC 1, wherein it has been held thus:

“146. Section 10 of the Evidence Act further provides a unique and special rule of evidence to be followed in cases of conspiracy. Section 10 reads as under:

“10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.”

147. It is to be seen that there are three conditions in Section 10. One is, before utilising the section for admitting certain statements of the co-accused from a confession, there should be a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong. According to this section, only when this condition is satisfied in a given case, then only the question of utilising the statement of an accused against the co-accused can be taken into consideration. Thus, as per Section 10, the following principles are agreed upon unanimously:

147.1. There shall be *prima facie* evidence affording a

reasonable ground for the court to believe that two or more persons were part of a conspiracy to commit a wrongful act or offence;

147.2. *Once this condition was fulfilled, anything said, done or written by any of its members, in reference to their common intention, will be considered as evidence against other co-conspirators;*

147.3. *This fact would be evidence for the purpose of existence of a conspiracy and that the persons were a part of such conspiracy.*

148. *This Court, in Nalini, (1999) 5 SCC 253, observed as under:*

148.1. *Per Thomas, J. The theory of agency, according to him, is the basic principle which underlines Section 10 of the Evidence Act. He says that the first condition for application of Section 10 is “reasonable ground to believe” that the conspirators have conspired together based on prima facie evidence. If this condition is fulfilled, anything said by any of the conspirators becomes substantive evidence for the purpose of corroboration if the statement is in reference to their common intention. (This is much wider than its English counterpart which uses the expression “in furtherance of the common object”.) The arrest of a conspirator will not cut off his connection with the conspiracy.*

148.2. *Per Wadhwa, J. (concurring)*

He was of the opinion that before considering the principle of Section 10 and applying it to the facts and circumstances, it is necessary to ascertain the period of conspiracy because any statement made before or after the conspiracy is thatched will not be admissible under the aforesaid section. It would also be relevant against a person who entered or left the time-frame during the existence of the conspiracy.”

413. Reference may also be made to the decision of the Supreme Court in **Mohd. Khalid v. State of W.B.**, (2002) 7 SCC 334, wherein it was held thus:

“31. *A confessional statement is not admissible unless it is made to the Magistrate under Section 25 of the Evidence Act. The requirement of Section 30 of the Evidence Act is that before it is made to operate against*

the co-accused the confession should be strictly established. In other words, what must be before the court should be a confession proper and not a mere circumstance or an information which could be an incriminating one. Secondly, it being the confession of the maker, it is not to be treated as evidence within the meaning of Section 3 of the Evidence Act against the non-maker co-accused and lastly, its use depends on finding other evidence so as to connect the co-accused with the crime and that too as a corroborative piece. It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to effect (sic) him as lending support or assurance to such other evidence. To attract the provisions of Section 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such a guilt. The evidence of the co-accused cannot be considered under Section 30 of the Evidence Act, where he was not tried jointly with the accused and where he did not make a statement incriminating himself along with the accused. As noted above, the confession of a co-accused does not come within the definition of evidence contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is only when a person admits guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth. The legislature provides that his statement may be considered against his fellow accused charged with the same crime. The test is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it

to lend assurance to the other evidence. This position has been clearly explained by this Court in Kashmira Singh v. State of M.P., AIR 1952 SC 159. The exact scope of Section 30 was discussed by the Privy Council in the case of Bhuboni Sahu v. R., (1949) 50 Cri.L.J. 872. The relevant extract from the said decision which has become locus classicus reads as follows:

Section 30 applies to confessions, and not to statements which do not admit the guilt of the confessing party. ... But a confession of a co-accused is obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. The confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction.

32. *Kashmira Singh (supra) principles were noted with approval by a Constitution Bench of this Court in Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184. It was noted that the basis on which Section 30 operates is that if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly. So Section 30 provides that such a confession may be taken into consideration even against the co-accused who is being tried along with the maker of the confession. It is significant, however, that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Evidence Act is produced before the court, it is the duty of the court to consider that evidence. What weight should be attached to such evidence is a matter in the discretion of the court. But the court cannot say in*

respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the court in dealing with a confession because Section 30 merely enables the court to take the confession into account. Where, however, the court takes it into confidence, it cannot be faulted. The principle is that the court cannot start with confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidences, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on some other evidence. That is the true effect of the provision contained in Section 30. We may note that great stress was laid down on the so-called retraction of the makers of the confession. Apart from the fact that the same was made after about two years of the confession, PWs 81 and 82 have stated in court as to the procedures followed by them, while recording the confession. The evidence clearly establishes that the confessions were true and voluntary. That was not the result of any tutoring, compulsion or pressurization. As was observed by this Court in *Shankaria v. State of Rajasthan*, (1978) 3 SCC 435, the court is to apply a double test for deciding the acceptability of a confession i.e. (i) whether the confession was perfectly voluntary, and (ii) if so, whether it is true and trustworthy. Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the court to have been caused by any inducement, threat or promise, such as mentioned in Section 24 of the Evidence Act, it must be excluded and rejected *brevi manu*. If the first test is satisfied, the court must before acting upon the confession reach the finding that what is stated therein is true and reliable. The Judicial Magistrate, PWs 81 and 82 have followed the requisite procedure. It is relevant to further note that complaint was lodged before the Magistrate before his recording of the confessional statement of accused Md. Gulzar. The complaint was just filed in court and it was not moved. The name of the lawyer filing the complaint could not be ascertained either. This fact has been noted by the Designated Court.

33. In view of what we have said about the confessional statement it is not necessary to go into the question as to

whether the statement recorded under Section 164 of the Code has to be given greater credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of learned counsel for the accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. In State of Gujarat v. Mohd. Atik, (1998) 4 SCC 351, it was held that the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

34. *The first condition which is almost the opening lock of that provision is the existence of “reasonable ground to believe” that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement “in reference to their common intention”. Under the corresponding provision in the English law the expression used is “in furtherance of the common object”. No doubt, the words “in reference to their common intention” are wider than the words used in English law (vide Sardar Sardul Singh Caveeshar v. State of Maharashtra, AIR 1957 SC 747).*

35. *But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 10 if it was made “in reference” to the common intention, is too broad a proposition for acceptance. We cannot overlook that the basic principle which underlies Section 10 of the Evidence*

Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under Section 10.

36. *Way back in 1940, the Privy Council had considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in Mirza Akbar v. King-Emperor, AIR 1940 PC 176, had stated the legal position thus:*

“[T]he words ‘common intention’ signify a common intention existing at the time when the thing was said, done or written by the one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party.”

37. *Intention is the volition of mind immediately preceding the act while the object is the end to which effect is directed, the thing aimed at and that which one endeavours to attain and carry on. Intention implies the resolution of the mind while the object means the purpose for which the resolution was made.*

38. *In Bhagwan Swarup case, AIR 1965 SC 682, it was observed that the expression “in reference to their common intention” is wider than the words “in furtherance of the common intention” and this is very comprehensive and it appears to have been designedly used to give it a wider scope than the words “in furtherance of” in the English law. But, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made “in reference to the common intention”. Therefore, a post-arrest statement made to the police officer was held*

to be beyond the ambit of Section 10 of the Evidence Act.

39. *In Sardul Singh Caveeshar v. State of Bombay, AIR 1957 SC 747, it was held:*

The principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. The rule in Section 10 of the Evidence Act, confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were 'in reference to their common intention' that is to say 'things said, done or written, while the conspiracy was on foot' and 'in carrying out the conspiracy'. It would seem to follow that where, the charge specified the period of conspiracy, evidence of acts of co-conspirators outside the period is not receivable in evidence.

(i) In a given case, however, if the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of a criminal conspiracy continues and Section 10 of the Evidence Act applies. In other words, it cannot be said to be a rule of universal application. The evidence in each case has to be tested and the conclusions arrived at. In the present case, the prosecution has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest. Similar view was expressed by this Court in State v. Nalini, (1999)5 SCC 253."

414. Thus, what has been laid down in the above decisions is that the basic principle which underlies section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator, restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out

of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under section 10. In other words the rule in section 10 of the Evidence Act, confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were 'in reference to their common intention' that is to say 'things said, done or written, while the conspiracy was on foot' and 'in carrying out the conspiracy'. Therefore, where, the charge specified the period of conspiracy, evidence of acts of co-conspirators outside the period is not receivable in evidence.

415. In the facts of the present case, the charge relates to the acts committed on 28th February 2002, whereas the statement of the co-accused made during the course of the sting operation has been recorded in the year 2007, much after the period of conspiracy. Therefore, in view of the provisions of section 10 of the Evidence Act, the extra-judicial confession made by the co-accused is not admissible in evidence qua those accused and would be restricted to the concerned accused. The trial court has failed to consider this legal aspect while placing reliance upon on the extra-judicial confession of a co-accused made during the course of the sting operation for coming to the conclusion that accused No.37 Mayaben Kodnani was present at the scene of offence in the morning as well as evening hours and holding that a conspiracy had been hatched by accused No.37 and other co-accused who were not part of the sting operation.

416. PRINCIPLES: Proceeding to the charge of criminal

conspiracy under section 120B of the Indian Penal Code, the principles laid down in the above cited decisions may be reiterated thus:

- Conspiracy requires an act, that is, *actus reus* and an accompanying mental state that is *mens rea*. Whereas the agreement constitutes the act, the intention to achieve the unlawful objectives of the agreement comprises the required mental state.
- In conspiracy prosecutions, any declaration by one conspirator made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Conspirators are liable on an agency theory by the statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.
- For proving a charge of conspiracy, it is not necessary that all the conspirators know each and every detail of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.
- In criminal trials, on a charge of conspiracy evidence not admissible under Section 10 of the Evidence Act as proof of the two issues to which it relates viz. of the existence of conspiracy and of the fact of any particular person being a party to that

conspiracy, is not admissible at all. What is sought to be admitted in such a case is, something said, or done, or written by any one of the co-conspirators behind the backs of the others as being in law attributable to the others and what is sought to be proved by such evidence taken by itself is the existence of the conspiracy as between the alleged conspirators and the fact that a particular person was a party to the conspiracy.

- There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.

- A conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must be borne in mind that meeting of the mind is essential; mere knowledge or discussion would not be sufficient.

- It is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

- An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

- The essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the

guilt may be drawn only when such circumstances are incapable of any other reasonable explanation.

- Proof or otherwise of such conspiracy is a matter of inference and the court in drawing such an inference must consider whether the basic facts i.e. circumstances from which the inference is to be drawn have been proved beyond all reasonable doubt, and thereafter, whether from such proved and established circumstances no other conclusion except that the accused had agreed to commit an offence can be drawn.
- Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of cooperation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.
- So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

- Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement.
- The relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict.
- To attract the applicability of section 120-B it has to be proved that all the accused had the intention and they had agreed to commit the crime.
- Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger

of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

- It is difficult to support the charge of conspiracy with direct evidence in every case but if the prosecution relies upon circumstantial evidence, a clear link has to be established and the chain has to be completed, otherwise it would be indeed hazardous to accept a part of the link as a complete one and on the basis of such incomplete evidence, the allegation of conspiracy cannot be accepted.

417. In brief, to establish the charge of conspiracy the prosecution has to establish that there was a meeting of minds among the co-conspirators. There may not be any direct evidence of such meeting of minds; nevertheless, the existence of conspiracy can be inferred from surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which the conclusion of the guilt of the accused can be drawn. If the prosecution relies upon circumstantial evidence, a clear link has to be established and the chain has to be completed. The circumstances proved before, during and after the

occurrence have to be considered to decide about the complicity of an accused. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by any cogent evidence. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy. It is essential that the offence of conspiracy requires some kind of physical manifestation of agreement.

418. The evidence on record is required to be evaluated in the light of the above principles.

419. Considering the evidence adduced by the prosecution, if one considers the testimonies of the above referred eleven witnesses, all that they have mentioned is the presence and participation of the accused. From the testimonies of none of the witnesses can one discern any meeting of minds amongst the accused or pre-meditation and pre-concert. Apart from the fact that this kind of evidence has come on record after a considerable delay of six years, even assuming that the versions given by the witnesses are true and correct, all that it shows is that the accused were part of the mob and were leading the mobs. One of the witnesses has referred to swords having been brought in a vehicle and having been distributed at the instance of accused No.37, which part of the evidence has not been accepted by the trial court on the ground that it was not possible for the accused to have distributed swords in this manner in the gaze of the public. From the circumstances referred to by the witnesses in their testimonies, there is nothing to infer a meeting of minds

among any of the accused or any pre-planning. As rightly submitted by the learned counsel for the appellants, in view of the incident of burning a coach at Godhra that had taken place on the previous day, there were incidents of rioting all over Gujarat and the public had come out spontaneously to ventilate their anger. Therefore, insofar as the accused persons other than those on whom the sting operation was conducted are concerned, the chain of circumstances has not been established to prove that there was meeting of minds between the accused and that they had planned in advance to commit any illegal act.

420. Insofar as accused No.37 is concerned, even if the evidence of the witnesses is taken at face value, at best her presence at the scene of offence can be said to have been established and she can be stated to have instigated the accused in the commission of the offences. However, from no part of the evidence of the witnesses can it be culled out that there was any meeting of minds between accused No.37 and any other co-accused. Insofar as the presence of accused No.37 at the scene of offence is concerned all the eleven witnesses have given different versions showing her presence at different spots at more or less the same spot. (i) PW 104 Mohammadsalim Mohammadhussain Shaikh says that after 9:00 to 9:30, first a police jeep came near the S.T. Workshop gate, followed by Kishan Korani, Manoj Videowala and Murli Sindhi and after a while a white Maruti Franti car came in which he saw MLA Mayaben Kodnani. She spoke to the above three accused and the police in an aggressive tone and all of them gestured to the mob which had run away and called the mob back, after which Mayaben spoke to the mob in an

aggressive tone and went back in the same car that she had come. Whereas (ii) PW 136 Basirkhan Nanhekan Pathan speaks about Mayaben coming in a white car near a police vehicle which was parked near the S.T. Workshop and talking to the police after which the police fired at the Muslims. (iii) PW 176 Zulekhabanu Sardarahemad Sarmuddin Chaudhary at the end of her examination-in-chief has stated that in the mob which she saw between 9:00 to 9:45, she had seen Mayaben Kodnani. Nothing has been stated about the place where she saw her nor has any role been attributed to her. (iv) PW 149 Faridabibi Abdulkadar Khalifa has deposed that at around 9:00 to 9:30, she was standing next to the S.T. Workshop compound wall and Shri K.K. Mysorewala was also present at the S.T. Workshop in a Government jeep. At this time Mayaben Kodnani came out of the mob, went near K.K. Mysorewala and spoke to him. She has also referred to the presence of several accused in the mob. She has stated that after talking with Mysorewala, Mayaben left, after which there was police and private firing. The witness does not describe the manner in which Mayaben left. (v) PW 192 Rasidabanu Imtiyazhussain Momin has deposed that she has seen Mayaben in the mob which had come from the direction of Natraj. In this mob she had also seen Manoj Videowala, Bipin Autowala, Santosh Dudhwala, Guddu Chhara, Naresh Chhara, Suresh Langdo and Suresh Langda's younger brother. Mayaben was instigating the public by saying "come forward" and "kill". (vi) PW 198 Harun Mahammadbhai Shaikh says that mobs had gathered near the S.T. Workshop as well as the S.R.P. Quarters gate and in the mob he had seen Mayaben, Babu Bajrangi, Sachin Modi, Ashok Pangallawala, Manoj Videowala, Suresh Langdo, Haresh, Guddu and Bipin Autowala at around 9:30 in the morning. (vii) PW 236

Siddiquebhai Allabax Mansuri has deposed that at around 8:30 to 9:00 in the morning, he went near Natraj Hotel where there was a mob of five to ten thousand people. While he was present there, Mayaben came in a Maruti Franti car together with her P.A./Assistant. Mayaben gave a provocative speech to the people there and instigated them to kill and hack down the miyas. After giving a speech she left. After Mayaben left the public was incited and advanced towards the Muslim area. This witness has deposed that at around 11:00 o'clock Mayaben came in a white coloured Maruti Franti car near the S.T. Workshop which was followed by a TRAX jeep. Mayaben alighted from the car and gestured to the mob standing near Natraj whereupon about a hundred leaders came, including Mayaben's P.A. She talked to them and thereafter, under her instructions her P.A. distributed weapons from the jeep to the leaders. Thereafter Mayaben left and the people in the mob, including her P.A. attacked the Noorani Masjid. (viii) PW 156 Abdulmajid Mohammadusman Shaikh has deposed that the mobs started coming at 9:00 a.m. Two police vehicles came near the S.T. Workshop and unloaded two black trunks. Thereafter, a white car arrived and Mayaben alighted from the car and said "Maro salao ne". Thereafter the mob attacked them. (ix) PW 227 Zuber Khan Ismail Khan Pathan has deposed that at around 9:00 to 9:15 in the morning the mobs had started coming from the side of Natraj Hotel as well as Krushnanagar. In the mob from the side of Krushnanagar he had seen Bipin Panchal, Guddu Chhara and Babu Garagewala armed with weapons. In the mob from the side of Natraj Hotel, he had seen Mayaben Kodnani on the road and she was telling the people in the mob to march ahead and that she was with them. (x) PW 52 Amina Abbas Belim has stated that from the

midst of the mob, a white car came from the direction of Natraj Hotel and halted near the masjid and Mayaben and her assistant alighted from the car. Mayaben started talking with the people in the mob. Mayaben told the mob that the masjid and Muslim area should be destroyed. The witness also claims to have seen something like a pistol in Mayaben's hand with which she was firing and after firing, Mayaben told the mob that they should continue and thereafter, she returned in the same car in which she had come. (xi) PW 143 Dildar Umrao Saiyed has deposed that he was standing near his Eicher vehicle near Panchvati estate when Mysorewala came and parked his jeep there and together with him four to five policemen also alighted from the jeep. After ten minutes, a white Maruti car came from which their MLA Mayaben Kodnani, Bipin Panchal, Murli Sindhi and Guddu Chhara alighted and the mob followed the car. Thereafter weapons were distributed from the car. Bipin Panchal saw the witness and chased him away.

421. Thus, eleven witnesses have testified regarding having seen Mayaben Kodnani at the scene of offence in the morning on the day of the incident. The credibility of the witnesses and the veracity of the versions given by them has already been discussed hereinabove. However, assuming for the sake of argument that all the witnesses are speaking the truth, it may be noted that out of the eleven witnesses six witnesses claim to have seen her alighting from a white coloured Maruti Franti car. While PW 104, PW 136, PW 156 refer to only Mayaben (A-37) alighting from the car, PW 236 and 52 speak of her alighting from the car with her P.A./assistant, whereas PW 143 talks of Mayaben, Bipin

Panchal, Murli Sindhi and Guddu Chhara alighting from the car. The time referred to by all these witnesses is more or less the same, viz. around 9:00 to 9:30 in the morning. PW 236, however, claims to have seen accused No.37 twice, once around 9:00 to 9:30 and again at around 11:00 a.m. The remaining five witnesses, viz., PW 176, 149, 192, 198 and 227, claim to have seen Mayaben Kodnani (A-37) in the mob. All these witnesses also claim to have seen her at around the same time. Again while PWs 104, 136 and 149 say that Mayaben spoke to the police, PW 104 also says she spoke to the mob, PW 176 only refers to the presence of Mayaben in the mob, PW 192 says she saw Mayaben with several other accused and Mayaben was instigating the mob, while PW 198 simply refers to the presence of Mayaben with several other co-accused in the mob and PW 227 says he saw Mayaben in the mob and that she was instigating the mob. Thus, while some of the witnesses say Mayaben came in a car, and then either spoke to the police or instigated the mob or did both and left, while others speak about her mere presence in the mob or of her presence in the mob and instigating the mob. Considering the overall evidence which has come on record, it is difficult to reconcile the versions given by the different witnesses, inasmuch as if around the same time Mayaben came in a car and left, how could she be present in the mob. Besides, around the same time how is it possible that Mayaben came in a car alone, or came with her P.A. or came with Bipin Panchal, Murli Sindhi and Guddu Chhara in a car? The trial court has simpliciter accepted the testimonies of all the witnesses brushing aside all the discrepancies in their evidence and without considering the credit worthiness of such witnesses. Since the prosecution has put forth evidence of

witnesses which conflict with each other and it is not possible to reconcile the same, the benefit of doubt has to go to the accused. Another notable aspect of the matter is that while the above referred witnesses talk of Mayaben Kodnani (A-37) coming in a white Maruti Franti car, none of the witnesses have given the number of the vehicle. Not only that, no investigation has been carried out by the SIT to ascertain whether accused No.37 owned or was using any such vehicle at the relevant time, nor has it attempted to trace out such vehicle. This is a serious lacuna in the investigation by the SIT because all evidence against accused No.37 Mayaben Kodnani has come only at the stage when the SIT came into the picture; therefore, it was the duty of the Investigating Officer (SIT) to gather evidence in support of the versions given by the witnesses. Moreover, even if one brushes aside all the discrepancies in the evidence of the witnesses, there is still no material on record to indicate the hatching of a conspiracy as no evidence whatsoever has been adduced by the prosecution to show any meeting of minds between accused No.37 and any other accused so as to establish the existence of a conspiracy. The trial court has also placed reliance upon the evidence of the sting operation, which as discussed above, being an extra judicial confession of a co-accused long after the conspiracy was over, is not admissible in evidence against the other co-accused. The trial court was, therefore, not justified in considering the evidence of the sting operation qua any accused other than those who had made the extra-judicial confession. It is well settled that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

422. The trial court has accepted part of the testimony of the witnesses and has discarded part of it while considering the charge of conspiracy. While it is true, that it is permissible for the court to accept part of the evidence that appears credible and discard the part that is not credible, by separating the grain from the chaff. However, where it is not possible to separate the grain from the chaff, the entire evidence cannot be taken into consideration. In the present case, the trial court has accepted the version given by the witnesses who have stated that Mayaben got down from her car and talked either to Mysorewala or the police and then went back to hold that the charge of conspiracy has been proved, despite the fact that Mysorewala and the police are totally silent about it, and without holding that the police were also involved in the conspiracy. If the act of Mayaben alighting from the car and talking to the police can be said to be part of the conspiracy, how then, can the police be excepted from such conspiracy!

423. However, accused No.18 Babubhai Bajrangi, accused No.21 Prakash Rathod and accused No.22 Suresh Chhara stand on a different footing, inasmuch as they have made extra-judicial confessions before PW 322 Ashish Khetan, who has duly deposed about it in his testimony. Of course, if the entire sting operation as contained in the DVDs or as contained in the transcripts prepared by PW 322 had been proved in accordance with law, the evidence against those accused would have been stronger as the same would also have established the collection of inflammable substances by the accused for the purpose of committing the offences, nonetheless, to the extent the extra-judicial confession made

before PW 322 has been duly proved by him through his testimony, the same can certainly be used as evidence against the said accused. As regards the defence of the accused that they were speaking from readymade scripts, it may be apposite to note that the entire recording of the sting was done through spy cameras of which the accused were unaware; therefore, there was no occasion for the accused to recite from a readymade script.

424. If one considers the testimony of PW 322 Ashish Khetan, he has duly deposed that accused No.18 had told him that on 27th February, 2002, viz. a day prior to the incident, he had gone to Godhra and had seen the dead bodies of the kar sevaks and on that day he had decided that they would show the results at Naroda Patiya on the next day. This witness has also deposed that accused No.18 stated before him, that on the previous night he along with twenty nine to thirty other persons had visited houses of people in the area who had arms and had forcible collected twenty three revolvers. He has also stated that after he saw what had happened in the Godhra incident, on the next day they had given their retaliation. On a query by Anandji as to how did they organise it within such a short time, Babu Bajrangi had said that they had gathered a team of about twenty nine to thirty persons at night itself and approached those who had guns and forcibly collected twenty three revolvers from them. The witness has also deposed that Babu Bajrangi had said that if the police so desired, they would not have let them enter inside patiya; that the gas cylinders belonged to the Muslims and they were burst.... they had revolvers with them; they had thrust a whole diesel tanker into the masjid and set it ablaze; at that time the leadership was

theirs, they did whatever they wanted to.

425. Thus, from the extra-judicial confession made by accused No.18 Babubhai Bajrangi before PW 322, it is clearly established that on the previous day he along with other persons had forcibly collected revolvers from persons who possessed such fire-arms; which indicates pre-planning. The accused has also stated that on the previous day when they went to Godhra and saw the dead bodies they had decided to give a befitting reply at Patiya on the next day. Therefore, both the motive and planning are evident from the extra-judicial confession. The active participation of the accused in the riots and in setting ablaze the masjid and mass killing of people is also borne out from such extra-judicial confession. Clearly therefore, the ingredients of criminal conspiracy are clearly made out, inasmuch as, while the names of the other persons who have participated in collecting fire-arms on the previous day have not come on record, nonetheless it is clear that there was a meeting of minds between accused No.18 and those unnamed accused, to collect arms with a view to use them on the next day for retaliating in respect of the Godhra incident.

426. Accused No.18 Babubhai Bajrangi has been named by in all ten witnesses, viz. (i) PW 142 Zannatbibi Kallubhai, (ii) PW 149 Faridabibi Abdulkadar, (iii) PW 174 Abdulsalim Abdulmajid, (iv) PW 198 Haroon Mohmad, (v) PW 228 Javed Ismail, (vi) PW 244 Maiyuddin Imamuddin, (vii) PW 262 V.K. Solanki, (viii) PW 266 P.V. Thakore, (ix) PW 274 K.K. Mysorewala and (x) PW 277 M.T. Rana, out of whom the last four are police witnesses. Out of the above witnesses, this court while evaluating the credibility of the witnesses

individually has found that in case of PW 142, insofar as the presence of Babu Bajrangi is concerned, there is an inconsistency between the previous statement of this witness recorded by the police and her testimony before the court and has held that the testimony of this witness cannot be relied upon to prove the charge against Babu Bajrangi (A-18). As regards PW 149, the court has found that insofar as implication of this accused is concerned, it is in the nature of an improvement and that the witness had not named him in her earlier statement. Therefore, the witness is not consistent as regards the presence of this accused. In case of PW 174, the court, upon considering the quality of the testimony of this witness, found that he does not appear to be very credible and that it would be very hazardous to place reliance upon the testimony of this witness to prove the charge against the accused. As regards PW 198, the court, upon considering the nature of contradictions in the testimony of this witness, as well as the fact that his version has come on record for the first time in the year 2008 when his statement came to be recorded by the SIT, as well as considering the contradictions in his testimony before the court and his statement recorded by the SIT, has found that the witness does not come across as a credible and truthful witness and that it would be hazardous to rely upon his testimony to prove the charge in such a serious offence. As regards PW 228, the court has noted that at the relevant time when the incident took place the witness was fourteen years of age. The court has expressed the opinion that insofar as naming of the accused is concerned, it would be risky to accept such version which has come at such a belated stage, more, so, when nothing has been brought on record to establish the acquaintance of the witness with the accused and

no test identification parade has been carried out to establish the identity of the accused. As regards PW 244, this court has recorded that this witness's statements came to be recorded on 13.5.2002 as well as on 26.6.2002. At the relevant time he did not name any accused and in fact had stated that does not know any person in the mob. However, in the year 2008, before the SIT he has named accused No.18 Babubhai Bajrangi and has stated that he had seen him in the mob, and though he did not know him, some of the other Muslims pointed out to the accused and said "*woh raha Babu Bajrangi*". The witness has also failed to identify the accused in the dock. Thus, from testimony of this witness, it emerges that at the relevant time he had not named any accused, but before the SIT after a period of more than six years, he has named the accused and that too on the basis of other persons having said that such person is Babu Bajrangi. The witness has admitted that he had no prior acquaintance with the said accused and that he had never seen him prior to the incident. It is an admitted position that no test identification parade had been carried out to identify the accused. Under these circumstances, apart from the fact that at the relevant time the witness had not named the accused when his statement came to be recorded, when the witness had no acquaintance with the accused and has not been able to identify him in the dock, no reliance can be placed upon the testimony of this witness to prove the charge against the accused. Thus insofar as the private witnesses are concerned, the court has found it hazardous to rely upon their testimonies insofar as accused No.18 Babu Bajrangi is concerned.

427. However, this accused has also been named by four

police witnesses. In this case there are several Investigating Officers, as well as their assignee officers who, under the instructions of the Investigating Officers have recorded statements and drawn panchnamas. Apart from these officers who have taken part in the investigation, there are police officers and police personnel who were on stand to duty on the day of the incident and are eye witnesses of the incident and have named some of the accused. The trial court has found the investigation to be not credible and has discarded the entire investigation carried out by the police at the relevant time except for the ministerial work like drawing of panchnamas etc. by the previous investigating agency. While discarding the investigation, the trial court has also observed that where any policeman has named an accused, it would not rely upon the same unless such accused is also named by a private witness. It may be noted that not all the police who are eye-witnesses have taken part in the investigation. Besides, there does not appear to be any justification for discarding the evidence of the police officers who are eye witnesses merely because the investigation is not up to the mark. Moreover, no evidence has been brought on record by the defence to show that these police personnel who named them bore any grudge or animosity against them so as to falsely implicate them.

428. PW 262 V.K. Solanki has deposed that at around nine to nine thirty in the morning, mobs started gathering on the road and they made attempts to disperse them during the course of patrolling. At around 11:00 to 11:30 in the morning, while patrolling they came to Naroda Patiya near the Noorani Masjid, at that time Hindu mobs had gathered in large numbers and were shouting slogans like “kill them, hack

them". In the meanwhile their Deputy Police Commissioner, Shri P.B. Gondia and A.C.P. Shri M.T. Rana and Naroda Police Station Senior P.I. Shri K.K. Mysorewala also arrived there. At that time mobs from Krushnanagar, Saijpur, Fadeli, Kubernagar, Chharanagar started gathering near the Noorani Masjid and Hussainnagar hutments. At the relevant time, active members of the V.H.P. and B.J.P., Kishan Korani, P.J. Rajput, Hareesh Rohera, Babu Bajrangi and Raju Chaumal were leading the mobs and were instigating them and in a while, shops, houses of Muslims and the Noorani Masjid were targeted and ransacked and set ablaze and looted. From the evidence on record, the presence of this witness at the scene of offence has been established. This witness has lodged the first information report in this case and has named the above referred accused including accused No.18 Babu Bajrangi as leading the mobs and instigating them.

429. PW 266 P.V. Thakore is another police witness whose presence at the scene of offence has been established. This court, after appreciating the evidence of this witness has found that through his evidence the presence of the accused named and identified by him, viz., accused No.24 Raju Chobal, accused No.18 Babu Bajrangi and accused No.20 Kishan Korani, is duly established and there is no reason to disbelieve the witness to the extent he has named and identified these accused as being present in the mob in the afternoon.

430. The presence of PW 274 K.K. Mysorewala at the scene of offence has been duly established by the prosecution. While the witness has failed to discharge his duties in a proper manner and prevent the mobs from committing the offences in

question, he has named five accused, including accused No.18 Babu Bajrangi. This witness along with PW 262 and PW 277 was present at the scene of offence, and all three of them have named this accused as being present.

431. PW 277 Shri M.T. Rana whose presence at the scene of offence has also been duly established has also deposed regarding the presence of accused No.18 Babu Bajrangi.

432. Thus, when four police officers have named this accused first in point of time, at the relevant time when the incident took place, there is no reason to disbelieve their testimonies. Apart from the testimonies of the police witnesses, the evidence of PW 322 Ashish Khetan before whom the accused made an extra-judicial confession as narrated hereinabove, clearly indicates the active involvement of the accused in the entire incident as well as the pre-planning and pre-concert, which is indicative of a criminal conspiracy having been hatched between this accused and some of the other accused. The prosecution has therefore, duly established the charge of criminal conspiracy qua this accused.

433. Insofar as accused No.22 Suresh Chhara is concerned, this witness has been named by as many as fifty seven eye witnesses, many of whom have been found to be credible and trustworthy by the court. The presence and participation of this accused in incidents that took place throughout the day is established through the testimonies of the witnesses, a detailed reference to which shall be considered while considering the evidence against each individual accused. From the testimony of PW 322 Ashish

Khetan, it has been clearly established that this accused made an extra-judicial confession before him which also shows his involvement in the offences in question. The accused has also talked about Babubhai Bajrangi helping them. From the extra-judicial confession made by this accused, it can be inferred that there was a meeting of minds between this accused and Babubhai Bajrangi to commit illegal acts and that they planned and conspired to attack the Muslims of Naroda Patiya and their properties. However, insofar as the other accused are concerned, it is not possible to say that they were aware of the conspiracy and if in furtherance of the conspiracy they were induced to do any unlawful acts. Without the knowledge of the conspiracy, they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act.

434. Insofar as accused No.21 Prakash Rathod is concerned, he has not been named by any witness and appears to have been implicated on the basis of the sting operation conducted on him by PW 322 Ashish Khetan. Therefore, in the case of this accused the only evidence against him is the extra-judicial confession made by him before PW 322. Before evaluating the evidentiary value of such extra-judicial confession, it may be germane to refer to certain decisions of the Supreme Court on the question as to whether an extra-judicial confession can be the sole basis for convicting an accused.

435. In ***Aloke Nath Dutta v. State of W.B.***, (2007) 12 SCC 230, the Supreme Court held thus:

“68. *In State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, it was held:*

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witness who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

It was further observed:

“20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law.”

69. *In Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516, this Court opined:*

“23. Extra-judicial confession, as is well known, can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra-judicial confession cannot ipso

facto be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the courts."

(emphasis supplied)

70. *In Nazir Khan v. State of Delhi, (2003) 8 SCC 461, this Court held:*

"A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt."

(See also Ram Khilari v. State of Rajasthan, (1999) 9 SCC 89 and Namala Subba Rao v. State of A.P., (2006) 10 SCC 557)

71. *It will also be relevant to consider State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254, wherein this Court observed:*

"14. ... There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made."

72. *Recently, in Kulwinder Singh v. State of Punjab, (2006) 12 SCC 538, this Court held:*

"31. The evidentiary value of an extra-judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto."

73. *In his confession Aloke Nath takes the entire blame on himself. We are not persuaded to hold that the courts below erred in opining that extra-judicial confession of Aloke Nath is in any way doubtful."*

436. Another decision of the Supreme Court which may profitably be referred to is **Gura Singh v. State of Rajasthan**, (2001) 2 SCC 205, wherein it has been held thus:

“6. It is settled position of law that extrajudicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322, this Court again in Maghar Singh v. State of Punjab, (1975) 4 SCC 234, held that the evidence in the form of extrajudicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh v. State of M.P., (1985) 4 SCC 26, this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extrajudicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of H.P., (1991) 1 SCC 286, this Court held that an unambiguous extrajudicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was

made have to be scrutinised. To the same effect is the judgment in Baldev Raj v. State of Haryana, 1991 Supp (1) SCC 14. After referring to the judgment in Piara Singh v. State of Punjab, (1977) 4 SCC 452, this Court in Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204, held that the extrajudicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.”

437. In **Kadamanian v. State**, (2016) 9 SCC 325, the Supreme Court held thus:

“8. In Sahadevan v. State of T.N., (2012) 6 SCC 403, it has been observed that extra-judicial confession is weak piece of evidence. Before acting upon it the court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. In Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259, it has been observed that extra-judicial confession requires great deal of care and caution before acceptance. There should be no suspicious circumstances surrounding it. In Pakkirisamy v. State of T.N., (1997) 8 SCC 158, it has been observed that there has to be independent corroboration for placing any reliance upon extra-judicial confession. In Kavita v. State of T.N., (1998) 6 SCC 108, it has been observed that reliability of the same depends upon the veracity of the witnesses to whom it is made. Similar view has been expressed in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, in which this Court has further observed that witness must be unbiased and not even remotely inimical to the accused. In Alope Nath Dutta v. State of W.B., (2007) 12 SCC 230, it has been observed that the main features of confession are required to be verified. In Sansar Chand v. State of Rajasthan, (2010) 10 SCC 664, it has been observed that extra-judicial confession should be corroborated by some other material on record. In Rameshbhai Chandubhai Rathod v. State of Gujarat, (2009) 5 SCC 740, it has been observed that in the case of retracted confession it is unsafe for the court to rely on it. In Vijay Shankar v. State of Haryana, (2015) 12 SCC 644, this Court has followed the decision in Sahadevan (supra). Based on the aforesaid judgment rendered by this Court,

it was submitted that the extra-judicial confession being a weak piece of evidence, should not have been relied upon for determining the culpability of the appellant.

15. *Having given our thoughtful consideration on the above contention, we are of the view that the judgment² relied upon by the learned counsel is wholly inapplicable in the facts and circumstances of this case for two distinguishing features in the present case, namely, that the extra-judicial confession in the instant case was made to the Village Administrative Officer, R.V. Alagurajan, PW 12, who was totally unbiased and unconnected with the controversy in hand. He could also not be stated to be inimical to the appellant. He is not shown to have any relationship with either the complainant or the accused. Moreover, insofar as the extra-judicial confession made in the judgment relied upon by the appellant is concerned, the same had been made by the accused to the sister of the deceased, which by itself made the extra-judicial confession extremely doubtful. We are therefore not impressed with the submission advanced by the learned counsel for the appellant based on the cited judgment."*

438. From the above decisions, it can be culled out thus:

- Extra-judicial confession requires great deal of care and caution before acceptance. There should be no suspicious circumstances surrounding it.
- An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak

type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak of such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of a witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

- If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.
- The evidentiary value of an extra-judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto.

- The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence.

439. Examining the extra-judicial confession made by accused No.21 in the light of the above principles, PW 322 Ashish Khetan before whom such confession came to be made is an unbiased witness, who is not even remotely inimical to the accused. While the witness has assumed an identity and claimed to be a scholar in Hindutva, there is no reason whatsoever to doubt the veracity of the evidence of the witness, who comes across as a truthful and credible witness, who has withstood the grilling cross-examination by the learned counsel for the accused. Moreover, as discussed earlier, it is not even the defence of the accused that no such sting operation had been carried out and that they had not met the witness and stated what has been attributed to them. A faint attempt has been made to suggest that they were reading from a prepared script, however, considering the manner in which the sting operation came to be conducted, whereby the sting was recorded through spy cameras, it is apparent that the accused were not even aware that their conversation was being recorded. Therefore, the question of reading from a prepared script does not arise. Though as discussed earlier, the evidence of the sting as contained in the DVDs and CDs is not admissible in evidence as the same has not been proved in accordance with law; however, PW 322, who had conducted the sting has duly deposed as to what was

stated by the accused to him from a transcript prepared by him on the basis of what was recorded during the course of the sting. Thus, the confession has been duly proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. In the present case, PW 322 comes across as a reliable and trustworthy witness and his evidence can be given due weightage. Therefore, considering the nature of the evidence of extra-judicial confession, the same appears to be reliable and trustworthy and can form the basis of conviction based upon what has been stated in such extra-judicial confession.

440. It may be noted that it is well settled that the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidences, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on some other evidence. However in this case, the court is not concerned with the confession of a co-accused but with the confession of the maker himself. Therefore, if the extra-judicial confession appears to be true and credible it can be made the sole basis of conviction.

441. PW 322 Ashish Khetan has duly deposed that this accused had stated before him that they were inside the riots when Mayaben came. He has further deposed that this accused had stated before him that they came to know that the Godhra incident had taken place, Mohammedan people

have burnt a train wherein Ramsevaks died, many Hindu people died, and they had thought since there is call for bandh, no one should open their shop. In response of a question as to whether the Chharas fought only with their hands, legs and sticks, he has said that some of them had swords and trishuls. The accused has also stated that Suresh Chhara had in his possession all kinds of weapons, except revolvers. In response to a question as to whether he cut two or four Miyas or not, the accused has stated that their people had broken hands and legs of many people and that they had badly beaten those who were there. He has further stated that he had not gone inside; they had remained there and would beat and chase away whoever had come. The accused has also referred to the presence of other co-accused, however, since the extra-judicial confession has been made after the conspiracy has been made, it cannot be considered for the purpose of proving the charge of conspiracy against the co-accused. Nonetheless, it can certainly be used as a circumstance against the accused who made such extra judicial confession while considering his/her complicity in the other offences. The accused has also referred to Bipin Panchal coming with his people, etc. The accused has further stated that amongst the Chharas Suresh Richard, Guddu and Naresh fought strongly and without getting tired. The accused has further talked about having burst many cylinders, despite which the masjid was not shaken much.

442. Considering the nature of the extra-judicial confession of this accused and his close association with accused No.22 Suresh Chhara, it can be inferred that this accused was aware of the conspiracy to cause loss of life of

Muslims and to damage their properties. The fact regarding conspiracy can be culled out from the fact that the accused had come prepared with weapons and inflammable substances. It was not as if they had come as mere spectators and had thereafter joined in the commission of the offence.

443. In the present case the mobs were comprised of thousands of people. It is an admitted position that on the previous day a coach of the Sabarmati Express had been set ablaze by at Godhra, allegedly by Muslims, which resulted in several Ram Sevaks being burnt to death. In view of the broadcast by the television channels, tempers were running high and people, on their own, came out on the streets. Therefore, when there are mobs of thousands, it is evident that all the people in the mob would not have come as a part of the conspiracy and many would have come on their own having regard to the situation prevailing on that day. Therefore, all the accused named and unnamed cannot be held to be guilty of conspiracy. From the evidence on record, insofar as the charge of conspiracy is concerned, the same can be said to be duly proved only qua accused No.18 Babubhai Bajrangi, accused No. 21 Prakash Rathod and accused No.22 Suresh Langda. Insofar as the other accused are concerned, there can be said to be strong suspicion that they were also co-conspirators, but suspicion, however strong, cannot take the place of evidence, and in the absence of any direct or circumstantial evidence showing their involvement in the conspiracy, it cannot be said that the charge of criminal conspiracy qua them has been proved. The accused other than accused No.18, 21 and 22 are therefore required to be given the benefit of doubt insofar as the charge of the offence under section 120B of the Penal

Code is concerned.

444. From the video of the sting operation, it emerges that on the prior night that is on 27th February 2002, Babu Bajrangi and his associates had forcibly collected arms from people in that area. He has also boasted about how the petrol pump owner had given them petrol for free. Unfortunately, the recording of the sting operation is not admissible in evidence as the prosecution has not chosen to prove it in accordance with law. Nonetheless, insofar as use of inflammable substances is concerned, many witnesses have deposed regarding people in the mob having cans of kerosene, petrol and other inflammable substances. The manner in which the victims have been burnt to death is indicative of large scale use of inflammable substances. The victims have been burnt by pouring inflammable substances on them; or by soaking mattresses, quilts etc. in inflammable substances and throwing them on the hapless victims. The availability of such large quantities of inflammable substances is indicative of prior planning on the part of the mob. Of course, the prosecution has not adduced any evidence as regards use of such arms, but some of the witnesses have attributed use of arms to some of the accused. Accused Suresh Chhara in the sting operation has stated that Babu Bajrangi had helped them. What is stated by the accused in the sting operation is not merely an act of bravado and mere boasting on his part, but also has an element of truth considering the events that transpired on that day and the manner in which the heinous offence was committed.

