



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1265 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Approved for Reporting	Yes	No

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IMRAN DAWOOD S/O. MOHAMMAD SALIM DAWOOD BRITISH NATIONAL
 Versus
 PATEL MITHABHAI PASHABHAI & ORS.

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Appearance:

MR NASIR SAIYED(6145) for the Appellant(s) No. 1
 MR VIJAY PATEL with MS DEVANSHIBA RANA for HL PATEL
 ADVOCATES(2034) for the Opponent(s)/Respondent(s) No. 1,2,3,4,5,6
 MR RC JANI, SENIOR ADVOCATE for the Respondents
 MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL assisted by MS
 MONALI H.BHATT, APP for the Opponent(s)/Respondent(s) No. 7

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

and

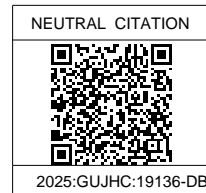
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 06/03/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. The present appeal by the original complainant under Section 378 of the Criminal Procedure Code against judgment and order dated 27.02.2015 passed by the Court of Principal District and Sessions Judge (Specially Designated Court), Sabarkantha at Himmatnagar in Sessions Case No.70 of 2002. By the impugned judgment and order, the Sessions Court was pleased to acquit the



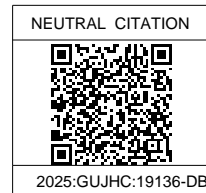
respondents-accused of the charges under Sections 302, 307, 323, 395, 396, 397, 201, 435, 324, 188, 153(a) r/w 143, 147, 148, 149, 341, 337, r/w 120B of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. It is a case where the appellant preferred the present appeal in connection with an incident as an aftermath of the Godhra Train Burning incident followed by Statewide riots in the year 2002.

3. Though the incident is of 2002, the entire investigation and the trial faced several rounds of litigations in the interregnum period to which chronology the Court would refer to later.

4. This Court by order dated 27.10.2015 admitted the Appeal permitting the appellant to move the Court for early hearing. The matter thus was listed on 05.12.2024, when the matter was taken up for hearing with the assistance of learned Additional Advocate General and the matter was adjourned for learned Advocate for the appellant. The case was heard in parts till by order dated 10.12-2024 it was declared as part-heard.

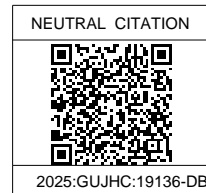
4.1 In order dated 10.12.2024, while the hearing progressed, no Advocate appeared for the appellant and therefore, the Court deemed it fit to inform the appellant, who was residing out of India, to be intimated about the ongoing hearing by e-mail on



the e-mail ID of the appellant.

4.2 In the meantime, learned Advocate for the appellant on record addressed letter dated 11.12.2024 to the Registry along with letter of even dated addressed to the appellant as well, intimating that he has no instruction to conduct the Criminal Appeal from either the appellant or Senior Advocate from Delhi, who had entrusted the case to him. The Registry has placed such communication on record by way of submission. In view of the submission made by the Registry, the Court recorded in its order dated 16.12.2024 withdrawal of appearance and issuing fresh notice of ongoing hearing to the appellant and his Power of Attorney Holder. The notice was ordered to be served via e-mail to the appellant living in U.K. making it returnable on 02.01.2025.

4.3 The case was taken up on 03.01.2025 and in order dated 03.01.2025, it is recorded that the matter was placed along with submission of Registry regarding e-mail received from the appellant seeking detail regarding availability of Free Legal Aid. The order also records appointed Mehtabnasir M.Saiyed as Advocate to assist the Court also leaving an option for the appellant to appoint any advocate on his behalf from the details of learned Advocates under free Legal Aid that may be communicated by the Registry in response to e-mail of the appellant dated 03.01.2025 and the said order was also communicated via e-mail.

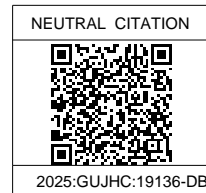


4.4 In order dated 09.01.2025, it is recorded that the Registry to comply with order dated 03.01.2025 as it was still not complied. The record thereafter shows that the order was complied and the order was also communicated to the appellant by e-mail as is indicated by the Registry.

4.5 The case was then adjourned from time to time to enable Mr.Saiyed to receive the Paper-book and to prepare the case.

4.6 The case was thereafter listed for final arguments on 03.03.2025 and the argument for the parties continued on 04.03.2025 and 05.03.2025.

5. The case pertains to an incident which took place on 28.02.2002 at Vadvasa Village patiya, Nr.Prantij in Sabarkantha district. On the day of occurrence when the complainant, Imran Mohamad Salim Dawood (the appellant herein) along with his two uncles namely Saeed Safik Dawood and Sakil Abdul Hai Dawood and another person of his village, Mohamad @ Nallabhai Abdulbhai Aswar after completing their trip of Agra and Jaipur, were returning towards Navsari, in Tata Sumo bearing registration No.GJ-21-1414 and the said Tata Sumo Jeep was driven by Yusuf Suleman Peragar. As stated in the complaint at about 06.00 p.m. when they were 05 km. away from Prantij towards Ahmedabad at



that time on the highway there was a mob of 15 to 20 persons having sticks and dhariyas in their hands. The said mob intercepted their vehicle Tata Sumo Jeep and attacked with lethal weapons. On knowing that they were Muslims, they told to take their Tata Sumo back and forced to stop on the side of the road and thereafter, they were dragged out and started beating.

5.1 As a result of sudden attack, they tried to run away, but during that time one person hit a blow of stick on his head and another person who was having knife with him also injured him on the left leg, thigh and hip with this knife. The mob also started to beat other persons, who were with the complainant. The people of the mob also injured Mohamad Aswar on the head, who fell down. The driver was also seriously injured, as a result of which he died on the spot and the people of the mob also set fire to the jeep and driver who was killed also burnt in the said jeep.

5.2 The complainant's two uncles fled away towards nearby fields and they were also chased by the mob. The complainant and his relative Mohamad Aswar were injured, meanwhile police patrolling van reached near the spot and they were brought to the hospital in the said police jeep, where Jateron Mohamad Aswar was declared dead. The in-charge of the police van informed the Police Inspector of Prantij Police Station about the incident, as a result of which he immediately rushed to the hospital and thereafter the said



once Inspector, Dalpatbhai Karsanbhai Vankar had written the complaint-as stated by the said FIR, Imran, which is on record vide Exh.240. The FIR was taken at Community Health Center, at about 11.00 p.m. on 28.02.2002.

6. The Court may in brief record the chronology leading to the impugned judgment and order. Mr. Bilal Dawood, brother of the appellant's deceased uncle, Mr. Saeed Safik Dawood, made a request to the office of British Deputy High Commissioner, Mumbai to visit -the site of the incident, which happened on 28.02.2002. Thereafter, they visited first the Prantij ' police station, met with the Police Inspector, Mr. D.K. Vankar, and then they searched the area where the incident took place as well as local villages and the nearby factory. They also visited the Janani farm, which was located 100 metres from 'the scene of offence and asked one lady there whether she had seen the incident. She told them that she had seen four British nationals running towards the farm, 'who were being pursued by a mob.

6.1 On 09.03.2002, the British Deputy High Commissioner, Mr. Ian Reakes, accompanied by Bilal Dawood and police personnel from Prantij police station visited a factory, namely the Flexix Gumy Hose Pvt, Ltd., approximate 400 metres away from the burnt Tata Sumo, where they . found small fragments of bone, which were recovered and panchnama was carried out. The police

inspector then : handed over the bone fragments to the British Deputy High 'Commissioner who then arranged for it to be sent to the British Deputy High 'Commission, Mumbai, which was thereafter couriered to the Forensic Laboratory. in Hyderabad: Pursuant. to the instruction by the Hyderabad laboratory, the British Deputy High Commissioner arranged for a local doctor to take blood samples from Bilal Dawood and other members of Saeed Safik Dawood and Shakeel Abdul Hai Dawood's family to assist in the identification.

6.2 On 24.03.2002, an anonymous fax was received by the British Deputy High Commissioner, Mr. Howard Parkinson, Mumbai, in which the name of Pravinbhai Jivabhai Patel was mentioned and he along with a mob of 50-100 persons were 'alleged' to have killed the Appellant's uncles.

6.3 On 05.04.2002, forwarding the above-mentioned fax, the British Deputy High Commissioner wrote a letter -addressed to the Director General of Police of Respondent No. 7 requesting him to direct the Prantij police to investigate further into the killings of the Appellant's uncles. On 15.04.2002, the British Deputy High Commissioner sent another letter addressed to the Director General & Inspector General of Police, Gandhinagar, of Respondent No. 7, along with an article dated 13.04.2002.