445. Coincidentally, the number of people who were burnt

to death in the Godhra Train carnage was fifty eight and the number of persons who were burnt to death at the passage of the water tank is also fifty eight. However, that appears to be a mere coincidence, inasmuch as several other persons were injured in the incident and later on died in the hospital. Besides, considering the manner in which the incident took place, it would be too farfetched to assume that fifty eight persons were killed near the passage of the water tank as the toll in the Godhra Train carnage for fifty eight. However, pertinently, the passengers in the coach were roasted to death, and similarly, the victims in the incident have also been roasted to death. In the opinion of this court, the manner in which the Muslims have been killed by the mob, is not a matter of coincidence, but matches with what the accused has said, namely that they would pay back in the same coin.

446. It is a matter of regret and concern that the prosecution, despite being represented by a Senior Public Prosecutor, who supposedly was well versed with and experienced in criminal law, has not thought it fit to prove the electronic documentary evidence on record. Significantly, even as muddamal, it is only pursuant to the suo motu order dated 25.1.2012 passed by the trial court at Exhibit 2555, that such DVDs and CDs have been brought on record. Moreover, despite the fact that PW 322 Ashish Khetan had produced a complete transcript of the sting operation, such transcript was only placed on record with a list and the learned Special Public Prosecutor did not deem it fit to ensure that the same is proved in accordance with law and exhibited. It is difficult to believe that such an experienced Public Prosecutor was not aware of the importance of proving the sting operation and the

transcript. However, for reasons best known to the prosecution as well as the investigating agency, they have not thought it fit to prove such important evidence in accordance with law. While the CBI Officer, FSL officer and Director of Akashwani Ahmedabad have been examined to prove that there is no tampering with the DVDs and CDs and that the voices in the sting operation are that of accused No.18, 21 and 22, in the absence of the DVDs and CDs being admitted in evidence, the entire exercise has been rendered an exercise in futility.

447. In the light of the above discussion, the court is of the view that the prosecution has duly established the charge of criminal conspiracy punishable under section 120B of the Indian Penal Code against accused No.18 Babu Bajrangi, accused No.21 Prakash Rathod and accused No.22 Suresh Richard Chhara.

XXX UNLAWFUL ASSEMBLY:

448. Mr. Y.S. Lakhani, learned counsel for the appellants submitted that apart from very shaky evidence of witnesses, which is full of material contradictions/omissions/improvements and embellishments, severely affecting the core of the prosecution case, the omnibus allegation of witnesses against the accused being there as a part of mob would never make them liable under the constructive and vicarious liability by invoking section 149 of the Indian Penal Code, particularly when several incidents of different nature, at different places, at different points of time and indicating different complicity of different accused are brought in evidence of the case. It was submitted that the following situation is required to be looked at and appreciated:

448.1 There are large number of small to big incidents which have taken place in a large spread of the Naroda Police Station like at the Noorani Masjid, at the gate of the S.T. Workshop or near Natraj Hotel, at or near Bipin Auto, at or on the road towards Krushnanagar, towards Kubernagar, at different chawls on the road opposite to Noorani Masjid, at different chawls of Hussain Nagar, at different chawls of Jawannagar, at or near Gopinath and Gangotri Society, on the road from Uday Gas Agency, at or near the S.R.P. Quarters, etc. from 09:00 hours in the morning to 19:00 hours in the evening.

448.2 In relation to the morning incidents, the learned counsel submitted that as per the versions given by witnesses, a large number of people had gathered in the morning on the road near the Noorani Masjid, the number of people being in thousands. No incident of causing any injury by any weapon or otherwise to any person of the minority community had taken place at the hands of any accused. Incidents of police firing has taken place wherein one person from the Muslim community has died and four to five other persons of the Muslim community have been injured therein as per the evidence of witnesses. Two persons of the Hindu community, who are shown as deceased accused in the charge-sheet, have also died in the police firing. A few of victim witnesses have tried to even allege private firing in the morning hours as an improved story, but the same is not corroborated by any other evidence, direct or circumstantial, as also by any of the police witnesses. A few incidents of setting on fire the shops and properties on the road, causing

damage to them and pelting of stones, etc. is alleged to have taken place in the morning hours. No specific evidence against any accused causing any injury by any weapon to any of the members of the minority community has surfaced or even alleged in the morning hours.

448.3 No specific evidence of causing damage to a particular property by a specific accused (except to the Noorani Masjid) has been alleged by witnesses. There seems no specific allegation made by witnesses against any specific accused regarding the utterance of specific words or sentences except making general allegations.

448.4 Referring to the evidence of the afternoon incident, it was submitted that though the witnesses have tried to make out a case that in the afternoon hours of 28.2.2002, the mobs had entered the chawls from the road of the S.T. Workshop and caused damage to the properties in the lanes of such chawls up to Lane No. 3 of Hussainnagar, except saying so in general, no specific and definite evidence in this regard has been led by the prosecution against any particular accused. Though in the afternoon, some incidents relating to the death of Maiyuddin, Ayub and Hasanali have been alleged by some witnesses, but the version given by those witnesses runs contrary to and in contradiction to each other, indicating different points of time, different manner of occurrence, showing complicity of different accused, etc. which is difficult to reconcile. It was submitted that the inquest reports of such deceased together with the post mortem notes and the text of the relevant panchnamas make such case of the witnesses further doubtful.

448.5 As regards the evening incident, the learned counsel submitted that mass killing is stated to have taken place at the passage near the water tank between Gopinath and Gangotri Society, which is said to have taken place at the hands of few persons who came from the S.T. Workshop side and at the hands of a large number of unknown persons who came from the rear side (viz., from the open ground of Teesra Kuva) where the canal is situated.

448.6 It was submitted that in short, the morning incident, afternoon incident and evening incident, are all different offences allegedly committed by different sets of accused unconnected with each other and such incidents apparently are not the result of any conspiracy hatched amongst them. It was contended that no cogent, clinching, convincing, reliable and dependable evidence has been led or is coming on record whereby it can be said that all such incidents and everything that had happened from 9:00 to 19:00 hours is a part of the result of a single conspiracy hatched by the accused. Thus the concept of constructive liability under section 149 IPC needs to be examined in such facts of the case to decide whether all the accused against whom reliable and dependable evidence has been led can be convicted for all the offences so committed during the course of the day, taking them within the sweep of section 149 IPC as sharing the common object and acting in pursuance of that common object.

448.7 It was argued that firstly, there is no evidence on record to show that the accused against whom reliable and

creditworthy evidence has been found showing their presence and participation in the mob in the morning, were even sharing any object, much less, a common object for anything which has taken place in his absence in the afternoon or evening nor can it be said that they knew that such incidents are likely to be committed. Secondly, there are few accused against whom no overt act has been alleged in the morning, except to say that he was seen as part of mob. It was submitted that mere presence in mob without any overt act in such a situation may be innocent or innocuous, particularly when such accused reside in that very area and have their business/work place there. Noticing somebody's presence in a large mob of thousand of persons without any overt act may not be for the purpose of committing some offence and, therefore, such persons cannot be held liable for sharing any common object whatsoever, in the absence of any other evidence against them. Thirdly, if there is reliable and dependable evidence against certain accused that were seen in the mob in the morning and against whom an overt act has been attributed by leading cogent evidence, it is required to be ascertained as to what common object he was sharing in prosecution whereof that he committed that overt act. Beyond such apparent common object, which from the facts of the case can be reasonably deduced, such accused cannot be held liable for any other offence which either he would not have shared nor would he be knowing that is likely to be committed in prosecution thereof. Fourthly, the incidents which are stated to have taken place in the afternoon are not proved beyond reasonable doubt in view of the contradictory and improved versions of different witnesses incident-wise. The accused so attempted to be implicated cannot, therefore, be held liable

under section 149 IPC for any of the incidents which have taken place in the evening as the evening incident is altogether a separate and distinct incident, not even anticipated or known to be likely to be committed or even foreseen by all the accused, to take them within the sweep of section 149 IPC. Fifthly, in the absence of any cogent and reliable evidence on record any and every omnibus allegation in the above stated fact situation can never be said to satisfy the tests and parameters prescribed by the apex court to bring the accused within the sweep of constructive liability of section 149 IPC for holding all of them liable for all the incidents of 28.2.2002 that occurred in the Naroda Patiya area under various sections of the Penal Code as per the charges framed. Sixthly, the prosecution has miserably failed to prove beyond reasonable doubt that any overt act on the part of the accused at any point of time in any area of Naroda Patiya, was a result of the prosecution of a common object, so as to make all the accused vicariously liable for anything and everything done by other accused resorting to section 149 IPC. Seventhly, these incident have to be appropriately divided into different groups as may be found just and proper in the set of facts of the case by the court and to hold only those accused guilty whose presence and participation is proved beyond reasonable doubt by way of reliable, creditworthy and dependable evidence for the particular incident committed at one point of time at one place, but not holding him so guilty for the other incident committed at another and distinct point of time at a totally different place by resorting to section 149 IPC, inasmuch as, doing so would be in consonance with the law laid down by the apex court in the case of **Najabhai Desurbhai Wagh v. Velerabhai Deganbhai Vagh**, 2017 (3) SCC 261, wherein

distinct sub-groups were discernible with different common object/intention.

449. Mr. B.B. Naik, learned counsel for the appellants invited the attention of the court to paragraph (h) at page 1601 of the impugned judgment to submit that the trial court has recorded a finding that, except accused No.37, all the remaining conspirators have joined in the unlawful assembly for executing the conspiracy in the morning itself. Thus, they all are punishable for the offences committed as members of unlawful assembly also. It is submitted that there is no evidence to show that accused No. 34, accused No.39 and accused No.47 have been seen by any witnesses after the morning incident, that is, in the incident which has taken place in the chawls in the afternoon and in the incident at the khancha (passage) in the evening. Thus, it becomes very clear that the findings recorded by the trial court are not based on relevant evidence. Not only that, but, the findings are contrary to the evidence on the record of the case.

449.1 It was pointed out that in paragraph (vi) of Part-3: Section 149; at page 1613, the trial court, in sub-paragraph (a) has recorded a finding that all the accused mentioned above, that is, in paragraph (b-1) are held "Guilty" as members of unlawful assembly who have committed offences while being and continuing as part of the said unlawful assembly and that it is that assembly which has committed offences against property, offences against human body, offences relating to religion and offences against public tranquillity, etc. It is further recorded by the trial court that it can safely be inferred from the conduct of the accused, from the continuation of the

accused as member of the unlawful assembly and from the very act of joining the said assembly by the accused that the accused have joined the unlawful assembly intentionally and that it can also be safely inferred that the accused had knowledge of the common object which, in fact, was shared by all members of the said unlawful assembly. Mr. Naik submitted that, as stated above, accused No. 34, accused No.39 and accused No.47 were not seen by any witness after the morning incident either in the incidents that took place in the afternoon or in the evening, and, thus, it becomes clear that this finding is also contrary to the evidence on record and perverse.

450. Mr. Bhargav Bhatt, learned counsel for accused No.62 Kirpalsingh, submitted that to prove the charge under section 149 of the Penal Code, the prosecution has to prove that: (i) there was an unlawful assembly; (ii) that the accused was a member thereof at the time of committing the offence as contemplated under section 142 of the Penal Code; (iii) that he intentionally joined and continued in that assembly; (iv) that he knew the common object of the assembly; (v) that an offence was committed by a member of such assembly; and (vi) it was either committed: (a) in prosecution of the common object of the assembly, or (b) was such, as the members of the assembly knew to be likely to be committed in prosecution of their common unlawful object.

450.1 It was submitted that a gathering of five or more persons is first essential for an unlawful assembly; such unlawful assembly should have a common object; such unlawful assembly should have gathered for fulfilling the common object; the possibility of knowledge of the common

object is sufficient to attract section 149 of the Penal Code; however, each and every member of the unlawful assembly, even when his presence is proved in or near a riotous mob by itself does not become liable; for such person, the argument will still be open, that his association with the assembly in the commission of the offence was not from the beginning to the end and that his association in it is insignificant. It was submitted that to put it differently, the prosecution has to prove sharing of the common object by such person at all crucial stages.

451. In support of their submissions, the learned counsel placed reliance upon the decision of the Supreme Court in **Ranjit Singh v. State of Punjab**, (2013) 16 SCC 752, wherein it was held thus:

“34. We may, before turning to the facts of the case, briefly refer to the legal position as regards the applicability of Section 149 IPC, which has fallen for interpretation on numerous occasions in the past before this Court and has been comprehensively dealt with in several pronouncements. The essence of Section 149 IPC is that a member of an unlawful assembly is responsible for the acts committed by any other member of the assembly in the same measure as the person committing such an act himself is. The section thereby creates a vicarious or constructive liability for all those who share the common object of the unlawful assembly provided the acts constituting the offence are done in pursuit of the common object of the unlawful assembly or are acts which the members of the unlawful assembly knew to be likely to be committed in pursuance of that object.

35. Baladin v. State of U.P., AIR 1956 SC 181, was one of the early cases in which this Court dealt with Section 149 IPC. This Court held that mere presence in an assembly does not make a person a member of the unlawful assembly, unless it is shown that he had done or omitted to do something which would show that he was a member of

the unlawful assembly or unless the case fell under Section 142 IPC. Resultantly, if all the members of a family and other residents of the village assembled at the place of occurrence, all such persons could not be condemned ipso facto as members of the unlawful assembly. The prosecution in all such cases shall have to lead evidence to show that a particular accused had done some overt act to establish that he was a member of the unlawful assembly. This would require the case of each individual to be examined so that mere spectators who had just joined the assembly and who were unaware of its motive may not be branded as members of the unlawful assembly.

36. *The observations made in Baladin case (supra) were considered in Masalti v. State of U.P., AIR 1965 SC 292, where this Court explained that cases in which persons who are merely passive witnesses and had joined the assembly out of curiosity, without sharing the common object of the assembly stood on a different footing; otherwise it was not necessary to prove that the person had committed some illegal act or was guilty of some omission in pursuance of the common object of the assembly before he could be fastened with the consequences of an act committed by any other member of the assembly with the help of Section 149 IPC. The following passage is apposite in this regard:*

“17. ... The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in Baladin (supra) assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common

object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly."

37. *Again in Bajwa v. State of U.P., (1973) 1 SCC 714, this Court held that while in a faction-ridden society there is always a tendency to implicate even the innocent with the guilty, the only safeguard against the risk of condemning the innocent with the guilty lies in insisting upon acceptable evidence which in some measure implicates the accused and satisfies the conscience of the court."*

451.1 Reliance was also placed upon the decision of the Supreme Court in **Busi Koteswara Rao v. State of A.P., (2012) 12 SCC 711**, wherein it was held thus:

"11. *According to the prosecution, there was a friction amongst the two groups of the same village. The prosecution party belongs to Telugu Desam Party and the accused party belongs to Congress (I). It is also projected by the prosecution that apart from the political rivalry, there is also serious enmity between the parties in respect of lease of temple lands. There is no dispute that the incident occurred on 14-4-1997 was a group clash between two rivalries. In such type of incidents, an onerous duty is cast upon the criminal courts to ensure that no innocent is convicted and deprived of his liberties. At the same time, in the case of group clashes and organised crimes, persons behind the scene executing the crime, should not be allowed to go scot-free. In other words, in cases involving a number of accused persons, a balanced approach by the court is required to be insisted upon. In a series of decisions, this Court has held that in cases of arson and murder where a large number of people are accused of committing crime, the courts should be cautious to rely upon the testimony of the witnesses speaking generally without specific reference to the accused or the specific role played by them.*

12. *Even, as early as in 1965, a larger Bench of this Court in Masalti v. State of U.P., AIR 1965 SC 202, considered about how the prosecution case is to be believed. The principles laid down in para 16 of the decision are relevant which are as under:*

“16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Evidence Act, 1872 trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.”

13. *It is clear that when a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, the normal test is that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question.”*

451.2 The decision of the Supreme Court in **Akbar Sheikh v. State of W.B.**, (2009) 7 SCC 415, was cited for the following proposition of law:

“21. *Whether an assembly is unlawful one or not, thus, would depend on various factors, the principal amongst them being a common object formed by the members thereof to commit an offence specified in one or the other clauses contained in Section 141 of the Penal Code. Constructive liability on a person on the ground of being a member of unlawful assembly can be fastened for an act of offence created (sic committed) by one or more members of that assembly if they had formed a common object. The distinction between a common object and common intention is well known.*

22. *In Munna Chanda v. State of Assam, (2006) 3 SCC 752, this Court held as under:*

“10. The concept of common object, it is well known, is different from common intention. It is true that so far as common object is concerned no prior concert is required. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of the assembly, however, is a relevant factor. At what point of time the common object of the unlawful assembly was formed would depend upon the facts and circumstances of each case.

11. Section 149 IPC creates a specific and distinct offence. There are two essential ingredients thereof:

(i) commission of an offence by any member of an unlawful assembly, and

(ii) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed.

12. It is, thus, essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed.

13. The appellants herein were not armed with weapons. They except Bhuttu were not parties to all the three stages of the dispute. At the third stage of the quarrel, they wanted to teach the deceased and others a lesson. For picking up quarrel with Bhuttu, they might have become agitated and asked for apologies from Moti. Admittedly, it was so done at the instance of Nirmal, Moti was assaulted by Bhuttu at the

*instance of Ratan. However, it cannot be said that they had common object of intentional killing of the deceased. Moti, however, while being assaulted could free himself from the grip of the appellants and fled from the scene. The deceased was being chased not only by the appellants herein but by many others. He was found dead the next morning. There is, however, nothing to show as to what role the appellants either conjointly or separately played. It is also not known as to whether if one or all of the appellants were present, when the last blow was given. Who are those who had assaulted the deceased is also not known. At whose hands he received injuries is again a mystery. Neither Section 34 nor Section 149 of the Penal Code is, therefore, attracted. (See *Dharam Pal v. State of Haryana*, (1978) 4 SCC 440 and *Shambhu Kuer v. State of Bihar*, (1982) 1 SCC 486.)”*

23. *The question came up for consideration before this Court in *Baladin v. State of U.P.*, AIR 1956 SC 181, wherein B.P. Sinha, J., as the learned Chief Justice then was, opined that with a view to invoke the provisions of Section 149 of the Penal Code, “it was necessary therefore for the prosecution to lead evidence pointing to the conclusion that all the appellants before us had done or been committing some overt act in prosecution of the common object of the unlawful assembly”.*

24. *It was furthermore stated in *Baladin* case (supra):*

“19. ... The evidence as recorded is in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, like guns, spears, pharsas, axes, lathis, etc. This kind of omnibus evidence naturally has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication. That feelings were running high on both sides is beyond question.

That the six male members who were done to death that morning found themselves trapped in the house of Mangal Singh has been found by the courts below on good evidence. We have, therefore, to examine the case of each individual accused to satisfy ourselves that mere spectators who had not joined the assembly and who were unaware of its motive had not been branded as members of the unlawful assembly which

committed the dastardly crimes that morning.

It has been found that the common object of the unlawful assembly was not only to kill the male members of the refugee families but also to destroy all evidence of those crimes. Thus even those who did something in connection with the carrying of the dead bodies or disposal of them by burning them as aforesaid must be taken to have been actuated by the common objective.”

25. *The aforementioned observation in Baladin case (supra) was, however, not accepted later by this Court as an absolute proposition of law and was held to be limited to the peculiar facts of the case in Masalti v. State of U.P., AIR 1965 SC 202, in the following terms:*

“17. ... What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.”

26. *We may, however, notice that whereas the principle of law laid down in Masalti (supra) is beyond any doubt or dispute, its application in the later cases has not been strictly adhered to. This Court, as would appear from the discussions made hereinafter, in some of its decisions had proceeded to determine the issue in the factual matrix*

obtaining therein although some observations of general nature had been made.

27. *Sherey v. State of U.P., 1991 Supp (2) SCC 437, involved a case where there was a dispute between Hindus and Muslims of a village regarding a grove. Whereas the Hindus were claiming that it was a grove, the Muslims were claiming it to be a graveyard. A large number of Muslims, about 25 in number, came out with lethal weapons and killed three persons and injured others. Before this Court an argument was advanced that the appellants against whom no overt act was attributed but were part of the unlawful assembly should be held to be not guilty was accepted, stating:*

“4. ... Therefore, it is difficult to accept the prosecution case that the other appellants were members of the unlawful assembly with the object of committing the offences with which they are charged. We feel it is highly unsafe to apply Section 149 IPC and make everyone of them constructively liable. But so far as the above nine accused are concerned the prosecution version is consistent, namely, that they were armed with lethal weapons like swords and axes and attacked the deceased and others. This strong circumstance against them establishes their presence as well as their membership of the unlawful assembly. The learned counsel appearing for the State vehemently contended that the fact that the Muslims as a body came to the scene of occurrence would show that they were members of an unlawful assembly with the common object of committing various offences including that of murder. Therefore, all of them should be made constructively liable. But when there is a general allegation against a large number of persons the Court naturally hesitates to convict all of them on such vague evidence. Therefore, we have to find some reasonable circumstance which lends assurance. From that point of view it is safe only to convict the abovementioned nine accused whose presence is not only consistently mentioned from the stage of FIR but also to whom overt acts are attributed.”

28. *Similarly, in Musa Khan v. State of Maharashtra, (1977) 1 SCC 733, it was opined:*

“5. ... It is well settled that a mere innocent presence in an assembly of persons, as for example a bystander,

does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly. Thus a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages."

It was opined therein that as evidence was wholly lacking that all of them had taken part at all stages of the commission of offence, they were held to be not guilty of the charges levelled against them.

29. *Yet again in Nagarjit Ahir v. State of Bihar, (2005) 10 SCC 369, it was opined:*

"12. ... Moreover, in such situations though many people may have seen the occurrence, it may not be possible for the prosecution to examine each one of them. In fact, there is evidence on record to suggest that when the occurrence took place, people started running helter-skelter. In such a situation it would be indeed difficult to find out the other persons who had witnessed the occurrence."

It was furthermore observed:

"14. ... In such a case, it may be safe to convict only those persons against whom overt act is alleged with the aid of Section 149 IPC, lest some innocent spectators may get involved. This is only a rule of caution and not a rule of law."

30. *Almost a similar view has been taken in Hori Lal v. State of U.P., (2006) 13 SCC 79, wherein this Court noticed both Baladin, AIR 1956 SC 181 and Masalti, AIR 1965 SC 202 as also other decisions to opine:*

"23. Common object would mean the purpose or

design shared by all the members of such assembly. It may be formed at any stage.

24. Whether in a given case the accused persons shared common object or not, must be ascertained from the acts and conduct of the accused persons. The surrounding circumstances are also relevant and may be taken into consideration in arriving at a conclusion in this behalf.

25. It is in two parts. The first part would be attracted when the offence is committed in furtherance of the common object. The offence, even if is not committed in direct prosecution of the common object of the assembly, Section 149 IPC may still be attracted."

What was, therefore, emphasised was that not only the acts but also the conduct and surrounding circumstances would be the guiding factors.

31. *In Shankaraya Naik v. State of Karnataka, (2008) 14 SCC 685, this Court held:*

"15. ... It is clear from the record that the accused had come to the place of incident duly armed and had immediately proceeded with the attack on the opposite party and had caused serious injuries to the deceased and to as many as eight witnesses. It is also clear from the facts preceding the attack that there was great animosity between the parties and it must, therefore, be inferred that when the accused had come armed with lethal weapons, the chance that somebody might be killed was a real possibility."

32. *In Maranadu v. State, (2008) 16 SCC 529, this Court stated the law, thus*

"17. 'Common object' is different from 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of

the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instanti."

33. We may, however, notice that in Maranadu case (*supra*) this Court had taken note of an earlier decision of this Court in *State of U.P. v. Dan Singh*, (1997) 3 SCC 747, wherein it was held:

"34. Mr Lalit is right in submitting that the witnesses would be revengeful as a large-scale violence had taken place where the party, to which the eyewitnesses belonged, had suffered and it is, therefore, necessary to fix the identity and participation of each accused with reasonable certainty. Dealing with a similar case of riot where a large number of assailants who were members of an unlawful assembly committed an offence of murder in pursuance of a common object, the manner in which the evidence should be appreciated was adverted to by this Court in Masalti case as follows:

'15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This

criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.' "

34. *The decisions of this Court in Shankaraya Naik, (2008) 14 SCC 685 and Maranadu, (2008) 16 SCC 529, therefore, do not militate against the proposition of law in regard to appreciation of evidence, which we have to apply herein.*

35. *The prosecution in a case of this nature was required to establish: (i) whether the appellants were present; and (ii) whether they shared a common object."*

451.3 The learned counsel for the appellants further placed reliance upon the decisions of the Supreme Court in **Masalti v. State of Uttar Pradesh**, AIR 1965 SC 202, **Musa Khan v. State of Maharashtra**, (1977) 1 SCC 733, and **State of U.P. v. Dan Singh**, (1997) 3 SCC 747, which already find reference in the decisions cited hereinabove, and hence, it is not necessary to reiterate the same.

451.4 Reliance was placed upon the decision of the Supreme Court in ***Ek Nath Ganpat Aher v. State of Maharashtra***, (2010) 6 SCC 519, wherein the Supreme Court held thus:

23. *In our considered opinion the aforesaid approach of the courts below was incorrect. Nine persons including four witnesses belonging to the complainant party received injuries whereas as many as 14 accused persons received injuries including some who even suffered grievous injuries. Admittedly, there was a mob of about 75-100 persons who descended from the hillside to the place of occurrence by pelting stones and a melee followed. Not even a single witness including the injured witnesses could specifically state as to who had caused which injury either to the deceased or to the injured witnesses or to the accused. A very general statement has been made that the accused persons were armed with deadly weapons and caused injuries to the complainant party. In a situation where a mob of 75-100 persons entered into a clash with the complainant party it could not have been possible for any of the witnesses, who would naturally be concerned with their own safety and to save themselves from the assault, to see as to who had inflicted what type of injury either on the deceased or on the injured witnesses.*

24. *In view of such omnibus and vague statements given by the witnesses, the Court below acquitted as many as 21 accused persons on the ground that there is no evidence on record to implicate them in the offences alleged. There being no other evidence to specifically ascribe any definite role to any of the 14 appellants herein, it is difficult to hold that any of the present appellant had inflicted any particular injury on any of the deceased or the injured witnesses. Unless there is cogent and specific evidence attributing a specific role in the incident to the accused persons, who have themselves been injured and there being no explanation forthcoming as to such injuries, it would be unsafe to pass an order recording conviction and sentence against the appellants, more so when the prosecution has produced, in support of its case, witnesses who are inimical to the accused persons.*

452. On the other hand Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the trial court has appreciated the evidence in proper perspective while finding that the appellants are guilty of the offence under section 149 of the Penal Code for the offences that were committed throughout the day. It was submitted that in the facts of the present case, it is likely that the members of the mob were aware that grievous hurt is likely to be caused, though at the initial stage the members did not know about the grievous hurt. Therefore, all the accused are covered also under the second part of section 149 of the Penal Code and their appeal deserves to be dismissed and their conviction for the offences under section 302, 326, etc. read with section 149 of the Penal Code is required to be upheld.

452.1 In support of his submissions, the learned Special Public Prosecutor placed reliance upon the decision of the Supreme Court in **Gangadhar Behera v. State of Orissa**, (2002) 8 SCC 381:

“22. Another plea which was emphasized relates to the question whether Section 149 IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a

general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object"? It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

23. *"Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful*

assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident on the spot eo instanti.

24. *Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature*

of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word "knew" used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of "might have been known". Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first, offences committed in prosecution of the common object would be generally, if not always, within the second, namely, offences which the parties knew were likely to be committed in the prosecution of the common object. (See Chikkarange Gowda v. State of Mysore, AIR 1956 SC 731)

25. *The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-Judge Bench of this Court in Masalti case, AIR 1965 SC 202, observed as follows:*

"15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful

assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

26. *To similar effect is the observation in Lalji v. State of U.P., (1989) 1 SCC 437. It was observed that:*

"Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

27. *In State of U.P. v. Dan Singh, (1997) 3 SCC 747, it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to Lalji case (supra) where it was observed that:*

"While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149."

452.2 Reference was made to the decision of the Supreme Court in ***Yunis v. State of M.P., (2003) 1 SCC 425*** wherein it was held thus:

9. *The learned counsel appearing for appellant Liyaquat argued that no overt act is imputed to his client and he was being implicated only on the basis of Section 149 IPC. This argument, in our view, has no merit. Even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction.*

The fact that Liyaquat was a member of the unlawful assembly is sufficient to hold him guilty. The presence of Liyaquat has not been disputed.

452.3 The decision of the Supreme Court in ***Vishnu v. State of Rajasthan, (2009) 10 SCC 477*** was relied upon, wherein it has been held thus:

44. *The plea that the provisions of Section 149 IPC would not be attracted to the facts of the case and therefore the appellants who had not played overt act in causing injury to deceased Sukh Lal could not have been convicted under Section 302 with the aid of Section 149 IPC has no substance.*

45. *Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf.*

46. *The record unmistakably indicates that accused Lata who is now acquitted by the High Court, had gone to the place where the first informant and his relatives were watching sports event, to inform appellant Bhanwar Lal and others that Jatavas were plying tractor in the disputed land. The evidence of the complainant shows that the moment the said information was conveyed by*

Lata, Kanhaiya Lal i.e. father of appellant Bhanwar Lal had loudly shouted that where all their people had gone, upon which Babu Devta, Mahesh, Brahmanand, Kanta, Vishnu, Din Dayal, Kailash, Bhagwan Lal, Bhanwar Lal, Lata, etc. had armed themselves with different weapons including axes and started proceeding towards the disputed land.

47. *The appellants were knowing fully well that the land was allotted to Jatavas and they were entitled to cultivate the same, but with a view to preventing them from cultivating the land, the appellants with others had gone to the disputed land with weapons and started attacking the first informant and his relatives. Having regard to the definition of the word “unlawful assembly” as given in Section 141 IPC there is no manner of doubt that the appellants were members of unlawful assembly, common intention of which was to mount attack and cause injuries to Jatavas.*

48. *The evidence of the informant proves that first of all he was assaulted after which his wife was assaulted and thereafter his brother Ram Khiladi was assaulted. His evidence further establishes that his father Harmukh, his mother Sua Bai, his wife Birma Bai were also assaulted by the appellants and others. His evidence further shows that deceased Sukh Lal with his wife was running towards the house to save himself but the appellants had chased him and after overtaking him, delivered blows with dangerous weapons and sticks as a result of which he lost his life on the spot. The appellants and others who had come in a group had left the place of incident together.*

49. *The cumulative effect of the circumstances proved by the prosecution is such that the intention of the unlawful assembly was to cause death of Sukh Lal and to cause injuries to the injured witnesses. Thus the conviction of the appellants under Section 302 read with Section 149 IPC cannot be said to be erroneous at all and no ground is made out to interfere with the same in the instant appeal.”*

452.4 Reliance was also placed upon the decision of the

Supreme Court in **Annareddy Sambasiva Reddy v. State of A.P., (2009) 12 SCC 546**, wherein it was held thus:

“43. In *Nanak Chand*, AIR 1955 SC 274, this Court stated:

“7. ... There is a clear distinction between the provisions of Sections 34 and 149 IPC and the two sections are not to be confused. The principal element in Section 34 IPC is the common intention to commit a crime. In furtherance of the common intention several acts may be done by several persons resulting in the commission of that crime. In such a situation Section 34 provides that each one of them would be liable for that crime in the same manner as if all the acts resulting in that crime had been done by him alone. There is no question of common intention in Section 149 IPC. An offence may be committed by a member of an unlawful assembly and the other members will be liable for that offence although there was no common intention between that person and other members of the unlawful assembly to commit that offence provided the conditions laid down in the section are fulfilled. Thus if the offence committed by that person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, every member of the unlawful assembly would be guilty of that offence, although there may have been no common intention and no participation by the other members in the actual commission of that offence.”

“44. In *Umesh Singh*, (2000) 6 SCC 89, while dealing with Section 149 IPC, this Court held:

*“4. Vicarious liability, we may state, as rightly contended for the State by Shri B.B. Singh relying upon the decisions of this Court in *Shamshul Kanwar v. State of U.P.*, (1995) 4 SCC 430 and *Bhajan Singh v. State of U.P.*, (1974) 4 SCC 568, extends to members of the unlawful assembly only in respect of acts done in pursuance of the common object of the unlawful assembly or such offences as the members of the unlawful assembly are likely to commit in the execution of that common object. An accused whose case falls within the terms of Section 149 IPC as aforesaid cannot put forward the defence that he did*

not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he had joined. It is not necessary in all cases that all the persons forming an unlawful assembly must do some overt act. Where the accused had assembled together, armed with guns and lathis, and were parties to the assault on the deceased and others, the prosecution is not obliged to prove which specific overt act was done by which of the accused. Indeed the provisions of Section 149 IPC, if properly analysed will make it clear that it takes an accused out of the region of abetment and makes him responsible as a principal for the acts of each and all merely because he is a member of an unlawful assembly. We may also notice that under this provision, the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge can reasonably be intended from the nature of the assembly, arms or behaviour, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise. Tested on this touchstone, we may safely say that in the present case when the appellants were members of an unlawful assembly which was armed with lathis and guns and a declaration had been made that in the event there is any resistance to the taking away of the paddy which is stated to have been the original object, they were willing to take the life of the deceased and take away the paddy. If that is the position, it is futile to contend for the appellants that their conviction is in any way bad."

47. *Section 149 IPC creates constructive liability i.e. a person who is a member of an unlawful assembly is made guilty of the offence committed by another member of the same assembly in the circumstances mentioned in the*

section, although he may have had no intention to commit that offence and had done no overt act except his presence in the assembly and sharing the common object of that assembly.”

453. FINDINGS: In the backdrop of the submissions advanced by the learned counsel for the respective parties and the authorities cited at the bar, the applicability or otherwise of the provisions of section 149 of the Penal Code is required to be examined. If the court comes to the conclusion that the provisions of section 149 of the Penal Code would be attracted and that the accused persons had in fact formed an unlawful assembly, two other questions would also have to be addressed. This being a riot case where there are a large number of witnesses and a large number of accused, whether the proposition advanced by the learned counsel for the appellants to apply a two, three or four witnesses theory in case of each accused should be accepted. Another important question that arises for consideration is that this is not a case of a single incident or a series of incidents at one place at one time, but is an incident which has started in the morning and continued till night and several scattered incidents have taken place throughout the day at different places in the Naroda Patiya area. From the testimonies of the witnesses it emerges that some accused have been implicated only in the incidents that took place in the morning, some are implicated in the incidents that took place in the afternoon and some are implicated in the incidents that took place in the evening. Some of the accused are implicated in incidents that took place in the morning as well as afternoon, some in the incidents that took place in the morning and evening, some have been implicated in the afternoon and evening incidents and some have been

implicated in incidents that took place in the morning, afternoon as well as in the evening. Some of the accused have been implicated only in the incidents that took place on the road without there being any reference to their presence inside the chawls, though the time may be in the afternoon. Thus, the question that arises is whether all the accused can be held guilty of the offences that took throughout the day by invoking section 149 of the Penal Code or whether section 149 can be invoked to the extent of the offences committed at that time of the day. Yet another question that would arise for consideration is if the two witnesses theory is adopted, as to how to apply such theory? Whether the court should insist upon two witnesses having deposed regarding individual incidents or two witnesses deposing regarding any incident that took place at any time of the day in which the accused are sought to be involved.

454. At the outset the legal position may be examined. From the decisions cited by the learned counsel for the respective parties, the following principles can be culled out:

- The concept of common object, it is well known, is different from common intention. It is true that so far as common object is concerned no prior concert is required. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of the assembly, however, is a relevant factor. At what point of time the common object of the unlawful assembly was formed would depend upon the facts and circumstances of each case.

Section 149 IPC creates a specific and distinct offence. There are two essential ingredients thereof:

- (i) commission of an offence by any member of an unlawful assembly, and
- (ii) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed.

It is, thus, essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed.

- The essence of section 149 IPC is that a member of an unlawful assembly is responsible for the acts committed by any other member of the assembly in the same measure as the person committing such an act himself is. The section thereby creates a vicarious or constructive liability for all those who share the common object of the unlawful assembly provided the acts constituting the offence are done in pursuit of the common object of the unlawful assembly or are acts which the members of the unlawful assembly knew to be likely to be committed in pursuance of that object.
- Mere presence in an assembly does not make a person a member of the unlawful assembly, unless it is shown that he had done or omitted to do something which would show that he was a member of the unlawful assembly or

unless the case fell under section 142 IPC.

- Cases in which persons who are merely passive witnesses and had joined the assembly out of curiosity, without sharing the common object of the assembly stand on a different footing; otherwise it is not necessary to prove that the person had committed some illegal act or was guilty of some omission in pursuance of the common object of the assembly before he could be fastened with the consequences of an act committed by any other member of the assembly with the help of Section 149 IPC.
- The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.
- Where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but

it cannot be treated as irrational or unreasonable. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt such a test. When a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, the normal test is that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question.

- It is well settled that a mere innocent presence in an assembly of persons, as for example a bystander, does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly. Thus a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages.
- Whether in a given case the accused persons shared

common object or not, must be ascertained from the acts and conduct of the accused persons. The surrounding circumstances are also relevant and may be taken into consideration in arriving at a conclusion in this behalf.

- Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need

not continue to be the same. It may be modified or altered or abandoned at any stage.

- The expression “in prosecution of common object” as appearing in section 149 has to be strictly construed as equivalent to “in order to attain the common object”. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.
- An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident on the spot *eo instanti*.
- When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true;

there may be cases which would come within the second part but not within the first part. The distinction between the two parts of section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first, offences committed in prosecution of the common object would be generally, if not always, within the second, namely, offences which the parties knew were likely to be committed in the prosecution of the common object.

- Even if no overt act is imputed to a particular person, when the charge is under section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction.

- Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the

members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf.

- An accused whose case falls within the terms of section 149 IPC cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he had joined. It is not necessary in all cases that all the persons forming an unlawful assembly must do some overt act.

455. Examining the facts of the present case in the light of the above legal principles, the evidence on record indicates that on 27th February, 2002 a coach of the Sabarmati Express came to be set on fire at the Godhra Railway Station allegedly by members of a minority community. Several kar sevaks who had gone to Ayodhya were travelling in the coach and were burnt to death. The news was widely broadcast on television

and sentiments were running high. On the next day, viz. 28th February, 2002, the dead bodies of the kar sevaks hailing from Ahmedabad were brought to the city. Some of the survivors were from the Naroda area, who upon their return narrated their versions of the incident that took place at Godhra thereby arousing a feeling of anger against the minority community amongst the Hindus in the area. On the morning of the 28th mobs started gathering on the road opposite the Noorani Masjid, a religious place of the minority community and its surrounding areas which are predominantly Muslim areas. Anticipating trouble, police points were placed at strategic points at and near the Noorani Masjid and the surrounding areas and the police were on stand to duty from 7:00 a.m. and there was constant patrolling by the police. Since there was a call for bandh by the VHP, most of the shops and business places were closed and the traffic had also come to a standstill, and hence, people who are not ordinary residents of that area would not be present there, unless they had come there with the intention of rioting. It could be that initially people may have come out of curiosity, but with the passage of time, the mobs grew larger and larger and resorted to stone pelting, destruction and arson. The evidence on record shows that the police who were present near the Noorani Masjid and the S.T. Workshop, made efforts to disperse the mobs, but to no avail. The mobs, after dispersing, would once again assemble, which is clearly indicative of the intention of the people in the mob to persist with the rioting. While it may be true that there may be onlookers or passersby, or people who might have come out only out of curiosity; however, once the police started dispersing the mob and at least when the curfew was imposed, such bystanders had no business to continue to

remain present on the road. Once curfew was declared, no one could have lawfully gathered on the road.

Thus, while the people who joined the mob may have no connection with each other or there may have been no prior concert, but the fact is that the common object of the unlawful assembly which had gathered on the road in the morning is evident on the face of the record, namely, to damage and destroy the properties belonging to Muslims and to damage and destroy their religious place, viz. the Noorani Masjid. Section 149 of the Penal Code creates a vicarious or constructive liability for all those who share the common object of the unlawful assembly. Therefore, a member of the unlawful assembly is responsible for the acts committed by any other member of the assembly in the same measure as the person committing such an act himself. While persons who are merely passive witnesses and had joined the assembly out of curiosity, without sharing the common object stand on a different footing, in the opinion of this court, once the police called upon the mobs to disperse, it can be safely presumed that the persons who still remained in the mob were not innocent bystanders, but shared the common object of the mob.

456. Therefore, it can safely be assumed that all the accused whose presence is established on the highway opposite the Noorani Masjid and the S.T. Workshop and nearby areas shared the common object of the unlawful assembly of damaging, destroying and burning the properties of the Muslims as well as hurting their sentiments by destroying their religious place, the Noorani Masjid. The evidence on record indicates large scale destruction of the properties belonging to

the minority community on both sides of the highway, be it shops, cabins, carts, vehicles or residential houses. These factors act as pointers towards the formation of an unlawful assembly.

457. The incidents that took place on the day of the incident are in three stages: (i) those incidents that took place in the morning, including incidents that took place on the road throughout the day; (ii) those incidents that took place inside the chawls in the afternoon; and (iii) the incidents that took place in the evening, including the incident that occurred at the passage of the water tank.

458. Insofar as the first stage is concerned, from the evidence of the witnesses, including the police witnesses, right from around 9:00 to 9:30 in the morning the mobs started pelting stones, thereafter they resorted to vandalism and burning the carts, cabins, stalls, shops, vehicles and residential houses of the Muslims on both sides of the road. They also pelted stones at the Noorani Masjid, damaged it and set it on fire. The evidence on record shows that many of the people in the mob were carrying cans of inflammable substances. The police witnesses have stated that they had made attempts to disperse the crowd, but in vain. The police had burst tear gas shells, resorted to lathi charge and firing but the mob did not disperse. Thus, despite the police asking the mobs to disperse, the members of the unlawful assembly, including the named accused, continued to remain in the mob, which ultimately resulted in large scale destruction of properties. However, from the evidence on record, though one Muslim youth died due to bullet injuries and six others sustained bullet injuries on the

road in the morning, such injuries were sustained due to firing by the police. Insofar as the mobs are concerned, there is no evidence on record that to show that they had resorted to any physical violence and injured any person in the incidents that occurred on the road. One witness, viz. PW 52 Amina Abbas Belim has referred to incidents of violence on the road wherein the watchman of Mahavir Hall, his wife and his children, in all four persons, were killed by the mob on the road in front of her eyes and the mob had killed and hacked down all four and thrown them on the road. However, there is no evidence to corroborate the version of the witness, whom the court has even otherwise found to be not a credible witness. A few witnesses have also referred firing by private individuals; however, such version has come on record for the first time after more than six years at the time when the SIT recorded the statements of such witnesses. Moreover, the court after considering the evidence on record has come to the conclusion that the above persons were injured in police firing.