6.4 The Hon'ble Supreme Court of India in Writ Petition (Criminal) No.109 of 2003, being National Human Rights Commission v/s. State of Gujarat and others, directed the Respondent No. 7 to constitute a Special Investigation Team (hereinafter 'SIT') in nine cases, including the present one, to be headed by Mr. R.K. Raghavan, former Director of the Central Bureau of Investigation, to undertake enquiry/investigation, including further investigation into these cases.

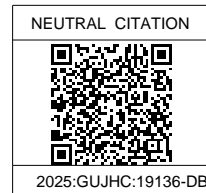
6.5 On 01.04.2008, pursuant to the above-mentioned order, the Respondent No. 7, i.e., the State of Gujarat, issued a notification constituting a SIT to investigate into the - cases arising out of Godhra incident and the subsequent communal riots in 2002.

6.6 On 09.04.2008, SIT took over the investigation of the case under Section 173(8) of the CrPC and Mr. Himanshu Shukla was appointed as the Investigating Officer.

On 11.04.2008, the SIT sought permission for further investigation under Section 173(8), CrPC.

On 27.12.2008, the Appellant's statement was recorded at Mumbai by the SIT.

6.7 On 06.05.2009, by a final order and judgment, Hon'ble Supreme Court set aside the order of this Hon'ble Court dated

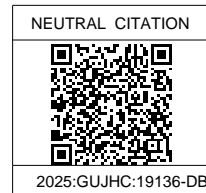


05.09.2008 and held that in the peculiar facts and circumstances of this case, in exercise of their jurisdiction under Article 142 of the Constitution of India, make the interim direction absolute subject to any other or further orders that may be passed by the Sessions Judge till an additional charge sheet, if any, is filed by the SIT before the learned Sessions Judge.

On 13.07 2009, the Court of Sessions framed the charge against the respondent Nos. 1-6 for the commission of the offence under Sections 302, 323, 324, 435, 153(A) read with Sections 143, 147, 148, 149 of the IPC and also for the offence under Section 135 of the Bombay Police Act. Subsequently, further charges were framed for the commission of offence under Section 337, 307, 201, 341, 395, 396, 397, 188 and 120B of the IPC. All the charges were denied by the respondent nos.1 to 6 and they claimed trial.

7. Learned Advocate for the appellant submitted that the trial Court erred in not relying on the identification of the accused by the appellant in the Court on 15.04.2010, which constitutes substantive evidence.

7.1 It is submitted that there is no provision in the Code of Criminal Procedure (CrPC), which obliges the investigating agency to hold, or confers a right upon the accused to claim a test

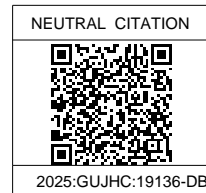


identification parade. That does not constitute substantive evidence and these parades are essentially governed by Section 162, CrPC. Thus, failure to hold a test identification parade would not make inadmissible the evidence of identification in court.

7.2 Holding of test identification parade is not the rule of law but rule of prudence. Normally, identification of the accused in a test identification parade lends assurance so that subsequent identification in court during trial could be safely relied upon.

7.3 Trial Court erred in drawing a negative inference against the Appellant for 'purportedly not taking part in the Test Identification Parade. Because the Learned Trial Court erred in finding that the Complainant/ Appellant 'had been asked to attend the TIP in as much as the admitted position is that the request to attend the TIP was admittedly sent to the British Deputy High Commission, Mumbai in mid-May, 2002 (para 7 of the judgment). There is nothing on record to 'show that the said request was sent to the Complainant and that he had refused to participate in the TIP.

7.4 That police had two eyewitnesses, apart from the Appellant and they could have conducted the TIP with those two eyewitnesses, even without the Appellant. Thus, it is wrong to say that the test identification parade could not have happened without

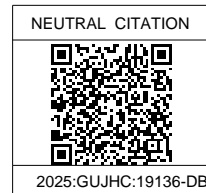


the Appellant's presence.

7.5 The appellant is an injured eyewitness in the present case, who is the Complainant in the complaint no. CR No.I-26/2002 that became the FIR in this case. The testimony of an injured witness is accorded a special status in law. Such witness accepted fact of his/her presence at the scene of the crime and is unlikely to forget actual assailants.

7.6 The Appellant positively identified the Respondent Nos. 1-6 in the Court on 15.04.2010 as persons who were part of the murderous mob that killed four persons and grievously injured the Appellant by saying that they look "somewhat like them and they are almost like them in the mob. It has-been long time now almost eight years". The appellant nowhere deposed that he could not identify the 'members of the mob or that the Respondent Nos. 1-6 were not part of the mob. The mere usage of the words 'somewhat' or 'almost' cannot discredit the identification of the accused by the Appellant.

7.7 Trial Court erred in holding that since the Appellant had stated before the SIT in his statement recorded on 27.12.2008 that due to passage of time, he would not be in a position to identify the accused in the identification parade, the Appellant's positive act of identifying the accused in the Court on 15.04.2010



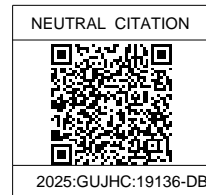
was invalid.

8. As against this, learned Advocate Mr.Vijay H.Patel for the respondents-accused submitted that from the initiation itself, the identification of the accused is highly doubtful as even in the complaint-FIR itself, no description of the accused persons is given. The only description came up is in the deposition of the appellant.

8.1 It is submitted that the appellant at the relevant time did not cooperate to carry out T. I. Panchnama. Learned Advocate has taken this Court to the cross examination of Dalpatbhai Karshanbhai Vankar-IO PW No.72, Exh.258 with regard to attempt to carry out TI parade. Learned Advocate also submitted that the appellant's version in his testimony is exaggerated version and same stands contradicted by the deposition of IO.

8.2 It is further submitted that evidence of the appellant is not sufficiently reliable as the other independent witnesses have given an account of the mob of 150 to 200 persons, whereas the appellant said there were only 15-20 persons in mob.

9. Learned Senior Advocate Shri R.C.Jani has firstly focused on the process adopted in collecting remains like bones etc. from the scene of offence and sending it to FSL at Hyderabad for DNA Test, which is a process unknown to law as it was done by



the official of British High Commission and therefore, cannot be treated as evidence collected during course of investigation to be treated as legally admissible evidence.

9.1 Learned Senior Advocate has referred to decision of the Apex Court in case of **Venkatesh and ors. v/s. State Karnataka (2025 INSC 103)** and judgment in case of **P. Sasikumar v/s. State Rep. by Inspector of Police (2024 INSC 1474)** to submit regarding reliability of the Test Identification Parade to be sufficient to record conviction.

9.2 Learned Advocate has then relied upon the decision of the Apex Court in **Bhaskarrao & Ors. Vs. State of Maharashtra, reported in 2018 (6) SCC 591** and in case of **Mallapa and others Vs. State of Kar 2024 (3) SCC, 544** on the point of scope of an appeal against acquittal.

10. Learned Additional Advocate General for the State has taken this Court through the relevant portion of the impugned judgment and order on the issue of identity of the accused and the evidence regarding FSL report, which according to him was a document admitted by the accused during trial and therefore, not open to argue now about it. Moreover, this is no quarrel on the fact that it establishing the identity of the deceased whose body was not recovered during the investigation.

10.1 He has then referred to Exh.258 the testimony of the IO regarding the procedure for handing over the recovered articles, particularly the bones recovered from scene of offence (the factory).

11. In rejoinder, learned Advocate for the appellant reiterated his elaborate submissions again focusing on the identity being established and also refer to Exh-337 and Exh-371, which were referred to by learned Additional Advocate General.

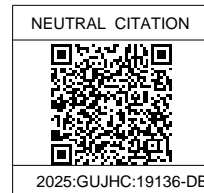
12. Having heard learned Advocates for the parties and having perused documents on record, at the outset this Court may quote certain relevant paras of the reported judgment in case of ***NHRC v/s. State of Gujarat reported in 2009 (6) SCC 767:-***

“2. The State Government issued a Notification dated 1.4.2008 constituting the SIT. On 11.2.2009 the SIT has submitted its consolidated report. It has indicated therein that since its constitution the SIT has made considerable progress in respect of each of the nine cases and the current status is as follows:

- 1: Godhra Railway Police Station Cr. No 09/02
Applications received 63
Witnesses examined 183(125 old & 61 new)
Number arrested -
Charge sheets filed -
Stage of investigation Completed
- 2: Khambholaj Police Station Cr. No 23/02