459. In the second stage, from the people in the mob, several persons entered the chawls from both the sides of the road, but mainly from the side of the S.T. Workshop. Once the mobs entered the chawls they resorted to ransacking and damaging the residential houses, shops and other personal properties of the Muslims and burning them. The inquest panchnamas show that dead bodies have been recovered from houses that were burnt down by the mob. When residential houses were set on fire, the people in the mob would have been aware that the persons inside would also sustain burn injuries or be burnt to death. Furthermore, incidents of violence took place in Hussainnagar in the afternoon hours,

like the incident in which a violent mob dragged Hasanali out of his house and set him ablaze in the courtyard of Jadikhala's house. Though the accused involved in the offence have not been identified, the occurrence of the incident has been proved beyond reasonable doubt.

460. In the third stage, the incident of the breaking of the Jawannagar Wall occurred, whereafter there was large scale violence. Witnesses have deposed about various incidents in which members of their families have been assaulted and hacked to death and set ablaze by people in the mob. Mobs came from all sides, viz. the S.R.P. Quarters, the S.T. Workshop as well as from the side of the canal. The residents of the chawls were running from one place to another in search of safety and while trying to escape from the open ground beyond Gopinath Society, they were accosted by mobs from both sides and while trying to escape, they were caught in the passage of the water tank between Gangotri Society and Gopinath Society where the most gruesome massacre took place. The people in the mob climbed on the terrace of the tank and terrace of the adjoining shops and poured inflammable substances on the hapless victims. The mob caught hold of the victims and assaulted them and set them ablaze. Mattresses and quilts soaked with kerosene and petrol were thrown on them. Infants and children were thrown in the fire and roasted to death. Women, mostly young girls, were stripped naked, molested, raped and burnt alive. The final toll at and near the passage was fifty eight. Thus, while the offence committed near the passage is culpable homicide amounting to murder punishable under section 302 of the Penal Code, the gravity thereof is of a much greater degree,

considering the brutal, savage, inhuman, barbaric and depraved manner in which it was committed, warranting a more severe sentence.

461. It is well settled that a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages.

462. In the facts of the present case, except for the three accused who have been held guilty of the offence of criminal conspiracy under section 120 B of the Penal Code, insofar as the other accused are concerned, some of them have joined the unlawful assembly at the initial stage and have indulged in the offences committed on the road, viz. the first stage of incidents. Some of them have continued to remain in the unlawful assembly and indulged in the offences committed at the second stage. Some have joined at the second stage. Some have continued till the third stage or have joined at the third stage. From the evidence on record, there is nothing on record to indicate that the accused involved in the offences committed at one stage, had anticipated and contemplated the

illegal activities in which the assembly would subsequently indulge. Thus, it will have to be proved that not only was an accused a member of the unlawful assembly, it will further have to be proved that the person concerned was also a member of the unlawful assembly at all the crucial stages and shared the common object at all these stages.

463. Since at the first stage, the unlawful assembly had indulged in damaging and destroying properties belonging to Muslims and setting them ablaze, including the religious place of the Muslims viz., the Noorani Masjid, the accused who are found to be members of the unlawful assembly and whose presence is established on the road, cannot be said to be involved in offences against the human body as there is no evidence of any person being assaulted or killed by the mob. Therefore, the accused whose presence has been established in the mob on the road in the morning hours as well as anytime of the day, would be guilty of the offences punishable under sections 143, 144, 147, 148, 295, 427, 435, 436, 153, 153A, 153-A (2) read with section 149 of the Indian Penal Code unless it is proved that they shared a common object with the unlawful assembly at the other stages also, in which case they would be guilty of the offences committed at those stages also.

464. In the second stage, the unlawful assembly has indulged in damaging and destruction of properties and arson as well as assault and violence, resulting in the deaths of several persons on account of being burnt in their houses or on account of being done to death by the mob. Consequently, the accused whose presence is established in the chawls would be

guilty of the offences punishable under sections 143, 144, 147, 148, 295, 427, 435, 436, 440, 153, 153A, 323, 325, 326, 302 and 307 read with section 149 of the Indian Penal Code.

465. In the third stage, the unlawful assembly has indulged in the most heinous offences of burning the victims alive in the most gruesome manner. Some of the members of the mob have also stripped young girls naked and have molested and raped them. However, such offences cannot be said to have been committed pursuant to the common object of the unlawful assembly and to that extent, the individual accused would have to be held guilty of the offence under sections 354 and 376 of the Penal Code. The accused whose presence is established in the chawls in the evening hours and more so, in or near the passage of the water tank between Gangotri and Gopinath Society would be guilty of the offences punishable under sections 143, 144, 147, 148, 295, 427, 435, 436, 440, 153, 153A, 323, 325, 326, 302 and 307 read with section 149 of the Indian Penal Code.

466. The next question that arises for consideration is whether or not to adopt the two to three witnesses theory propounded by the Supreme Court in case where the court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims by adopting the test that the conviction be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.

467. Reference may be made at this stage to the

relevant findings of the trial court while rejecting the request of the defence to adopt the two or three witness theory, which are extracted below:

“It is useful to draw a picture of the situation on that day. On 28/02/2002, it was a situation of total subversion and erosion of rule of law at Naroda Patiya right from about 9.30 a.m. or so to evening at least upto 08:30 p.m. With the highest respect, it needs to be stated that it is true that in Masalti's case, Dansingh's case etc. the fact situation was not like the case on hand, there were no frequent change in the investigating agency, there was no allegation that the investigating agency has helped a particular community against the another community, that case did not come for its trial after seven years, there was no transfer petition filed in that case before Hon'ble Supreme Court and in that case no need was noticed to constitute special investigating team on the ground that previous investigation was improper and even there was no order for further investigation, which all had happened in this case.

A very notable fact of this case is, since the trial has commenced after about 7 years or so and many PW had opportunity to testify after about 8 years, several prosecution witnesses have died. On account of the negative impact of the incidents viz., the communal riots, many of the PWs, many of the victims, who were nowhere heard and who have even left

the city of Ahmedabad with the silence they have adopted and thus, the situation as is prevalent in routine communal riot cases, is not existing in this case that after the spur of moment things get settled itself.

Most importantly, because of dropping, death, unavailability, migration of the eyewitnesses for some of the accused in fact no PW was available though was available at the stage of investigation and for some of the accused now none is available and for some of the accused, only one or two PW are now available.

In these circumstances it is not prudent and proper to practice the need of two PW to involve the accused as at times even two are also not available to depose though in fact there were many witnesses, hence it would be in accordance with, the discussed citations, principles of appreciation of evidence, principle of justice, equity and propriety to practice the theory of need of one reliable PW to bring home guilt of the accused. Not adopting the policy would cause serious prejudice to the victims and it is also essential to strike the balance.

The benefit of examining many star eyewitnesses is now not available to the Court hence for the occurrence even if in 2002 there were many eyewitnesses today hardly one or may be two are available who have been examined as PW

and even some of them have been dropped by the prosecution to avoid repetition.

Considering the above situation, if theory of two PW is practiced it is likely to cause serious prejudice to the prosecution / victims. After eight years it is already difficult for the prosecution to find out the victim and then after if such theory is practiced it would be amounting to adding injustice to the victims of riot. The usual theory of expecting at least one reliable PW is not going to cause any injustice to the accused and it would be very just and proper in the facts of the case.

To put a rough estimate it may be mentioned that, as the record reveals about 29 witnesses had died before the matter has reached its trial, about 18 witnesses were not found in spite of diligent efforts. Since these witnesses were not examined on account of their death and they being not found, it is very typical circumstance, the court did not have benefit of their first hand experience and version from personal knowledge, which needs consideration as even after this loss of witnesses to the prosecution the theory of need of two, three or four witnesses if would be practiced, then that would be prejudicing the interest of prosecution and of victim and ultimately of justice which cannot be permitted.

PW 263 was summoned to produce the record of learned Metropolitan Magistrate Court wherein numerous 'C' Summaries were filed by the Crime Branch which were filed

during the tenure of the then I.O. Shri S.S. Chudasma. These 'C' Summaries were filed for many of the complaints. Along with the material certain statements, certain xerox and original printed complaint application and damage analysis forms were tagged. 'C' Summaries were filed on the ground that the complaint has been lodged by the mistake of fact. This was perhaps with reference to the fact that many complaints have been merged in the I-C.R.No.100/02 and others. About 24 R&P of C-Summaries have been summoned up which all have been exhibited as Exh.1776/1 to 1776/24. Some of such C-Summaries are worth discussing to know the kind of insufficient investigation done to highlight that this is a fit case to adopt the practice of sufficiency of one reliable PW to bring home the guilt, the strong circumstances pointing to the involvement of the accused right from the year, 2002, in the serious offences committed in the riot including of murders, slitting stomach of a pregnant woman, etc. gets confirmed even through this record."

468. With due respect to the findings recorded by the trial court, in the opinion of this court, the delay in the trial and change in investigation cannot be attributed to the accused, inasmuch as, it is not on account of any act on the part of the accused that the delay has occurred. Besides, it is for the prosecution to prove its case beyond reasonable doubt, and settled principles of law cannot be brushed aside on the ground that though witnesses were available at the relevant time, they are not available now. The record of the case reveals that, in all, 327 witnesses have been examined by the

prosecution. Several witnesses who have not named any accused nor stated anything which could further the prosecution case, have been examined by the prosecution and several witnesses who had named the accused have been dropped. At the stage of trial, the trial court could have rejected the application for dropping witnesses, if it thought that such witnesses are important witnesses. Thus, when the prosecution deliberately drops witnesses whose testimonies may have supported its case and examines witnesses whose testimonies in no manner furthers its case, the accused cannot be put to a disadvantage and be deprived of the benefit of the legal principles established by the Supreme Court. Moreover, from the nature of the evidence which has come on record, wherein in some cases the court has found a witness to be credible subject to corroboration by some other witness, this court is of the view that it would not be proper to convict an accused on the basis of testimony of a single eye-witness. However, considering the manner in which the incident has occurred as well as considering the fact that the faces in the mob are seldom known faces, the court is of the view that the interests of justice would be sub-served if the two witnesses test is adopted.

469. The next question that arises for consideration is how to apply the two witnesses test. As discussed hereinabove, the incidents took place throughout the day and the witnesses have seen the accused at different parts of the day indulging in different offences at different spots in the area, viz., the Noorani Masjid and the areas nearby as well as on the road in front of the Noorani Masjid and the S.T. Workshop and the chawls situated on the side of the road

beside the S.T. Workshop compound wall till the end of the road, viz. Gopinath Society. Therefore, should the court insist upon two witnesses who have named an accused in connection with the same incident or two witnesses who have named an accused in any incident that took place throughout the day? In the opinion of this court, considering the evidence which has come on record, as several incidents have taken place throughout the day it, it is quite natural that there may not be two eyewitnesses available in respect of each individual incident, consequently, it would not be proper to insist upon two witnesses testifying regarding the same incident. Therefore, if any two witnesses name and testify against a particular accused in any incident throughout the day, that should be considered as sufficient evidence against such accused, provided of course, that the court has found such witness to be a credible witness has accepted his/her testimony on its own strength.

470. After conducting such exercise, the next question which would be required to be addressed is when the accused who meet with the two witnesses test are identified, in what manner would section 149 of the Indian Penal Code operate qua each such accused? In other words, the question that arises for consideration is if the presence of the accused has been established only in the mob on the road in the morning or afternoon hours, where no offence against the human body has been found to have taken place, whether such accused can be held guilty for the commission of the offences under sections 323, 325, 326, 302, 307 and 440 read with section 149 of the Indian Penal Code.

471. At this juncture reference may be made to the decision of the Supreme Court in **Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Vagh**, (supra) on which reliance has been placed by the learned counsel for the appellants, wherein it has been held thus:

9. *Whether the High Court was right in acquitting the accused under Section 302 read with Section 149 IPC is the question that falls for our consideration in this case. The essential ingredients and the width and amplitude of Section 149 as well as its applicability to the facts of the case have to be examined. It would be relevant to refer to Section 149 IPC which is as under:*

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—*If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”*

10. *A Full Bench of the Calcutta High Court analysed Section 149 IPC in the year 1873 in R. v. Sabed Ali, 1873 SCC OnLine Cal 64, Phear, J., speaking for the majority, held as under:*

“... It seems to me clearly not the case that every offence which may be committed by one member of an unlawful assembly while the assembly is existing i.e. while the members are engaged in the prosecution of a common object, is attributed by Section 149 to every other member. The section describes the offence which is to be so attributed, under two alternative forms viz. it must be either, first — ‘an offence committed by a member of the unlawful assembly in prosecution of the common object of that assembly,’ or second — ‘an offence such as the members of that assembly knew to be likely to be committed in prosecution of that object.’

Now, inasmuch as the continuance of the unlawful

assembly is by the definition of Section 141 made coterminous with the prosecution of the common object, it seems tolerably clear that the legislature must have employed the words "prosecution of the common object" with some difference of meaning in these two passages respectively. Also the mere fact that the legislature thought fit to express the second alternative appears to show very distinctly that it did not intend the words "in prosecution" which are found in the first to be equivalent "during the prosecution"; for if they were then the second alternative would have clearly been unnecessary. And a comparison with this passage of the language which is used in Section 460, where the legislature makes all the persons concerned in committing a burglary punishable with transportation for life, if any one of their number at the time of committing of burglary causes death, etc., strongly bears out this view. I am of opinion that an offence, in order to fall within the first of the above alternatives i.e. in order to be committed in the prosecution of the common object must be immediately connected with that common object by virtue of the nature of the object: for instance, if a body of armed men go out to fight, their common object is to cause bodily injury to their opponents, and in that case death, resulting from injury caused, would be homicide committed in prosecution of the common object. And an offence will fall within the second alternative if the members of the assembly, for any reason, knew beforehand that it was likely to be committed in the prosecution of the common object, though not knit thereto by nature of the object itself.

It seems, thus, on a little consideration, to be apparent that the two alternatives of Section 149 do not cover all possible cases of an offence being committed by one member of an unlawful assembly during the time when the common object of the assembly is being prosecuted. It follows that, in every trial of prisoners on a charge framed under the provisions of Section 149 of the Penal Code, even when it is proved that the specified offence was committed by one of the members of the assembly during, so to speak, the pendency of that assembly, it

yet remains an issue of fact to be determined on the evidence, whether that offence was committed in prosecution of the common object, as I have endeavoured to explain the meaning of those words in the first part of the section; and, if not, whether it was an offence such as the members of the assembly knew to be likely to be committed in the prosecution of the object."

(emphasis supplied)

The Calcutta High Court was dealing with a case of riot over a dispute about a piece of land between Fukeer Buksh and Sabid Ali. Tureeboollah, who was a member of Sabid Ali's party of assailants, fired a gun and killed one Samed Ali. The trial court held that Tureeboollah was a member of the unlawful assembly of which the others in Sabid Ali's party were also members. It convicted all the accused under Section 302 read with Section 149 IPC. The High Court held that the conviction under Section 149 was unsustainable. In a concurring opinion, Jackson, J. held as follows:

"It appears to me that the construction of this Section 149, that is, a construction which shall be at once reasonable grammatical, involves two difficulties, or at least two points which call for attentive consideration—

first— "The common object."

second— "Or such as the members of that assembly knew to be likely to be committed in the prosecution of that object."

It has been proposed to interpret the "common object" in a precise sense so as to indicate the exact extent of violence to which the rioters intended to go, namely, to take possession of the land by force extending, if need be, to wounding and the like. This, I think, is not the sense in which the words were intended to be understood. They are not, it seems to me, used in the same sense as "the common intention" in Section 34, which means the intention of all, whatever it may have been. The words here seem to have manifest reference to the defining Section 141, and to point to one of the five objects, which being common to five or more persons assembled together, make their assembly unlawful. For this reason, I think that any attempt to mitigate the rigour

of the section by limiting the construction of the words "common object" must fail, and that any offence done by a member of an unlawful assembly, in prosecution of the particular one or more of the five objects mentioned in Section 141, which is or are brought home to the unlawful assembly, to which the prisoner belonged, is an offence within the meaning of the first part of the section."

11. Pontifex, J. agreed with the majority and interpreted the word "knew" in Section 149 in the following terms:

"To bring the offence of murder, as defined by the Code, within Section 149, I think it must either necessarily flow from the prosecution of the common object; or it must so probably flow from the prosecution of the common object that each member might antecedently expect it to happen. The offence of murder as strictly defined by the Code, requires a previous intention or knowledge in the perpetrator; and to "know" that murder is likely to be committed, is to know that some member of the assembly has such previous intention or knowledge. The word "knew" used in the second branch of the section is, I think, advisedly used, and cannot be made to bear the sense of "might have known"."

12. This Court in *Mizaji v. State of U.P.*, AIR 1959 SC 572, observing that various High Courts of India had interpreted Section 149 held that every case has to be decided on its own facts. This Court proceeded to deal with Section 149 in detail as under:

"6. ... The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was

such as the members knew was likely to be committed. The expression "know" does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in Sabed Ali case (supra) that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 of the Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part."

Mizaji case (supra) was referred to and relied upon in a long line of decisions of this Court. (See e.g. Avtar Singh v. State of Haryana, (2012) 9 SCC 432, Roy Fernandes v. State of Goa, (2012) 3 SCC 221 and Lokeman Shah v. State of W.B., (2001) 5 SCC 235)

472. In the facts of the present case as is evident from the evidence which has come on record, mobs comprised of thousands of people gathered on the length and breadth of the road in front of the Noorani Masjid and the S.T. Workshop from

Natraj Hotel to the S.R.P. Quarters gate and beyond. This mob indulged in heavy stone throwing and damaging and destroying properties and setting them ablaze, as well as damaging and setting the Noorani Masjid on fire. While witnesses have attributed weapons in the hands of several accused, no overt act has been alleged by using such weapons. Therefore, insofar as the mob on the road is concerned, there is no allegation of any offence affecting the human body thereby attracting the provisions of sections 323, 325, 326, 302 and 307 read with section 149 of the Indian Penal Code. Some of the accused named by the witnesses have been seen only in the mob on the road in the morning whereas the police witnesses have referred to the presence of some of the accused in the afternoon at around 2:00 to 3:00 p.m. However, except to the extent noted earlier, no allegation of any physical violence against any person has been alleged. Therefore, insofar as the common object of the unlawful assembly which was on the road is concerned, it appears that it was to damage and destroy the properties of the Muslims and to damage and destroy their religious place the Noorani Masjid. In the opinion of this court, the people who formed part of the unlawful assembly on the road in the morning or afternoon can be presumed to share the common object to the extent referred to hereinabove. There is no evidence on record, except in the case of the accused who have been found guilty of the offence of criminal conspiracy under section 120B of the Penal Code, that they knew that the offences which were committed by the unlawful assembly inside the chawls and in the passage of Gangotri and Gopinath Society and nearby areas were likely to be committed. Therefore, insofar as the acts committed by the unlawful assembly at different times of

the day are concerned, those persons in the unlawful assembly who had left the assembly or were not part of the unlawful assembly subsequently cannot be held guilty of the offence committed inside the chawls and the societies on the rear side of the chawls. As held by the Supreme Court in the decisions cited hereinabove, a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages. The complicity of the accused in a particular offence shall, therefore, be required to be decided on the basis of the presence of such accused at a particular stage.

XXXI OTHER OFFENCES:

473. Section 143 of the Penal Code: From the evidence on record, it has been clearly established that the accused whose presence has been established in the morning incidents and/or the afternoon incidents and or/ the evening incidents were members of an unlawful assembly as envisaged in section 141 of the Penal Code, inasmuch as more than five persons had assembled together with the common object as contemplated under the third clause of that section. Thus, such

members of the unlawful assembly are clearly guilty of the offence punishable under section 143 of the Penal Code.

474. Section 147 of the Penal Code: The accused were members of an unlawful assembly which used force or violence as contemplated in section 146 of the Penal Code and thus committed the offence punishable under section 147 thereof.

475. Section 148 of the Penal Code: Having regard to the fact that several witnesses have deposed that the members of the unlawful assembly were armed with deadly weapons; the offence under section 148 of the Penal Code is duly established.

476. Section 188 of the Penal Code: In this case curfew was declared in the areas under the jurisdiction of the Naroda Police Station at about 12:30 in the afternoon on the day of the incident. Despite the fact that curfew had been declared, the accused continued to remain in the mob and disobeyed such directions. The offence under section 188 of the Penal Code is therefore clearly established against all the accused who did not obey the order of promulgation of curfew in the area.

477. Section 295 of the Penal Code: From the evidence on record it has been clearly established that the members of the unlawful assembly destroyed and damaged and set ablaze the Noorani Masjid, the place of worship of the Muslims and hence, the accused who participated in the offences that took place on the road are clearly guilty of the offence punishable under section 295 of the Penal Code.

478. Sections 427, 435, 436 and 440: The offence of mischief as contemplated in section 427 of the Penal Code as well the offence of mischief by fire or any explosive substance intending to cause damage to any property to the amount of one hundred rupees upwards as envisaged in section 435 and mischief by fire with intent to destroy any building which is ordinarily used as a place of worship or as a human dwelling place or as a place for the custody of property as envisaged in section 436 of the Penal Code are also clearly established.

479. Insofar as the offence under section 440 of the Penal Code is concerned, from the findings recorded by the trial court, the same relate to the offences of burning houses etc. inside the chawls. Therefore, insofar as the accused whose presence has been established only on the road are concerned, they cannot be held guilty of that offence.

480. Section 153A and section 153A(2) of the Penal Code: The fact that the unlawful assembly committed acts which are prejudicial to the maintenance of harmony between different religions and which disturbed the public tranquillity to a great extent are writ large over the manner in which the occurrences took place. Moreover, such offences also came to be committed in the Noorani Masjid which undisputedly is a place of worship and hence the offence under section 153A (2) of the Penal Code also stands established.

481. Sections 323 to 326 of the Penal Code: The trial court has discussed the applicability of these provisions at great length and hence it is not necessary to reiterate the same. Suffice it to state that through the testimonies of the

injured witnesses as well as the medical witnesses, the prosecution has duly established the injuries sustained by the victims in the incidents that took place on the day of the incident, which range from simple to grievous injuries. Under the circumstances, the accused whose presence is established in the chawls at any time of the day are clearly guilty of the offences punishable under section 323, 324, 325 and 326 of the Penal Code.

482. Section 307 of the Penal Code: The evidence on record shows that the members of the unlawful assembly that entered the chawls set the houses on fire. Since the houses in the chawls were residential premises, the members of the mob would certainly be aware of the fact that the occupants of the house would be burnt to death or die due to asphyxia. Moreover, the evidence also shows that several victims have sustained injuries which could have resulted into death of such victims. Therefore, the offence of attempt to murder punishable under section 307 of the Penal Code is clearly established.

483. Section 302 of the Penal Code: The evidence on record shows that dead bodies of persons who were burnt to death were recovered from the houses in the chawl. There have been specific instances wherein the members of the unlawful assembly have killed persons, namely Hasanali brother of PW 135 Hussainabanu, who had been dragged out of his house, assaulted, tied to a cot and burnt to death in the afternoon hours at Hussainnagar; the incident wherein a handicapped boy Maiyuddin came to be assaulted and burnt to death at about 4 o'clock in the afternoon; the incident of Ayub

who jumped from a terrace and was burnt to death by the mob; Kausarbanu who came to be done to death in the passage of the water tank between Gangotri and Gopinath Society; as well as several other incidents in which people belonging to the Muslim community were done to death. The offences have been committed from the morning hours; viz. after 11 o'clock and have continued till about 6 or 7 o'clock in the evening, culminating into the massacre that took place near the passage of the water tank. Thus, the offence of murder punishable under section 302 of the Penal Code is clearly established.

484. In the opinion of this court, instead of categorising the occurrences simply as morning, noon and evening offences, it would be more appropriate to categorise them as offences that took place on the road, offences that took place in the chawls and in the other areas in the morning, noon and evening offences. In the opinion of this court, those accused persons who remained only on the road, be it in the morning or noon, cannot be implicated for the offences committed inside the chawls by invoking section 149 of the Penal Code. The invocation of section 149 should be restricted to the offences committed on the road, inasmuch as there is nothing to establish that the accused whose presence is established only on the road shared the common object of the accused who committed the more serious offences inside the chawls.

485. It is in the aforesaid backdrop that the complicity of the individual accused is required to be examined by invoking section 149 of the Penal Code.

XXXII COMPLICITY OF INDIVIDUAL ACCUSED WHO HAVE BEEN CONVICTED BY THE TRIAL COURT:

486. In the light of the testimonies of the witnesses as discussed hereinabove, the complicity of each individual accused may now be examined: (The names of the witnesses whose testimonies have been found to be credible in respect of a particular accused have been shown in **bold** and the witnesses whose testimonies have been found to be acceptable subject to corroboration by some other witness are shown in *italics*.)

487. **Accused No.1 Naresh Agarsinh Chhara @ Nariyo:** This accused has been named by in all fifteen witnesses.

1. PW-73 Basubhai Mayuddin Saiyed: This witness has deposed regarding having seen this accused in the mob near the Noorani Masjid from 8:00 a.m. to 9:30 a.m. However, this court while considering the credibility of this witness has found that his testimony cannot be taken into consideration qua this accused.

2. **PW-145 Shahnawazkhan Abbaskhan Pathan:** This witness has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

3. **PW-149 Faridabanu Abdulkadar Khalifa:**This witness has deposed regarding having seen this accused in the mob near the Noorani Masjid between 9:00 a.m. to 10:00 a.m. as well as having seen him in the mob at Jawannagar at about 7:00 p.m. This witness has been found to be credible and trustworthy and hence, through her evidence the presence of this accused in the mob in the morning as well as in the evening is duly established.

4. **PW-156 Abdulmajid Mohammadusman Shaikh:**This witness has named this accused in the incident of burning of Ayub in the afternoon at about 4 o'clock before the police in his statement dated 15.4.2002 as well as before the SIT. Before the SIT there was a slight improvement regarding Ayub being put in a rickshaw and burnt, however, as regards the involvement of the accused in the incident, he is consistent. This court has found the testimony of this witness to be credible qua this accused.

5. **PW-172 Arifali Kasamali Saiyed:**This witness has deposed about the presence of this accused in the mob on the road in the morning at 9:00 a.m. This witness has been found to be credible and hence, his testimony against this accused deserves to be accepted.

6. *PW-182 Bhikhabhai Habibbhai Mansuri:*This witness has seen this accused on the road near the Noorani Masjid at about 9:00 a.m. to 9:30 a.m. The testimony of this witness has been found to be credible, subject to corroboration by some other witness.

7. **PW-184 Mahammad Hanif Yusufbhai Shaikh:**This witness has deposed regarding having seen this accused in the mob near Noorani Masjid at 9:00 a.m. to 9:30 a.m. This witness has been found to be credible and trustworthy insofar as implication of this accused is concerned.

8. **PW-189 Mahammadimran Imtiazhussain Momin:** This witness has deposed that he had seen the accused in the mob at 2:30 to 3:00 which was indulging in looting and assaulting. Through the testimony of this witness, the presence and involvement of this accused in the mob which was looting household goods and committing loot and arson and assault has been found to be established.

9. **PW-192 Rasidabanu Imtiazhussain Momin:** This witness has deposed regarding having seen this accused in the mob on the road in the morning, however, her testimony has not been found to be credible against this accused.

10. **PW-202 Samsuddin Shahbuddin Rathod:** This witness has deposed regarding having seen this accused in the mob on the road in the morning. The witness has been found to be credible and trustworthy qua this accused.

11. **PW-209 Shabana Bundubhai Kureshi:** This witness has deposed regarding having seen this accused in the mob in the passage of the water tank, however, the testimony of this witness though found to be credible as regards the version of the events that took place on that day, has not been found to be credible insofar as the accused named by her are concerned.

12. PW-212 Rukshana Bundubhai Kureshi: This witness has deposed that this accused was in the mob which had assaulted her mother in the passage of the water tank. The testimony of this witness, though found to be otherwise credible and trustworthy, has not been found to be credible as regards the accused named by her.

13. **PW-264 Kirankumar Parsottambhai Makwana:** This witness, who is a police witness, has deposed regarding having seen this accused on the road in the morning. This witness has been found to be credible qua the accused named by him.

14. **PW-265 ASI Sajjansingh Jaswantsingh Puvar:** This witness, who is a police witness, has deposed that he had seen this accused in the mob pelting stones and throwing burning rags. This witness has been found to be credible as regards the accused named by him.

15. **PW-267 Manubhai Madhabhai Rathod:** This witness has deposed regarding having seen this accused in the Hindu mob on the road in the morning. This witness has been found to be credible qua the accused named by him.

488. FINDINGS: Thus, as many as ten witnesses, viz., PW-145, PW-149, PW-156, PW-172, PW-184, PW-189, PW-202, PW-264, PW-265 and PW-267, who have been found to be credible and trustworthy witnesses have deposed regarding the presence/involvement of this accused at the scene of incident on the road in the morning, in the chawls in the afternoon as well as at Jawannagar in the evening and the

testimony of one witness, viz., PW-182, who has referred to his presence in the mob in the morning has been found to be credible subject to corroboration by some other witness. Thus, through the testimonies of these witnesses, the prosecution has duly established the presence of this accused at the scene of offence in the morning, afternoon and evening incidents. This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. The judgment of conviction and sentence qua those offences, therefore, deserves to be sustained. However, the order of conviction and sentence for the offence punishable under section 120B of the Penal Code is required to be set aside.

489. Accused No.2 Morlibhai Naranbhai Sindhi @ Murli: This accused has been named by, in all, nine witnesses.

1. PW-104 Mahammadsalim Mahammadhussain Shaikh: This witness has deposed regarding having seen this accused in the mob and firing on Mustaq in the morning between 8:30 a.m. to 9:30 a.m. This witness has not been found to be a credible witness.

2. PW-115 Ibrahimbhai Chhotubhai Shaikh: This witness has deposed regarding having seen this accused in the mob at 10:00 a.m. to 11:00 a.m., however, he has not been found to be credible as regards this accused.

3. PW-143 Dildar Umrao Saiyed: This witness has referred to the presence of this accused in the mob at 12:00 noon as well as in the mob near the S.R.P. Quarters in the evening at 5:30 to 6:00 p.m. and in the incident of Ayub at Jawannagar at 6:15 to 6:30 p.m. This court has found this witness not a credible witness and hence, his testimony cannot be relied upon.

4. **PW-145 Shahnawazkhan Abbaskhan Pathan:** This witness has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

5. PW-149 Faridabanu Abdulkadar Khalifa: This witness has deposed regarding having seen this accused in the mob on the road at 9:00 a.m. to 10:00 a.m., however, this witness is not found to be credible as regards this accused.

6. PW-184 Mahammad Hanif Yusufbhai Shaikh: This witness has deposed having seen this accused instigating the mob and attacking the Muslims in the morning. The testimony of this witness, however, has not been found to be credible qua this accused.

7. PW-236 Siddiqbhai Allabux Mansuri: This witness has not named this accused but has only identified him in the court by his face as being the leader of the mob. The court has found the testimony of this witness to be not credible qua this accused.

8. **PW-261 Mariambibi Hasanbhai Saiyed:** This witness has named this accused as one of the persons who broke the door of her house and took her son Maiyuddin out of her house and set him ablaze. This witness has been found to be credible and, therefore, through her testimony the presence of this accused in the incident in question is duly established.

9. Two witnesses, namely, PW-105 Hussainbhai Valibhai Kaladiya and PW-204 Abdulrazzak Abdulrehman have neither named this accused nor implicated him but have wrongly identified him in place of the accused named by them.

490. **FINDINGS:** Thus, out of nine witnesses who have deposed against this accused two credible witnesses have testified against him. PW 261 Mariambibi Hasanbhai Saiyed has named this accused in the incident of assaulting and burning her son Maiyuddin in the afternoon hours, and PW 145 Shahnawazkhan Abbaskhan Pathan has deposed that he had seen him in the mob which was looting and setting the houses on fire at about 11:00 a.m. on the day of the incident.

Thus, two witnesses whose testimonies have been accepted on their own strength have testified against this accused. Therefore, the two witnesses test stands satisfied in the case of this accused. The presence of this accused in the chawls from around 11:00 in the morning till around 4:00 to 5:00 in the evening stands established. This accused has, therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A

(2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. The judgment of conviction and sentence qua those offences, therefore, deserves to be sustained. However, his conviction for the offence punishable under section 120B of the Penal Code is required to be set aside.

491. **Accused No.4 Ganpat Chhanaji Didawala (Chhara):** This accused has been named by in all five witnesses.

1. PW-116 Lalabhai Nizambhai Luhar: This witness has deposed regarding having seen this accused in the mob at around 5:00 to 5:30 p.m. This witness has failed to identify the accused and hence, his testimony would be of no avail to the prosecution.

2. PW-117 Anishbhai Nasirbhai Mansuri: This witness has deposed regarding having seen this accused in the mob at 9:30 in the morning. He, however, has failed to identify this accused in the dock. Hence, his evidence would be of no avail to the prosecution.

3. PW-177 Ishratjahan Parvezhussain Saiyed: This witness has deposed regarding having seen this accused in the mob at Hussainnagar in the afternoon. This court has not found this witness to be credible insofar as the present accused is concerned. Her testimony is, therefore, of no avail to the prosecution.

4. PW-197 Kherunisha Riyazbhai Shaikh: This witness has named this accused in the mob near the Noorani Masjid and pelting stones in the chawl. She, however, has failed to identify the accused in the dock and hence, her testimony would not assist the prosecution against this accused.

5. PW-238 Nasreen Mahammadrafiq Shaikh: This witness has deposed regarding having seen this accused in the mob looting the houses in their chawls and setting them ablaze at 5:00 to 5:30. This witness has not been found to be credible qua the present accused and hence, her testimony would be of no avail to the prosecution.

492. FINDINGS: Thus, none of the witnesses who have deposed against this accused have been found to be credible insofar as the present accused is concerned. Under the circumstances, the prosecution has failed to establish the charge against this accused. The conviction of the accused is required to be set aside and he deserves to be acquitted by giving him the benefit of doubt.

493. **Accused No.5 Vikrambhai Maneklal Rathod (Chhara) @Tiniyo son-in-law of deceased Dalpat:** This accused has been named by two witnesses.

1. PW-116 Lalabhai Nizambhai Luhar: This witness has named this accused in the mob coming from the side of the highway at about 5:00 to 5:30 p.m. He, however, has failed to identify the accused and hence, his evidence would be of no avail to the prosecution.

2. **PW-149 Faridabanu Abdulkadar Khalifa:** This witness has deposed that while she was sitting outside the S.R.P. Quarters, a mob came from the direction of Uday Gas Agency. The people in the mob had swords, dharias, iron pipes, iron rods and cans filled with kerosene or petrol in their hands. This mob had broken the compound wall of Jawannagar and entered inside. In this mob, she had seen this accused along with other named accused, who were leading the mob. This witness has been found to be credible qua this accused.

494. FINDINGS: Thus, out of the two witnesses who have named this accused, only one witness is found to be credible. Therefore, the two witnesses test is not satisfied in the case of this accused, and hence his conviction cannot be sustained and he deserves to be acquitted by giving him the benefit of doubt.

495. **Accused No.10 Hareh @ Hariyo son of Jivanlal @ Agarsinh Rathod (Chhara):** This accused has been named by, in all, thirteen witnesses.

1. PW-73 Basubhai Mayuddin Saiyed: This witness has not been found to be credible qua this accused.

2. **PW-145 Shahnawazkhan Abbaskhan Pathan :** This witness has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

3. **PW-149 Faridabanu Abdulkadar Khalifa:**This witness

has deposed that while she was sitting outside the S.R.P. Quarters, a mob came from the direction of Uday Gas Agency. The people in the mob had swords, dharias, iron pipes, iron rods and cans filled with kerosene or petrol in their hands. This mob had broken the compound wall of Jawannagar and entered inside. In this mob, she had seen this accused along with other named accused, who were leading the mob. The testimony of this witness has been accepted insofar as this accused is concerned.

4. **PW-156 Abdulmajid Mohammadusman Shaikh:** This witness has named this accused in the incident of burning of Ayub in the afternoon at about 4 o'clock before the police in his statement dated 15.4.2002 as well as before the SIT. Before the SIT there was a slight improvement regarding Ayub being put in a rickshaw and burnt, however, as regards the involvement of the accused in the incident, he is consistent. This court has found the testimony of this witness to be credible qua this accused.

5. **PW-170 Mohammad Jalalluddin Ibrahim Shaikh:** This witness has deposed that he had seen this accused in the mob which was damaging the houses and stalls near the Noorani Masjid and setting them on fire at 9:00 to 9:15 a.m. This witness has been found to be a credible witness.

6. PW-175 Saiyed Yakubali Kasamali: This witness has named this accused in the mob in the afternoon at 1:30. However, the said witness has not been found to be a credible witness.

7. PW-182 Bhikhabhai Habibbhai Mansuri: This witness has deposed that he had seen this accused in the mob which was pelting stones at the Noorani Masjid as well as the Muslims in the morning at about 9:00 a.m. to 9:30 a.m. This witness has not been found to be credible qua this accused.

8. **PW-184 Mahammad Hanif Yusufbhai Shaikh:** This witness has referred to the presence of this accused on the road in the morning at about 9:00 a.m. to 9:30 a.m. instigating the mob and attacking the Muslims. This witness has been found to be a credible witness.

9. **PW-189 Mahammadimran Imtiazhussain Momin:** This witness has referred to the presence of this accused in the mob which was looting the household articles from the houses and burning them and were also assaulting and killing. This witness has been found to be credible qua this accused.

10. PW-198 Haroon Mahammadbhai Shaikh: This witness has named this accused in the mob on the road at 9:30 a.m. This witness has not been found to be a credible witness.

11. PW-209 Shabana Bundubhai Kureshi: This witness has deposed regarding having seen this accused in the mob in the passage of the water tank, however, the testimony of this witness though found to be credible as regards the version of the events that took place on that day, has not been found to be credible insofar as the accused named by her are concerned.

12. PW-212 Rukshana Bundubhai Kureshi: This witness has

deposed that this accused was in the mob which had assaulted her mother in the passage of the water tank. The testimony of this witness, though found to be otherwise credible and trustworthy, has not been found to be credible as regards the accused named by her

13. PW-242 Mahammadsalim Ahemadbhai Shaikh: This witness has deposed regarding having seen this accused in the mob in the Jawannagar pit armed with weapons like rods and swords. This witness has not been found to be credible witness qua this accused.

496. FINDINGS: Thus, out of thirteen witnesses who have testified against this accused, five witnesses are such whose testimonies have been accepted on their own strength by this court. PW 145 has referred to the presence of this accused in the mob that was setting houses in Hukamsing-ni-chali on fire at around 11 o'clock in the morning. PW 149 has proved his presence in the mob that came after breaking the Jawannagar wall; PW 156 has proved his presence in the incident of Ayub at about 4:00 p.m.; PW 184 has proved his presence in the mob on the road in the morning; and PW 189 has proved his presence in the mob that was looting household articles from houses and burning them. From the testimonies of these witnesses, the presence of this accused in the mob on the road from about 9:00 a.m. in the morning as well as in the mob inside the chawls till 4 o'clock in the afternoon has been duly proved. This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and

307 read with section 149 of the Penal Code as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. The judgment of conviction and sentence qua those offences is, therefore, deserves to be sustained. However, the order of conviction and sentence for the offence punishable under section 120B of the Penal Code is required to be set aside.

497. **Accused No.18 Babubhai alias Babu Bajrangi son of Rajabhai Patel:** This accused has been named by in all ten witnesses.

1. PW-142 Zannatbibi Kallubhai Shaikh: This witness has referred to be presence of this accused in the incident of Kausarbanu at 5:00 p.m. in the passage of the water tank. However, her testimony has not been accepted qua this accused.

2. PW-149 Faridabanu Abdulkadar Khalifa: This witness has named this accused in the mob on the road in the morning at about 9:00 a.m. to 10:00 a.m. However, her testimony has not been accepted qua this accused.

3. PW-174 Abdulalim Abdulmajid Chaudhary: This witness has referred to the presence of this accused in the mob but has failed to identify him in the dock. This witness even otherwise has not been found to be a credible witness.

4. PW-198 Haroon Mahammadbhai Shaikh: This witness has referred to the presence of this accused in the mob on the road at 9:30 in the morning and standing with a mob near Teesra Kuva late in the evening. This witness has not been

found to be a credible witness.

5. PW-228 Javed Ismail Shaikh: This witness has referred to the presence of this accused in the passage of the water tank in the evening in the incident of Kausarbibi as well as in the mob assaulting and killing people. The testimony of this witness has not been accepted qua this accused.

6. PW-244 Maiyuddin Imamuddin Shaikh: This witness has deposed that this accused was leading the mob which came from the side of Uday Gas Agency. This witness has failed to identify the accused in the dock and hence, his testimony would be of no avail to the prosecution.

7. **PW-262 Vinubhai Khimabhai Delwadia @V.K. Solanki:** This witness has referred to the presence of this accused in the mob in the first information report as well as in his deposition before the court and has also identified him in the dock. His testimony has been accepted qua this accused.

8. **PW-266 Parbatsinh Vajesinh Thakore:** This witness has referred to the presence of this accused in the mob at Naroda Patiya at about 2:00 to 2:15 in the afternoon. His testimony has been accepted qua this accused.

9. **PW-274 Kerman Khurshed Mysorewala:** This witness has deposed that he had seen this accused in the area between Noorani Masjid and Hussainnagar Chali after 2 o'clock in the afternoon explaining something to the mob. His testimony has been accepted qua this accused.

10. **PW-277 Madansinh Takhatsinh Rana (M.T. Rana):**

This witness has deposed that he had seen this accused in the mob in the afternoon talking with the people in the mob. His testimony has been accepted qua this accused.