	Applications received	17
	Witnesses examined	85(30 old & 55 new)
	Number arrested	Court is requested to
	issue process against	16 accused
	Charge sheets filed	Amended separate charge
	sheet-1	
	Stage of investigation	Completed
3:	Khambholaj Police Station Cr. No 27/02	
	Applications received	17
	Witnesses examined	39
	Number arrested	-
	Charge sheets filed	-
	Stage of investigation	Completed
4:	Naroda Police Station Cr. No 98/02	
	Applications received	06
	Witnesses examined	450
	Number arrested	20
	Chargesheets filed	02
	Stage of investigation	Nearly complete
5:	Naroda Police Station	Cr. No 100/02
	Applications received	88
	Witnesses examined	341
	Number arrested	17
	Chargesheets filed	01
	Stage of investigation	Nearly complete
6:	Meghaninagar Police Station Cr. No 67/02	
	Applications received	59
	Witnesses examined	227
	Number arrested	18
	Chargesheets filed	03
	Stage of investigation.	Nearly complete
7:	Visnagar Police Station Cr. No 60/02	
	Applications received	05
	Witnesses examined	42
	Number arrested	03
	Chargesheets filed	01
	Stage of investigation	Nearly complete
8:	Vijapur Police Station	Cr.No.46/02
	Applications received	13
	Witnesses examined	39
	Number arrested	21



Chargesheets filed	02
Stage of investigation	Completed

9: Prantij Police Station Cr.No.100/02

Applications received	10
Witnesses examined	24 (14 old and 10 new)
Number arrested	-
Chargesheets filed	-
Stage of investigation	Completed

40. We have considered the submissions made by Mr. Harish N. Salve, learned amicus curiae, Mr. Mukul Rohtagi, learned counsel for the State, Ms. Indira Jaisingh and other learned counsel. The following directions are given presently:

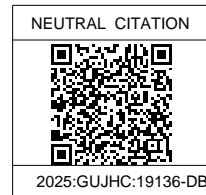
(i) Supplementary charge sheets shall be filed in each of these cases as the SIT has found further material and/or has identified other accused against whom charges are now to be brought.

(ii) the conduct of the trials has to be resumed on a day-to-day basis -

keeping in view the fact that the incidents are of January, 2002 and the trials already stand delayed by seven years. The need for early completion of sensitive cases more particularly in cases involving communal disturbances cannot be overstated.

(iii) the SIT has suggested that the six "Fast Track Courts" be designated by the High Court to conduct trial, on day-to-day basis, in the five districts as follows:

- i) Ahmedabad (Naroda Patia, Naroda Gam)
- ii) Ahmedabad (Gulbarg).



- iii) Mehsana (for two cases).
- iv) Saabarkantha opened(British National case)
- v) Anand
- vi) Godhra Train Case (at Sabarmati Jail, Ahmedabad).

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13. The Court may now take up the analysis of the evidence of each of the witnesses examined during the course of the trial, which is as under:-

13.1 PW No.1, Exh.77-Mukeshbhai Ramanbhai Patel is the panch witness of the scene of offence. In his chief, he has deposed that on 01-03-2003, around 4:15 PM, the police called him near a burnt vehicle, a panchnama conducted by P.I. Vanakar of Prantij Police Station. The vehicle was completely burnt, making its color and number unidentifiable, with an estimated loss of Rs.2-2.5 lakh. The complainant Imran was shown the site but made no further representations. Another panch, Ambalal Jivdas Patel, was also present. The panchnama was conducted between 4:15 PM and 5:30 PM on 1-3-2002, and both panch witnesses signed it. No human incineration found in or around the vehicle. The panchnama was written by the police.

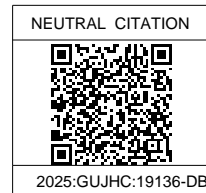
In his cross-examination, he has deposed that No human incineration found in or around the vehicle. Panchanama written by writer of PI. The police officer was writing the

Panchnama, while the P.I. and his associates were guiding him on what to write.