498. FINDINGS: Out of the ten witnesses who have testified against this accused, the testimonies of six of the private eyewitnesses have not been accepted qua this accused. However, four of the police witnesses, viz. PW 262, PW 266, PW 274 and PW 277, whose presence at the scene of offence on the day of the incident has been duly established, have referred to the presence of this accused in the mob on the road in the afternoon. The trial court has not accepted the testimonies of the police witnesses unless they are corroborated by the testimony of some private witness. For the reasons recorded hereinabove, this court has not agreed with the view adopted by the trial court and has found no reason to discard the testimonies of the police officers implicating the accused. Therefore, through the testimonies of the four police witnesses, the presence of this accused in the mob on the road in the afternoon has been duly established. Insofar as this accused is concerned, he has been found to be guilty of the offence of criminal conspiracy under section 120B of the Indian Penal Code and, therefore, it is not necessary that he should participate from the inception of the conspiracy to the end. On the principal of agency he is liable for all the offences committed at different stages of the crime. This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code and for the same offences read with section

120B of the Penal Code, as well as under section 188 and 120B of the Penal Code and section 135 (1) of the Bombay Police Act.

499. **Accused No.20 Kishan Khubchand Korani:** This accused has been named by, in all eleven witnesses, out of whom four are police witnesses.

1. **PW-73 Basubhai Maiyuddin Saiyed:** This witness has deposed about the presence of this accused in the mob on the road in the morning at 8:30 as well as 5:00 p.m. in the mob setting Majid's house on fire. The testimony of this witness has been found to be acceptable qua this accused.

2. PW-104 Mahammasalim Mahammadhussain Shaikh: This witness has deposed regarding having seen this accused in the mob on the road in the morning. However, his testimony has not been accepted qua this accused.

3. PW-149 Faridabanu Abdulkadar Khalifa: This witness has deposed regarding having seen this accused in the mob on the road in the morning at about 9:00 a.m. to 10:00 a.m. The testimony of this witness has not been found to be credible qua this accused.

4. PW-184 Mahammad Hanif Yusufbhai Shaikh: This witness has deposed regarding having seen this accused in the mob on the highway in the morning firing at the Muslims. The testimony of this witness has not been accepted qua this accused.

5. PW-202 Samsuddin Shahbuddin Rathod: This witness has

referred to the presence of this accused in the mob which came from the direction of Krushnanagar in the morning. His testimony, however, has not been found to be acceptable qua this accused.

6. PW-204 Abdulrazak Abdul Raheman Saiyed: This witness has referred to the presence of this accused on the road in the morning firing with a pistol. However, the testimony of this witness has not been accepted qua this accused.

7. PW-236 Siddiqbhai Allabux Mansuri: This witness has named the accused in his deposition but has identified him by face in the dock. The testimony of this witness qua this accused has not been accepted.

8. **PW-262 Vinubhai Khimabhai Delwadia @ V.K. Solanki:** This witness has referred to the presence of this accused in the mob on the road in the morning instigating the mob. The court has found the testimony of this witness to be credible qua the accused.

9. **PW-266 Parbatsinh Vajesinh Thakore:** This witness has deposed having seen this accused in the mob on the road at 2:00 to 2:15 in the afternoon. The testimony of this witness has been found to be acceptable.

10. **PW-274 Kerman Khurshed Mysorewala:** This witness has referred to the presence of this accused in the mob in the area between Noorani Masjid and Hussainnagar-ni-Chali after 2 o'clock. The testimony of this witness qua the accused has been found to be acceptable.

11. **PW-277 Madansinh Takhatsinh Rana:** This witness has referred to the presence of this accused in the mob in the afternoon. The testimony of this witness has been found to be acceptable qua the accused.

500. FINDINGS: Thus, out of eleven witnesses who have testified against this accused, one credible private witness namely PW-73 Basubhai Maiyuddin Saiyed and four police witnesses, namely PW 262, PW 266, PW 274 and PW 277, whose testimonies qua the accused have been found to be credible, have referred to his presence from the 8:30 in the morning to 2:00 to 2:30 in the afternoon in the incidents the road, as well as at 5 o'clock in the incident at Jawannagar. The two witnesses test is, therefore, clearly satisfied in the case of this accused. This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. However, the order of conviction and sentence under section 120B of the Penal Code is required to be set aside.

501. **Accused-21 Prakash Sureshbhai Rathod (Chhara):** No witness has implicated his accused.

502. FINDINGS: None of the witnesses have implicated this accused. However, from the testimony of PW-322 Ashish Khetan, the extra-judicial confession of this accused has been proved, which indicates his complicity and participation in the

offence in question. The court has found this accused guilty of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code and therefore, on the principal of agency he is liable for all the offences committed at different stages of the crime. This accused has, therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code and for the same offences read with section 120B of the Penal Code, as well as under section 188 and 120B of the Penal Code and section 135 (1) of the Bombay Police Act.

503. **Accused-22 Suresh @ Richard @ Suresh Langado son of Kantibhai Didawala (Chhara):** This accused has been named by, in all, fifty seven witnesses.

1. PW-37 Salimbhai Roshanali Shaikh: This witness has referred to the presence of this accused in the mob at 9:30 a.m. However, this witness has not been found to be a credible witness.

2. PW-56 Kamrunisha Muradali Shaikh: This witness alleged that this accused was taking away goats at Chetandas-ni-Chali. The testimony of this witness qua this accused has not been accepted.

3. PW-72 Shakilabani Firozahmed Ansari: This witness has deposed regarding having seen this accused in the mob at Gopinath in the evening. The testimony of this witness has not been accepted qua this accused.

4. PW-73 Basubhai Maiyuddin Saiyed: This witness has referred to the presence of this accused in the mob from Kubernagar at 8:30 in the morning as well as at 5:00 pm. in the mob which set Majid's house on fire. The witness has, however, failed to identify this accused and hence his testimony is of no avail to the prosecution.

5. PW-105 Hussainbhai Valibhai Kaladia: This witness has named this accused but has failed to identify him in the dock. Hence, his testimony is of no avail to the prosecution.

6. PW-109 Sarfarazkhan Maheboobkhan Pathan: This witness has deposed that he had seen this accused in the mob on the road in the morning. The court has found that the testimony of this witness can be accepted, subject to corroboration by some other witness.

7. **PW-112 Fatmabibi Mahmadyusuf Shaikh:** This witness has referred to the presence of this accused near the water tank where the people were set ablaze. The testimony of this witness has been found to be credible.

8. **PW-114 Rahemanbhai Shakurbhai Saiyed:** From the testimony of this witness it emerges that in the evening at about 7:00 p.m., this accused was present in the mob that killed his children on the boundary of Jawannagar and Gangotri Society. The testimony of this witness has been found to be acceptable against this accused.

9. PW-116 Lalabhai Nizambhai Luhar: This witness has

referred to the presence of this accused in the mob on the highway. The witness has, however, failed to identify the accused. Hence, his testimony is of no avail to the prosecution.

10. PW-137 Rafikanbanu Rahemanbhai Saiyed: This witness has referred to the presence of this accused in the mob in the evening at Teesra Kuva killing people. This witness has not been found to be a credible witness and hence, her testimony is of no avail to the prosecution.

11. PW-141 Kaiyumkhan Rasidkhan Pathan: This witness has referred to the presence of this accused in the mob at Jawannagar. However, in his deposition he has stated that he does not know this accused. Therefore, the testimony of this witness is of no avail to the prosecution.

12. **PW-142 Zannatbibi Kallubhai Shaikh:** This witness has referred to the presence of this accused in the mob at Jawannagar at 11:00 a.m. to 11:15 a.m. and in the mob near the passage of the water tank in the evening at any time between 4:30 to 6:00. This witness has been found to be a credible witness and her testimony against this accused has been accepted.

13. **PW-144 Sarfaraz Abbaskhan Pathan:** This witness has referred to the presence of this accused at Hukamsing-ni-Chali at 10:00 a.m. to 11:00 a.m. The testimony of this witness qua this accused has been accepted.

14. **PW-145 Shahnawazkhan Abbaskhan Pathan:** This witness has referred to the presence of this accused along with

other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

15. *PW-147 Reshmabanu Nadeembhai Saiyed*: This witness has referred to the presence of this accused in the mob near the S.T. Workshop in the morning and in the Kausarbanu incident near the water tank in the evening. The court has found that the testimony of this witness can be accepted, if corroborated by the testimony of some other witness.

16. **PW-149 Faridabanu Abdulkadar Khalifa**: This witness has referred to the presence of this accused in the mob on the road in the evening. The testimony of this witness qua this accused has been found to be acceptable.

17. *PW-150 Ishaqkhan Sardarkhan Pathan*: This witness has referred to the presence of this accused in the mob in the morning at the S.R.P. Quarters as well as in the evening. The witness, however, has not been found to be a credible witness. Hence, his testimony is of no avail to the prosecution.

18. *PW-156 Abdulmajid Mahammadusman Shaikh*: This witness has referred to the presence of this accused in the mob in the evening dragging his daughter Supriya. The testimony of this witness has not been found to be acceptable qua this accused.

19. **PW-157 Mahhammadsafi Allabux Mansuri**: This witness has referred to the presence of this accused in the

mob at about 9:30 in the morning on the road near the Noorani Masjid as well as in the mob that came from Uday Gas Agency in the evening. To the extent the witness has referred to the presence of this accused in the mob in the morning, the court has found his testimony to be acceptable.

20. PW-162 Rafiq Kallubhai Shaikh: This witness has referred to the presence of this accused in the mob near the S.R.P. Quarters. The testimony of this witness has not been found to be credible.

21. *PW-167 Mahammadhussain Kaiyumbhai Shaikh:* This witness has referred to the presence of this accused in the mob on the road in the morning. The testimony of this witness qua this accused can be accepted provided there is corroboration by some other witness.

22. PW-168 Ayeshabibi Abdulkadar Shaikh @ Malwari: This witness claims to have seen the accused in the mob pelting stones while she was standing near Babu's hotel. The testimony of this witness has not been found to be credible qua this accused.

23. PW-169 Belim Zubedaben Mahammadidrish: This witness has referred to the presence of this accused in the mob in the evening at 7:00 to 8:00 p.m. She, however, has failed to identify the accused in the dock. Her testimony therefore, is of no avail to the prosecution.

24. **PW-170 Mahammadjalaluddin Ibrahimhai Shaikh:** This witness has referred to the presence of this accused in the

mob on the road coming from Natraj at 9:00 a.m. to 9:15 a.m. This witness has been found to be a credible witness and through his testimony, the presence of this accused in the mob which was damaging the houses and stalls near the Noorani Masjid and setting them on fire has been duly established.

25. **PW-171 Shaikh Mustaqahemad Abdulrazak:** This witness has referred to the presence of this accused in the mob in the morning at around 10:00 a.m. vandalising and damaging the shops, stalls and carts on the road. The testimony of this witness qua this accused has been found to be credible and trustworthy.

26. PW-174 Abdulalim Abdulmajid Chaudhary: This witness has referred to the presence of this accused in the mob near the Noorani Masjid in the morning as well as in the mob in the evening. The testimony of this witness has not been found to be credible and hence, would be of no avail to the prosecution.

27. PW-175 Saiyed Yakubali Kasamali: This witness has referred to the presence of this accused in the mob in the afternoon at 1:30. He, however, has not been found to be a credible and truthful witness.

28. **PW-180 Aslambhai Samsherbhai Shaikh:** This witness has deposed that he had come out of his house in the morning at around 9:00 to 9:15 a.m. and on the road he mobs on both sides. One mob was from the direction of Krushnanagar and the other was towards Natraj. All the people in the mob had weapons like knives, swords, sticks, dharias, etc. The mob was shouting “kill, kill” and was advancing

forward. The mob started coming forward and pelting stones at the people of their mohalla. He recognized one of the persons in the mob who was pelting stones viz. accused No.22 Suresh Chhara. The testimony of this witness has been found to be acceptable qua this accused.

29 **PW-181 Apsarabegum Kabirali Shaikh:** This witness has referred to the presence of this accused in the mob with a stick in his hand at 4:00 p.m. in the afternoon indulging in rioting and looting. The testimony of this witness has been found to be credible qua this accused.

30. *PW-184 Mahammad Hanif Yusufbhai Shaikh:* This witness has referred to the presence of this accused in the mob on the road in the morning between 9:00 to 9:30 a.m. instigating the mob and attacking the Muslims. The court has not accepted the testimony of this witness qua this accused.

31. *PW-185 Mahammadayub Sofilal Shaikh:* This witness has referred to the presence of this accused in the mob on the road in the morning. The court has found the witness to be not very credible and would, therefore, look for corroboration to his testimony.

32. *PW-188 Mahammadbhai Bachubhai Belim:* This witness has referred to the presence of this accused in the mob which was damaging the Noorani Masjid at about 10:00 a.m. in the morning. The court, however, has not accepted his testimony qua the accused named by him.

33. *PW-189 Mahammadimran Imtiazhussain Momin:* This

witness has referred to the presence of this accused with a sword in the mob near the Noorani Masjid pelting stones and shouting kill, cut. The testimony of this witness has not been accepted qua this accused.

34. PW-192 Rasidabanu Imtiazhussain Momin: This witness has referred to the presence of this accused in the mob in the morning. This witness has not been found to be credible and hence, her testimony would be of no avail to the prosecution.

35. PW-198 Haroon Mahammadbhai Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning as well as hiding at the Gopinath gate and causing injuries in the afternoon. The witness has, however, not been found to be a credible and truthful witness and hence, his testimony would be of no avail to the prosecution.

36. **PW-199 Noormahammad Nazirmahammad Mev (Pathan)**: This witness has referred to the presence of this accused leading and instigating the mob on the road in the morning. The testimony of this witness has been found to be acceptable.

37. **PW-202 Samsuddin Shahbuddin Rathod**: This witness has deposed that he had seen this accused in the mob which came from the direction of Natraj Hotel towards the Noorani Masjid and set the shops, houses in their area on fire. The testimony of this witness has been found to be acceptable qua this accused.

38. PW-203 Sharifabibi Iqbalbhai Shaikh: This witness has

referred to the presence of this accused in the mob which assaulted and burnt her son Sharif. The testimony of this witness has not been found to be acceptable qua this accused.

39. PW-209 Shabana Bundubhai Kureshi: This witness has deposed regarding having seen this accused in the mob in the passage of the water tank, however, the testimony of this witness though found to be credible as regards the version of the events that took place on that day, has not been found to be credible insofar as the accused named by her are concerned.

40. PW-212 Rukshana Bundubhai Kureshi: This witness has deposed that she had seen this accused having inflicted a blow with a gupti (dagger) in her mother's stomach. The testimony of this witness, though found to be otherwise credible and trustworthy, has not been found to be credible as regards the accused named by her

41. PW-213 Hasibkhan Achhankhan Pathan: This witness has referred to the presence of this accused in the mob on the road in the morning and has attributed specific weapon to him. The testimony of this witness has not been found to be acceptable.

42. PW-219 Noorbanu Zakirhussain Saiyed: This witness has referred to the presence of this accused in the mob that set Jaadi Khala, her grandson and Noori ablaze. The testimony of this witness has not been found to be credible and trustworthy. Her evidence, therefore, would be of no avail to the prosecution.

43. **PW-224 Chandbhai Abdulrashid Shaikh:** This witness has referred to the presence of this accused in the mob which broke the Jawannagar wall. This witness has been found to be credible and through his witness, the presence of this accused in the mob in the afternoon on the day of the incident has been established.

44. PW-226 Salim Allabux Shaikh: This witness has referred to the presence of this accused in the mob entering the chawls after 3:00 p.m. and damaging the houses. The testimony of this witness has not been found to be credible and trustworthy. Hence, his evidence is of no avail to the prosecution.

45. PW-227 Zuber Khan Ismail Khan Pathan: This witness has referred to the presence of this accused in a mob of Hindus pelting stones. The testimony of this witness has not been found to be credible and trustworthy and is of no avail to the prosecution.

46. PW-228 Javed Ismail Shaikh: This witness has deposed having seen the accused in the passage of the water tank in the evening hacking and killing people and throwing burning rags from the terrace. The testimony of this witness has not been accepted.

47. PW-229 Sairabanu Khwajahussain Shaikh: This witness has referred to the presence of this accused outside the Pinjara's house in the afternoon. The testimony of this witness has not been found to be acceptable qua this accused.

48. PW-230 Mahammadrafiq Abulkarim Shaikh: This witness has referred to this accused pushing twenty seven to twenty eight persons towards the passage of the water tank. The testimony of this witness has not been found to be acceptable and trustworthy.

49. PW-231 Zulekhabegum Mahmadaiyub Shaikh: This witness has referred to the presence of this accused in the mob in the evening. The testimony of this witness has not been found to be credible and trustworthy.

50. PW-238 Nasreen Mahammadrafiq Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning as well as in the evening. The testimony of this witness has not been accepted qua this accused.

51. PW-239 Gulamyasinbhai Noorbhai Kureshi: This witness has referred to the presence of this accused in the morning in the mob which took away his forty five goats. The court has not accepted the testimony of this witness qua the accused.

52. PW-242 Mahammadsalim Ahemadbhai Shaikh: This witness has referred to the presence of this accused in the mob in the Jawannagar pit at 4 o'clock in the evening. This witness has not been found to be a credible and trustworthy witness and his evidence is of no avail to the prosecution.

53. PW-243 Sabbirali Nivasali Ansari: This witness has referred to the presence of this accused in the mob in the morning. The testimony of this witness has not been accepted qua the accused named by him.

54. PW-247 Afrozbanu Mahammadrazak Ansari: This witness has referred to the presence of this accused in the mob which attacked her son and set him ablaze in the evening. The witness, however, has failed to identify the accused in the dock and hence her testimony is of no help to the prosecution.

55. PW-257 Mahammadriyaz Fasiuddin Shaikh: This witness has referred to the presence of this accused in the mob with a dagger in his hand inflicting blows on women. The testimony of this witness has not been accepted qua the accused.

56. PW-260 Rasulbi Azmuddin Shaikh: This witness has referred to the presence of this accused in the mob that entered their chawls. The testimony of this witness has not been accepted against the accused.

57. **PW-261 Mariyambibi Hasanbhai Saiyed:** This witness has referred to the presence of this accused amongst the persons who had assaulted her son Maiyuddin and poured kerosene or petrol over him and burnt him alive. The testimony of this witness has been accepted qua this accused.

504. FINDINGS: Thus, out of fifty seven witnesses who have testified against this accused, fifteen witnesses have been found to be credible and trustworthy namely PW 112, PW 114, PW 142, PW 144, PW 145, PW 149, PW 157, PW 170, PW 171, PW 180, PW 181, PW 199, PW 202, PW 234 and PW 261 and in case of three witnesses, viz. PW 109, PW 147 and PW 167, the court has observed that it would look for corroboration from some other witness. From the testimonies

of these witnesses who have consistently named this accused before the police as well as in their deposition before the court and have identified him in the dock, the presence of this accused on the road in the morning and then in the chawls throughout the day as well as in the massacre that took place in the passage of the water tank in the evening has been duly established. This accused is one of the accused on whom sting operation had been carried out by PW-322 Ashish Khetan and the charge of criminal conspiracy under section 120B of the Indian Penal Code has been duly proved against him. This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code and for the same offences read with section 120B of the Penal Code, as well as under section 188 and 120B of the Penal Code and sections 354 and 376 of the Penal Code and section 135 (1) of the Bombay Police Act.

505. **Accused No.25 Premchand @ Tiwari Conductor son of Yagnanarayan Tiwari:** This accused has been named by in all sixteen witnesses.

1. PW-73 Basubhai Maiyuddin Saiyed: This witness has referred to the presence of this accused in the chawls in the afternoon. However, his testimony has not been accepted qua this accused.

2. PW-83 Fatmabibi Maqboolbhai Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning. The testimony of this witness has not

been accepted qua any of the accused named by her.

3. **PW-94 Akbarsubhani Nazirahmed Munshi:** This witness has deposed that in the mob which was committing arson and was killing people in the evening, he had seen Jay Bhavani and accused No.25 Tiwari. The witness has been found to be a credible and trustworthy witness.

4. PW-105 Hussainbhai Valibhai Kaladia: This witness has referred to the presence of this accused in the mob on the road in the morning but has failed to identify him in the dock and hence, his testimony is of no avail to the prosecution.

5. **PW-106 Farzanabanu Ayubkhan Pathan:** This witness has referred to the presence of this accused in the evening incident near Gopinath and Gangotri Society where a Hindu mob killed members of her family and set them ablaze. The court has found that through the testimony of this witness, the presence of this accused in the mob during the evening incident has been established.

6. PW-112 Fatmabibi Mohmmad Yusuf Shaikh: This witness has deposed that they had taken shelter in the house of a Hindu woman and when they came out of this house, a person by the name of Tiwari, who was working as a conductor in the AMTS and a policeman in uniform were standing there, and they (the witness) had requested them to take them to a safe place and give them shelter, whereupon they had told that arrangement is made for them towards the khada and told them to go there. Apart from the fact that there is nothing incriminating in her statement so far as this accused is

concerned, the witness had not named him in her statement dated 19.4.2002. The testimony of this witness has not been accepted insofar as this accused is concerned.

7. PW-137 Rafikanbanu Rehmanbhai Saiyed: This witness has neither named nor referred to the presence of this accused but has wrongly identified him instead of accused No.26.

8. PW-173 Mahammadnaseem Shaikhbuddhu Shaikh: This witness has not attributed any overt act to this accused and has stated that he had given them shelter in his house. The only incriminating part of his testimony is that he had stated that Tiwari had told them to go towards Naroda as arrangements had been made for them. However, from the testimony of the witness, it has come out that no arrangements had been made for their safety and that the victims were led into a trap by misleading them. The testimony of this witness would therefore, not assist the prosecution in establishing the charge against this accused.

9. PW-176 Zulekhabanu Sardarahemad Sarmuddin Chaudhary: This witness has referred to the presence of this accused in the mob near Gangotri Society. The testimony of this witness has not been found to be credible and trustworthy.

10. PW-185 Mahammadaiyub Sofilal Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning as well as in the mob near Gangotri in the evening. The court has found that the testimony of this witness can be accepted provided it is corroborated by the testimony of some other witness.

11. *PW-187 Altafhussain Abdulrehman Saiyed*: This witness has referred to the presence of this accused in the mob which set houses on fire in Jawannagar in the afternoon. The court has found that the testimony of this witness can be accepted provided it is corroborated by the testimony of some other witness.

12. *PW-188 Mahammadbhai Bachubhai Belim*: This witness has referred to the presence of this accused in the evening at 5:00 p.m. pointing out to the mob the place where people were hiding. The testimony of this witness has not been accepted qua the accused.

13. *PW-198 Haroon Mahammadbhai Shaikh*: This witness has referred to the presence of this accused at Gopinath and Gangotri Society at about 4 o'clock in the evening. The testimony of this witness has not been accepted qua this accused.

14. **PW-199 Noormahammad Nazirmahhammad Mev (Pathan)**: This witness has referred to the presence of this accused in the mob which came from Krushnanagar leading and instigating the mob on the road in the morning. The testimony of this witness has been accepted qua this accused.

15. *PW-202 Samsuddin Shahbuddin Rathod*: This witness has referred to the presence of this accused late at night when he had gone searching for the Muslims who were left there and were hiding. The testimony of this witness has not been accepted qua this accused. The witness has not deposed

regarding any incriminating facts against this accused.

16. PW-217 Salim Rahimbhai Shaikh: This witness has referred to the presence of this accused standing outside the building on the terrace on which people had gone in the evening. The court has not accepted the testimony of this witness qua this accused.

506. FINDINGS: Out of the sixteen witnesses who have testified against this accused, two witnesses namely PW-94 Akbarsubhani Nazirahmed Munshi and PW-106 Farzanabanu Ayubkhan Pathan, who have deposed regarding his presence in the mob which was killing and burning people to death in the evening have been found to be consistent in their versions before the police and in their depositions before the court and have also identified him. One credible witness, namely, PW-199 Noormahammad Nazirmahammad Mev (Pathan) has referred to his presence in the mob on the road in the morning. One witness viz. PW-185 Mahammadayub Sofilal Shaikh, whose testimony the court has found to be acceptable subject to corroboration by some other witness has deposed about his presence in the mob in the morning, and another such witness viz. PW-187 Altafhussain Abdulrehman Saiyed has deposed about his presence in the afternoon. The two witnesses test is clearly satisfied in the case of this accused. Therefore, from the testimonies of the witnesses, the prosecution has succeeded in establishing the presence of this accused in the mob in the morning and in the afternoon as well as in the mob which was killing and burning people to death at the passage of the water tank in the evening. This accused has therefore, rightly been held guilty of the offences punishable under

sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code as well as under sections 188 of the Penal Code and section 135 (1) of the Bombay Police Act. He is, however, required to be acquitted of the offence punishable under section 120B of the Penal Code.

507. **Accused-26 Suresh alias Sahejad Dalubhai Netlekar (Marathi Chharo):** This accused has been named by, in all, twenty-two witnesses.

1. PW-72 Shakilabanu Firozahmad Ansari: This witness has referred to the presence of this accused in the mob. The testimony of this witness has not been accepted qua the accused.

2. PW-83 Fatmabibi Maqboolbhai Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning. The testimony of this witness has not been accepted.

3. PW-106 Farzanabanu Ayubkhan Pathan: This witness has referred to the presence of this accused in the mob which was stripping her daughter, raping and causing injury and setting the persons on fire. However, her testimony has not been accepted qua this accused.

4. *PW-109 Sarfarazkhan Maheboobkhan Pathan:* This witness has referred to the presence of this accused in the mob on the road in the morning. The court has accepted his

testimony subject to corroboration by some other witnesses.

5. PW-112 Fatmabibi Mahmadyusuf Shaikh: This witness has deposed having seen this accused in the passage of the water tank in the evening. However, since the witness has not named the accused in her statement dated 19.4.2002, her testimony has not been accepted qua this accused.

6. **PW-136 Bashirkhan Nanhekhan Mansuri:** This witness has referred to the presence of this accused in the riotous mob that was present on the road in the morning. The witness has been found to be credible and trustworthy.

7. PW-137 Rafikanbanu Rahemanbhai Saiyed: This witness has referred to the presence of this accused as part of the mob which was killing people at Teesra Kuva. However, the witness has failed to identify this accused. Moreover, since she had named him very belatedly after a period of more than six years for the first time before the SIT, her testimony has not been accepted qua this accused.

8. **PW-138 Mahammad Abdulhamid Khalifa:** This witness has deposed that at about 2:00 p.m. in the afternoon, this accused along with others, came to his house at Hussainnagar and looted Rs.40,000/- in cash as well as took away the vaults from his house. This witness has been found to be credible and trustworthy.

9. **PW-142 Zannatbibi Kallubhai Shaikh:** This witness has referred to the presence of this accused in the mob in the chawls in the afternoon after 11 o'clock. The witness has been

found to be credible and trustworthy.

10. **PW-149 Faridabanu Abdulkadar Khalifa:** This witness has referred to the presence of this accused in the mobs on the road in the morning. Her testimony has been found to be credible and trustworthy.

11. PW-150 Ishaqkhan Sardarkhan Pathan: This witness has deposed that there was a mob of around fifty to sixty persons at the Jawannagar corner, where on the front side, he had seen this accused with three other named accused. These four persons and others hurled abuses at them and were saying, *"cut them! kill them!"*. They also said *"where are you going; Miyas, where will you go now, your end has come; today, we will certainly cut you!"* All the four were holding swords in their hands. He reached the open ground in front of Jaybhavani's house where he saw this accused along with three other named accused holding weapons in their hands and grabbing the sister of a girl called Nagina and her mother and molesting both of them. This court after appreciating the evidence of this witness has found that he does not come across as a truthful witness. Moreover, in his first available police statement, he had named the accused on the basis of hearsay. Therefore, his testimony has not been accepted.

12. PW-177 Ishratjahan Parvezhussain Saiyed: This witness has referred to the presence of this accused in the mob in Hussainnagar in the afternoon at 2:00 p.m. to 2:30 p.m. Since the witness has not named this accused in her statement dated 12.5.2002, her testimony has not been accepted qua this accused.

13. **PW-183 Bashirbhai Usmanbhai Shaikh:** This witness has referred to the presence of this accused in the mob on the road holding sword in his hand. This witness has named this accused in his statement dated 13.5.2002 as well as in his deposition before the court and has identified. After appreciating the evidence of this witness, this court has found that through his testimony the prosecution has established the presence of this accused in the mob on the road in the morning.

14. **PW-184 Mahammad Hanif Yusufbhai Shaikh:** This witness has referred to the presence of this accused in the mob on the road in front of the Noorani Masjid in the morning instigating the mob and attacking the Muslims. The testimony of this witness has been accepted qua this accused.

15. PW-186 Taherabanu Mahammadkasam Abdulla Shaikh: This witness has referred to the presence of this accused as leading different mobs when she was returning from her work place. She, however, thereafter has stated that she had given the name of this accused out of nervousness. Therefore, the testimony of this witness is of no avail to the prosecution qua this accused.

16. PW-197 Kherunisha Riyazbhai Shaikh: This witness has referred to the presence of this accused in the mob near the Noorani Masjid as well as pelting stones in the chawls. She, however, has failed to identify him in the dock and hence, her testimony is of no avail to the prosecution.

17. PW-198 Haroon Mahammadbhai Shaikh: This witness has deposed that this accused along with others came and told them that they should go from the road on the rear side to the S.R.P. Quarters. Since no overt act has been attributed to the accused and the accused has been named for the first time in the year 2008, the testimony of this witness has not been accepted qua this accused.

18. **PW-203 Sharifabibi Iqbalbhai Shaikh:** This witness has deposed that from a terrace on Gangotri Society she saw that her son Sharif was being assaulted with swords, hockey, sticks and he was beaten and felled down. Thereafter, kerosene and petrol was poured on Sharif and he was set ablaze. She has further deposed that in the mob which had assaulted and burnt her son Sharif, she had seen she had seen this accused along with other named accused. After appreciating the evidence of this witness, this court has accepted her testimony against this accused.

19. PW-229 Sairabanu Khwajahussain Shaikh: This witness has referred to the presence of this accused in the mob in the afternoon committing loot and arson as well as to a conversation between the accused and the Muslim women in Pinjara's house. This court has not found this witness to be credible as far as involvement of the accused is concerned.

20. PW-236 Siddiqbhai Allahbax Mansuri: Insofar as this accused is concerned, the witness has alleged that after the incident, he had tried to influence him and asked him to make an affidavit in his favour as his name had cropped up in the case. Therefore, the witness has not implicated this accused in

any offence that took place on the day of the incident. His testimony, therefore, would be of no avail to the prosecution.

21. PW-238 Nasreen Mahammadrafiq Shaikh: This witness has referred to the presence of this accused in the mob which had gathered on the road in the morning. She has also referred to the presence of this accused in the mobs looting the houses in their chawls and setting them ablaze at about 5:00 to 5:30 in the evening. Since at the relevant time this witness has not named the accused before the police and has named him for the first time in the statement before the SIT, her testimony has not been accepted qua this accused.

22. **PW-261 Mariyambibi Hasanbhai Saiyad:** This witness has named this accused as one of the persons who broke the door of her house and took her son Maiyuddin out of her house and set him ablaze. This witness has been found to be credible and, therefore, through her testimony the presence of this accused in the incident in question is duly established.

508. FINDINGS: Out of the twenty two witnesses who have deposed against this accused, four credible witnesses namely PW 136, PW 149, PW 183, and PW 184, have deposed about his presence in the mob on the road in the morning and one witness whose testimony has been accepted subject to corroboration viz. PW 109, has referred to his presence on the road in the morning. One witness who has been found to be credible and trustworthy namely PW 138 has deposed about his presence in the mob at Hussainnagar at about 2 o'clock in the afternoon and one credible and trustworthy witness namely PW 203 has referred to his presence in the mob that

assaulted her son and set him ablaze in the evening near Gangotri Society, one credible witness namely PW 142 has referred to the presence of this accused in the chawls in the afternoon after 11 o'clock and another credible witness viz., PW 261 has named him as one of the persons who assaulted her son and set him ablaze. Therefore, the presence of this accused in the mob on the road in the morning, in the mob in the chawls in the afternoon as well as in the mob near Gangotri Society in the evening has been duly established through these witnesses.

This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. He is, however, required to be acquitted of the offence punishable under section 120B of the Penal Code.

509. **Accused No.27 Nawab alias Kalu Bhaiyo Harisinh Rathod:** This accused has been named by, in all, five witnesses.

1. **PW-144 Sarfaraz Abbaskhan Pathan:** This witness has deposed that in the mob which had come to their chawl Hukamsing-ni-Chali which is one of the chawls which near the Highway, in the morning at around 10:00 to 11:00 and set his house on fire and caused damage to his house, he had seen this accused. This court after appreciating the evidence of this witness has accepted his testimony against this accused.

2. **PW-145 Shahnawazkhan Abbaskhan Pathan:** This witness has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

3. **PW-264 Kirankumar Parsottambhai Makwana:** This witness has referred to the presence of this accused on the road in the morning throwing burning rags on the houses in the chawls. The testimony of this witness has been accepted qua this accused.

4. **PW-265 Sajjansingh Jaswantsingh Puvar:** This witness has referred to the presence of this accused in the mob that was pelting stones and burning rags. The testimony of this witness has been found to be acceptable.

5. **PW-267 Manubhai Madhabhai Rathod:** This witness has referred to the presence of this accused in the Hindu mob on the road throwing burning rags on the Muslim mob. The testimony of this witness has been accepted.

510. **FINDINGS:** In the case of this accused, all the five witnesses who have deposed against him have been found to be consistent and credible. PW 144 and PW 145 have deposed about the presence of this accused in Hukamsing-ni-chali in the morning at around 11 o'clock whereas PW 264, PW 265 and PW 267 have deposed about his presence in the mob on the road in the morning. Thus, through the testimonies of

these witnesses, the presence of this accused in the mob on the road in the morning as well as in the chawls at about 11 o'clock has been established.

This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. He is, however, required to be acquitted of the offence punishable under section 120B of the Penal Code.

511. Accused No.28 – Manubhai Keshabhai Maruda:

This accused has been named by, in all, eight witnesses.

1. PW-72 Shakilabanu Firozahmed Ansari: This witness has deposed that they had gone to a shuttered shop towards Gangotri Society and were sitting inside the shop. When they were hiding inside, this accused along with other named accused came there and told them that they should not be frightened and asked them to come with them and that they would make arrangements for their meal. Later on when they were going towards the rear side she had seen the mob assaulting her family members. This accused was present in the mob that beat up her family members in front of her eyes along with four other named accused. These five persons were helping the mob in setting everything on fire. This mob poured kerosene over her family members and burnt them alive. Her three month old infant nephew was also thrown alive in the fire by the mob. The testimony of this witness has not been

accepted as the names of the accused have cropped up for the first time before the SIT and before the police, she had stated that she does not know any of the accused.

2. PW-106 Farzanabanu Ayubkhan Pathan: This witness has deposed that she had seen this accused in the incident where her daughter was stripped and brutally raped as well as in the mob which was setting people on fire. However, her testimony qua this accused has not been accepted as she had not named him in her statements recorded by the police at the relevant time.

3. PW-113 Jainulabedin Mahmadvaja Shaikh: This witness has referred to the presence of this accused in the mob near the S.T. Workshop Gate. However, from his testimony, it emerges that he has named this accused on the basis of assumption as he did not allow the witness to stand near his house.

4. PW-156 Abdulmajid Mahammadusman Shaikh: This witness has deposed that his daughter had informed him that this accused was also amongst one of the persons who had raped her. Since this accused has been named only at a subsequent stage before the SIT and has not been named in any of the earlier statements of this witness recorded by the police, his testimony has not been accepted qua this accused.

5. PW-176 Zulekhabanu Sardarahemad Sarmuddin Chaudhary: This witness has deposed that she had seen this accused in the mob near Gangotri Society. The witness has, however, not named this accused in her statement dated

12.5.2002 recorded by the police at the relevant time and has named him only in the statement dated 28.5.2008 recorded by the SIT and hence, her testimony has not been accepted qua this accused.

6. PW-201 Sattarbhai Mahammadhussain Shaikh: This witness has deposed that this accused had driven the Muslims women towards the field with a hockey stick. Though the witness has been sought to be contradicted in his cross-examination to the effect that he had not stated such facts in his statement dated 13.5.2002, however, the contradiction has not been proved in the cross-examination of the Investigating Officer. Nonetheless, this court after appreciating the evidence of this witness has found that the role attributed to this accused does not appear to be credible, and has not accepted the testimony of this witness qua him.

7. PW-209 Shabana Bundubhai Kureshi: This witness has referred to the presence of this accused in the mob in the passage of the water tank where several persons were killed and set ablaze. This witness had not named the accused in her statement dated 11.5.2002 and has named him for the first time in her statement dated 23.5.2008 recorded by the SIT and hence, though the witness is found to be credible as regards the version of the events that took place on that day, she has not been found to be credible insofar as the accused named by her are concerned.

8. PW-228 Javed Ismail Shaikh: This witness has referred to the presence of this accused in the mob near the passage of the water tank. This witness has named the accused for the

first time in his statement recorded by the SIT and had not given any statement before the police at the relevant time and hence, his testimony has not been accepted insofar as the involvement of the individual accused is concerned.

512. FINDINGS: Thus, out of the eight witnesses who have deposed against this accused, none of their testimonies have been accepted by this court insofar as this accused is concerned. The conviction of this accused, therefore, deserves to be set aside and he is required to be acquitted by giving him the benefit of doubt.

513. **Accused No.30 Shashikant alias Tiniyo Marathi son of Yuvraj Patil:** This accused has been named by, in all, four witnesses.

1. PW-149 Faridabibi Abdulkadar Khalifa: This witness has referred to the presence of this accused in the mob on the road in the morning as well as in the mob which broke the Jawannagar wall and lifted Ayub in a rickshaw and set him on fire. She, however, has failed to identify this accused and hence, her testimony is of no avail to the prosecution.

2. PW-156 Abdul Majid Mahammad Usman Shaikh: This witness has referred to the presence of this accused in the passage of the water tank dragging his daughter Supriya. However, his testimony has not been accepted qua this accused.

3. PW-158 Naemuddin Ibrahim Shaikh: This witness has not named any accused, but has identified this accused as being

near the water tank and hacking and killing people. This court has held that the testimony of this witness insofar as this accused is concerned, to be in the nature of very weak evidence, which cannot be relied upon to prove the charge in such a serious offence.

4. **PW-201 Sattarbhai Mahammadhussain Shaikh:** This witness has referred to the presence of this accused in the mob which came from the side of Uday Gas Agency at about 4 o'clock in the evening. The testimony of this witness has been accepted qua this accused. While this witness has referred to this accused as Tiniya Marathi and A-55 is also known as Tiniya Marathi, he has identified this accused as Tiniya Marathi whom he had seen. Therefore, the testimony of this witness qua this accused is acceptable.

514. FINDINGS: Thus, out of the witnesses who have deposed against this accused, only one witness, namely, PW-201 Sattarbhai Mahammadhussain Shaikh has deposed that he had seen him in the mob which came from the side of Uday Gas Agency about 4 o'clock. The two witnesses test is, therefore, not satisfied in case of this accused and he deserves to be acquitted by giving him the benefit of doubt.

515. **Accused No.33 Babubhai alias Babu Vanzara, son of Jethabhai Salat (Marwadi):** This accused has been named by, in all, five witnesses.

1. PW-200 Shoukat Nabibhai Mansuri: This witness has referred to the presence of this accused in the mob in the morning at the Noorani Masjid. He, however, has failed to

identify the accused and hence, his testimony is of no avail to the prosecution qua this accused.

2. PW-213 Hasibkhan Achhankhan Pathan: This witness has referred to the presence of this accused in the morning with the police in the mob on the road. Since this witness has named this accused for the first time before the SIT and has not named him in his statement dated 17.7.2002, his testimony is of no avail to the prosecution.

3. PW-227 Zuber Khan Ismail Khan Pathan: This witness has referred to the presence of this accused in the mob which came from the side of Krushnanagar in the morning and that he was armed with a weapon. The witness has, however, failed to identify the accused and hence, his testimony is of no avail to the prosecution.

4. PW-232 Shahid Hussain Abdulgafur Shaikh: This witness has referred to the presence of this accused leading the mob which had come from Natraj Hotel to S.T. Workshop. He, however, could not identify the accused in the dock. The testimony of this witness would, therefore, be of no avail to the prosecution.

5. PW-249 Salauddin Sarifuddin Saiyed: This witness has named this accused, but has not attributed any criminality to him. Moreover, he has failed to identify him in the dock. The testimony of this witness would, therefore, be of no avail to the prosecution.

516. FINDINGS: Out of the five witnesses who have

testified against this accused, the presence and participation of this accused in the incident has not been established through the testimony of even a single witness. Under the circumstances, this accused deserves to be acquitted by giving him the benefit of doubt.

516-A Accused No.34 Laxmanbhai alias Lakho son of Budhaji Thakor:

Only one witness, viz., **PW-167 Mahammadhussain Kaiyumbhai Shaikh** has testified against this accused. This witness has deposed that in the mob which had come from Krushnanagar, he had seen this accused who had a trishul in his hand and was saying "*Cut the Miyas, burn them, loot them, don't spare them*". This court after appreciating the evidence of this witness, has found that the witness is consistent about the presence of this accused in the mob on the road in the morning and that his acquaintance qua this accused has also been established. The court has considered this witness to be a credible witness insofar as this accused is concerned.

FINDINGS: Thus, only one credible witness, viz., PW-167 Mahammadhussain Kaiyumbhai Shaikh has named this accused. The two witnesses test, therefore, is not satisfied. This accused, therefore, deserves to be acquitted by giving him the benefit of doubt.

517. Accused No.37 Dr. Mayaben Surendrabhai Kodnani: In all, eleven witnesses have testified against this accused.

1. PW-52 Amina Abbas Belim: This witness has deposed that she had gone in front of the Noorani Masjid and had seen a mob standing there. From the midst of the mob, a white car came and halted near the masjid and Mayaben and her assistant got down. Mayaben told the mob that the masjid and the Muslim area should be destroyed. The witness has further stated that the mob had started pelting stones and vandalizing houses. Thereafter, she had seen that Mayaben had something like a pistol in her hand and she was also firing. After firing, Mayaben told the mob that they should continue and thereafter, she returned in the same car in which she had come.

No statement of this witness had been recorded by the police at the relevant time. After appreciating the evidence of this witness, the court has found that she is not a credible and truthful witness.

2. PW-104 Mahammad Salim Hussain Shaikh: This witness has stated that after 9:00 to 9:30 in the morning, a police jeep came which halted at the S.T. Workshop Gate. The jeep was followed by Kishan Korani, Manoj Videowala and Murli Sindhi. After a little while, MLA Mayaben Kodnani came there in a white Maruti Franti car and spoke to the above referred three accused and the police. While talking, Mayaben's voice was aggressive and she was gesturing towards their area and was saying something. All these people gestured to the mob which had gone away towards Natraj Hotel and called it back.

Mayaben discussed something with the mob in an aggressive tone and thereafter, she had left in the car in which she had come.

The statement of this witness came to be recorded only in the year 2008 after the SIT came to be constituted. This court, after appreciating the evidence of this witness, has found that no reliance can be placed upon his evidence insofar as this accused is concerned.