13.2 PW No.2, Exh.79-Ambalal Jivadas Patel is the panch witness of scene of offence. In his chief, he has deposed that On **01-03-2002**, around 4:15 PM, the police called him near a burnt vehicle, a panchnama conducted by P.I. Vanakar of Prantij Police Station. The vehicle was completely burnt, making its color and number unidentifiable, with an estimated loss of Rs.1 lakh. The complainant Imran was shown the site. Another panch, Mukeshbhai Ramanbhai Patel, was also present. The panchnama was conducted within an hour and both panch witnesses signed it.

In his cross-examination, he has deposed that We didn't see any kind of injury to the body of complainant Imran. He deposed that Ash was found in or around the burnt vehicle.

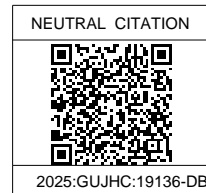
13.3 PW No.3, Exh.80-Sajidhussain Umrudin Luhar is the panch witness of inquest panchnama. In his chief, he has deposed that on 01-03-2002, around 9:15 AM, he was called by Prantij Police near the post-mortem room of M.C. Desai Hospital, where complainant Imran Mohammed Salim identified two deceased bodies. The first body was severely burnt, naked, and unrecognizable, except for partially burnt hair and some remaining clothing fragments. Imran identified it as Yusuf Pelagar, the driver



of their jeep. The second body was covered, with a sharp injury on the back of the head, clothed in a black T-shirt and blue shorts, and identified as Mohammed Abdul Haid Aswar by Imran. The inquest panchnama was prepared by the police in the presence of another panch and him, Salimbhai Abdulbhai Luhar, and both signed it. The photographs of the burnt body and the covered body were taken.

In his cross-examination, he has deposed that the panch confirmed that the police had not taken photos in his presence. He admitted having no prior experience identifying burnt bodies and did not communicate with Imran due to a language barrier.

13.4 PW No.4, Exh.2-Salimbhai Abdulbhai Luhar is the panch witness of the inquest panchnama. In his chief, he has stated that on 01-03-2002, between 9:15 AM and 10:15 AM, he was called by the Prantij Police near the post-mortem room of M.C. Desai Hospital, where he was panch of the inquest panchnama of two deceased bodies. The first body, mostly burnt, was identified by complainant Imran Mohammed Salim Daud as Yusuf Pelagar, a jeep driver from Navsari. The second body, found on the floor with sharp weapon injuries to the head and multiple bruises on the hands, legs, and back, was identified by Imran as Mohammed Abdul Haid Aswar from a nearby village. The panchnama was conducted in his presence, signed by him as Panch No.2, along with Sajid Hussain Luhar (Panch No. 1), and was recorded under



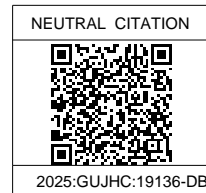
the supervision of P.I. Vanakar.

In his cross-examination, he has deposed that he did not have any conversation with Imran.

13.5 PW No.5, Exh.83- Jayeshbhai Babubhai Prajapati is the panch witness of seizure of clothes of dead body of Mohammed Aswar. In his chief, he has deposed that on 01-03-2002, around 1:30 PM, He was called to Prantij Police Station for a panchnama related to the clothes recovered from the deceased, Mohammad Aswar. Along with another panch, Pravin Kumar Dahyabhai, They witnessed the police seize a bloodstained black T-shirt and a blue-colored lungi with side stripes and a pocket chain. Both items were sealed in separate cloth bags with our signatures and police seals. The panchnama was written in their presence, and they signed it. Later, when shown the original panchnama, he confirmed his signature on page two. He was also shown the seized T-shirt and lungi, which I recognized, along with the attached slips bearing their signatures.

In his cross-examination, he has deposed that I do not know English and that there was no curfew in Prantij at the time of the panchnama.

13.6 PW No.6, Exh.85-Pravinkumar Dahyabhai Prajapati is the Panch witness of seizure of clothes of dead body of Mohammed



Aswar. In his chief, he has deposed that On 01-03-2002, between 1:30 PM and 2:30 PM, Prantij police called him for a panchnama regarding the clothes seized from the deceased, Mohammad Aswar, after the post-mortem. In the presence of another panch, Jayeshkumar Babulal, the police presented a bloodstained black T-shirt and a blue lungi with a side pocket chain and three white vertical stripes. Both items were packed, sealed and signed by us and the police before being taken into custody for investigation. He later identified my signature on the panchnama and the slips attached to the evidence, though the signature on the T-shirt slip was unreadable due to paper damage.