3. PW-136 Basirkhan Nannekhan Pathan: This witness has deposed that Mayaben came in a white car near a police vehicle which was parked near the S.T. Workshop Gate and talked to the police, after which the police fired at the Muslims. In all his prior statements recorded by the police, this witness had not named this accused and for the first time, has named her in his statement dated 27.5.2008 recorded by the SIT.

Thus, all that emerges from the testimony of this witness insofar as this accused is concerned is that she came to the corner of the S.T. Workshop in the morning and talked to some police officers standing there. No criminal act has been attributed to her. Under the circumstances, apart from the fact that there is an inordinate delay in recording the statement of this witness, even otherwise, he has not attributed any criminality to this accused.

4. PW-143 Dildar Umrao Saiyed: This witness has stated

that while he was standing near Panchvati Estate, Mysorewala came in a jeep and parked it near Panchvati Estate. Four to five policemen also alighted from the vehicle with him. After ten minutes, a white coloured Maruti car came from which MLA Mayaben Kodnani and three other accused alighted. The mob followed the car. Thereafter, the door of the car was opened and swords were taken out and distributed.

The statement of this witness was recorded for the first time in the year 2008 and this court after appreciating the evidence of this witness, has found that he is not a credible and truthful witness. His testimony, therefore, does not further the prosecution case.

5. PW-149 Faridabibi Abdulkadar Khalifa: This witness has deposed that she was standing near the S.T. Workshop compound wall near the Noorani Masjid at around 9:00 to 9:30 in the morning. At that time, the police and S.R.P. Personnel were present near the Noorani Masjid and Shri K.K. Mysorewala was also present at the S.T. Workshop with a government jeep. At this time, Mayaben Kodnani came out of the mob and went near K.K. Mysorewala and spoke to him. The witness has named several other accused in the mob along with this accused. She has further deposed that after talking with Mysorewala, Mayaben left, whereafter police firing and private firing as well as arson commenced near the Noorani Masjid.

Insofar as implication of this accused in the offence in question is concerned, the same has come at a belated stage

at the time when the statement of the witness came to be recorded. Taking the testimony of this witness at face value, what has been deposed by the witness is that Mayaben came out of the car, talked with Mysorewala and left, and thereafter there was police firing and private firing. Thus, the only overt act attributed to Mayaben is that she had talked to Mysorewala and left. Under the circumstances, apart from the fact that in view of the delay in naming this accused, the statement of this witness cannot be accepted, even otherwise from the testimony of this witness, the complicity of this accused in any offence is not established.

6. PW-156 Abdul Majid Mahammad Usman Shaikh: This witness has deposed that the mob started coming on the road at 9:00 a.m. Two police vehicles came near the S.T. Workshop and unloaded two black trunks. Thereafter, a white car came and everyone started taking Mayaben Kodnani's name. Mayaben got down from the car and instigated the mob, after which the mob attacked them. Insofar as reference by this witness to the presence of Mayaben Kodnani on the National Highway in the morning is concerned, such version has come up for the first time in the year 2008 in the statement recorded by the SIT. Prior thereto, the witness had not named Mayaben before the investigating agencies despite the fact that several statements of this witness were recorded by different Investigating Officers.

This court after appreciating the evidence of this witness, has found that it would be hazardous to rely upon his testimony against this accused when her involvement has

been brought on record after a period of more than six years in the year 2008. The testimony of this witness is, therefore, of no avail to the prosecution insofar as this accused is concerned.

7. PW-176 Zulekhabanu Sardarahmed Sarmuddin Chaudhary: This witness, at the end of her cross-examination-in-chief, has stated that in the mob which she saw between 9:00 to 9:45 in the morning on the road, she had seen Mayaben Kodnani also and she had recognized her. Thus, except for a passing reference at the end of her examination-in-chief, nothing has been stated as regards the place where she had seen her and no role has been attributed to her. Moreover, this witness, in her previous statement recorded by the police at the relevant time when the incident took place, has not named this accused and has named her for the first time in her statement recorded by the SIT. Considering the delay in naming the accused as well as the testimony of this witness, in the opinion of this court, no reliance can be placed upon her testimony for the purpose of proving the charge against this accused.

8. PW-192 Rasidabanu Imtiyaz Hussain Momin: This witness has deposed that the mob which had come from the direction of Krushnanagar was pelting stones on the masjid as well as on them and was also throwing bottles. The mob which came from the direction of Natraj was also pelting stones and bottles at them and that Mayaben Kodnani was in this mob and was instigating the public by saying "come forward" and "kill".

This witness has named this accused only in her statement recorded by the SIT after a period of more than six years. Considering the version given by this witness, which is contrary to the version given by the other witnesses, and more so, considering the delay in naming the accused, the court is of the view that it would be hazardous to place reliance upon her testimony to implicate her in such a serious offence.

9. PW-198 Harun Mahammadbhai Shaikh: This witness has deposed that the mobs had gathered near the S.T. Workshop as well as the S.R.P. Quarters Gate and in the mob, he had seen Mayaben together with other named accused in the morning at around 9:30 on the day of the incident and that they were leading the mob. This witness has named this accused after a period of more than six years at the time when his statement came to be recorded by the SIT.

Considering the nature of the evidence of this witness together with the fact that he has named this accused after a considerable delay, no reliance can be placed upon the testimony of this witness to implicate the accused in such a serious offence.

10. PW-227 Zuber Khan Ismail Khan Pathan: This witness has deposed that he had gone to the Natraj Hotel and he had seen Mayaben Kodnani (A-37) on the road in the mob from the side of Natraj Hotel. She was telling the people in the mob that they should go ahead and that she was with them. It may be

pertinent to note that the statement of this witness has not been recorded at the relevant time and for the first time his statement was recorded by the SIT, in the year 2008. It appears that the witness had made a complaint application on 6.3.2002, wherein he had named certain accused, but he had not named this accused in it.

In view of the fact that the statement of this witness has been recorded after a considerable delay, the credibility of this witness is considerably impeached. Moreover, after considering the overall testimony of this witness, this court has found that this witness does not come across as a credible and trustworthy witness and no part of his evidence can be relied upon for the purpose of proving the charge against the accused.

11. PW-236 Siddiquebhai Allabax Mansuri: This witness has deposed that there was a huge mob near Natraj Hotel at around 8:30 to 9:00 in the morning. Mayaben came in a Maruti Franti car together with her P.A./assistant and both of them alighted from the car. Mayaben gave a provocative speech to the people there and told that she had gone to Godhra and had seen the dead bodies of the Kar Sevaks and that they Ram Bhakts should kill and cut the Miyas. Just like the Babri Masjid had been demolished, they should also demolish the masjid here. She had also said that she and Narendra Modi were with them and they would not have to face any problems. After saying this, she went away. This witness has further deposed that at around 11 o'clock, Mayaben came in a white coloured Maruti Franti car near the S.T. Workshop Gate which was

followed by a TRAX jeep. Both the vehicles came from the direction of Krushnanagar and halted near the S.T. Workshop. Mayaben alighted from the Maruti car and gestured towards the mob standing near Natraj and called them near the S.T. Workshop Gate. At this time, about a hundred leaders, including Mayaben's P.A. came there. Mayaben talked with those people and discussed something and thereafter, gestured to her P.A. and gave him instructions, whereupon her P.A. took out weapons from the TRAX jeep, which comprised of swords, spears, tridents and something that looked like a revolver from far. Under her instructions, her P.A. gave all those weapons to the leaders of the mob. Thereafter, Mayaben left and the mob, in which her P.A. was present, attacked the Noorani Masjid.

This court after discussing the evidence of this witness, has found that the prosecution has led two sets of evidence, one which shows the presence of this accused at the scene of offence and another which negates her presence and in view of the two sets of evidence which has been led by the prosecution, one against and one favouring the accused, the view in favour of the accused has to be adopted.

518. FINDINGS: Thus, out of all the eleven witnesses who have deposed regarding the presence of this accused on the road in the mob or otherwise, in the morning on the day of the incident, none of the witnesses had named this accused in their statements recorded by the police at the relevant time when the incident took place. The name of this accused has cropped up for the first time when the statements of the

witnesses came to be recorded by the SIT. Moreover, the versions given by the witnesses are contradictory to each other. While discussing the topic of criminal conspiracy, this court has discussed the testimonies of the witnesses at length. It has also been noted that the witnesses have referred to Mayaben alighting from her vehicle and talking to the police, however, none of the police witnesses have referred to her presence at the scene of incident on the day of the incident. Considering the delay in naming this accused as well as the nature of the testimonies of the witnesses, the court has found it hazardous to rely upon the testimonies of the witnesses to implicate this accused in such a serious offence.

Thus, the testimony of none of the witnesses who have testified against this accused has been accepted qua this accused. Therefore, the two witnesses test is not satisfied in the case of this accused. Moreover, the trial court has convicted this accused of the offences with which she was charged only by invoking section 120B of the Indian Penal Code. This court while discussing the topic of criminal conspiracy, has found that the charge under section 120B of the Indian Penal Code has not been established against this accused. This accused, therefore, deserves to be acquitted of the offences with which she has been charged by giving her the benefit of doubt.

519. **Accused No.38 Ashok Hundaldas Sindhi:** This accused has been named by in all three witnesses.

1. PW-52 Amina Abbas Belim: This witness has named this

accused. However, the witness has not been found to be truthful and credible witness and her testimony has not been accepted qua any of the accused.

2. PW-73 Basubhai Mayuddin Saiyed: This witness has referred the presence of this accused in the mob in the morning as well as in the mob which set Majid's house on fire in the evening. He, however, has failed to identify the accused and hence, his testimony is of no avail to the prosecution.

3. PW-135 Hussainabanu Agarkhan Pathan: This witness has named the accused in her deposition as the person whom she had identified in the test identification parade. She has not named him in any of her statements before the police as well as the SIT. Though she had identified him in the test identification parade, she had failed to identify him in the dock and had wrongly identified accused No.58 as accused No.38. Her testimony is, therefore, of no avail to the prosecution qua this accused.

520. FINDINGS: Thus, out of the three witnesses who have testified against this accused, none of them have consistently named him before the police as well as in his/her deposition before the court and identified him. Therefore, in the absence of any cogent and credible evidence against him, this accused is entitled to be given the benefit of doubt and acquitted of the offences with which he has been charged.

520-A Accused No.39 Harshad alias Mungda Jilgovind Chhara:

In all three witnesses have testified against this accused.

1. *PW-109 Sarfarazkhan Mehboobkhan Pathan* has deposed against this accused. This accused has deposed that when he came out of his house on the road at around 9 o'clock in the morning, in the mob he had seen this accused along with other named accused. This court after analyzing the testimony of this witness, has found that through his testimony, the prosecution has proved the presence of this accused in the mob on the road in the morning, but has observed that it would look for corroboration while considering his evidence against the individual accused.

2. **PW-170 Mahammad Jallaluddin Ibrahim Shaikh** has deposed that in the morning after 9:15, he had gone to the tap near the S.T. Workshop at the corner of the chawl and in the mob, he had seen this accused along with other accused. This accused was one of the persons who was leading the mob and managing it. After appreciating the testimony of this witness, the court has found that while the witness has improved upon his original version by stating that he had seen the accused on the road and has also attributed overt acts to him, to the effect that he was leading and managing the mob, to the extent of their involvement in the offence in question, the witness is consistent. The court has, accordingly, held that the prosecution has established the presence of this accused in the mob which was damaging the houses and stalls near the Noorani Masjid and setting them on fire.

3. **PW-202 Samsuddin Shabuddin Rathod** has deposed that in the morning at around 9 o'clock, he had seen this

accused in the mob coming from the direction of Natraj Hotel. Such mob was setting the shops and houses in their area on fire. He has stated that he had seen this accused in the mob along with other named accused. After appreciating the evidence of this witness, the court has found him to be a credible and trustworthy witness and has accepted his testimony qua this accused.

FINDINGS: Thus, out of the three witnesses who have deposed against this accused, two credible witnesses whose testimony has been accepted by this court, have deposed regarding the presence of this accused in the mob on the road in the morning. Thus, this accused has rightly been held guilty for the offences punishable under sections 143, 144, 147, 148, 295, 427, 435, 436, 153, 153A, 153A(2), 149 and 188 of the Penal Code as well as under section 135(1) of the Bombay Police Act. However, his conviction for the offences punishable under sections 323, 324, 325, 326, 302, 307 and 440 read with section 149 of the Penal Code and under section 120B of the Penal Code is required to be set aside.

521. Accused No.40 Mukesh alias Vakil Ratilal Rathod, son of Jaybhavani: This accused has been named by in all six witnesses.

1. PW-142 Zannatbibi Kallubhai Shaikh: This witness has deposed that at about 4:00 to 4:30 p.m. while she was in a passage between the Gopinathnagar and Gangotri Society, she saw that clothes of girls were being torn and they were being set ablaze. At this time, two mobs came, one from the side of Parshwanathnagar and the other from the opposite side. The

witness has referred to the presence of this accused viz. Bhavanisingh's son in this mob. This witness has been consistent in her testimony insofar as implication of this accused is concerned. Therefore, through the testimony of this witness the prosecution has proved the presence of this accused in the mob near the passage of the water tank in the evening.

2. PW-156 Abdulmajid Mahammadayub Shaikh: This witness has referred to the involvement of this accused whom he has described him as Jaybhavani's son, amongst the persons who had raped his daughter Supriya. The witness has, however, failed to identify this accused in the dock and hence, his testimony is of no avail to the prosecution.

3. PW-184 Mahammad Hanif Yusufbhai Shaikh: This witness has referred to the presence of this accused in the mob on the highway in the morning instigating the mobs and attacking the Muslims. The accused has been referred to as Bhavani's son. This witness has not named this accused in his first available statement dated 12.5.2002 and has named him for the first time in his statement recorded by the SIT and hence, his testimony has not been accepted qua this accused.

4. PW-203 Sharifabibi Iqbalbhai Shaikh: This witness has referred to the presence of this accused in the mob which killed her son. She, however, has failed to identify him in the dock. Therefore, her testimony is of no avail to the prosecution.

5. PW-209 Shabana Bundubhai Qureshi: This witness has

referred to the presence of this accused describing him as Jaybhavani's son in the mob in the passage of the water tank where the massacre took place. This witness had not named this accused in her statement recorded by the police and has named him for the first time in the statement recorded by the SIT and hence, her testimony, though found to be credible as regards the version of the events that took place on that day, has not been found to be credible insofar as the accused named by her are concerned.

6. PW-212 Rukshana Bundubhai Kureshi: This witness has referred to the presence of this accused in the mob which had assaulted her mother in the passage of the water tank in the evening. This witness had not named the accused in her statement dated 11.5.2002 recorded by the police and had named him for the first time in her statement dated 3.6.2008 recorded by the SIT and hence, the testimony of this witness, though found to be otherwise credible and trustworthy, has not been found to be credible as regards the accused named by her.

522. FINDINGS: Out of the six witnesses who have testified against this accused, only one witness has been found to be credible and trustworthy insofar as this accused is concerned. The two witnesses test is, therefore, not satisfied in the case of this accused and consequently, he deserves to be acquitted by giving him the benefit of doubt.

523. **Accused No.41 Manojbhai alias Manoj Sindhi, son of Renumal Kukrani:** This accused has been named by in all twenty two witnesses.

1. **PW-73 Basubhai Maiyuddin Saiyed:** This witness has referred to the presence of this accused in the mob coming from Kubernagar in the morning as well as in the mob that set Majid's house on fire in the evening. This witness has been consistent insofar as having seen this accused in the mob on the road in the morning is concerned, in his statements dated 12.5.2002 and 4.6.2008 as well as in his deposition before the court. He has also identified him. Therefore, his testimony has been found acceptable to the extent he has referred to the presence of this accused in the mob on the road in the morning.

2. **PW-104 Mohammadsalim Mohammadhussain Shaikh:** This witness has referred to the presence of this accused in the mob on the road in the morning and firing at Abid. This witness has not named the accused in his statement dated 11.6.2002 and has named him for the first time in his statement dated 29.5.2008 recorded by the SIT and hence, such implication which has come after six years, has not been accepted by the court.

3. **PW-105 Hussainbhai Valibhai Kaladiya:** This witness has referred to the presence of this accused in the mob on the road in the morning, but has failed to identify the accused in the dock. His testimony, therefore, is of no avail to the prosecution.

4. **PW-108 Iqbalhussain Amirmiya Qureshi:** This witness has deposed that when he was returning from his workplace in the morning on the day of the incident he had

seen this accused in the mob on the road. The testimony of this witness has been found to be credible and trustworthy.

5. *PW-109 Sarfarazkhan Mehboobkhan Pathan:* This witness has referred to the presence of this accused in the mob on road in the morning. This witness has consistently named the accused in his police statement as well as in his deposition before the court and had identified him in the dock. However, in view of the fact that prior acquaintance with the accused was not properly established, the court while finding his testimony to be acceptable qua the accused so named and identified, has observed that it would look for corroboration while considering his evidence against the individual accused.

6. *PW-113 Jainulabedin Mahammad Khwaja Shaikh:* This witness has referred to the presence of this accused in the mob on the road in the afternoon near the S.T. Workshop Gate. This witness had not named this accused in his first available statement dated 19.4.2002 and had named him for the first time before the SIT and hence, his testimony has not been accepted qua this accused.

7. **PW-145 Shahnawazkhan Abbaskhan Pathan:** This witness has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

8. *PW-149 Faridabibi Abdulkadar Khalifa:* This witness has referred to the presence of this accused in the mob near the

Noorani Masjid in the morning. However, in her statement dated 12.5.2002 recorded by the police she had named Manoj Tyrewala Sindhi and not Manoj Videowala and no correlation between the two has been brought on record. Therefore, the testimony of this witness has not been accepted qua this accused.

9. *PW-167 Mahammad Hussain Kayumbhai Shaikh:* This witness has referred to the presence of this accused in the mob on the road in the morning. However, as his acquaintance with the accused has not been duly established, this court while analysing the testimony of this witness has held that it would look for corroboration to his testimony.

10. *PW-174 Abdulalim Abdulmajid Chaudhary:* This witness has referred to the presence of this accused in the mob near the Noorani Masjid and has alleged that he had a revolver and was firing by using the S.T. Workshop compound wall as a buffer. Since this witness has named this accused for the first time before the SIT in the year 2008, his testimony has not been accepted against the accused.

11. *PW-175 Yakubali Kasamali Saiyed:* This witness has referred to the presence of this accused in the mob in the afternoon at 1:30. This witness has not been found to be a credible and trustworthy witness and hence, his testimony cannot be relied upon.

12. *PW-184 Mahammad Hanif Yusufbhai Shaikh:* This witness has deposed that on the day of the incident in the morning, he had seen this accused in the mob on the highway, firing at the

Muslims. Since this witness has not named this accused in his statement dated 12.5.2002, and has named him for the first time before the SIT in the year 2008, his testimony has not been accepted qua this accused.

13. PW-188 Mahammadbhai Bachubhai Belim: This witness has referred to the presence of this accused in the mob on the road in the morning damaging the Noorani Masjid. This witness had not named this accused in his statement dated 12.5.2002 and has named him for the first time before the SIT in the year 2008 and hence, his testimony has not been accepted qua the accused.

14. PW-189 Mahammad Imran Imtiyaz Hussain: This witness has deposed that he had seen this accused with a trishul in the mob near the Noorani Masjid and has deposed that he along with other accused was pelting stones and shouting "kill, cut". The witness has been consistent in his version regarding the presence of this accused in the mob near the Noorani Masjid in the morning in his statements as well as in his deposition before the court, but has failed to identify him in the dock. His testimony would, therefore, be of no avail to the prosecution.

15. PW-190 Salauddin Abdulkarim Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning, but has failed to identify him in the dock. His testimony would, therefore, be of no avail to the prosecution qua this accused.

16. PW-192 Rasidabanu Imtiyazhussain Momin: This witness has referred to the presence of this accused in the mob on the

road in the morning. She, however, has named the accused for the first time in her statement recorded by the SIT and has not named him in her statements dated 12.5.2002 and 11.6.2002 recorded by the police. Therefore, her testimony has not been accepted qua this accused.

17. PW-198 Harun Mahammadbhai Shaikh: This witness has referred to the presence of this accused on the road in the morning. This witness has named this accused for the first time before the SIT and has not found to be a credible and truthful witness.

18. **PW-202 Samsuddin Shabuddin Rathod:** This witness has referred to the presence of this accused in the morning mob which was setting the shops and houses in their locality on fire. This witness is found to be credible and trustworthy witness and his testimony against this accused has been found to be acceptable.

19. PW-204 Abdulrazak Abdulrehman Saiyed: This witness has deposed that this accused had taken a revolver and fired on the road in the morning. This witness has not named this accused in his statements dated 13.5.2002 and 11.6.2002 and has named him for the first time before the SIT on 22.6.2002. Furthermore, he has failed to identify the accused in the dock and hence, his testimony is of no avail to the prosecution.

20. PW-230 Mahammad Rafik Abdul Karim Shaikh: This witness has deposed that he had seen this accused in the mob on the road in the morning at 11:00 a.m. and that he had snatched a revolver from the police and started firing. The

witness has not named this accused in his statement dated 13.5.2002 and has named him for the first time in the statement recorded by the SIT in the year 2008. Apart from the delay in naming the accused, the role attributed by the witness to this accused does not find support in the testimony of any other witness, including the police witnesses and even otherwise does not appear to be credible. It would, therefore, be hazardous to rely upon the testimony of such witness to convict the accused.

21. PW-233 Rajabax alias Rajesh Nabisha Saiyed: This witness has named this accused and has claimed to have seen him in a mob throwing his cart inside the Noorani Masjid and setting it ablaze. The sole statement of this witness was recorded in the year 2008 and hence, the court has not accepted his testimony qua the accused named by him.

22. PW-258 Mahammadusman Mahemoodbhai Shaikh: This witness has referred to the presence of this accused in the mob instigating the people in the mob on the road in the morning. He, however, has failed to identify this accused. Besides, in his sole statement recorded by the SIT, he had attributed different roles to the accused than stated before the court. The court has, therefore, found his testimony to be not reliable.

524. FINDINGS: Thus, out of twenty two witnesses who have testified against this accused, the testimony of PW-73 Basubhai Maiyuddin Saiyed has been accepted by this court to the extent he has referred to the presence of this accused in the mob on the road in the morning. The testimony of PW-108

Iqbalhussain Amirmiya Qureshi who has deposed regarding the presence of this accused in the mob on the road has been found to be credible and trustworthy. The testimony of PW-109 Sarfarazkhan Mehboobkhan Pathan who has referred to the presence of this witness in the mob on the road in the morning has been accepted subject to corroboration by some other witness. The testimony of PW-145 Shahnawazkhan Abbaskhan Pathan who has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning has been found to be credible and trustworthy. PW-167 Mahammad Hussain Kayumbhai Shaikh has referred to the presence of this accused in the mob on the road in the morning. The testimony of this witness has been accepted subject to corroboration. PW-202 Samsuddin Shabuddin Rathod has deposed that he had seen this accused in the mob which was setting the shops and houses in their locality on fire in the morning after 9'clock. This witness has been found to be a credible and trustworthy witness. Thus, three credible witnesses have referred to the presence of this accused in the mob on the road. One credible witness viz., PW 145 Shahnawazkhan Abbaskhan Pathan has referred to his presence along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. One witness, whose testimony has been accepted by this court subject to corroboration by any other witness, has referred to the presence of this accused in the mob on the road in the morning. Therefore, through the testimonies of the above referred five witnesses, the prosecution has duly established the presence of this accused in the mob on the

road in the morning as well as in the chawls at around 11 o'clock.

Since the presence of this witness has been established in the mob on the road in the morning as well as inside the chawls, the trial court has rightly held him to be guilty of the offences punishable under sections his conviction under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. He is, however, required to be acquitted of the offence punishable under section 120B of the Penal Code.

525. **Accused No.42 Hiraji alias Hiro Marwadi alias Sonaji son of Danaji Meghval (Marwadi):** This accused has been named by two witnesses.

1. PW-150 Ishaqkhan Sardarkhan Pathan: This witness has referred to the presence of this accused in the mob at the S.R.P. Quarters in the morning as well as in the evening inside the chawls at 6:30 p.m. The witness has not named this accused in his statement dated 18.3.2002 and has named him for the first time in his statement recorded by the SIT on 11.6.2008. This witness has not been found to be truthful and credible witness and hence, his testimony would be of no avail to the prosecution.

2. **PW-183 Basirbhai Usmanbhai Shaikh:** This witness has referred to the presence of this accused in the mob on the

road in the morning. This court has accepted the testimony of this witness qua the presence of this accused in the mob pelting stones on the highway in the morning.

526. FINDINGS: Out of the two witnesses who have deposed against this accused, only one witness has been found to be credible and trustworthy. The two witnesses test is, therefore, not satisfied in the case of this accused and he deserves to be acquitted by giving him the benefit of doubt.

527. **Accused No. 44 Bipinbhai @ Bipin Autowala son of Umedrai Panchal:** This accused has been named by, in all, thirty five witnesses.

1. PW-37 Salimbhai Roshanali Shaikh: This witness has referred to the presence of this accused in the mob at Noorani Masjid in the morning as well as in the incident of killing Sadiq and Sharif near the water tank in the evening. This witness has not been found to be a credible witness and hence, his testimony would not advance the prosecution case.

2. PW-52 Aminaben Abbasbhai Belim: This witness has deposed that this accused was firing from the terrace of his garage. This witness has not been found to be a truthful and credible witness and hence, her testimony is of no avail to the prosecution.

3. PW-105 Hussainbhai Valibhai Kaladia: This witness has referred to the presence of this accused in the mob on the road in the morning but has failed to identify him. His testimony would, therefore, be of no avail to the prosecution.

4. *PW-107 Mohmmmedbhai Kalubhai Khalifa:* This witness has referred to the presence of this accused in the mob on the road in the morning. However, the court has found that insofar as his testimony against this accused is concerned, it would look for corroboration.

5. **PW-108 Iqbalhussain Amirmiya Kureshi:** This witness has referred to the presence of this accused in the mob on the road in the morning while he was returning from his workplace. This witness has been found to be a credible and trustworthy witness.

6. **PW-115 Ibrahimbhai Chhotubhai Shaikh:** This witness has referred to the presence of this accused on the road in the morning leading and instigating the mob. The testimony of this witness has been found to be credible and trustworthy as he has consistently named this accused and has identified him before the court.

7. **PW-136 Bashirkhan Nanhekhan Mansuri:** This witness has referred to the presence of this accused in the riotous mob that was present on the road in the morning on the day of the incident. This witness has been consistent insofar as the presence of this accused is concerned in his previous statements as well as in his deposition and has identified him. His testimony is, therefore, credible and trustworthy.

8. **PW-142 Zannatbibi Kallubhai Shaikh:** This witness has referred to the presence of this accused in the mob in the

chawls in the afternoon at 11 o'clock. The witness is consistent in her testimony qua this accused and has been found to be reliable and trustworthy.

9. PW-143 Dildar Umrao Saiyed: This witness has referred to the presence of this accused in the mob; however, he has been found to be not credible and trustworthy and hence, his testimony would be of no avail to the prosecution.

10. **PW-144 Sarfaraz Abbaskhan Pathan:** This witness has referred to the presence of this accused in the mobs in the chawls in the morning. This witness is a credible and trustworthy witness and through his testimony the involvement of the accused has been proved.

11. **PW-145 Shahnawazkhan Abbaskhan Pathan:** This witness has referred to the presence of this accused along with other named accused in the mob which had vandalized his house which is situated in Hukamsing-ni-Chali and set it on fire at around 11 o'clock in the morning. This witness has been found to a credible and truthful witness.

12. **PW-149 Faridabanu Abdulkadar Khalifa:** This witness has referred to the presence of this accused in the mob on the road near Noorani Masjid in the morning. The witness has been found to be credible and trustworthy.

13. **PW-157 Mohammadsafi Allabux Mansuri:** This witness has referred to the presence of this accused in the mob on the road in the morning near Noorani Masjid. His

testimony has been found to be trustworthy and credible insofar this accused is concerned.

14. PW-169 Belim Zubedaben Mahammadidrish: This witness has referred to the presence of this accused in the mob in the evening between 7:00 to 8:00 p.m. She, however, has failed to identify him in the dock and hence, her evidence is of no avail to the prosecution.

15. **PW-170 Mahammadjalaluddin Ibrahimbhai Shaikh:** This witness has referred to the presence of this accused in the mob which was damaging houses and stalls near the Noorani Masjid and setting them on fire. The testimony of this witness has been accepted qua this accused.

16. PW-175 Saiyed Yakubali Kasamali: This witness has referred to the presence of this accused in the mob at 1:30 in the afternoon. This witness has not been found to be a credible and truthful witness and hence, his testimony would be of no avail to the prosecution.

17. PW-179 Naseembanu Abdulrehman Shaikh: This witness has referred to the presence of this accused in the mob coming from the side of Uday Gas Agency. She, however, has failed to identify the accused and hence, her testimony would not help the prosecution to prove the charge against this accused.

18. **PW-184 Mahammad Hanif Yusufbhai Shaikh:** This witness has referred to the presence of this accused in the mob in front of the S.T. Workshop on the day of the incident,

instigating the mob and attacking the Muslims. This witness is consistent in his testimony and has been found to be a truthful and credible witness.

19. PW-186 Taherabanu Mahammadkasam Abdulla Shaikh: This witness has deposed that she had seen that this accused was leading different mobs when she was returning from her workplace. Considering the quality of her evidence, the court has found that her testimony is not reliable qua this accused.

20. PW-188 Mohammadbhai Bachubhai Belim: This witness has referred to the presence of this accused in the mob from Krushnanagar at 10:00 a.m. in the morning. The witness has not named this accused in his first available statement dated 12.5.2002 and had named him belatedly in his statement dated 26.5.2008 recorded by the SIT. This court has, therefore, found that his testimony cannot be relied upon against this accused.

21. PW-192 Rasidabanu Imtiazhussain Momin: This witness has referred to the presence of this accused in the mob on the road in the morning. This witness had not named the accused in her statements dated 12.5.2002 and 11.6.2002 and has named him for the first time in her statement dated 10.6.2008 recorded by the SIT. This court has, therefore, not accepted the testimony of this witness qua this accused.

22. PW-193 Ibrahimbhai Hasanbhai Shaikh: This witness has stated that he had seen this accused going from his garage to Krushnanagar. The witness has failed to identify the accused in the dock. Moreover, he had named this accused merely on the

basis of presumption. His testimony, therefore, does not in any manner support the prosecution case.

23. PW-198 Haroon Mahammadbhai Shaikh: This witness has referred to the presence of this accused in the mob on the road in the morning. This witness had not given any statement before the police at the relevant time and it is only in the year 2008, when his statement came to be recorded by the SIT, that he has named the accused. This court has found the witness to be not a credible and truthful witness.

24. PW-200 Shoukat Nabibhai Mansuri: This witness has referred to the presence of this accused in the mob in the morning, but in his statement dated 13.5.2002 he had referred to the accused as Bipin Patel. Upon an overall consideration of the testimony of this witness, his testimony has not been believed qua this accused.

25. **PW-202 Samsuddin Shahbuddin Rathod:** This witness has referred to the presence of this accused in the mob in the morning which was setting shops and houses in their locality on fire. He has also deposed that he had seen this accused leading the mob which came from the direction of Krushnanagar to the Jawannagar Pit at 1:30 in the afternoon. The court has found this witness to be a credible and trustworthy witness.

26. PW-213 Haseebkhan Achhankhan Pathan: This witness has deposed that he has seen this accused in the mob in the morning on the road with the police as well as in the incident in which Ayub was killed in the evening. Considering the fact that

in his initial statement dated 17.7.2002, this witness had not named the accused and he had named him at a much belated stage in the year 2008, without any plausible explanation coming forth, this court has found that his testimony could not be relied upon against this accused.

27. PW-227 Zuberkhan Ismailkhan Pathan: This witness has stated that in the mob from the side of Krushnanagar, he had seen this accused and that he was armed with a weapon. This court has not found this witness to be credible and trustworthy and hence, his evidence cannot be relied upon.

28. PW-233 Rajabaksh @ Rajesh Nabisha Saiyed: This witness claims to have seen this accused in a mob throwing his cart along with the cart belonging to one Usmanbhai, inside the Noorani Masjid and setting them ablaze. The witness, however, could not identify this accused in the dock. Under the circumstances, the evidence of this witness is of no avail to the prosecution.

29. PW-234 Mahmmadyunus Basirahemad Shaikh: This witness has stated that he had seen this accused standing at his auto centre and instigating the mob. The statement of this witness was recorded for the first time after more than six years and no plausible reason has been advanced as to why his statement was not recorded at the relevant time. Apart from the delay, the witness has not been found to be a credible and truthful witness and hence, no reliance can be placed upon his testimony.

30. PW-235 Nadeemuddin Sharifuddin Shaikh: This witness

has deposed that he had seen this accused in the mob in the afternoon between 11:30 to 12:00. This witness, however, has failed to identify the accused. The testimony of this witness is, therefore, of no avail to the prosecution insofar as this accused is concerned.

31. PW-236 Siddiqbhai Allabux Mansuri: This witness claims to have seen this accused as one of the hundred leaders who met Mayaben Kodnani on the road. This witness has not named the accused in any of his previous statements recorded by the investigating agencies nor has he named him in his deposition before the court. No test identification parade had been carried out through this witness to identify the accused; however for the first time before the court, this witness has identified the accused by his face as being a leader of the mob. Under the circumstances, such identification after a period of eight years for the first time before the court without first fixing the identity of the accused has not been accepted by this court.

32. PW-243 Sabbirali Nivasali Ansari: This witness has referred to the presence of this accused in the mob which came from Krushnanagar with something like a revolver with him. This witness in his first available statement had not named this accused. Moreover, he has failed to identify the accused in the dock. Under the circumstances, no reliance can be placed upon his testimony qua this accused.

33. PW-249 Salauddin Sarifudfin Saiyed: This witness has deposed that ten to fifteen persons from the minority community had gone to meet this accused who had assured

them that nothing would happen. Apart from the fact that no criminality has been attributed to the accused by this witness, the witness has also failed to identify the accused in the dock. The testimony of this witness, therefore, does not in any manner help the prosecution in proving the charge against this accused.

34. PW-258 Mahammadusman Mahemoodbhai Shaikh: This witness has deposed that he had seen this accused instigating the people in the mob. This witness has named the accused in the incident and has attributed specific role to him; however, in his sole statement recorded by the SIT, he has attributed a different role to the accused than stated before the court. Considering the quality of the evidence of this witness together with the fact that his statement was recorded at a highly belated stage in the year 2008, this court has not accepted the testimony of this witness qua this accused.

35. PW-260 Rasulbibbi Azmuddin Shaikh: This witness has referred to the presence of this accused in the mob that entered their chawls. This witness in her first available statement has not named any accused and for the first time after more than six years, she has implicated this accused before the SIT. Under the circumstances, the testimony of this witness cannot be relied upon to prove the charge against this accused.

528. FINDINGS: Out of 35 witnesses who have deposed against this accused eleven witnesses have been found to be credible and in case of one witness (PW 107), the court has observed that it would look for corroboration by other

witnesses. Out of the witnesses who have named this accused, PW 107, PW 108, PW 115, PW 136, PW 149, PW 157, PW 170 and PW 184 have referred to the presence of this accused in the mob on the road near the Noorani Masjid or the S.T. Workshop in the morning on the day of the incident, two of these witnesses have stated that he was leading the mob and instigating them. Three witnesses, viz. PW 142, 144 and 145 have deposed about the presence of this accused in the chawls at about 11 o'clock in the morning. One witness, namely PW 202 Samsuddin Shahbuddin Rathod has deposed that he had seen this accused in the mob which came from the side of Krushnanagar to Jawannagar at 1:30 in the afternoon. Thus, through the testimonies of these witnesses, the presence of this accused on the road in the morning and in the chawls in the afternoon has been duly established. This accused has therefore, rightly been held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 440, 153, 153A, 153A (2), 323, 324, 326, 302 and 307 read with section 149 of the Penal Code, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. He is, however, is required to be acquitted of the offence punishable under section 120B of the Penal Code.

529. **Accused No.46 Vijaykumar Takhubhai Parmar:**
Only one witness has testified against this accused.

PW-149 Faridabanu Abdulkadar Khalifa has testified that she had seen this accused in the mobs on the road in the morning as well as amongst the persons who were leading the mob in the evening. The testimony of this witness has been

found to be credible and trustworthy.

530. FINDINGS: Thus only one credible and trustworthy witness has testified against this accused, both in the morning and evening incidents. The two witnesses test is therefore, not satisfied in the case of this accused. The conviction of this accused, therefore, cannot be sustained and he deserves to be acquitted of all the offences with which he is charged, by giving him the benefit of doubt. .

531. **Accused No.47 Ramesh Keshavlal Didawala (Chhara):** Only one witness has testified against this accused.

PW-235 Nadeemuddin Sharifuddin Shaikh has deposed that he had seen this accused in the mob towards Krushnanagar in the afternoon between 11:30 to 12:00 hours. The court has found the testimony of this witness qua this accused to be consistent right from the beginning and has held that the complicity of this accused in the incident to the extent referred to by this witness is proved.

532. FINDINGS: Since this accused has been named by only one witness, the two witnesses test is not satisfied. This accused is, therefore, entitled to be given the benefit of doubt and acquitted of all the offences with which he has been charged.

533. **Accused No.52 Sachin Nagindas Modi:** In all, three witnesses have testified against this accused.

1. PW-198 Haroon Mahammadbhai Shaikh: This witness has

referred to the presence of this accused in the mob on the road in the morning. Considering the nature of the contradictions in the testimony of this witness as well as the fact that his version has come on record for the first time after a period of six years when the SIT recorded his statement, this court has found that the witness is not a credible and truthful witness. No reliance can, therefore, be placed upon his testimony qua this accused.

2. PW-217 Salim Rahimbhai Shaikh: This witness has deposed that while he was on the terrace of a house at Gopinath Society, his brother Rashid had informed him that his mother was burnt in the passage of the water tank as well as regarding the involvement of this accused in the offence. This witness is not an eyewitness to the incident. In his first statement recorded on 7.6.2002, he had not named this accused and has named him for the first time in his statement recorded by the SIT. Under the circumstances, the court has not accepted his testimony qua this accused.

3. PW-218 Abdulrashid Rahimbhai Shaikh: This witness has deposed that he had seen this accused in the mob with a hockey stick when his mother was killed. Having regard to the fact that no statement of this witness was recorded at the relevant time as well as keeping in view the fact that this witness had narrated the incident regarding his mother being killed to PW-217 his brother Salim, whose statement was recorded on 7.6.2002, but he (his brother) had not named this accused at the relevant time, this court has found that it would be hazardous to rely upon the testimony of this witness against this accused.

534. FINDINGS: In view of the fact that none of the three witnesses who had testified against this accused have been found to be credible and trustworthy, the two witnesses test has not been satisfied. This accused is, therefore, entitled to be given the benefit of doubt and acquitted of the offences with which he was charged.

535. **Accused No.53 Vilas @ Viliyo Prakashbhai Sonar:** This accused has been named by only one witness.

PW-209 Shabana Bundubhai Kureshi: This witness has deposed that she when they entered the passage of the water tank, the people in the mob surrounded them from all four sides. In this mob, she had seen this accused with several other named accused and others. She has further deposed that she was called to identify two accused and she had gone there and identified an accused by the name of Vilas. She has further identified this accused in the dock. The witness has admitted that the test identification parade had been carried out through her in the year 2008, after six years. This witness has neither named this accused nor described him either in the statements before the investigating agencies or before the court. She, however, had identified him in a test identification parade conducted in the year 2008 and has also identified him before the court. However, considering the events that have taken place in the intervening period, this court has found it hazardous to rely upon such identification, for the purpose of establishing the charge against the accused.

536. FINDINGS: Thus, this court after appreciating the

testimony of the sole witness who has testified against this accused, has found it hazardous to rely upon her testimony against this accused. Even otherwise, only one witness has testified against this accused and hence, the two witnesses test is not satisfied. Hence, the conviction of this accused cannot be sustained and he deserves to be acquitted by giving him the benefit of doubt.

537. **Accused-55 Dinesh @ Tiniyo Govindbhai Barge (Marathi):** This accused has been named by, in all, five witnesses.

1. PW-73 Basubhai Mayuddin Saiyed: This witness has deposed that after the incident that took place at Majid's house, those persons who were left in the godown, who were approximately fifteen to twenty persons, as well as those who could not climb near the S. T. wall, were sitting near the compound wall and Tiniyo Marathi (A-55), son of S.R.P. chased them away. The witness has wrongly identified accused No.22 as Tiniyo Marathi, and therefore has failed to identify this accused.

Insofar as this accused is concerned, all that has been attributed to him is that he chased away the people who had come out of the shuttered hall and were sitting near the S.T. compound wall and chased them away. Moreover, the witness has failed to identify this accused. His evidence would, therefore, be of no avail to the prosecution.

2. PW-137 Rafikanbanu Rehmanbhai Saiyed: This witness has referred to the presence of this accused in the mob

towards Teesra Kuva in the evening. This court after considering the overall testimony of this witness has not found her to be a credible and truthful witness. No reliance can, therefore, be placed upon her testimony to prove the charge against this accused.

3. PW-143 Dildar Umrao Saiyed: This witness has deposed that he had seen this accused in the mob near the S.R.P. Quarters in the evening at about 5:30 to 6:00 p.m. This witness had not named this accused in his statements dated 4.5.2002 and 9.5.2002 and had named him for the first time in his statement dated 3.6.2008. This court has found that no reliance can be placed upon the testimony of this witness for the purpose of proving the charge against any of the accused named by him.

4. PW-156 Abdulmajid Mohammad Usman Shaikh: This witness has referred to the presence of this accused in the mob in the evening as well as in the afternoon. He, however, has failed to identify this accused in the dock. No reliance can, therefore, be placed upon his testimony qua this accused.

5. **PW-203 Sharifabibi Iqbalbhai Shaikh:** This witness has deposed that she had seen this accused in the mob which assaulted and burnt her son Sharif. The testimony of this witness has been found to be acceptable qua this accused in the incident relating to the murder of her son Sharif.

538. FINDINGS: Insofar as this accused is concerned, out of the five witnesses who have testified against him, only one witness viz., PW-203 Sharifabibi Iqbalbhai Shaikh has been

found to be credible. The two witnesses test is, therefore, not satisfied in the case of this accused. The conviction of this accused, therefore, cannot be sustained and he is required to be acquitted of the offences with which he has been charged by giving him the benefit of doubt.

539. Accused No.58 Santoshkumar Kodumal Mulchandani, also known as Santosh Dudhwala: Two witnesses have testified against this accused.

1. PW-104 Mahammasalim Mahammadhussain Shaikh: This witness has not named this accused in any of his statements before the court but has merely identified him by his face in the dock. The court has, therefore, found that it would be very risky to rely upon the testimony of this witness to establish the charge against this accused.

2. PW-192 Rasidabanu Imtiazhussain Momin: This witness has referred to the presence of this accused in the mob on the road in the morning. This witness has named the accused for the first time after a period of six years and despite the fact that two of her statements had been recorded at the relevant time, she had not named any accused. The court has, therefore, found that it would be hazardous to rely upon her testimony to prove the charge against this accused.

540. FINDINGS: Thus, both the two witnesses who have implicated this accused have not been found to be credible and trustworthy witnesses. Therefore, the two witnesses test is not satisfied in the case of this accused. It may be noted that PW-135 Hussainabanu Asgarkhan had wrongly identified this

accused instead of accused No.38 Ashok Sindhi. The trial court has considered this to be a circumstance against this accused while recording a finding of guilt. In the opinion of this court, when the witness has neither named nor implicated this accused and has wrongly identified him instead of another accused, no reliance can be placed upon the testimony of such witness against this accused who has been wrongly identified. Thus, in the absence of any credible evidence to establish the complicity of this accused, his conviction deserves to be set aside and he is required to be acquitted of the offences with which he was charged by giving him the benefit of doubt.

541. Accused No.60 Pintu Dalpatbhai Jadeja (Chhara): In all, three witnesses have testified against this accused.

1. PW-37 Salimbhai Roshanali Shaikh: This witness has referred to the presence of this accused in the mob at the Noorani Masjid in the morning as well as in the incident of dragging Siddique and killing him in the evening. This witness had not named this accused in his statement recorded by the police and named him for the first time in the statement recorded by the SIT. Moreover, he has failed to identify this accused in the dock. The testimony of this witness, therefore, cannot be relied upon against this accused.

2. PW-209 Shabana Bundubhai Kureshi: This witness has deposed regarding having seen this accused in the mob in the passage of the water tank. This witness had not named the accused at the relevant time when her statement came to be recorded on 11.5.2002, and has named him for the first time

before the SIT. This court has found the testimony of this witness to be credible as regards the version of the events that took place on that day, but has not found her testimony to be credible insofar as the accused named by her are concerned.

3. PW-212 Rukshana Bundubhai Kureshi: This witness has referred to the presence of this accused in the mob which assaulted her mother near the passage of the water tank. This witness had not named this accused in her statement dated 11.5.2002 and had named him for the first time in her statement dated 3.6.2008 recorded by the SIT. Furthermore, she has failed to identify this accused. Under the circumstances, her testimony is of no avail to the prosecution.

542. FINDINGS: Thus, out of the three witnesses who had testified against this accused, the evidence of none of the witnesses has been accepted by this court insofar as implication of this accused is concerned. This accused is therefore, entitled to be acquitted of all the offences with which he has been charged by giving him the benefit of doubt.

543. **Accused No.62 Kirpalsingh Jangbahdursingh Chhabda:** In all three witnesses have testified against this accused.

1. PW-52 Amina Abbas Belim: This witness has deposed that while she was standing in front of the Noorani Masjid, Mayaben Kodnani came in a white car which halted near the Noorani Masjid and Mayaben and her assistant got down. Thus, insofar as this accused is concerned, it is the case of the witness that

he got down along with Mayaben near the Noorani Masjid. The witness has failed to identify this accused in the dock. Moreover, there is nothing on record to show as to how he is sought to be implicated as an accused inasmuch as this witness has only referred to a person who according to her was Mayaben's Assistant, but nothing has been brought on record to show that accused No.62 is in fact Mayaben's assistant, nor has any test identification parade been carried out to establish his identity. In view of the fact that this witness has failed to identify the accused in the dock, her testimony would be of no avail to the prosecution.

2. PW-157 Mahammad Shafi Allabax Mansuri: This witness has deposed that he had come out of his house at around 9:00 to 9:30 in the morning. The witness has stated that there were mobs from Natraj and Krushnanagar and the people in the mob were armed with weapons like swords, dharias, rods, pipes, etc. and in this mob, he had seen Bipin Autowala. The police were present and behind them, Kirpal Singh (A-62) was present who was in the mob which was near the S.T. Workshop, opposite Noorani Masjid. This witness has further deposed that at around 4:30 in the evening, a mob had come from the side of Uday Gas Agency. The people in the mob were armed with weapons, and in this mob, he had seen this accused along with other named accused. In the cross-examination of this witness, he has admitted that in his statements dated 13.4.2002 and 23.5.2002, he had not stated the facts regarding accused Kirpal Singh. In his further cross-examination, it has come out that in his statement dated 2.6.2008 recorded by the SIT, he had not named this accused

in the mob which came from the side of Uday Gas Agency. Thus, this witness had not named this accused in his original statements recorded at the relevant time when the incident took place and has named him for the first time after a period of more than six years in the statement recorded by the SIT and that too, only in respect of the morning incident.

Considering the fact that this witness has named this accused after a considerable delay and had not named him in his initial statement recorded by the police, this court has found that the evidence of this witness cannot be relied upon qua this accused.

3. PW-236 Siddique Allahbax Mansuri: This witness has stated that at 11 o'clock, Mayaben Kodnani came near the S.T. Workshop and gestured to the mob and called them to the S.T. Workshop Gate. At this time, about a hundred leaders, including her P.A., also came there. Mayaben gestured to her P.A. and gave him instructions, whereupon he took out weapons from the TRAX jeep and under her instructions, he gave all the weapons to the leaders of the mob. Thereafter, Mayaben went away and the people in the mob, including her P.A., attacked the Noorani Masjid. The witness has stated that he does not know the name of Mayaben's P.A. and that he knows him by his face. He has identified accused No.62 as Mayaben's P.A. The statement of this witness has not been recorded at the relevant time and came to be recorded for the first time by the SIT in the year 2008. After his statement was recorded, it was read over to him. In his statement recorded by the SIT, the witness has stated that Mayaben had come with

her *pati* (her husband), but in his testimony, he has clarified that he had referred to Mayaben's P.A. Thus, before the SIT, the witness has referred to Mayaben's husband and not her P.A. and for the first time, he has identified him by his face before the court. Under the circumstances, when the witness has not named this accused in his statement before the SIT, which even otherwise was recorded belatedly, such identification before the court for the first time cannot be accepted. Under the circumstances, the testimony of this witness is not reliable qua this accused.

544. FINDINGS: Thus, out of three witnesses who have deposed against this accused, none of them have been found to be credible witnesses. Each of the witnesses had named this accused belatedly in the year 2008 after the SIT came to be constituted. Moreover, PW 52 Amina Abbas Belim and PW 236 Siddique Allahbax Mansuri have merely referred to him as Mayaben's P.A. and no evidence has been brought on record to establish the fact that this accused is in fact Mayaben's P.A. Insofar as PW 236 is concerned, this accused stands implicated for the first time before the court when the witness identified him by his face in the dock. Therefore, insofar as these two witnesses are concerned, the identity of the accused itself had not been established prior to the accused being identified in the dock, therefore, it would be hazardous to place reliance upon such identification before the court for the first time. As regards PW-157 Mahammad Shafi Allahbax Mansuri, this witness has named him for the first time only in his statement recorded by the SIT and had not named him in his statements recorded by the police at the relevant time. Moreover, even

before the SIT, he had named him only in the morning incident, whereas before the court he has improved upon that version and has referred to his presence in the mob had come from the side of Uday Gas Agency at 4:30 in the evening.

Considering the fact that none of the three witnesses who have deposed against this accused are found to be credible and trustworthy insofar as implication of this accused is concerned, the two witnesses test is not satisfied in the case of this accused and he is entitled to be given the benefit of doubt and acquitted of the offences with which he has been charged.

XXXIII QUANTUM OF SENTENCE:

545. On behalf of the appellants it has been submitted that the trial court, after conviction has erred in imposing upon a few of the accused persons, non-concurrent sentence, in the facts of the present case. It was submitted that in the case of accused No.18, he has been convicted till the last breath; however, the case does not fall in the rarest category and, therefore, does not warrant non-concurrent conviction and such harsh punishment.

546. The trial court while imposing sentence has held that all substantive sentences, except the sentences for life, the applicable meaning of which has been given by it in the order with reference to each of the accused shall run concurrently.

547. Insofar as interference with the imposition of sentence by the trial court is concerned, the legal position in this regard is

well settled. The Supreme Court in **Bikram Dorjee v. State of W.B.**, (2009) 14 SCC 233, has held thus:

5. *The logic behind the sentence in a criminal trial has been highlighted by this Court in State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13:*

“15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Council McGautha v. State of California, 402 US 183 : 28 L.W. 2D 711, that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished.

16. ... The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. ...

17. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long

run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

* * *

19. ... The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."

548. Thus, the court has held that the punishment to be awarded for a crime should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. Having regard to the facts and circumstances of the case, the trial court after considering the enormity of the crime which warrants public abhorrence has responded to the society's cry for justice against the criminals while imposing the sentence. Considering the brutality and depravity of the crime, it cannot be said that the sentence awarded by the trial court is disproportionate to the crime which has been committed. Therefore, except to the extent where in a given case, this court has found the sentence to be disproportionate to the role attributed to an individual accused, there is not warrant for intervention with the sentence imposed by the trial court.

XXIV FINAL ORDER**Criminal Appeal No.1708 of 2012**

549. The appeal is hereby allowed insofar as appellant No.2 – Ganpat Chhanaji Didawala (Chhara) (original accused No.4 in Sessions Case No.235 of 2009), appellant No.3 – Vikrambhai Maneklal Rathod (Chhara) alias Tiniyo (original accused No.5 in Sessions Case No.235 of 2009), appellant No.10 – Manubhai Keshabhai Maruda (original accused No.28 in Sessions Case No.236 of 2009), appellant No.11 – Shashikant alias Tiniyo Marathi son of Yuvraj Patil (original accused No.30 in Sessions Case No.236 of 2009), appellant No.12 – Babubhai @ Babu Vanzara S/o Jethabhai Salat (Marwadi) (original accused No.33 in Sessions Case No.242 of 2009), appellant No.13 – Laxmanbhai alias Lakho son of Budhaji Thakor (original accused No.34 in Sessions Case No.243 of 2009), appellant No.15 – Mukesh alias Vakil Ratilal Rathod son of Jaybhavani (original accused No.40 in Sessions Case No.245 of 2009), appellant No.16 – Hiraji alias Hiro Marvadi alias Sonaji son of Danaji Meghval (Marvadi) (original accused No.42 in Sessions Case No.245 of 2009), appellant No.17 – Vijaykumar Takhubhai Parmar (original accused No.46 in Sessions Case No.246 of 2009), appellant No.18 – Ramesh Keshavlal Didawala (Chhara) (original accused No.47 in Sessions Case No.246 of 2009), appellant No.19 – Sachin Nagindas Modi (original accused No.52 in Sessions Case No.246 of 2009), appellant No.20 – Vilas alias Viliyo Prakashbhai Sonar (original accused No.53 in Sessions Case No.246 of 2009), appellant No.21 – Dinesh alias Tiniyo

Govindbhai Barge (original accused No.55 in Sessions Case No.246 of 2009) and appellant No.22 – Pintu Dalpatbhai Jadeja (Chhara) (original accused No.60 in Sessions Case No.270 of 2009) are concerned.

550. Accordingly, the judgment and order of conviction and sentence against appellant No.2 – Ganpat Chhanaji Didawala (Chhara) (original accused No.4 in Sessions Case No.235 of 2009), appellant No.3 – Vikrambhai Maneklal Rathod (Chhara) alias Tiniyo (original accused No.5 in Sessions Case No.235 of 2009), appellant No.10 – Manubhai Keshabhai Maruda (original accused No.28 in Sessions Case No.236 of 2009), appellant No.11 – Shashikant alias Tiniyo Marathi son of Yuvraj Patil (original accused No.30 in Sessions Case No.236 of 2009), appellant No.12 – Babubhai @ Babu Vanzara S/o Jethabhai Salat (Marwadi) (original accused No.33 in Sessions Case No.242 of 2009), appellant No.13 – Laxmanbhai alias Lakho son of Budhaji Thakor (original accused No.34 in Sessions Case No.243 of 2009), appellant No.15 – Mukesh alias Vakil Ratilal Rathod son of Jaybhavani (original accused No.40 in Sessions Case No.245 of 2009), appellant No.16 – Hiraji alias Hiro Marvadi alias Sonaji son of Danaji Meghval (Marvadi) (original accused No.42 in Sessions Case No.245 of 2009), appellant No.17 – Vijaykumar Takhubhai Parmar (original accused No.46 in Sessions Case No.246 of 2009), appellant No.18 – Ramesh Keshavlal Didawala (Chhara) (original accused No.47 in Sessions Case No.246 of 2009), appellant No.19 – Sachin Nagindas Modi (original accused No.52 in Sessions Case No.246 of 2009), appellant No.20 – Vilas alias Viliyo Prakashbhai Sonar (original accused No.53 in Sessions Case No.246 of 2009), appellant No.21 – Dinesh alias Tiniyo

Govindbhai Barge (original accused No.55 in Sessions Case No.246 of 2009) and appellant No.22 – Pintu Dalpatbhai Jadeja (Chhara) (original accused No.60 in Sessions Case No.270 of 2009), is hereby set aside and the appellants are acquitted of the offences with which they were charged by giving them the benefit of doubt. They shall forthwith be set at liberty unless required in any other case.

551. The appeal is partly allowed insofar as the appellant No.1 Naresh Agarsinh Chhara alias Nariyo (original accused No.1 in Sessions Case No.235 of 2009), appellant No.4 Haresh alias Hariyo son of Jivanlal alias Agarsing Rathod (Chhara) (original accused No.10 in Sessions Case No.235 of 2009), appellant No.7 Premchand alias Tiwari Conductor son of Yagnanarayan Tiwari (original accused No.25 in Sessions Case No.236 of 2009), appellant No.8 Suresh alias Sehjad Dalubhai Netlekar (Chhara) (original accused No.26 in Sessions Case No.236 of 2009), the appellant No.9 – Navab alias Kalu Bhaiyo Harisinh Rathod (original accused No.27 in Sessions Case No.236 of 2009) and appellant No.14 – Harshad alias Mungda Jilagovind Chhara Parmar (original accused No.39 in Sessions Case No.245 of 2009), are concerned. The appeal is dismissed qua appellant No.5 Prakash Sureshbhai Rathod (Chhara) (Original accused No.21 in Sessions Case No.236 of 2009), appellant No.6 Suresh alias Richard alias Suresh Langado son of Kantibhai Didawala (Chhara) (original accused No.22 in Sessions Case No.236 of 2009).

552. Accordingly, while confirming the impugned common judgment and order of conviction and sentence dated 31st August, 2012/5th October, 2012 passed by the learned

Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against the appellant No.1 Naresh Agarsinh Chhara alias Nariyo (original accused No.1 in Sessions Case No.235 of 2009), appellant No.4 Haresh alias Hariyo son of Jivanlal alias Agarsing Rathod (Chhara) (original accused No.10 in Sessions Case No.235 of 2009, appellant No.7 Premchand alias Tiwari Conductor son of Yagnanarayan Tiwari (original accused No.25 in Sessions Case No.236 of 2009), appellant No.8 Suresh alias Sehjad Dalubhai Nettlekar (Chhara) (original accused No.26 in Sessions Case No.236 of 2009) and the appellant No.9 – Navab alias Kalu Bhaiyo Harisinh Rathod (original accused No.27 in Sessions Case No.236 of 2009), the conviction and sentence of the appellants for the offence under section 120B of the Penal Code is hereby set aside. Insofar as appellant No.14 – Harshad alias Mungda Jilagovind Chhara Parmar (original accused No.39 in Sessions Case No.245 of 2009), is concerned, his appeal is partly allowed. The judgment and order of conviction and sentence passed by the learned Special Judge is hereby set aside to the extent the appellant has been convicted and sentenced for the offences punishable under sections 323, 324, 325, 326, 302, 307 and 440 read with section 149 of the Penal Code. The conviction and sentence for the offence punishable under section 120B of the Penal Code is also set aside. The rest of the order of conviction and sentence is confirmed. The judgment and order of conviction and sentence dated 31st August, 2012/5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against appellant No.5 Prakash Sureshbhai Rathod (Chhara) (Original accused No.21 in Sessions Case No.236 of 2009), appellant No.6 Suresh alias

Richard alias Suresh Langado son of Kantibhai Didawala (Chhara) (original accused No.22 in Sessions Case No.236 of 2009 is hereby confirmed.

Criminal Appeal No.1709 of 2012

553. The appeal is allowed qua the appellant No.3 – Ashok Hundaldas Sindhi, (original accused No.38 in Sessions Case No.245 of 2009). The impugned common judgment and order of conviction and sentence dated 31st August, 2012 /5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against this accused is hereby set aside and the appellant is acquitted of the charges leveled against him by giving him the benefit of doubt. He shall forthwith be set at liberty unless required in any other case. The appellant No.5 – Ashokbhai Uttamchand Korani (Sindhi), known as Ashok Pan-na Galla walo and Bholenath Pan-na-Galla walo Ashok Sindhi (original accused No.45 in Sessions Case No.246 of 2009) has passed away during the pendency of this appeal and hence the appeal stands abated qua this accused.

554. The appeal is partly allowed insofar as appellant No.1 – Morlibhai Naranbhai Sindhi alias Murli (original accused No.2 in Sessions Case No.235 of 2009) and appellant No.2 – Kishan Khubchand Korani (original accused No.20 in Sessions Case No.236 of 2009) are concerned. The impugned common judgment and order of conviction and sentence dated 31st August, 2012 / 5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against the appellant No.1 –

Morlibhai Naranbhai Sindhi alias Murli (original accused No.2 in Sessions Case No.235 of 2009) and appellant No.2 – Kishan Khubchand Korani (original accused No.20 in Sessions Case No.236 of 2009) is hereby set aside to the extent the appellants have been convicted and sentenced for the offence under section 120B of the Penal Code. The rest of the judgment and order of conviction and sentence is hereby confirmed. Appellant No.2 Kishan Khubchand Korani has been granted bail. He shall forthwith surrender to judicial custody.

Insofar as appellant No.4 – Manojbhai alias Manoj Sindhi son of Renumal Kukrani, known as Manoj Videowala and Manoj Tyrewala (original accused No.41 in Sessions Case No.245 of 2009) is concerned, the prosecution has established his presence on the road in the morning and in the chawls at 11 o'clock in the morning. This appellant is similarly situated to accused No.27 Navab alias Kalubhaiya Harisinh Rathod, who has been sentenced to life imprisonment (to be meant in the usual terms) and to pay fine of Rs.3000/- in default to suffer further rigorous imprisonment for twenty days for the offence punishable under section 302 of the Penal Code. Therefore, on the grounds of parity, the sentence for the offence under section 302 of the Penal Code in the case of this accused is required to be reduced to that extent. Accordingly, the appeal is partly allowed. The impugned common judgment and order of conviction and sentence dated 31st August, 2012/ 5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, against the appellant No.4 – Manojbhai alias Manoj Sindhi son of Renumal Kukrani, known as Manoj Videowala and Manoj Tyrewala (original accused No.41 in Sessions Case No.245 of

2009) is hereby set aside to the extent the appellant has been convicted and sentenced for the offence under section 120B of the Penal Code and to the extent the appellant has been sentenced to “rigorous imprisonment to serve a minimum sentence of twenty one years in jail without remissions before consideration of his case for premature release and fine of rupees five thousand, in default to suffer further rigorous imprisonment for forty days” for the offence under section 302 of the Penal Code. The sentence for the offence under section 302 of the Penal Code is reduced to “life imprisonment (to be meant in the usual terms) and to pay fine of Rs.3000/- in default to suffer further rigorous imprisonment for twenty days”. The rest of the judgment and order of conviction and sentence is hereby confirmed.

Criminal Appeal No.1710 of 2012

555. The appeal is partly allowed. The impugned common judgment and order of conviction dated 31st August, 2012/5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against the appellant Babubhai @ Babu Bajarangi S/o Rajabhai Patel, original accused No.18 in Sessions Case No.236 of 2009, is hereby confirmed. However, insofar as the sentence is concerned, having regard to the evidence on record, the involvement of the appellant in the commission of the crimes cannot be said to be of a higher degree than that of the accused persons who are actually found to be involved in the offences that came to be committed both on the road and in the chawls. Significantly,

the eye-witnesses who have been found to be credible qua this accused are all police witnesses who have deposed regarding his presence in the mob on the road. Insofar as the more serious offences committed inside the chawls are concerned, this accused has been convicted on the basis of section 120B of the Penal Code and his actual involvement in those offences has not been established by the prosecution beyond reasonable doubt. Under the circumstances, there is no reason why he should be sentenced to a harsher punishment than the other accused. His sentence is required to be reduced to the same as in case of the other accused who have been found guilty of the commission of the offences throughout the day. Accordingly, the order of sentence passed by the trial court is hereby set aside to the extent the appellant, for the offence under section 302 read with section 149 and section 120B of the Indian Penal Code, has been sentenced to suffer rigorous imprisonment for remaining period of his natural life subject to remission or commutation at the instance of the Government for sufficient reason and to also pay a fine of Rs.500/- and in default, to suffer further rigorous imprisonment for fifteen days, if his case is considered for commutation and remission. Instead, for the offence under section 302 read with section 149 of the Indian Penal Code, the appellant is sentenced to suffer rigorous imprisonment to serve a minimum sentence of twenty one years in jail without remissions before consideration of his case for premature release and shall also pay a fine of Rs.5000 (Rupees five thousand only), in default, to suffer further rigorous imprisonment for forty days. The sentences awarded for all the other offences are confirmed. All the substantive sentences, except the sentence for imprisonment for life shall run concurrently.

Criminal Appeal No.1711 of 2012

556. The appeal is partly allowed. The impugned common judgment and order of conviction and sentence dated 31st August, 2012/5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against the appellant Bipinbhai @ Bipin Autowala S/o Umedrai Panchal (original accused No.44 in Sessions Case No.245 of 2009), it is hereby set aside to the extent the appellant has been convicted for the offence under section 120B of the Penal Code. The rest of the judgment and order of conviction and sentence is hereby confirmed.

Criminal Appeal No.1713 of 2012:

557. The appeal is allowed. The impugned common judgment and order of conviction and sentence dated 31st August, 2012 / 5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against the appellant Dr. Mayaben Surendrabhai Kodnani original accused No.37 in Sessions Case No.243 of 2009, is hereby set aside and the appellant is acquitted of the offences with which she was charged by giving her the benefit of doubt. The appellant is already on bail. The bail bond shall stand cancelled.

Criminal Appeal No.1740 of 2012:

558. The appeal is allowed. The impugned common

judgment and order of conviction and sentence dated 31st August, 2012 / 5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad against accused No.62 Kirpalsingh Jungbahdursingh Chhabada, original accused No.62 in Sessions Case No.270 of 2009, is hereby set aside and he is acquitted of the offences with which he was charged by giving him the benefit of doubt. The appellant is on bail. His bail bond shall stand cancelled.

Criminal Appeal No.1862 of 2012:

559. The appeal is allowed. The impugned common judgment and order of conviction and sentence dated 31st August, 2012 / 5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad, against the appellant Santoshkumar Kodumal Mulchandani (original accused No.58 in Sessions Case No.243 of 2009) is hereby set aside and the appellant is acquitted of the offences with which he was charged by giving him the benefit of doubt. The appellant shall forthwith be set at liberty unless required in any other case.

XXXV ACQUITTAL APPEALS:

CRIMINAL APPEAL NO.1050 OF 2013

560. The State of Gujarat has filed only one acquittal appeal being Criminal Appeal No.1050 of 2013, challenging the acquittal of accused No.19 – Padmendrasinh Jaswantsinh Rajput, accused No.24 – Rajkumar alias Raju son of Gopiram

Chaumal, accused No.43 – Haresh Parshuram Rohera, accused No.56 – Geetaben Ratilal alias Jaybhavani Rathod and accused No.61 – Ramilaben Ratilal alias Jaybhavani Rathod.

561. Mr. Prashant Desai, learned Special Public Prosecutor submitted that insofar as accused No.19, 24 and 43 are concerned, only police witnesses have named them. It was submitted that since in the first information report, their names figure and the complainant has specifically stated that they were at the site of incident, which is also supported by the other police witnesses, viz., PW-266, PW-274 and PW-277, their involvement is proved by these witnesses. It was submitted that accused No.19 has been named by four witnesses, viz., PW-262, PW-266, PW-274 and PW-277 all of whom are police witnesses, whereas accused No.24 has been named by five witnesses, viz., PW-236, PW-262, PW-266, PW-274 and PW-277. It was contended that from the evidence of these witnesses, their involvement is proved beyond reasonable doubt. In case of accused No.24, even PW-236 has also spoken about his involvement. In this view of the matter, there is no reason to acquit these three accused, or at least, accused No.19 and 20. It was submitted that at least in case of those accused who were also named by prosecution witnesses other than police witnesses, the benefit of doubt should not have been given. It was submitted that while accused No.19 has been named only by police witnesses, accused No.24 has also been named by PW-236 Siddique Allabax who has identified him, but has not named him, whereas accused No.43 has been named only by PW-262 Shri V.K. Solanki.

562. It was submitted that the criteria adopted by the

trial court for considering the involvement of an accused only if a witness other than the police witnesses names him, is not proper and reasonable. It was argued that if the trial court has concluded that apart from the police witnesses, other witnesses have also named them and is taking support of the first information report, there is no logical reason not to accept the contents of the first information report and also convict these three accused. It was submitted that a specific question was also asked to PW-274 K.K. Mysorewala and also PW-262 V.K. Solanki that they had delayed the filing of the first information report only to include these five accused, which was denied by both of them. It was submitted that if that be so, there is no reason to disbelieve the first information report and the police witnesses who have named these accused and the justification given by the trial court is not correct.

563. It was submitted that insofar as accused No.56 – Geeta and accused No.61 – Ramila are concerned, three eyewitnesses have named Geeta, viz., PW-219 Noorbanu Zakirhussain Saiyed, PW-137 Rafikanbanu Rehmanbhai Saiyed and PW-177 Ishratjahan Parvez Hussain Saiyed and insofar as accused No.61 Ramila is concerned, four witnesses have deposed against her, viz. PW-137 Rafikanbanu Rehmanbhai Saiyed, PW -142 Zannatbibi Kallubhai Shaikh, PW-177 Ishratjahan Parvez Hussain Saiyed and PW-212 Rukshana Bundubhai Kureshi. Referring to the findings recorded by the trial court in respect of these accused, it was submitted that the reasons given by the trial court are not correct. It was submitted that these accused had been identified in the test identification parade as well as in the court and hence, their presence is proved beyond reasonable doubt, and hence, they

could not have been given the benefit of doubt. It was submitted that both, the presence and participation of these accused in the crime has been established by the prosecution, and hence, they should not have been acquitted. It was submitted that both these accused should be held liable and punished for aiding and abetting the crime.

CRIMINAL APPEAL NO.1812 OF 2012

564. Six of the victims/witnesses have jointly filed an acquittal appeal being Criminal Appeal No.1812 of 2012, challenging the acquittal of accused No.3, 6, 7, 9, 11, 17, 19, 23, 24, 31, 36, 43, 48, 49, 51, 54, 56, 57, 59 and 61. In the appeal the appellants have also prayed for the following reliefs:

“(B) YOUR LORDSHIPS be pleased to resort to the remedy available u/s 391 Cr.P.C. and record the additional evidence of the prosecution witnesses considering the applications at annexures ‘F’ herein in the interest of justice;

(C) YOUR LORDSHIPS be pleased to pass orders under Section 173(8)(2) ordering further investigation by an independent agency into authentication, ownership and location of the Mobile Phone Records CD, as the Investigation by the SIT has been found to be seriously wanting and lacking in thoroughness by the Ld Sessions Judge;

(D) YOUR LORDSHIPS be pleased to grant reliefs to victims and survivors of gender violence in accordance with evolving and newly set national and international norms;”

565. Mr. Y. N. Ravani, learned counsel appearing for the victims/witnesses, submitted that the trial court has discarded the evidence of the police witnesses unless the testimony of such witnesses was corroborated by the testimony of other eyewitnesses. It was submitted that the police witnesses were not just Investigating Officers but they were also witnesses whose presence at the scene of offence was established. In these circumstances, they should not have been treated as police officers investigating the offence, but as eyewitnesses of the offence and their evidence ought to have been taken into consideration and given due weightage. It was argued that merely because the police witnesses may not have named influential persons, is no reason to discard the evidence against the named persons. According to the learned counsel, the evidence of the police witnesses should have been given more weightage as they are more acquainted with the people involved in criminal activities. Moreover, it is not the case of the defence that the accused had any enmity with the police officers and therefore, there was no question of wrongly implicating them. It was urged that the trial court has, therefore, committed serious error in acquitting those accused who were named by the police officers.

565.1 Next it was submitted that certain victims had named certain accused, who have been acquitted on the ground of non-identification before the court or delay in giving their names. It was pointed out that the Supreme Court stayed the investigation and thought it fit to constitute a Special Investigation Team after six and a half years and, therefore, that was the first opportunity for the witnesses to name those

accused. It was contended that the delay in giving the names should not have been a ground for non consideration of the evidence of such witnesses and not much weightage should have been given to non-identification of the accused after such a long time.

565.2 Referring to the testimony of PW-262 Shri V.K. Solanki, it was submitted that this witness could recognize only the leaders and gave the names of only known persons. Therefore, this shows the credibility of the witnesses qua the names of the accused persons. It was submitted that just because the police did not discharge their duties properly, the benefit should not go to the accused. It was submitted that this witness had named and identified the accused and nothing has been brought out in the cross-examination which shows that the identity of the accused is not believable. It was submitted that in the cross-examination of this witness, the presence or the identity of the accused has not been dislodged, and hence, his evidence qua the accused named by him is credible, reliable and believable.

565.3 Reference was made to the testimony of PW-274 Shri K.K. Mysorewala, to submit that this witness had named and identified accused Umesh Bharwad, Murli Sindhi, Raju Choumal, P. J. Rajput and Babu Bajrangi. It was submitted that the presence of this witness at the scene of offence has not been disputed. He was the Senior Police Inspector of the Naroda Police Station and was present at the scene along with his staff. It was submitted that he may not have given complete details about the incident, but he has identified the named accused in the mob, which stands undislodged in his

cross-examination.

565.4 Referring to the testimony of PW-277 Shri M.T. Rana, it was submitted that this witness who has named the accused also talks of the presence of Shri K. K. Mysorewala and his evidence has not been shaken in his cross-examination. It was submitted that this witness has deposed that he had seen Shri P.J. Rajput (A-19), Kishan Korani (A-20), Raju Chaubal (A-24) and Babu Bajrangi (A-18) in the mob. It was submitted that insofar as accused No.18 Babu Bajrangi is concerned, in the sting operation conducted on this accused, his involvement in the offence has been established. It was submitted that having regard to the fact that the presence of accused No.18 has been duly established, the testimony of this witness against the other accused named by him along with accused No.18 should have been believed.

565.5 The attention of the court was drawn to the testimony of PW-264 Shri K. P. Makwana, to submit that this witness has referred to the presence of three accused persons, namely, Naresh (A-1), Kalu (A-27) and Umesh Bharwad (A-3). While accused Naresh and Kalu have been convicted, there was no valid reason to acquit Umesh Bharwad. It was submitted that this police witness had no enmity with the accused so as to wrongly implicate him, and hence, the trial court was not justified in discarding his evidence against accused Umesh Bharwad.

565.6 Referring to the testimony of PW-267 Shri M. M. Rathod, it was submitted that this witness has named accused Naresh, accused Umesh Bharwad and accused Kalu as

well as identified all of them in the court. It was submitted that there was no reason for the trial court to discard the testimony of this witness and acquit accused Umesh Bharwad on the ground that no witness other than the police witnesses had named him.

565.7 The attention of the court was drawn to the testimony of PW-116 Lalbhai Nizambhai Luhar, to submit that on account of the fact that the witness had not seen the accused after the incident, the connection with the accused got snapped because later on, there was no occasion for them to see each other. It was submitted that the testimony of the witness has been recorded after a long gap of about eight to nine years; therefore, there is all possibility of the witness having forgotten the faces which might have been known to him when he was residing in the same area. It was submitted that on behalf of the defence, it has not been stated that this witness had any enmity with the persons named by him. It was further pointed out that the witness was so terrified that without police protection, he had not even ventured to identify the accused.

565.8 Reference was made to the testimony of PW-236 Siddiquebhai Allabax Mansuri, to submit that this witness has named only Maya Kodnani in his deposition, but has identified many accused by their faces as being the persons who were leading the mob. It was submitted that this witness had returned to Naroda Patiya, and, therefore, in view of the live link with the accused, he had an opportunity to identify the accused by their faces. According to the learned counsel, this witness had identified only those persons whom he knew and

the witness appears to be more reliable. Moreover, he has described the place from where he had seen the incident. It was submitted that the difference in versions between the witnesses indicates how natural the versions of the witnesses are. It was submitted that this witness is a resident of the Naroda Patiya area and he has rightly identified the accused. It was submitted that the fact that he had not named other accused, is no reason to discard his evidence. It was pointed out that this witness had got a natural opportunity to see the incident from an uncompleted building and had also got the opportunity to hear the speech. The witness might not know the names of the accused, and, therefore, the first opportunity that he had to identify them was in the court. It was contended that if there is any defect in the investigation in not carrying out test identification parade, the benefit cannot go to the accused. Moreover, in the cross-examination of the witness, nothing is shown to indicate any enmity with the accused, and, therefore, there was no intention of falsely implicating them.

565.9 Referring to the testimony of PW-212 Rukshanabanu Bundubhai Qureshi, it was pointed out that this witness has also named Chintu (A-31), Pintu (A-40) and Jaybhavani's daughter (A-61). It was submitted that this witness had seen the incident, including the death of her mother. She was the sufferer and had no reason to falsely implicate any accused. It was pointed out that even in her cross-examination the credibility of this witness has not been shaken. It was submitted that this witness has named Chintu (A-31) which is further corroborated by the police evidence. It was pointed out that the accused have continued to commit offence after offence and their presence has been established

at different places.

565.10 The attention of the court was invited to the testimony of PW-213 Asifkhan Achchankhan Pathan, to submit that this witness has named accused Navin Chhagan Chhara. It was submitted that he has named this accused in the company of other accused. Four out of the five accused have been convicted and therefore, there was no reason to give the fifth name incorrectly. It was submitted that the witness was from the same area as that of the accused and he had no enmity with Navin Chhara and that the suggestion made in the cross-examination that there was a demand of rupees three lakh, and, therefore, he implicated this accused, is not supported by any evidence.

565.11 Referring to the testimony of PW-156 Abdul Majid Mahammad Usman Shaikh, it was pointed out that this witness along with other accused has named Nilam Marathi (A-54) and has identified him earlier as well as in the court. It was submitted that therefore, there was no reason to discard the testimony of this witness.

565.12 Reference was made to the testimonies of PW-177 Ishratjahan Parvez Hussain Saiyed, PW-219 Noorbanu Zakirhussain Saiyed, PW-142 Zannatbi Kallubhai Shaikh and PW-137 Rafikanbanu Rehmanbhai Saiyed, to submit that these witnesses have deposed against Geeta (A-56) and Ramila (A-61), daughters of Jaybhawani. It was submitted that insofar as PW-137 Rafikanbanu is concerned, not naming the accused in the affidavit is no reason to give them a clean chit, more so, when the implication of the father and brother of these girls

has been accepted by the trial court.

565.13 Reference was made to the testimony of PW-273 Pankajbhai Pradhyumanbhai Bhatt, to submit that this witness has duly established the presence of P.M. Shah (A-57) and S.T. Darji (A-59) at the scene of offence. Referring to the impugned judgment, it was submitted that the findings regarding previous investigation are contradictory. It was submitted that the investigation was initially conducted by the police, where later on the Supreme Court found that further investigation was necessary and constituted the SIT. It was urged that merely because the previous investigation was not up to the mark, would not give any benefit to the accused who are named in such investigation. According to the learned counsel, the investigation ought to have been appreciated by clubbing both the investigations, and if any part thereof was found to be doubtful, that should have been discarded.

565.14 Referring to the findings of the trial court in respect of accused No.6 Rajesh alias Pangdo Kantilal Parmar (Chhara), it was pointed out that this accused has been named by PW-116 Lalbhai Nizambhai Luhar whose deposition had been recorded after a number of years. Therefore, due to this fact, the non-identification should not be given so much importance after so many years.

565.15 In the context of accused No.7 Champak Himmatbhai Rathod (Chhara), it was submitted that he is identically situated to accused No.6, except that during the course of identification, he had put on glasses and immediately after the witness had gone, he had taken them off, to avoid

identification. It was submitted that since this accused had tried to see that he is not identified by changing his appearance, non-identification of the accused should not have been taken into consideration.

565.16 Since accused No.9 Amrat alias Kalu Babubhai Rathod and accused No.11 Kaptansing Jawansing Parmar (Chhara) are similarly situated to accused No.6 Rajesh alias Pangdo Kantilal Parmar (Chhara) and have been named by PW-116 Lalbhai Nizambhai Luhar who could not identify them before the court, similar submissions were advanced.

565.17 As regards accused No.17 – Nandlal alias Jecky Vishnubhai (Chhara), it was submitted that PW-236 Siddiqbhai Allabax Mansuri had identified this accused in the court as being one of the persons in the group of leaders whom Mayaben had summoned and to whom weapons had been distributed. It was submitted that this witness has not named this accused anywhere, but before the court he had identified him and that the trial court was not justified in not accepting such identification before the court and acquitting this accused.

565.18 As regards accused No.19 Padmendrasinh alias P.J. Rajput Jaswantsinh Rajput, it was submitted that this accused has been named by, in all, four police witnesses, namely, PW-262 Vinubhai Khemabhai Delvadiya (V.K. Solanki), PW-274 Kerman Khurshid Mysorewala, PW-277 Madansinh Takhatsinh Rana and PW-266 Parbatsinh Vajesinh Thakor. It was submitted that all these witnesses have deposed that they had seen this accused in the mob in the afternoon at around 2 o'clock and

had identified him before the court. All the witnesses have been consistent in their statements regarding the presence of this accused. Therefore, the trial court was not justified in acquitting these accused solely on the ground that no witness other than the police witnesses had implicated him. It was submitted that this is a fit case for reversal of the acquittal and convicting the accused.

565.19 As regards accused No.23 Ashok Silvant Parmar (Chhara), it was submitted that this witness was named by PW-250 Naseembanu Khwaja Hussain Shaikh who had stated that she had seen him pelting stones near the Noorani Masjid and that merely because due to lapse of time, the witness could not identify the accused, is no reason to acquit him.

565.20 As regards accused No.24 Rajkumar alias Raja Gopiram Chaumal, it was submitted that this accused has been named by in all five police witnesses, namely, PW-236 Siddiqbhai Allabax Mansuri, PW-262 Vinubhai Khemabhai Delvadiya (V.K. Solanki), PW-266 Parbatsinh Vajesinh Thakor, PW-274 Kerman Khurshid Mysorewala and PW-277 Madansinh Takhatsinh Rana. It was submitted that all these witnesses have referred to the presence of this accused in the mob at around 2 o'clock in the afternoon on the day of the incident. It was submitted that the testimonies of the witnesses stand undislodged in their cross-examinations. They have not only consistently named this accused, but have also identified him before the court. Moreover, PW-236 Siddiqbhai Allabax Mansuri has identified this accused by face as one of the persons who were amongst the leaders whom Mayaben had summoned near the S.T. Workshop and distributed weapons. It was

submitted that considering the evidence which has come against this accused, the trial court was not justified in acquitting him and that this is a fit case for reversal of acquittal and convicting the accused of the offences with which he has been charged.

565.21 As regards accused No.31 Ankur alias Chintoo Ashokbhai Parmar, it was submitted that PW-212 Rukshanabanu Bundubhai Qureshi has named this accused as being in the mob in the passage of the water tank where her mother was done to death. It was submitted that this witness has named this accused in her statements recorded by the SIT on 3.6.2008 as well as 14.9.2008 and has identified him in the dock. It was submitted that this witness is a credible witness whose testimony has not been shaken in her cross-examination and therefore, the trial court was not justified in not convicting this accused on the basis of the testimony of this witness.

565.22 As regards accused No.43 Haresh Parshuram Rohera, it was submitted that this witness has been named in the first information report by the informant PW-262 V.K. Solanki who has also named him in his deposition before the court and has identified him. It was submitted that the presence of this witness at the scene has been duly established and his testimony has not been dislodged in his cross-examination. He had no enmity with the accused so as to falsely implicate him and hence, there was no justification in not accepting his testimony against this accused.

565.23 As regards accused No.36 Janaksinh Dharamsinh

Nehra alias Janak Marathi, it was submitted that PW-146 Iqbal Ismailbhai Mansuri has referred to the presence of this accused near Gangotri Society with a pipe in his hand. It was submitted that through the testimony of this witness, the presence of this accused at the scene of incident is duly established, and hence, the trial court was not justified in acquitting him.

565.24 As regards accused No.48 Kishanbhai Shankarbhai Mahadik (Kishan Manek), it was submitted that PW-203 Sharifabibi Iqbalbhai Shaikh has referred to the presence of this accused in the mob which assaulted her son and burnt him to death. It was submitted that this witness has named this accused consistently, but could not identify him in the dock, under the circumstances, non-identification of the accused after a lapse of eight to nine years, ought not to have been given undue weightage and the testimony of this witness ought to have been accepted to convict this accused.

565.25 As regards accused No.49 Ranchhodbhai Manilal Parmar, it was submitted that this accused has been named by PW-273 Pankaj Pradhyumanbhai Bhatt who used to serve as an officer at the Central Officer, S.T. Workshop at Naroda. This witness has named this accused as well as has identified him before the court. It was submitted that from the deposition of this witness, it is clear that the accused was present on duty at the S.T. Workshop. It was submitted that many witnesses have mentioned that there was stone pelting from inside the S.T. Workshop and burning rags with oil and iron scrap were thrown in the chawls of Muslims. It was submitted that this witness is an independent witness and there is no reason to disbelieve his testimony.

565.26 As regards accused No.51 Navin Chhaganbhai Bhogekar (Chhara), it was submitted that this accused has been named by PW-213 Haseebkhan Achchankhan Pathan who has deposed that he had seen this accused in the mob with a gas cylinder. This accused used to bring gas cylinders, open their pin and by applying cloth on it, used to throw them in a burning state on the Noorani Masjid and the Muslim houses. It was submitted that in his statement dated 2.6.2008 recorded by the SIT, the witness has stated that this accused was leading the mob with a gas cylinder and has identified him before the court. This witness has given concrete evidence against this accused and there is no reason to disbelieve him.

565.27 As regards accused No.56 Geetaben Ratilal alias Jaybhavani Rathod, it was submitted that this accused has been named by three witnesses, viz., PW-177 Ishratjahan Parvez Hussain, PW-219 Noorbanu Zakirhussain Saiyed and PW-137 Rafikanbanu Rahemanbhai Saiyed. It was submitted that PW-177 has named this accused in her statement dated 23.5.2008 before the SIT. In her deposition before the court, she has stated that at around 2:00 to 2:30 in the afternoon, she had seen a mob entering their chawl and Sahejad Chhara, Ganpat Chhara and two Chhara girls were in the forefront of the mob. She has identified the accused by their names before the court during the course of her deposition, and hence, has given adequate evidence against the accused. It was submitted that PW-219 has referred to the presence of this accused near the Pinjara's house with her father Bhavani, exclaiming that don't they make khadhi and khichdi when someone dies. The witness has further deposed that from

below the paan-cabin where she had taken the shelter, she had seen the mob standing near Jaybhavani's house and Jaybhavani and his daughter were driving all the people out. That Jaybhavani and his younger daughter gave mattresses soaked with kerosene to the mob. It was submitted that through the testimony of this witness, it is established that though this accused is a woman, she has acted in a brutal manner and played an active role in the commission of the offence. It was pointed out that PW-137 has deposed that when out of fear they came to Gopinath Society, she had her three daughters with her and Ramila and Geeta, daughters of Bhavani, had placed mattresses soaked with petrol and diesel on her daughter Afsana's waist and burnt her. It was submitted that since this accused had submitted an exemption application, she is deemed to have been identified. Thus, there is no reason to disbelieve the testimony of this witness. It was, accordingly, urged that three witnesses have deposed against this accused and have also identified her before the court and the trial court was not justified in acquitting this accused.

565.28 As regards accused No.54 – Nilam Manohar Chaubal (Marathi), it was submitted that PW-156 Abdul Majid Mahammad Usman Shaikh has named this accused. The witness has deposed that on the day of the incident, he had seen this accused in the mob along with Mayaben and other accused. It was submitted that this witness has also identified this accused and hence, there was no justification in not convicting this accused.

565.29 As regards accused No.57 – Pankaj Mohanlal Shah, it was submitted that, in all, three witnesses have testified

against this accused. PW-107 Mahammad Kalubhai Khalifa has named this accused in his statement before the SIT on 31.5.2008 and has stated that he had given petrol and diesel from the S.T. Workshop. He has also named him in his testimony before the court, but has failed to identify him. It was submitted that thus, this accused was giving kerosene and diesel to the mob. The intention of the mob was to burn the properties of the Muslims and this accused by giving kerosene to the mob, had played an active role and thereby, committed criminal acts. Therefore, there was no reason to disbelieve the testimony of this witness. It was pointed out that PW-108 Iqbalhussain Samirmiya Qureshi has named this accused before the SIT in his statement dated 12.6.2008, but could not identify him. This witness has deposed that when he was returning from his job in the morning, he had seen stones being pelted at the Patiya Circle and he had seen this accused in the mob. It was submitted that there is no reason to disbelieve the deposition of the witness. It was pointed out that PW-273 Pankaj Pradyumanbhai Bhatt used to work as an officer at the office of the Central Workshop, Naroda and has named this accused and has identified him before the court. From the testimony of this witness, it is clear that this accused was present on duty at the S.T. Workshop and this witness have being an Administrative Officer was well acquainted with this accused. It was submitted that many witnesses have mentioned that stones were being pelted from inside the S.T. Workshop, and burning rags and iron pieces were thrown in the chawls of the Muslims. This witness is an independent witness and there is no reason to disbelieve his testimony. It was submitted that in the light of the evidence of three credible witnesses, the trial court was not justified in acquitting

this accused.

565.30 As regards accused No.59 Subhashchandra alias Darji Jagannath Darji, it was submitted that this accused has been named by PW-273 Pankaj Pradyumanbhai Bhatt. It was pointed out that PW-273 Pankaj Pradyumanbhai Bhatt used to work as an officer at the office of the Central Workshop, Naroda and has named this accused and has identified him before the court. From the testimony of this witness, it is clear that this accused was present on duty at the S.T. Workshop and this witness have being an Administrative Officer was well acquainted with this accused. It was submitted that many witnesses have mentioned that stones were being pelted from inside the S.T. Workshop, and burning rags and iron pieces were thrown in the chawls of the Muslims.

565.31 As regards accused No.61 Ramilaben Ratilal alias Jaybhavani Somabhai Rathod, it was submitted that this accused has been named by, in all, four witnesses. PW-142 Zannatbibi Kallubhai Shaikh has deposed that in the lane between Gangotri Society and Gopinathnagar, the elder daughter of Bhavani was giving petrol and diesel to the mob from a white can and that Bhavanisingh, Guddu Chhara, Suresh, Bhavanisingh's advocate son and his elder daughter were in the mob that came from the opposite side.

565.32 It was submitted that PW-177 Ishratjahan Parvez Hussain has named this accused in her deposition before the court and has identified her. She has deposed that at around 2:00 to 2:30 in the afternoon, the mob was damaging, burning and looting inside their chawl and she had seen Sahejad

Chhara, Ganpat Chhara and two Chhara girls in the forefront of the mob. It was submitted that this witness has identified this accused as one of the two Chhara girls who were present there.

565.33 Referring to the testimony of PW-212 Rukshanabanu Bundubhai Qureshi, it was submitted that this witness has named this accused in both her statements dated 3.6.2008 and 14.9.2008 recorded by the SIT and has identified her. She has deposed that Jaybhavani's daughter was giving water to the people in the mob that had assaulted and killed her mother.

565.34 Referring to the testimony of PW-137 Rafikanbanu Rahemanbhai Saiyed, it was submitted that this witness has named this accused before the court and has also identified her. She has deposed that this accused along with her sister Geeta placed mattresses soaked with petrol and diesel on her daughter Afsana's waist and burnt her. It was submitted that thus, this accused has placed a direct role in burning the daughter of this witness. It was submitted that considering the consistent testimony of four eyewitnesses, the trial court was not justified in acquitting this accused.

565.35 The learned counsel referred to the decision of the Supreme Court in the case of ***National Human Rights Commission v. State of Gujarat and others***, (2009) 6 SCC 767, to submit that the Supreme Court found the investigation to be inadequate, but did not comment on the same in view of the consensus between the parties. It was pointed out that various interim orders were passed by the Supreme Court at

intervals, wherein the Supreme Court had directed further investigation considering that the accused were not arraigned. The Supreme Court found it fit to intervene and the SIT had arraigned more accused and named more witnesses. Such investigation could not be brushed aside only on the ground of delay. It was submitted that the Supreme Court has also monitored the investigation.

565.36 In support of his submissions, the learned counsel placed reliance upon the following decisions of the Supreme Court, the relevant extracts whereof have been reproduced below:

- (i) **Lokeman Shah and another v. State of W.B.**, (2001)
5 SCC 235:

21. *In that case this Court held that where a large crowd collected, and one among them committed a stray assault on a victim, the said assault cannot be treated as an act committed in prosecution of the common object of the unlawful assembly. Nor can the remaining accused be imputed with the knowledge that such an offence was likely to be committed in prosecution of the common object of the assembly. In Prabhakar Shankar Sawant v. State of Maharashtra⁹ this Court observed that it is an overstatement of law that when a morcha moved on to a stage when it became unlawful any person who was a member of that morcha must be presumed to share the common object of the unlawful assembly. The court must enter satisfaction that a particular accused was a member of the unlawful assembly either through his active participation or otherwise. It must further be shown that he shared the common object of the assembly. Of course the court can draw necessary inference from the conduct, but mere presence in the assembly is hardly sufficient to draw any adverse inference against him. The question whether or not the offence having been committed in prosecution of the*

common object of the assembly is one of fact, depending upon the facts and circumstances of each particular case.

22. *In this context it is appropriate to refer to Section 142 IPC. It pertains to a person who intentionally joins an unlawful assembly and continues to involve himself in it. The only condition which the section envisages is that the person who joins the unlawful assembly should have been aware of the facts which rendered such assembly unlawful. If he knew that an unlawful assembly had been formed with a common object and if he has chosen to join it en route to its destination the person joining midway can also be fastened with the vicarious liability envisaged in Section 149 IPC, unless he drops himself out before reaching such destination.*

23. *We have no doubt that appellant Lokeman Shah joined the unlawful assembly knowing fully well that it had already become unlawful as its common object was to chase the persons whom the rioters believed to be responsible for defilement of the mosque. It is immaterial that the deceased V.K. Mehta had no part in the destruction or defilement of any mosque, but the rioters believed him to be the one. We must bear in mind that the chasers carried with them explosive and lethal weapons. In all such broad circumstances it would be inane to presume that the common object of those chasers was something less than finishing the prey whom they were chasing after.*

(ii) **State of Rajasthan v. Abdul Mannan**, (2011) 8 SCC 65:

13. *When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a*

case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. *It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.*

(iii) **Mehbub Samsuddin Malek and others v. State of Gujarat**, (1996) 10 SCC 480:

37. *It was, however, contended by the learned counsel for the appellants that even if the prosecution evidence against Appellant 1 is believed his conviction under Section 120-B cannot be sustained. It was contended that when the bus started from the station Appellant 1 did not know that a communal disturbance had taken place near Mandavi and that a mob of Muslim boys would be standing at the entrance of Rajpura Pole. Thus there was no scope whatsoever for him to hatch a conspiracy with the mob near the entrance of Rajpura Pole. It was also submitted that Appellant 1's getting down from the bus and going near the mob was consistent with his innocence and in all probability he had gone near the mob to say that he was a Muslim and therefore he should not be beaten. He submitted that before an accused can be convicted under Section 120-B the prosecution has to establish an agreement and an agreement requires at least two persons. In this case there is nothing on record*

to show that there was an agreement between Appellant 1 and any person from that mob. In our opinion there is no substance in this contention. The prosecution case was that sensing some trouble and seeing a mob of armed Muslim boys standing at the entrance of Rajpura Pole Appellant 1 stopped the bus just opposite Rajpura Pole with a view to facilitate an attack on the passengers by the said mob. In spite of the request of the passengers he did not start the bus before the mob could approach it but instead he got down from it, went up to the mob and had some discussion with the persons of that mob. Thereafter the mob came near the bus and assaulted the passengers. That was the conspiracy alleged by the prosecution. If really the bus had stopped because of the mob coming in front of it then it was not necessary for him to get down from the bus. He could have disclosed his identity even by remaining in the bus. In view of the evidence of the eyewitnesses, the explanation given by him has to be regarded as false. His conduct is also inconsistent with his innocence. The stopping of the bus at a place where there was no necessity to stop it, his getting down from the bus and going across the road right up to the entrance of the Rajpura Pole and talking to the persons in the said mob leads to an irresistible inference that he not only facilitated the attack on the passengers by stopping the bus just opposite the entrance of Rajpura Pole but also induced the members of the said unlawful assembly to attack the passengers. Thus an agreement between him and the said unlawful assembly is satisfactorily established by the prosecution and therefore his conviction under Section 120-B IPC also deserves to be upheld.

(iv) **Paresh Kalyandas Bhavsar v. Sadiq Yakubbbhai Jamadar and others**, (1993) 3 SCC 95:

6. *It is not in dispute that on the night of April 7, 1990 communal riots took place in that area and that a crowd consisting of Muslims unlawfully went around and damaged the houses and properties belonging to some of the Hindus in that locality and also attacked some of them. In this case we are mainly concerned with the occurrence that took place inside the house of PW 5. To prove that the deaths of the deceased Nishitaben and Komalben, wife and daughter of PW 5 respectively were*

homicidal the prosecution has examined Dr Rakesh Tandon, PW 10 who conducted the post-mortem and his evidence establishes beyond all reasonable doubt that the deaths of these two deceased were due to shock as a result of burn injuries found on their persons. In the course of the rioting PW 5 and some others also received injuries. The evidence of Dr Praveen Thakkar proves the injuries found on them and there cannot be any doubt that they received these injuries during the same rioting. Now the question is whether the evidence of these witnesses can be relied upon. The learned counsel in this context submitted that all these witnesses are interested and therefore they are likely to speak falsehood and it is not possible to separate truth from falsehood. It is needless to say that mere interestedness is not a ground to reject the evidence of the eyewitnesses particularly those who were injured. Firstly their presence during the occurrence cannot be doubted. Secondly the injured witnesses would be the last persons to leave out the real culprits and implicate others falsely. However, it becomes necessary to scrutinise their evidence with great care and caution.

(v) **Lal Bahadur and others v. State (NCT of Delhi)**,
(2013) 4 SCC 557,

14. *The High Court on the first issue regarding delay in filing of FIR held that the circumstances of the present case are extraordinary as the country was engulfed in communal riots, curfew was imposed, Sikh families were being targeted by mobs of unruly and fanatic men who did not fear finishing human life, leave alone destroying/burning property. As regards recording of the statements of witnesses by the police on 30-11-1984 after a delay of 27 days, the High Court observed that the city was in turmoil and persons having witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators, till things settled down; that the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it. The High Court further found that the witnesses prior to the incident were the residents of the same area*

and knew the assailants and it was not the case of the appellants that the delay could have resulted in wrong identification of the accused.

15. *As regards contradictions in the testimony of various witnesses, the High Court observed as under:*

“19. ... Harjit Kaur had mentioned that her house was looted by a mob comprising, inter alia, of Lal Babu and Surinder. Her subsequent mentioning of names of other respondents does not appear to be an improvement of such importance that her entire eyewitness account which finds corroboration by other witnesses can be overlooked. At best here a doubt may arise only with regard to complicity of Virender and Ram Lal (it seems to have mistakenly typed as Surinder in ... trial court judgment) because later she had identified the other respondents Virender and Ram Lal also as having participated in looting her house.

*** **

23. It is no doubt true that the entire case of the prosecution hinges upon the neighbours and the widow of the victim, who may be interested in securing conviction of the accused persons but no rule of law prescribes that conviction cannot be based on the testimony of such witnesses. The only requirement of law is that the testimony of those witnesses must be cogent and credible. Here it is apposite to extract the substance of the testimony of PWs. ...

*** **

27. On reading of the evidence of above witnesses, we find that the testimonies of the witnesses are trustworthy. This we say so on account of the fact that their evidence has been consistent and they have also remained unshaken during their cross-examination. Thus, we do not find any reason to discard the evidence of these witnesses in totality. They do not vary in any manner on any material fact and if there are any discrepancies, the same are trivial, immaterial and could not be made the basis of the acquittal.”

We fully endorse the view expressed by the High Court and reject the contentions raised by the appellants.

(vi) *Inder Singh and others v. State of Rajasthan, (2015)*

2 SCC 734:

14. *The main issue that now requires consideration is whether the courts below have rightly applied Section 149 IPC against the appellants for convicting them for the death of four persons and for murderous assault on the informant. The principle of law governing application of Section 149 IPC has been explained by this Court in many judgments including those cited by the learned Senior Counsel for the appellants. In *Kuldip Yadav*⁵, the law was stated in para 39 in the following words:*

“39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC.”

15. *In *Busi Koteswara Rao*⁶ the facts showed involvement of large number of persons and, therefore, while approving the view taken in *Masalti*⁸ this Court cautioned in para 11 of the judgment that the courts should be cautious in cases of arson and murder where the number of accused is large, to rely upon the testimony of the witnesses speaking generally without specific reference to the accused or the specific role played by them.*

(vii) ***Sadhu Saran Singh v. State of Uttar Pradesh and others*** (2016) 4 SCC 357:

20. *Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would*

interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in Sambasivan v. State of Kerala² has held:

“7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal.”

(emphasis supplied)

21. *This Court, in several cases, has taken the consistent view that the appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the court below is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative.*

22. *This Court in Chandrappa v. State of Karnataka³ after referring to a catena of decisions, has laid down the following general principles with regard to powers of the appellate court while dealing with an appeal against an order of acquittal:*

“42. From the above decisions, in our considered view, the following general principles regarding

powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

565.37 In conclusion, it was submitted that the police witnesses who are also eyewitnesses should not have been excluded. According to the learned counsel, the fact that prosecution witness No.250 Naseembanu Khwajahussain Shaikh could not identify the accused should not be given weightage due to lapse of time and her evidence should be

taken into consideration. It was submitted that Rukshanabanu's deposition has remained unaltered, naming various persons; Haseebkhan's statements have remained unaltered qua Navin Chhara; the presence of Umesh Bharwad has been deposed by two police witnesses namely K.P. Makwana and Manu Rathod; and Lalabhai Luhar has named four accused. It was submitted that the evidence of all these witnesses should be relied upon while considering the complicity of the accused. It was pointed out that one accused viz., Champak Barot who had put on glasses at the time of identification could not be identified which shows the conduct of the accused to avoid identification. The trial court has taken judicial notice thereof, but has acquitted the accused. It was submitted that all the above accused persons have been wrongly acquitted by the trial court and their acquittals are required to be reversed and they should be convicted.

565.38 It was submitted that, in all, twenty-nine accused have been acquitted by the trial court, whereas the appellants have preferred this appeal against twenty accused only where specific role has been mentioned by the witnesses in respect of such accused. It was submitted that the fact remains that the first investigation was not satisfactory and therefore, due weightage should have been given to the subsequent investigation; however, the evidence collected in the first investigation should not have been discarded. It was submitted that the delay that has occurred in the investigation is not attributable to any of the witnesses, and, therefore, the delay should not come in the way of such persons.

566. On behalf of the respondents, Mr. B. B. Naik,

learned counsel submitted that insofar as accused No.19, 24 and 43 are concerned, only police witnesses have named them. It was pointed out that in the first information report of Naroda Patiya as well as Naroda Gam incidents, the names of the accused are same. In Naroda Police Station I-C.R. No.19/2002 which relates to the incident of Naroda Gam, the presence of the accused has been shown from 12 o'clock to 2 o'clock in the afternoon, and in the first information registered as Naroda Police Station I – C.R. No.100/2002, their presence has been shown after 2 o'clock. It was submitted that all the five accused are named in both the first information reports in the same sequence. Out of these five accused, accused No.20 and accused No.18 are shown in the mob in the morning on the highway. It was submitted that in case of the three accused except for two to three police witnesses, namely, Delwadia, K.K. Mysorewala and M.T. Rana and one or two police constables, no other witnesses have implicated them. Insofar as accused No.43 is concerned, neither K.K. Mysorewala nor M.T. Rana has implicated him. It was submitted that accused No.24 Raju Chaumal was hospitalized at the relevant time which has been duly proved. It was submitted that looking to the role of the police in the whole incident, the evidence of the police witnesses is not reliable. The evidence of police officers on many counts runs contrary to the evidence of other occurrence witnesses examined by the prosecution. It was submitted that the first information report is ante-timed and ante-dated and both the sets of accused in both the first information reports, are identical, which is admitted by Shri K.K. Mysorewala, which is another reason for disbelieving these witnesses insofar as these accused are concerned. It was submitted that there is no

criminal complicity indicated by any victim witness against these two accused persons who have been acquitted by the trial court and if the circumstances are put together, it cannot be said that their complicity has been proved beyond reasonable doubt and that there are any justifiable reasons to take a different view than that taken by the trial court and to hold that the presence and complicity of these two acquitted accused in any crime under the provisions of the Penal Code has been proved beyond reasonable doubt. It was submitted that even if these witnesses are to be believed, according to these witnesses, they were present after 2:00 p.m., that too, talking and discussing something. None of the accused had any weapons with them. At the time shown by them, the mobs had already entered the chawls as per other witnesses, so there was no need for them to instigate anyone. In these circumstances, the acquittal recorded by the trial court does not warrant interference.

CRITERIA FOR DETERMINING CULPABILITY OF THE ACCUSED IN THE ACQUITTAL APPEALS:

567. Insofar as the accused who have been acquitted by the trial court are concerned, the criteria for determining their culpability in the offences in question would be the same as that which has been adopted in case of the accused who have been convicted. Thus, for the purpose of convicting the accused, the two witnesses test would be required to be satisfied. The complicity of each individual accused who has been acquitted by the trial court and whose acquittal is subject matter of challenge before this court may be now examined by applying the two witnesses test.

XXXVI COMPLICITY OF THE ACCUSED IN THE ACQUITTAL APPEALS:

568. **Accused No.3 Umeshbhai Surabhai Bharwad:** Two witnesses, both of whom are police witnesses, have testified against this accused.

1. **PW-264 Kirankumar Parshottambhai Makwana:** This witness has deposed that after the TATA 407 incident, people from the mobs started pelting stones at Pandit-ni-Chali, Hussainnagar-ni-Chali and Jawannagar hutments situated opposite the Noorani Masjid. In the mob he had seen this accused, who resides in Krushnanagar Housing, shouting 'Kill! Hack!' This court after appreciating the evidence of this witness has found it to be acceptable qua this accused.

2. **PW-267 Manubhai Madhabhai Rathod:** This witness has deposed that after the TATA 407 incident, the mob caused damage to the Noorani Masjid as well as to the shops situated near the Noorani Masjid. The mob attempted to enter Hussainnagar-ni-chali, Jawannagar Chhapra, Panditji-ni-chali situated opposite the S.T. Workshop. The mob was comprised of Hindus. When they were trying to enter Hussainnagar-ni-chali, a mob of around four hundred to five hundred Muslims opposed them with weapons like sticks, pipes and dharias and the mobs came up against each other. At this time, attempts were made by the police to disperse the Hindu mob. The witness has deposed that this accused along with two other named accused was in the Hindu mob and was shouting "kill" "cut". After appreciating the evidence of this witness, this

court has found his evidence to be acceptable qua this accused.

569. FINDINGS: Thus, two witnesses, whose testimonies have been found to be acceptable qua this accused, have deposed against this accused. The two witnesses test is, therefore, satisfied in the case of this accused. The trial court has discarded the testimonies of the police witnesses if they were not supported by any private eye witness. This court while discussing the testimonies of the police witnesses has given reasons for not agreeing with the course of action adopted by the trial court. In the opinion of this court, the credibility of each witness, even if he is a police witness, is required to be considered independently and no rule of thumb can be applied by discarding the testimonies of the police witnesses unless supported by the testimony of any other witness. Under the circumstances, the presence of this accused as a member of the unlawful assembly on the road in the morning after 11 o'clock on the day of the incident is clearly established. The judgment and order of acquittal therefore deserves to be set aside and this accused is required to be convicted for the offences committed on the road with the aid of section 149 of the Penal Code. This accused is, therefore held guilty of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 153, 153A and 153A (2) read with section 149 of the Penal Code and, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act.

Accused No. 6 Rajesh alias Pangdo Kantilal Parmar (Chhara),

**Accused No.7 Champak Himmatlal Rathod (Chhara),
Accused No.9 Amrat alias Kalu Babubhai Rathod, and
Accused No.11 Kaptansing Jawansing Parmar (Chhara)**

570. In case of all these four accused persons, the evidence against them is in the nature of the testimony of PW 116 Lalabhai Nizambhai Luhar and the roles attributed to them are also identical. Hence, the complicity of all these accused can be considered together.

PW 116 Lalabhai Nizambhai Luhar: This witness has deposed that after 5:00 to 5:30 in the evening, they went on a terrace and sat there. From the terrace, he saw a mob coming from the side of the highway. There were many people in the mob, however, he knew twelve persons in the mob and identified them. Some of the people in the mob had spears, some had swords, some had kerosene for burning, some had pipes and some had sticks in their hands. In this mob, he saw these accused along with the other named accused. This witness has named these accused in his statement before the police as well as before the SIT and has also named them in his deposition before the court, but has failed to identify them in the dock.

571. FINDINGS: In the opinion of this court, though the witness has consistently named these accused, in the absence of identification of the accused, the evidence of this witness would be of no avail to the prosecution. The contention that much significance cannot be attached to identification of the accused after a lapse of a considerable period of time does not merit acceptance, inasmuch as, unless the accused are

identified, their involvement in the offence cannot be said to have been proved beyond reasonable doubt. Even otherwise, only one witness, whose evidence has not been found acceptable, has implicated these accused, and hence, the two witnesses test has not been satisfied in the case of these accused. No case is, therefore, made out for reversal of the order of acquittal in the case of these accused.

572. Accused No.17 Nandlal alias Jecky Vishnubhai (Chhara): Only one witness has testified against this accused.

PW 236 Siddique Allabax Mansuri: This witness has deposed that at around 11 o'clock, Mayaben came near the S.T. Workshop gate in a white coloured Maruti Franti car which was followed by a jeep. Both the vehicles came from the direction of Krushnanagar and halted near the S.T. Workshop and were parked facing the S.T. Workshop gate. Mayaben alighted from the Maruti car. After getting down, she gestured towards the mob standing near Natraj to come to the S.T. Workshop gate. At this time, around a hundred leaders came there; including her P.A. Mayaben talked with those people and discussed something. Thereafter, she gestured to her P.A. and gave him instructions whereupon, Mayaben's P.A. took out weapons like swords, spears, tridents and something which looked like a revolver from the TRAX jeep. Under Mayaben's instructions, her P.A. gave all these to the leaders of the mob. Thereafter, Mayaben left, after which the people in the mob, including her P.A., attacked the Noorani Masjid. The witness has further deposed that he knows the leaders of the mob by their faces, but does not know their names but can identify them, and has,

accordingly identified this accused along with several other accused by his face.

573. FINDINGS: No statement of this witness has been recorded at the relevant time by the police. Despite the fact that his statement came to be recorded for the first time by the SIT in the year 2008, this witness has not named this accused. In his deposition he merely refers to a hundred leaders having come near the S.T. Workshop upon Mayaben gesturing to them, and has identified certain accused as being amongst these hundred persons. This court after appreciating the evidence of this witness has expressed the opinion that it would be highly risky to accept such identification after a period of eight years from the date of the incident without having first fixed the identity of the accused.

Apart from the fact that the testimony of this witness is not acceptable in respect of this accused, even otherwise, only one witness having testified against him, the two witnesses test is not satisfied. Under the circumstances, there is no warrant for intervention with the order of acquittal in the case of this accused.

574. **Accused No.19 Padmendsinh alias P.J. Rajput Jasvantsinh Rajput:** In all, four witnesses, all of whom are police witnesses, have testified against this accused.

1. **PW-262 Vinubhai Khemabhai Delwadia:** This witness is the first informant in this case, who has deposed that mobs were coming from Krushnanagar, Saijpur Fadeli, Kubernagar and Chharanagar and were gathering near the Noorani Masjid

as well as Hussainnagar hutments. Sometime after 11:30, active workers of the Vishwa Hindu Parishad as well as the B.J.P., namely, Kishan Korani (A-20), P. J. Rajput (A-19), Haresh Rohera (A-43), Babu Bajrangi (A-18) as well as Raju Chaumal (A-24) were present in the mob, as leaders. They had taken the leadership of the mobs and were instigating the mobs and in a little while, shops and houses belonging to the Muslim community as well as the Noorani Masjid were targeted and damaged and were set on fire and looted.

This witness has named the accused in the first information report and has also named them in his deposition and has identified them before the court. The presence of this witness at the scene of offence is established. In the cross-examination of this witness, nothing has been brought out to suggest that the witness had any enmity with the accused so as to falsely implicate him nor has anything been brought out so as to shake his credibility insofar as implication of this accused is concerned. Under the circumstances, there is no reason to disbelieve the witness insofar as the complicity of this accused is concerned.

2. **PW-274 Kerman Khurshed Mysorewala:** This witness who was the Senior Police Inspector at the Naroda Police Station at the relevant time, has deposed that in the mob that had gathered there in the afternoon after 2 o'clock, he had seen this accused P. J. Rajput (A-19) as well as Kishan Korani (A-20), Rajubhai Chobal (A-24) and Babu Bajrangi (A-18) in the area between Noorani Masjid and Hussainnagar-ni-Chali, talking and trying to explain something to the mob and at this

time, the mob was shouting, "kill, cut". He had seen all these four people in the mob till around 2:45 p.m.

This witness has consistently named this accused in his statements recorded by the investigating agencies as well as in his deposition and has identified them before the court. Nothing has been pointed out to indicate that this witness was bearing any animosity against this accused so as to falsely implicate him nor has his testimony been shaken in the cross-examination insofar as this accused is concerned. Under the circumstances, there is no reason to disbelieve the testimony of this witness against this accused.

3. **PW-277-Madansinh Takhatsinh Rana:** This witness has deposed that in the stone pelting by the mob, Shri Mysorewala and other police staff had sustained nominal injuries. At around 1:30 in the afternoon, when they were once again trying to disperse the mob, he had seen this accused P.J. Rajput (A-19) as well as Kishan Korani (A-20), Raju Chaubal (A-24) and Babu Bajrangi (A-18) in the mob. All these four persons were talking about something with the people in the mob, but he had not heard what they were talking. However, the mob got more and more volatile.

Thus, this witness speaks about the presence of this accused in the mob at sometime in the noon hours. This witness also had no axe to grind against the accused so as to falsely implicate him. He has consistently named this accused in his statements before the police, in his deposition before the court and has also identified him. In these circumstances,

there is no reason to disbelieve the witness insofar as implication of this accused is concerned.

4. **PW-266 Parbatsingh Vajesinh Thakore:** This witness has deposed that at around 2:00 to 2:15 in the afternoon, he had seen workers from around the Naroda area, namely, this accused P. J. Rajput (A-19) as well as Kishan Korani (A-20), Babu Bajrangi (A-18), and Raju Chaumal (A-24), amidst the mob at Naroda Patiya. They were talking about something. The mob was pelting stones and rioting and were also creating a lot of commotion.

Thus, this witness also speaks about the presence of this accused in the mob at about 2:00 to 2:15 in the afternoon. Nothing has been brought out in the cross-examination of this witness to show that he had any grudge against this accused so as to falsely implicate him. Under the circumstances, considering the fact that this witness has consistently named his accused and has also identified him before the court, there is no reason to disbelieve his testimony to the extent he has implicated this accused.

575. **FINDINGS:** Thus, in all, four witnesses have testified against this accused. From the testimonies of the four witnesses, the presence of this accused in the mob from around 11:30 to 2:45 in the afternoon stands duly established. The evidence of these witnesses further establishes that this accused was leading the mob. All the four witnesses are police witnesses. The trial court has not accepted the testimonies of the police witnesses unless they are corroborated by the testimony of some other eyewitness.

In the opinion of this court, merely because the witnesses are police officers and the investigation by the police in this case was not up to the mark, the testimonies of such police witnesses who were present at the scene of offence and are eye witnesses cannot be disbelieved. Besides, it is nobody's case that the police have acted in a partisan manner against the Hindu mob, nor is it the case of the defence that the police witnesses had any enmity or bore any animosity towards the accused. All the four witnesses have been consistent in the version given by them in their statements before the police as well as before the SIT and in their depositions and have identified the accused in the dock. Under the circumstances, from the testimonies of the four witnesses, the presence of this accused in the mob on the road in the afternoon stands duly established. Since the accused was present on the road after curfew was declared, it is evident that he was a member of the unlawful assembly and shared its common object. Therefore, even in the absence of any specific role other than being a leader being attributed to him, as a member of the unlawful assembly, he would be guilty of all the offences committed on the road with the aid of section 149 of the Penal Code. The acquittal of this accused is, therefore, required to be reversed and he is required to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 153, 153A and 153A (2) read with section 149 of the Penal Code and, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act.

576. **Accused No.23 Ashok Silvant Parmar**

(Chhara): Only one witness has testified against this accused.

PW-250 Naseembanu Khwaja Hussain Shaikh: This witness has deposed that when they came on the road near the Noorani Masjid there was a mob on the road and in this mob she had seen this accused pelting stones. The witness, however, has failed to identify this accused in the dock. Her testimony would, therefore, be of no avail to the prosecution.

577. FINDINGS: In view of the fact that the sole witness who has deposed against this accused has failed to identify him in the dock, no case is made out for reversal of acquittal of this accused. The order of acquittal passed by the trial court, therefore, deserves to be sustained.

578. **Accused No.24 Rajkumar alias Raja son of Gopiram Chaumal:** In all, five witnesses have deposed against this accused.

1. PW 236 Siddique Allabax Mansuri: This witness has deposed that at around 11 o'clock, Mayaben came near the S.T. Workshop gate in a white coloured Maruti Franti car which was followed by a jeep. Both the vehicles came from the direction of Krushnanagar and halted near the S.T. Workshop and were parked facing the S.T. Workshop gate. Mayaben alighted from the Maruti car. After getting down, she gestured towards the mob standing near Natraj and called them to the S.T. Workshop gate. At this time, around a hundred leaders, including her P.A., came there. Mayaben talked with those people and discussed something. Thereafter, she gestured to her P.A. and gave him instructions, whereupon, her P.A. took

out weapons like swords, spears, tridents and something which looked like a revolver from the TRAX jeep. Under Mayaben's instructions, her P.A. gave all these weapons to the leaders of the mob. Thereafter, Mayaben left. After which the people in the mob, including her P.A., attacked the Noorani Masjid. The witness has further deposed that he knows the leaders of the mob by their faces, but does not know their names but can identify them, and has, accordingly identified this accused along with several other accused by his face.

2. **PW-262 Vinubhai Khemabhai Delwadia:** This witness is the first informant in this case, who has deposed that mobs were coming from Krushnanagar, Saijpur Fadeli, Kubernagar and Chharanagar and were gathering near the Noorani Masjid as well as Hussainnagar hutments. Sometime after 11:30, active workers of the Vishwa Hindu Parishad as well as the B.J.P., namely, Kishan Korani (A-20), P. J. Rajput (A-19), Haresh Rohera (A-43), Babu Bajrangi (A-18) as well as Raju Chaumal (A-24) were present in the mob, as leaders. They had taken the leadership of the mobs and were instigating the mobs and in a little while, shops and houses belonging to the Muslim community as well as the Noorani Masjid were targeted and damaged and were set on fire and looted.

This witness has named the accused in the first information report and has also named them in his deposition and has identified them before the court. In the cross-examination of this witness nothing has been brought out to suggest that the witness had any enmity with the accused so as to falsely implicate him. Under the circumstances, there is

no reason to disbelieve the witness insofar as the complicity of this accused is concerned.

3. **PW-274 Kerman Khurshed Mysorewala:** This witness who was the Senior Police Inspector at the Naroda Police Station at the relevant time, has deposed that in the mob that had gathered there in the afternoon after 2 o'clock, he had seen this accused Rajubhai Chobal (A-24) as well as P. J. Rajput (A-19), Kishan Korani (A-20), and Babu Bajrangi (A-18) in the area between Noorani Masjid and Hussainnagar-ni-Chali, talking and trying to explain something to the mob and at this time, the mob was shouting, "kill, cut". He had seen all these four people in the mob till around 2:45 p.m.

This witness has consistently named this accused in his statements recorded by the investigating agencies as well as in his deposition and has identified them before the court. Nothing has been pointed out to indicate that this witness bore any animosity against this accused so as to falsely implicate him. Under the circumstances, there is no reason to disbelieve the testimony of this witness against this accused.

4. **PW-277-Madansinh Takhatsinh Rana:** This witness has deposed that in the stone pelting by the mob, Shri Mysorewala and other police staff had sustained nominal injuries. At around 1:30 in the afternoon, when they were once again trying to disperse the mob, he had seen this accused Raju Chaubal (A-24) as well as Kishan Korani (A-20), P.J. Rajput (A-19) and Babu Bajrangi (A-18) in the mob. All these four persons were talking about something with the people in the

mob, but he had not heard what they were talking. However, the mob became more and more volatile.

Thus, this witness speaks about the presence of this accused in the mob at sometime in the noon hours. This witness also had no axe to grind against the accused so as to falsely implicate him. He has consistently named this accused in his statements before the police, in his deposition before the court and has also identified him. In these circumstances, there is no reason to disbelieve the witness insofar as implication of this accused is concerned.

5. **PW-266 Parbatsingh Vajesinh Thakore:** This witness has deposed that at around 2:00 to 2:15 in the afternoon, he had seen workers from around the Naroda area, namely, this accused Raju Chaumal (A-24) as well as Kishan Korani (A-20), Babu Bajrangi (A-18), and) P. J. Rajput (A-19), amidst the mob at Naroda Patiya. They were talking about something. The mob was pelting stones and rioting and were also creating a lot of commotion.

Thus, this witness also speaks about the presence of this accused in the mob at about 2:00 to 2:15 in the afternoon. Nothing has been brought out in the cross-examination of this witness to show that he had any grudge against this accused so as to falsely implicate him. Under the circumstances, considering the fact that this witness has consistently named his accused and has also identified him before the court, there is no reason to disbelieve his testimony to the extent he has implicated this accused.

579. FINDINGS: Thus, in all, five witnesses have testified against this accused. Insofar as PW-236 is concerned, no statement of this witness has been recorded at the relevant time by the police. Despite the fact that his statement came to be recorded for the first time by the SIT in the year 2008, this witness has not named this accused. In his deposition he merely refers to a hundred leaders having come near the S.T. Workshop upon Mayaben gesturing to them, and has identified certain accused as being amongst these hundred persons. This court after appreciating the evidence of this witness has expressed the opinion that it would be highly risky to accept such identification after a period of eight years from the date of the incident without having first fixed the identity of the accused.

Insofar as the other four witnesses who have testified against this accused are concerned, they are all police witnesses whose presence at the scene of offence has not been disputed. Through the testimonies of these witnesses, the presence of this accused in the mob on the road from around 11:30 to 2:45 in the afternoon stands duly established. The evidence of these witnesses further establishes that this accused was leading the mob. The trial court, however, has not accepted the testimonies of these witnesses as they are police witnesses unless they are corroborated by the testimony of some other eyewitness.

In the opinion of this court, merely because the witnesses are police officers and the investigation by the police in this case was not up to the mark, the testimonies of such police witnesses who were present at the scene of offence and are

eye witnesses cannot be disbelieved. Besides, it is nobody's case that the police have acted in a partisan manner against the Hindu mob, nor is it the case of the defence that the police witnesses had any enmity or bore any animosity towards the accused. All the four witnesses have been consistent in the version given by them in their statements before the police as well as before the SIT and in their depositions and have identified the accused in the dock. Under the circumstances, from the testimonies of the four witnesses, the presence of this accused in the mob on the road in the afternoon stands duly established. Since the accused was present on the road after curfew was declared, it is evident that he was a member of the unlawful assembly and shared its common object. Therefore, even in the absence of any specific role other than being a leader being attributed to him, as a member of the unlawful assembly, he would be guilty of all the offences committed on the road with the aid of section 149 of the Penal Code. The acquittal of this accused is, therefore, required to be reversed and he is required to be convicted for the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 153, 153A and 153A (2) read with section 149 of the Penal Code and, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act.

580. **Accused No.31 Ankur alias Chintu Ashokbhai Parmar:** Only one witness has testified against this accused.

PW-212 Rukshanabanu Bundubhai Qureshi: This witness has deposed that this accused was in the mob which had assaulted her mother in the passage of the water tank. The testimony of

this witness, though found to be otherwise credible and trustworthy, has not been found to be credible as regards the accused named by her, inasmuch as, she had not named any accused in her statement before the police and had named them for the first time after a period of more than six years when her statement came to be recorded by the SIT.

581. FINDINGS: Thus, only one witness who has not been considered to be credible insofar as implication of this accused is concerned has testified against this accused. Under the circumstances, there is no evidence on record to establish the involvement of this accused in the offence in question. No case is, therefore, made out for reversal of the order of acquittal passed by the trial court. Resultantly, the order of acquittal passed by the trial court deserves to be sustained.

582. **Accused No.36 Janaksinh Dharamsinh Nehra alias Janak Marathi:** Only one witness is stated to have testified against this accused.

PW-146 Iqbalbhai Ismailbhai Mansuri has deposed that at about 5:30 in the evening they went to Gangotri Society. At that time, Janak Marathi was standing in front of Gangotri Society with a pipe in his hand. He recognised him and told him that they should go away from there. In his cross-examination, this witness has admitted that all the Muslims went from the direction shown to them by Janakbhai and on account of that the lives of about thirty to forty Muslims were saved.

583. FINDINGS: The prosecution seeks to establish the

charge against this accused through the testimony of PW-146. However, from the deposition of this witness, it is evident that he has not implicated this accused in any offence and on the contrary from the evidence of this witness, it has come out that this accused was responsible for saving the lives of about thirty to forty Muslims. Under the circumstances, the judgment and order of acquittal deserves to be sustained insofar as this accused is concerned.

584. **Accused No.43 Haresh Parshuram Rohera:** Only one witness, namely, the first informant, has named this accused.

PW-262 Vinubhai Khemabhai Delwadia: This witness is the first informant in this case, who has deposed that mobs were coming from Krushnanagar, Saijpur Fadeli, Kubernagar and Chharanagar and were gathering near the Noorani Masjid as well as Hussainnagar hutments. Sometime after 11:30, active workers of the Vishwa Hindu Parishad as well as the B.J.P., namely, Kishan Korani (A-20), P. J. Rajput (A-19), Haresh Rohera (A-43), Babu Bajrangi (A-18) as well as Raju Chaumal (A-24) were present in the mob, as leaders. They had taken the leadership of the mobs and were instigating the mobs and in a little while, shops and houses belonging to the Muslim community as well as the Noorani Masjid were targeted and damaged and were set on fire and looted.

This witness has named the accused in the first information report and has also named them in his deposition and has identified them before the court. In the cross-examination of this witness nothing has been brought out to suggest that the

witness had any enmity with the accused so as to falsely implicate him. Under the circumstances, there is no reason to disbelieve the witness insofar as the complicity of this accused is concerned.

585. FINDINGS: From the evidence on record, it emerges that only one witness, namely, PW-262 has testified against this accused. Under the circumstances, the two witnesses test is not satisfied in the case of the present accused. Consequently, the order of acquittal passed by the trial court deserves to be sustained.

586. **Accused No.48 Kishanbhai Shankarbhai Mahadik (Kishan Manek):** Only one witness has deposed against this accused.

PW-203 Sharibibi Iqbalbhai Shaikh: This witness has deposed that in the mob which had assaulted her son and set him ablaze, she had seen this accused together with the other named accused. The witness, however, has failed to identify this accused though he was present in the court. Under the circumstances, the testimony of this witness would be of no avail to the prosecution.

587. FINDINGS: In the light of the fact that only one witness has deposed against this accused and she too has failed to identify him before the court, no case is made out for reversal of the order of acquittal passed by the trial court, which consequently, deserves to be sustained.

588. **Accused No.49 Ranchhodbhai Manilal Parmar:**

Only one witness had deposed in connection with this accused.

PW-273 Pankaj Pradyuman Bhatt, on the basis of the muster roll maintained at the S.T. Workshop, has deposed that this accused, namely, R.M. Parmar, Artisan-B was present on duty on 28.2.2002 and that his full name was Ranchhodbhai M. Parmar. This witness has further deposed that on 27.2.2002 the opening balance of high speed diesel was 3487 litres and no diesel was received on that day and the total consumption on that day was 76 litres. He has further deposed regarding the quantities of furnace oil in terms of the register maintained by them. It appears that no discrepancies have been noticed in the quantities of diesel and furnace oil maintained by the S.T. Workshop. Thus, all that this witness has deposed is with regard to the presence of this accused at his workplace, namely, the S.T. Workshop at Naroda. There is nothing in his testimony which implicates this accused in the offence in question. Under the circumstances, his testimony is of no avail to the prosecution.

589. FINDINGS: The prosecution has placed reliance upon the testimony of this witness to implicate this accused. However, considering the testimony of this witness it is apparent that all that has been established is the presence of this accused at his workplace viz. the S.T. Workshop. This witness has not implicated this accused in the offence in question nor have any incriminating circumstances been proved against him. Under the circumstances, the testimony of this witness, who is the sole witness on whose testimony the prosecution has placed reliance insofar as this accused is concerned, does not in any manner support the prosecution

case. Under the circumstances, no case is made out for reversal of the order of acquittal passed by the trial court, which consequently, deserves to be sustained insofar as this accused is concerned.

590. **Accused No.51 Navin Chhaganbhai Bhogekar (Chhara):** Only one witness has testified against this accused.

PW-231 Haseebkhan Achchhankhan Pathan has deposed that he had seen this accused in the mob on the road in the morning and that he had a gas cylinder with him. The witness has further deposed that this accused was bringing gas cylinders, taking out the pins, wrapping a cloth around it and lighting the gas cylinders and putting them in the Noorani Masjid and houses of Muslims.

591. **FINDINGS:** This court after appreciating the evidence of this witness has not accepted his testimony in respect of the accused named by him. In view of the fact that the testimony of the sole witness who has testified against this accused has not been found to be acceptable by this court, no case is made out for reversal of the order of acquittal passed by the trial court, which, therefore, deserves to be sustained insofar as this accused is concerned.

592. **Accused No.54 Nilam Manohar Chaubal (Marathi):** This accused has been named by only one witness.

PW-156 Abdul Majid Mahammad Usman Shaikh: This witness has deposed that from the terrace of Gangotri Society, he had seen Guddu Chhara, Guddu Chhara's two brothers, Tiniyo and

others were present. All of them had swords, sticks and kerosene cans in their hands. They had attacked Ayub, Allabux's son. They had put him in a rickshaw near the compound wall of the S.R.P. Quarters and near Abeda's house in the last lane of Jawannagar, and had burnt him. He himself had seen that Guddu Chhara had a sword in his hand. One of Guddu Chhara's brothers had a can of kerosene and his other brother had a stick in his hand. Five to six other Marathi youths were also there. The witness has further deposed that he had been called to the Gheekanta Court, where he had identified Nilam Marathi (A-54) whom he had seen in the mob and had thereafter seen in the court also. The witness has also deposed that out of the accused that he had seen on the day of the incident, Guddu Chhara, Dalpat Chhara and Jaybhavani have died. Out of the other accused whom he had seen on the day of the incident, he can identify Mayaben, Guddu's two brothers, Tiniyo, Manu, Suresh Langdo and Jaybhavani's son and Nilam Marathi. The witness has thereafter identified Mayaben Kodnani (A-37), Guddu's brother (A-10), Suresh Langdo (A-22), Manu Harijan (A-28) and Neelam (A-54).

This court after appreciating the evidence of this witness has observed that insofar as accused No.54 is concerned, the witness has not named him in his examination-in-chief and has merely referred to the presence of some Marathi youths in the incident pertaining to the death of Ayub and has stated that he had identified this accused in the test identification parade and has identified him in the dock. Thus, in the absence of reference to this accused in the examination-in-chief, mere identification of the accused in the mob, without reference to the mob in which he had seen him, is too slender an evidence

to incriminate the accused in such a serious offence. Thus, this court has not accepted the testimony of this witness qua this accused.

593. FINDINGS: As noted hereinabove, only one witness has testified against this accused. The witness, however, has not named the accused in his examination-in-chief and has merely identified him in the dock by his name and has stated that he had seen him in the mob. Having regard to the fact that this court, after appreciating the evidence of the sole witness who has testified against this accused, has found his evidence to be too slender to incriminate the accused in such a serious offence, the testimony of this witness would be of no avail to the prosecution. Even otherwise, since only one witness has deposed against this accused, the two witnesses test is not satisfied. This accused is, therefore, entitled to be given the benefit of doubt and his acquittal deserves to be sustained.

594. **Accused No.56 Geetaben daughter of Ratilal @ Jaybhavani Rathod:** In all, three witnesses have deposed against this accused.

1. PW-177 Ishratjahan Parvezhussain Saiyed: This witness has deposed that at around 2:00 to 2:30 in the afternoon, the mob had committed vandalism, arson and looting, and had entered their chawl. Sahejad Chhara (A-26), Ganpat Chhara (A-4) and two Chhara women were in front of the mob. The Chhara women were looting. The witness has, accordingly, identified the other three accused by their names, but has not identified this accused by her name. From the cross-examination of PW-

327, the Investigating Officer (SIT), it has been proved that the witness had stated before him that she does not know the names of the two women who were with the two named accused and that she cannot even identify them if she sees them. Insofar as this accused is concerned, even before the Investigating Officer (SIT) the witness had not named her and had in fact stated that she would not be in a position to identify them even if she saw them. This court, after appreciating the evidence of this witness has not accepted her testimony qua the accused named by her.

2. PW-219 Noorbanu Zakirhussain Saiyed: This witness has deposed that while she was hiding under a paan-cabin she had seen Jaybhavani and his daughter driving everyone out of their house and telling them that if the mob comes, there will be difficulty. They had driven everyone out, but thereafter they called the mob behind their house and Jaybhavani and his daughter gave kerosene soaked quilts to the mob. They used kerosene sprinkled quilts and set Jadikhala, Noori and Jadikhala's grandson on fire. In the act of burning them in this manner, Jaybhavani and his younger daughter had also participated. The witness has further deposed that the SIT had called her to the Gheekanta Court for identification of Jaybhavani's daughter and that she had gone to the Gheekanta Court and identified her. The witness has stated that even today, she can identify Jaybhavani's younger daughter, and has correctly identified Jaybhavani's younger daughter. In the cross-examination of the witness an omission has been brought on record that in her statement dated 17.5.2002 she has not stated any fact regarding her having seen the incident of Jadikhala, Noori and Jadikhala's grandson

or named the accused or the role played by them. This omission which is a material omission amounting to a contradiction has been proved through the testimony of the concerned assignee officer who had recorded her statement dated 17.5.2002, and has admitted that this witness had not stated any facts regarding the incident of Jadikhala, Noori and Jadikhala's grandchildren and had also not given the names of any accused or attributed any role to them. In her cross-examination, the witness has admitted that in her first statement dated 3.6.2008 recorded by the SIT; she had not given Geeta's name because till then, she did not know her name.

Considering the overall testimony of this witness, this court has found that this witness does not come across as a truthful witness and her testimony is full of improvements, exaggerations and embellishments. Her testimony is also contrary to the testimony of majority of the witnesses, who had stated that the incident of Jadikhala took place near the passage of water tank. Having regard to the testimony of this witness and considering the manner in which she claims to have seen the accused, this court had found that this witness does not appear to be a credible and truthful witness and her evidence cannot be taken into consideration for the purpose of establishing the charge against the accused named by her.

3. PW-137 Rafikanbanu Rahemanbhai Saiyed: This witness has deposed that her three daughters, Rukshana, Zarina and Afsana were with her. Bhavani's daughters – Ramila (Accused No.61) and Geeta (Accused No.56) had set her daughter Afsana on fire. Her daughter Afsana was saved, whereas her

son Samsad and daughters Ruksana and Zarina, all the three, have died in this incident. Her all three children had breathed their last in her presence. Ramila and Geeta had thrown petrol and diesel soaked quilts on her daughter Afsana's waist and set her ablaze. Insofar as identification of this accused is concerned, the witness had stated that she can identify her, but this accused had filed an exemption application and hence, is deemed to have been identified.

However, in the cross-examination of this witness a material omission amounting to a contradiction has been brought on record to the effect that she had not stated the facts regarding her three daughters Rukshana, Zarina and Afsana being with her and Bhavanisingh's daughters Ramila and Geeta having burnt her daughter Afsana, in her statement recorded by the SIT. Such omission has been proved through the testimony of PW 327 the Investigating Officer (SIT), who has admitted that the witness had not given the names of Ramila and Geeta and had also not attributed any role to them in the statement recorded by him. Thus this witness has named accused Ramila and Geeta for the first time before the court. This court after appreciating the evidence of this witness has found that apart from the fact that the version given by the witness has come up for the first time at a highly belated stage, even such version is full of contradictions and material omissions and the credibility of the witness has been fully dented during the course of cross-examination by the defence. Considering the overall testimony of this witness, this court has found that she does not come across as a credible and truthful witness and it would be very hazardous to base a conviction on such evidence. The evidence of this witness, therefore, would not

help the prosecution in establishing the charge against the accused named by her.

595. FINDINGS: Thus, none of the three witnesses who have testified against this accused have been found to be reliable and credible insofar as this accused is concerned. Under the circumstances, the two witnesses test is not satisfied in the case of this accused. Consequently, the order of acquittal is required to be sustained.

596. **Accused No.57 Pankaj Mohanlal Shah:** This accused has been implicated by, in all, three witnesses.

1. PW-107 Mohammadbhai Kalubhai Khalifa has deposed that he had seen this accused in the mob that had gathered on the road at around 10:00 to 10:30 and was pelting stones. He has further stated that this accused was giving diesel and kerosene to the people in the mob and was shouting "kill" "cut". The witness, however, has failed to identify this accused in the dock. Under the circumstances, his testimony is of no avail to the prosecution.

2. PW-108 Iqbalhussain Samirmiya Qureshi has deposed that as the mob was advancing, the witness and others were going to Jawannagar. At that time, there was stone pelting from the S.T. Workshop and he had heard the people in the mob addressing P.M. Shah and asking him to throw stones and rags on that side. The witness, however, has not identified this accused in the dock. Moreover, from his testimony it appears that he had heard people in the mob addressing one P.M. Shah

but he has not witnessed this accused committing any offence.

3. PW-273 Pankaj Pradyumanbhai Bhatt has deposed that this accused was a Time Keeper in their Accounts Division in February, 2002. He has further deposed on the basis of the entries in the register that this accused was present on duty at the Naroda S.T. Workshop on 28.2.2002. He has also deposed that on 27.2.2002 the opening balance of high speed diesel was 3487 litres and no diesel was received on that day and the total consumption on that day was 76 litres. He has further deposed regarding the quantities of furnace oil in terms of the register maintained by them. It appears that no discrepancies have been noticed in the quantities of diesel and furnace oil maintained by the S.T. Workshop. Thus, all that this witness has deposed is with regard to the presence of this accused at his workplace, namely, the S.T. Workshop at Naroda. There is nothing in his testimony which implicates this accused in the offence in question. Under the circumstances, his testimony is of no avail to the prosecution.

597. FINDINGS: Thus, the testimonies of none of the three witnesses who have testified against this accused are found to be acceptable insofar as this accused is concerned. Under the circumstances, no case is made out for reversal of the order of acquittal passed by the trial court, which, consequently, deserves to be sustained insofar as this accused is concerned.

598. **Accused 59 Subhashchandra alias Darji son of Jagannath Darji:** Insofar as this accused is concerned, the prosecution has placed reliance upon a sole witness.

PW-273 Pankaj Pradyuman Bhatt: This witness has deposed that this accused, namely, S.J. Darji was working on the post of Artisan-B. From the muster roll maintained at the S.T. Workshop, the witness has stated that this accused was present on duty on 28.2.2002 and that his correct name was Subhash Darji. The witness has stated that the original register is maintained by their office in the routine course. This witness has further deposed that on 27.2.2002 the opening balance of high speed diesel was 3487 litres and no diesel was received on that day and the total consumption on that day was 76 litres. He has further deposed regarding the quantities of furnace oil in terms of the register maintained by them. It appears that no discrepancies have been noticed in the quantities of diesel and furnace oil maintained by the S.T. Workshop. Thus, all that this witness has deposed is with regard to the presence of this accused at his workplace, namely, the S.T. Workshop at Naroda. There is nothing in his testimony which implicates this accused in the offence in question. Under the circumstances, his testimony is of no avail to the prosecution.

599. FINDINGS: The prosecution has placed reliance upon the testimony of this witness to implicate this accused. However, considering the testimony of this witness it is apparent that all that has been established is the presence of this accused at his workplace viz. the S.T. Workshop. This witness has not implicated this accused in the offence in question nor have any incriminating circumstances been proved against him. Under the circumstances, the testimony of the sole witness on whose testimony the prosecution has

placed reliance insofar as this accused is concerned, does not in any manner support the prosecution case. No case is, therefore, made out for reversal of the order of acquittal passed by the trial court, which consequently, deserves to be sustained insofar as this accused is concerned.

600. **Accused No. 61 Ramilaben, daughter of Ratilal alias Jaybhavani Somabhai Rathod, known as elder daughter of Jaybhavani:** In all, four witnesses have testified against this accused.

1. PW 142 Zannatbibi Kallubhai Shaikh: This witness has deposed that while she was in a passage between the Gopinathnagar and Gangotri Society, she saw that clothes of girls were being torn and they were being set ablaze. At this time, two mobs came from the side of Parshwanathnagar as well as from the opposite side. Bhavanisingh, Guddu Chhara, Suresh Chhara, Bhavanisingh's son and Bhavanisingh's elder daughter were there in this mob. The elder daughter of Bhavanisingh was giving petrol and kerosene filled in white cans to the persons in the mob. Bhavanisingh, Guddu Chhara, Suresh, Bhavanisingh's son who is an advocate and his elder daughter were in the mob which came from the opposite side. The witness has also stated that Bhavanisingh's daughter brought some kerosene for him and Kausarbanu and her child were burnt on the spot.

In her cross-examination an omission has been brought out that she had not referred to Bhavanisingh's daughter in either of her statements recorded by the police as well as in her statement recorded by the SIT. Such omission, which

amounts to a contradiction, has been proved through the testimonies of the concerned assignee officer as well as Investigating Officer who had recorded the respective statements and had admitted that this witness has not named Bhavani's elder daughter in the statements recorded by them nor had she attributed any role to her.

This court after appreciating the evidence of this witness has observed that insofar accused No.61 Ramila daughter of Jaybhavani is concerned, this witness had not named her in either of her statements recorded by the police at the relevant time in the year 2002, which has duly been proved through the testimonies of the concerned assignee officer and Investigating Officer who had recorded such statements. Even before the SIT, she had not named this accused and had merely referred to the presence of two girls. Thus, for the first time before the court she has identified her. In these circumstances, the testimony of this witness cannot be accepted qua this accused.

2. PW 177 Ishratjahan Parvezhussain Shaikh: This witness has deposed that at around 2:00 to 2:30 in the afternoon, the mob had committed vandalism, arson and looting, and had entered their chawl. Sahejad Chhara (A-26), Ganpat Chhara (A-4) and two Chhara women were in front of the mob. The Chhara women were looting. The witness has, accordingly, identified the other three accused by their names, but has not identified this accused by her name. From the cross-examination of PW-327, the Investigating Officer (SIT), it has been proved that the witness had stated before him that she does not know the names of the two women who were with the

two named accused and that she cannot even identify them if she sees them. Thus, insofar as this accused is concerned, even before the Investigating Officer (SIT), this witness had not named her and had in fact stated that she would not be in a position to identify them even if she saw them. This court, after appreciating the evidence of this witness has not accepted her testimony qua the accused named by her.

3. PW 212 Rukshana Bundubhai Qureshi: This witness has deposed that while she was running to escape from the mob, near the passage of the water tank, she suddenly saw that Suresh Langda had inflicted a blow with a gupti (dagger) in her mother's stomach. Naresh, Haresh, Suresh Langdo, Guddu Chhara and others were present in the mob which was assaulting her mother and Jaybhavani's daughter was giving water to the people in the mob. This witness has correctly identified this accused as Jaybhavani's daughter (A-61) in the dock. In her cross-examination, the witness has been confronted with her statement recorded by the police on 11.5.2002, to the effect that she had not named this accused at the relevant time. This omission has been proved through the testimony of the concerned assignee officer who has admitted that the witness in the statement recorded by him, has not Bhavani's daughter nor attributed any role to her.

This court after appreciating the evidence on this witness has found that from the cross-examination of the witness and the testimony of PW-278, the assignee officer who had recorded her statement dated 11.5.2002, it has been established that the witness had not named any accused in the

statement recorded by him. Therefore, for the first time, the names of the accused have been disclosed by this witness in her statement recorded by the SIT in the year 2008. The court has found that the submission of the witness that though at the relevant time she had named the accused, the concerned police officer had not recorded such names, does not merit acceptance, for the reason that the accused named by this witness have also been named by the other witnesses, and the concerned Investigating Officer/assignee officer has recorded their names; therefore, there would be no reason for the Investigating Officer/assignee to not record the names of such accused in her statement. Therefore, it would be very hazardous to rely upon the testimony of this witness to the extent she has named the accused who have allegedly committed the offence when such names have come on record more than six years after the incident. The testimony of this witness would, therefore, be of no avail to the prosecution to prove the charge against this accused.

4. PW-137 Rafikanbanu Rahemanbhai Saiyed: This witness has deposed that her three daughters, Rukshana, Zarina and Afsana were with her. Bhavani's daughters – Ramila (Accused No.61) and Geeta (Accused No.56) had set her daughter Afsana on fire. Her daughter Afsana was saved, whereas her son Samsad and daughters Ruksana and Zarina, all the three, have died in this incident. Her all three children had breathed their last in her presence. Ramila and Geeta had thrown petrol and diesel soaked quilts on her daughter Afsana's waist and set her ablaze. The witness has identified this accused in the dock.

However, in the cross-examination of this witness a material omission amounting to a contradiction has been brought on record to the effect that she had not stated the facts regarding her three daughters Rukshana, Zarina and Afsana being with her and Bhavanisingh's daughters Ramila and Geeta having burnt her daughter Afsana, in her statement recorded by the SIT. Such omission has been proved through the testimony of PW 327 the Investigating Officer (SIT), who has admitted that the witness had not given the names of Ramila and Geeta and had also not attributed any role to them in the statement recorded by him. Thus this witness has named accused Ramila and Geeta for the first time before the court. This court, after appreciating the evidence of this witness, has found that apart from the fact that the version given by the witness has come up for the first time at a highly belated stage, even such version is full of contradictions and material omissions and the credibility of the witness has been fully dented during the course of cross-examination by the defence. Considering the overall testimony of this witness, this court has found that she does not come across as a credible and truthful witness and it would be very hazardous to base a conviction on such evidence. The evidence of this witness, therefore, would not help the prosecution in establishing the charge against the accused named by her.

601. FINDINGS: Thus, none of the four witnesses who have testified against this accused have been found to be reliable and creditworthy insofar as this accused is concerned. In these circumstances, no infirmity can be found in the order of acquittal passed by the trial court in case of this accused.

The order of acquittal, therefore, deserves to be sustained.

FINAL ORDER

Criminal Appeal No.1812 of 2012 and 1050 of 2013

602. The appeals against the acquittal of respondent No.1 Umeshbhai Surabhai Bharwad (accused No.3 in Session Case No.235/2009), respondent No.7 Padmendrasinh Jashwantsinh Rajput (accused No.19 in Sessions Case No.236/2009) and respondent No.9 Rajkumar alias Raju son of Gopiram Chaumal (accused No.24 in Sessions Case No.236/2009) are hereby allowed. The impugned common judgment and order of acquittal dated 31st August, 2012/ 5th October, 2012 passed by the learned Special Judge, Court for conducting Speedy Trial of Riot Cases, situated at SIT Courts, Ahmedabad in favour of respondent No.1 Umeshbhai Surabhai Bharwad (accused No.3 in Session Case No.235/2009), respondent No.7 Padmendrasinh Jashwantsinh Rajput (accused No.19 in Sessions Case No.236/2009) and respondent No.9 Rajkumar alias Raju son of Gopiram Chaumal (accused No.24 in Sessions Case No.236/2009) is hereby set aside and they are convicted of the offences punishable under sections 143, 144, 147, 148 read with section 149 of the Penal Code and sections 295, 427, 435, 436, 153, 153A and 153A (2) read with section 149 of the Penal Code and, as well as under section 188 of the Penal Code and section 135 (1) of the Bombay Police Act. The order of sentence is required to be passed after giving the accused an opportunity of hearing and hence, these appeals are directed to be posted for hearing on

the question of sentence on 9th May, 2018.

603. The appeals are dismissed insofar as the other respondents are concerned. The judgment and order of acquittal in favour of accused No.6 in Sessions Case No.235/2009 Rajesh @ Panglo son of Kantilal Parmar (Chhara), accused No.7 in Session Case No.235/2009 Champak Himmatlal Rathod (Chhara), accused No.9 in Sessions Case No.235 of 2009, Amrat alias Kalu Babubhai Rathod (Chhara) accused No.11 in Sessions Case No.235 of 2009 Kaptansing Javansing Parmar (Chhara), accused No.17 in Sessions Case No.235 of 2009 Nandlal alias Jeki son of Vishnubhai Chhara, accused No.23 in Sessions Case No.236 of 2009 Ashok Silvant Parmar (Chhara), accused No.31 in Sessions Case No.241 of 2009 Ankur alias Chintu son of Ashokbhai Parmar, accused No.36 in Sessions Case No.243 of 2009 Janaksinh dharamsinh Nehra alias Janak Marathi, accused No.43 in Sessions Case No.245 of 2009 Hareesh Parshuram Rohera, accused No.48 in Sessions Case No.246 of 2009 Kishanbhai Shankarbhai Mahadik, accused No. 49 in Sessions Case No.246 of 2009 Ranchhodbhai Manilal Parmar, accused No.51 in Sessions Case No.246 of 2009 Navin Chhaganbhai Bhogekar (Chhara), accused No.54 in Sessions Case No.246 of 2009 Nilam Manohar Chaumal (Marathi), accused No. 56 in Sessions Case No.246 of 2009 Geetaben daughter of Ratilal alias Jaybhavani Rathod, accused No.57 in Sessions Case No.246 of 2009 Pankajkumar Mohanlal Shah, accused No.59 in Sessions Case No.246 of 2009 Subhashchandra alias Darji, son of Jagannath Darji, known as Maharashtraian Darji and accused No.61 in Session Case No.270/2009 Ramilaben daughter of Ratilal @ Jaybhavani Somabhai Rathod, is hereby confirmed.

PRAYER FOR COMPENSATION UNDER SECTION 357 OF THE CODE:

604 Mr. Y.N. Ravani, learned counsel for the appellants, submitted that these appeals have also been preferred for compensation under section 357 of the Code, and that irrespective of the compensation which might have been given by the Government; compensation should have been recovered from the accused and given to the victims in exercise of the powers under section 357 of the Code. It was submitted that compensation/reparation should be paid to all those and survivors of brute gender violence like rape, gang rape and other such sexual offences in recognition of and reparation of the fact that these are special offences that require special steps and protection. It was submitted that both the Supreme Court and the National Commission of Women and international law now recognises the deep need for acknowledgment and reparation for gender violence.

605. FINDINGS: As regards the prayer to grant reliefs to victims and survivors of gender violence in accordance with evolving and newly set national and international norms, no such norms have been pointed out to the court during the course of hearing.

606. The prayer for compensation has been made under section 357 of the Code. It may therefore, be germane to refer to the provisions of that section which read thus:

“357. Order to pay compensation.—(1) *When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—*

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court

shall take into account any sum paid or recovered as compensation under this section.

607. Thus, sub-section (1) of section 357 of the Code provides for application of the fine recovered under an order of sentence of fine in the manner provided therein. In the opinion of this court, the present case will not fall under any of the contingencies mentioned therein, in which case the fine can be applied. The relief claimed in the present case would, therefore, fall within the ambit of sub-section (3) of section 357 of the Code which provides for making an order for payment of compensation to the person who has suffered any loss or injury by reason of the act for which the accused person has so been sentenced. However, sub-section (3) of section 357 of the Code can be invoked where fine does not form part of the sentence. In the present case, there is a sentence of fine in respect of each offence in case of each accused who has been convicted. The provisions of sub-section (3) of section 357 of the Code, therefore, would not be applicable. The most significant aspect of the matter is that such relief for payment of compensation has been claimed in the acquittal appeals viz. against the accused who have been acquitted and not in the appeals filed against those accused who have been convicted. Since an order of compensation can be made against the accused person who has been sentenced, the question of making any order for payment of compensation in case of accused who are acquitted would not arise. Out of the accused against whom acquittal appeals had been preferred, the appeals have been allowed only qua three accused, who have been held guilty of commission of the offences committed on the road, which are offences other than offences against the

human body. The appellants have prayed for compensation for the survivors of brute gender violence like rape, gang rape and other such sexual offences, therefore, the question of ordering any of these three accused to pay compensation to victims of gender violence would not arise. Under the circumstances, no order for payment of compensation as prayed for by the appellants can be passed in this appeal.

PRAYER FOR RESORTING TO THE REMEDY AVAILABLE UNDER SECTION 391 OF THE CODE:

608. The appellants have also prayed that this court should resort to the remedy available under section 391 of the Code and record additional evidence of the prosecution witnesses considering the applications at Annexure "F", in the interest of justice.

609. Mr. Y.N. Ravani learned counsel for the appellants submitted that in view of the provision of section 391 of the Code, the appellate court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a Magistrate, or when the appellate court is a High Court, by a Court of Sessions or a Magistrate. It was submitted that in the facts of the present case, for the reasons set out in the application Exhibit-2558 (Annexure "F" to the memorandum of appeal), additional evidence of prosecution witnesses is required to be recorded.

610. FINDINGS: Insofar as the relief for taking additional evidence is concerned, it may be noted that this appeal has been heard right from December, 2016 and it is only in August,

2017, at the when the hearing of the appeals was on the verge of being completed that the learned counsel for the appellants has raised this plea before the court. Apart from the fact that no specific case has been made out for taking additional evidence, in the opinion of this court, considering such request at this stage would unnecessarily not only delay the process, but might result in setting at naught all the hearing that has taken place so far. Moreover, no such relief has been claimed in the conviction appeals. Therefore, it would not be in the interest of justice to consider such plea at this stage of hearing. If the appellants were serious about this prayer, the learned counsel should have taken steps to ensure that such plea was heard soon after the appeals came to be filed instead of waiting till the hearing of the conviction appeals was concluded. A perusal of application Exhibit-2558 (Annexure "F" to the memorandum of appeal) reveals that the same is in the nature of an application under section 319 of the Code for arraigning various persons as accused and is not an application under section 391 of the Code.

611. The prayer for resorting to the remedy available under section 391 of the Code, is, therefore, rejected.

FURTHER INVESTIGATION UNDER SECTION 173(8) (2) OF THE CODE:

612. The appellants have also prayed to pass orders under section 173(8)(2) of the Code, ordering further investigation by an independent agency into authentication, ownership and location of the Mobile Phone Records, CD, as the investigation by the SIT has been found to be seriously

wanting and lacking in thoroughness by the learned Sessions Judge.

613. Mr. Y.N. Ravani, learned counsel for the appellants submitted that the trial court in page 792 to 799 of the impugned judgment has referred to the mobile call details and has given detailed findings as to how the Special Investigation Team failed to clinch or authenticate simple aspects of the investigation related to ownership and location of mobile phone records despite being applied for. It was submitted that the trial court has erred in not using the powers given to the court under section 311 of the Code and order a complete investigation to ensure integrity and protection of evidence. It was submitted that this court may therefore, rectify the lacunae and order further investigation by an independent agency to ensure that complete justice is done in this case. It was submitted that the failure of the Special Investigation Team to thoroughly and rigourously investigate and authenticate ownership and location of mobile phone owners through service providers and proper statements has in fact rendered this aspect of the SIT investigation weak and puerile.

613.1 In support of his submissions, the learned counsel placed reliance upon the decision of the Supreme Court in the case of **Popular Muthiah v. State represented by Inspector of Police**, (2006) 7 SCC 296, wherein it has been held thus:

“27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional

jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being “a case before the court” in contradistinction from “a person who is arrayed as an accused before it” when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

28. *In certain situations, the court exercises a wider jurisdiction e.g. it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved.*

29. *The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.*

30. *In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:*

(i) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex

debito justitiae. It can, thus, do real and substantial justice for which alone it exists."

614. FINDINGS: The learned counsel for the appellants has urged that further investigation be directed to be carried out in connection with the deficiencies in the investigation conducted by the SIT as noted by the trial court. From the averments made in the memorandum of appeal it appears that previously an application Exhibit 2233 came to be filed on behalf of the victim witnesses seeking further investigation by an independent agency into authentication, ownership and location of the Mobile Phone Records CD, as the investigation by the SIT has been found to be seriously wanting and lacking in thoroughness. The application was ultimately not pressed as it was conveyed by the investigating agency SIT, that it had already made further investigation on the call details supplied to it, but however, it would not hesitate to look into the clues provided by the victims, the SIT would also look into the matter afresh is so required. It is further averred that the appellant witnesses had already given sufficient material to the SIT and therefore, it was the duty of the investigating agency to investigate independently. Upon this assurance for further investigation was not pressed and was ultimately rejected vide order dated 7.12.2011.

615. Thus, at the relevant time, during the pendency of the trial, an application for further investigation was made, which according to the appellants was not pressed in view of certain assurance given by the SIT. Now, such relief is claimed in this appeal. In this regard it may be pertinent to note that this is an appeal under section 372 of the Code, though it is

stated to be an appeal under section 372 read with section 391 read with section 482 of the Code. The proviso to section 372 of the Code confers a right upon the victim to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal lies against an order of conviction of such court. Therefore, what can be subject matter of challenge in this appeal is (i) an order of acquittal; (ii) an order of conviction for a lesser offence; or (iii) an order imposing inadequate compensation. Therefore, in an appeal under section 372 of the Code, the victim cannot seek further investigation or recording of additional evidence under section 391 of the Code. In respect of such reliefs, separate applications have to be filed under the relevant provisions of the Code.

616. Moreover, it may be noted that this appeal has been preferred in the year 2012. It appears that at the relevant time no request had been made to the court to direct further investigation in the matter. Even when the appeals were taken up for hearing by this Bench, no request was made to order further investigation. In this case, the record is very bulky, running into a hundred volumes, out of which about 30 volumes of the evidence have been read and re-read by the learned counsel for the respective parties during the course of hearing of the appeal. The court has been regularly taking up these appeals in the second session from 19th December, 2016 and for almost the entire day since the reopening after the summer break. Throughout this time, the learned counsel for the appellant did not deem it fit to request that the prayer for further investigation be considered, and now at this stage,

when the learned counsel for the accused and the learned Special Public Prosecutor have concluded their arguments and the learned advocate for the victims are being heard in the acquittal appeals and the hearing of the appeals is on the verge of being completed, the request for further investigation is put forth. Therefore, passing any orders, as prayed for, would amount to delaying the conclusion of all the appeals. If at all the appellants were serious regarding such relief, they ought to have filed separate applications under the appropriate provisions of law at the time when the appeals came to be filed so that if the court deemed it fit to direct further investigation, the same would have been completed by the time the appeals came up for hearing. Under the circumstances, apart from the fact that such relief cannot be prayed for in an appeal under section 372 of the Code, the parties by their conduct are disentitled to the grant of such relief inasmuch as at this stage of hearing of the matter, the appellants cannot be heard to say that the court may defer the judgment and direct further investigation in the case. For this reason also the prayer for further investigation does not merit consideration.

XXXVII ENHANCEMENT APPEALS

617. The State of Gujarat has preferred three appeals seeking enhancement of the sentence awarded to the accused.

618. Criminal Appeal No.1598 of 2013 has been filed by the State seeking enhancement of the sentenced awarded to Murlibhai Naranbhai Sindhi alias Murli (accused No.2 in Sessions Case No.235 of 2009), Manojbhai @ Manoj Sindhi (accused No.41 in Sessions Case No.245 of 2009), Bipinbhai @

Bipin Autowala S/o. Umedrai Panchal (accused No.44 in Session Case No.245 of 2009) and Dinesh @ Tinio S/o. Govindbhai Barge (Marathi) (accused No.55 in Sessions Case No.246 of 2009).

619. Criminal Appeal No.1599 of 2013 has been filed seeking enhancement of the sentence awarded to Babubhai alias Babu Bajrangi, son of Rajabhai Patel (accused No.18 in Sessions Case No.236 of 2009), Suresh alias Richard alias Suresh Langdo (accused No.22 in Sessions Case No.236 of 2009), Premchand alias Tiwari Conductor (accused No.25 in Sessions Case No.236 of 2009), Suresh alias Sehjad Dalubhai Netliker (Marathi Chharo) (accused No.26 in Sessions Case No.236 of 2009), Manubhai Keshabhai (Maruda) (accused No.28 in Sessions Case No.236 of 2009) and Shashikant alias Tinio Marathi son of Yuvraj Patil (accused No.30 in Sessions Case No.236 of 2009).

620. Criminal Appeal No.1600 of 2013 has been filed by the State of Gujarat seeking enhancement of the sentence awarded to respondent No.1 - Naresh Agarsinh Chhara (Accused No.1 in Sessions Case No.235 of 2009), respondent No.2 - Haresh alias Hario son of Jivanlal alias Agarsing Rathod (Chhara) (Accused No.10 in Sessions Case No.235 of 2009), respondent No.3 - Mukesh (Vakil) Ratilal alias Jaybhavani Rathod (Accused No.40 in Sessions Case No.245 of 2009), respondent No.4 - Sachin Nagindas Modi (Accused No.52 in Sessions Case No.246 of 2009), respondent No.5 - Vilas alias Vilio Prakashbhai Sonar (Accused No.53 in Sessions Case No.246 of 2009) and respondent No.6 - Pintu Dalpatbhai Jadeja (Chhara) (Accused No.60 in Sessions Case No.270 of 2009).

621. Mr. Prashant Desai, learned Special Public Prosecutor, submitted that the respondents No.1, 2 and 3 in Criminal Case No.1598 of 2013 namely the accused No.2, 41 and 44 respectively, have been convicted and sentenced to undergo a total imprisonment of thirty one years with the condition that remission, if any, would be admissible only after the said respondents have served out a sentence of twenty one years. Insofar as respondent No.4 viz. accused No.55 is concerned he has been sentenced to undergo total imprisonment of twenty four years with a condition that remission can be allowed only after he has served out fourteen years of the sentence. It was submitted that the State is seeking enhancement of the sentences of the respondents to rigorous imprisonment for twenty five years without remission.

621.1 Insofar as Criminal Appeal No.1599 of 2013 is concerned, the respondent No.1 therein viz. accused No.18 has been sentenced to suffer rigorous imprisonment for the remaining period of his life subject to remission or commutation at the instance of the Government for sufficient reason only together with fine. The respondents No.2 and 3 viz. accused No.22 and 25 have been sentenced to suffer rigorous imprisonment to serve a minimum sentence of twenty one years in jail without remissions before consideration of their case for premature release as well as fine. Accused No. 22 has also been convicted of the offence under section 354 and 376 of the Penal Code and sentenced to suffer rigorous imprisonment for two years and ten years respectively as well as fine. Respondent No.4 viz. accused No.26 has been convicted to serve a minimum sentence of 21 years in jail

without remissions, before consideration of his case for premature release as well as fine. Respondents No. 5 and 6 viz. accused No.28 and 30 respectively, have been sentence to life imprisonment in usual terms with fine. It was submitted that the State is seeking enhancement of the sentence in case of all these accused to rigorous imprisonment to full term of life, that is, till the remainder of natural life, without remission for their respective convictions.

621.2 Insofar Criminal Appeal No.1600 of 2013 is concerned, the respondents No.1 and 2 have been convicted of the offence punishable under section 302 read with section 149 of the Penal Code and are sentenced to suffer rigorous imprisonment to serve a minimum sentence of twenty one years in jail without remissions before consideration of their case for premature release and to pay fine of Rs.5,000/- (Rupees five thousand only), in default, to suffer further rigorous imprisonment for forty days, whereas for the same offence respondents No.3, 4, 5 and 6, have been sentenced to life imprisonment (to be meant in usual terms) and to pay a fine of Rs.3,000/- (Rupees three thousand only), in default, to suffer further rigorous imprisonment for twenty days. It was submitted that the State is seeking enhancement of the sentence in the case of all these accused to rigorous imprisonment without remission in connection with the conviction for the offence punishable under section 302 read with section 149 of the Penal Code.

621.3 It was submitted that accused No.1, 2, 10, 22, 25, 41 and 44 are among the accused who have been implicated in the crime committed for the entire day by

different reliable witnesses and these seven accused were also leading conspirators of the entire conspiracy and some were close aides of accused No.37. The gruesome and barbaric acts of the accused and more particularly the above mentioned seven accused have crossed all limits of inhumanity. The dastardly acts committed by these accused by killing as many as ninety six victims by burning them alive at the site of the Muslims chawls are horrifying and terrifying.

621.4 It was submitted that the prosecution has established that the entire incident which resulted in the murder of ninety six persons was an act of cold blooded and brutal murder where no provocation was offered by the helpless and innocent victims, and hence, this case falls in the category of "rarest of rare" cases without there being any mitigating circumstances. It was submitted that therefore, all the three appeals deserve to be allowed by enhancing the sentence as prayed for.

622. FINDINGS: At the outset it may be noted that insofar as accused No.55 Dinesh @ Tinio S/o Govind Barge (Marathi), accused No.28 Manubhai Keshabhai (Maruda), accused No.30 Shashikant @ Tinio Marathi S/o. Yuvraj Patil, accused No.40 Mukesh (Vakil) Ratilal alias Jaybhavani Rathod, accused No.52 Sachin Nagindas Modi, accused No.53 Vilas alias Vilio Prakashbhai Sonar and accused No.60 Pintu Dalpatbhai Jadeja (Chhara) are concerned, they have been acquitted by this court by giving them the benefit of doubt. Hence the question of enhancement of sentence does not arise in their case.

623. Insofar as the remaining accused are concerned, it

may be noted that while on the one hand it has been submitted by the prosecution that this case falls in the category of rarest of rare cases, it does not seek death penalty in case of any of the accused. Insofar as accused No.2, 41 and 44 are concerned the prosecution seeks enhancement of sentence from twenty one years to twenty five years without remission and in case of accused No.18, 22, 25 and 26, it seeks imprisonment for a full term of life without any remission. Insofar as accused No.1 and 10 are concerned, it seeks enhancement of the sentence to rigorous imprisonment for minimum actual imprisonment for thirty years without remission. Accused No.18 has already been sentenced to suffer rigorous imprisonment for the remaining period of his natural life subject to remission or commutation at the instance of the Government for sufficient reason only. Accused No.22, 25, 26, 1 and 10 have been sentenced to suffer rigorous imprisonment to serve a minimum sentence of twenty one years in jail without remissions before considering their case for premature release. In case of accused No.22 he has also been sentenced to suffer rigorous imprisonment for two years and ten years respectively for the offences punishable under section 354 and 376 of the Penal Code.

624. On behalf of the prosecution reliance has been placed upon the decision of the Supreme Court in **Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka**, (2008) 13 SCC 767, wherein it has been held thus:

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant

comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all."

625. In the present case, the trial court appears to have kept in mind the principles enunciated in the above decision and has, accordingly, sentenced the accused to imprisonment for more than fourteen years. Besides, if one considers the reliefs prayed for by the appellant, in case of accused No.2, 41 and 44, it seeks enhancement of the sentence from rigorous imprisonment for twenty one years without remissions to rigorous imprisonment for twenty five years without remissions. No rationale has been explained for seeking four years more of imprisonment. Once the trial court has exercised its discretion and has sentenced the accused to rigorous imprisonment for twenty one years without remissions, some specific case has to be put forth as to why such imprisonment is inadequate and more so, the logic behind seeking four more

years of imprisonment.

626. In case of accused No.22, 25 and 26, who have also been sentenced to suffer rigorous imprisonment for twenty one years without remission, the appellant seeks enhancement of the sentence to rigorous imprisonment for full term of life, that is, for the remaining period of the natural life of those accused without any remission. Whereas in case of accused No.1 and 10 who also have been sentenced to suffer rigorous imprisonment for twenty one years without remission, the appellant seeks enhancement of such sentence to thirty years without remission. However, nothing has been pointed out as to why in case of these accused the sentence is required to be enhanced more than in the case of accused No.2, 41 and 44 who too have been sentenced to rigorous imprisonment for twenty one years without remission. In case of accused No.18, he has already been sentence to rigorous imprisonment for the remaining period of his natural life subject to remission or commutation at the instance of the Government for sufficient reason only. Now the appellant seeks enhancement of the sentence to rigorous imprisonment for the remaining period of his natural life without any remission, which is quite incomprehensible for the reason that whether or not to grant remission is within the domain of the appropriate Government, namely the appellant herein. Under the circumstances, it is always open for the appellant not to grant remission to the said accused. Moreover, in the appeal filed by accused No.18 against his conviction and sentence, this court has reduced the sentence to rigorous life imprisonment for twenty one years without remission and fine of rupees five thousand, and in default of payment of fine to undergo further imprisonment for

forty days.

627. Another aspect of the matter which requires to be mentioned here is that during the pendency of the appeals, several applications for temporary bail on various grounds came to be made by these accused. However, at no point of time have such applications been opposed by the State on the ground that the offences committed are so heinous that the accused are not entitled to the grant of temporary bail nor has it ever been pointed out to this bench that the trial court has sentenced them to rigorous imprisonment without any remissions. It, therefore, appears that the State Government is merely paying lip service and is not really interested in keeping the respondent behind the bars as is sought to be contended in these appeals for enhancement of the sentence imposed by the trial court.

628. In view of the above discussion, no case is made out for enhancement of the sentence as prayed for. The appeals are, accordingly, dismissed. Record and proceedings be returned to the concerned court.

(HARSHA DEVANI, J)

(A. S. SUPEHIA, J)

Criminal Appeal No.1709 of 2012:

At this stage, the learned counsel appearing for the appellants has submitted that the appellant No.2 Kishan Khubchand Korani and appellant No.4 Manojbhai alias Manoj

Sindhi son of Renumal Kukrani, known as Manoj Videowala and Manoj Tyrewala are on regular bail on medical grounds and hence, sometime may be granted to them to surrender to the judicial custody.

The court has considered the request made by the learned counsel for the appellants which appears to be reasonable. Hence, the appellants are granted time of six weeks to surrender to judicial custody.

(HARSHA DEVANI, J)

(A. S. SUPEHIA, J)

parmar/zgs/karim