In his cross-examination, he has deposed that the slips did not mention the crime number and that I was unaware if the T-shirt was torn.

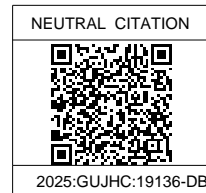
13.7 PW No.7, Exh.86- Mahendrakumar Shankarsinh Jhala is the Panch witness of recovery of muddamal i.e. bone fragments. In his chief, he has stated that On 09-03-2002, around 11 AM, Prantij police called the witness near a canal by a pipe factory in Auran village to assist in searching for two missing persons, though he was unaware of their identities. Along with another panch, Bhikhuji, and the police, including foreign experts, he inspected the burnt factory and found several bones—some large, some small—and a tooth. These remains were collected, packed into separate



sealed parcels, and labeled with their signatures. Additionally, ash samples and burnt site debris were sealed similarly. The entire procedure lasted from 11 AM to 2 PM, and he signed the panchnama. Later, in court, he identified the sealed evidence and his signature on the panchnama.

In his cross-examination, he has deposed that at the time, he was working as a private driver and that his jeep had been requisitioned for police duty during the Godhra riots. He had no knowledge of when the factory burned down. His co-panch, Bhikhuji, was a tractor driver. They first entered a right-side room in the factory, but he denied that any material from the room was seized. The factory was about 1.5-2 km from a petrol pump, with a canal running north-south outside. The Ahmedabad-Himmatnagar highway was nearby, with a petrol pump about 4-5 km away on the eastern side. Factory workers were present when they arrived.

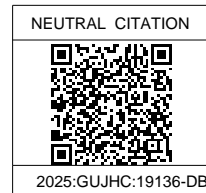
13.8 PW No.8, Exh.88-Bhikhusung Somsung Parmar is the panch witness of recovery of muddamal, i.e. bone fragments. In his chief, he has stated that on 09-03-2002, at around 11 AM, Prantij police called the witness near a canal by a pipe factory in Auran village to assist in the search for two missing persons, Mohammad Shakil and Mohammad Saeed Dawood. Along with panch Mahendrakumar Shankarsinh Zala, police personnel, and foreign experts, he inspected the site and found burnt bone fragments, a



tooth, and ash. The remains were packed, sealed with signatures, and taken into custody. Later, in court, he identified the panchnama (Exh.87) and confirmed his signature along with that of the other panch.

13.9 PW No.9, Exh.89-Dashratbhai Kacharabhai Patel Panch witness of panchnama of seizure of motorcycle. In his chief, he has deposed that On 26-04-2004, around 10 PM, Prantij police called the witness near house of Patel Rameshbhai Madhabhai (Accused no.3) in Tajpur village, where a black Hero Honda motorcycle (GJ-9-AL-35) was found near a bore room. In the presence of panch Jayantibhai, the police seized the motorcycle and prepared a panchnama. Later, in court, the witness identified the panchnama (Exh.90) and confirmed his and the other panch's signatures, along with the police officer's signature.

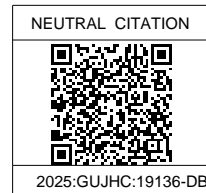
13.10 PW No.10, Exh.91-Jyantibhai Prabhudas Patel is the Panch witness of panchnama of seizure of motorcycle. In his chief, he has deposed that On 26-04-2002, Prantij police called the witness near the bore room of Rameshbhai Madhabhai Patel's farm in Tajpur, where panch Dashrathbhai Kacharabhai Patel was also present. A black Hero Honda motorcycle (GJ-9-AL-35), old and used, was found at the site. The witness estimated its value at ₹25,000. The police seized the motorcycle in their presence and prepared a panchnama, which both panch witnesses signed. Later,



in court, he identified the panchnama (Exhibit 90) and confirmed the signatures, stating he could recognize the motorcycle if shown.

13.11 PW No.11, Exh.92-Toraji Sundarji Vanjara is the Panch witness of the recovery of box in which ash and bone fragments were collected. In his chief, he has deposed that On 31-05-2008, around 5 PM, the witness was called to Prantij Police Station by the Assistant Superintendent of Police, Himmatnagar Division, S.I.T. Gandhinagar. The case involved complainant Imran Salim, in which, on 09-03-2002, British Deputy High Commission officials had taken three sealed boxes of ashes and bones from Prantij police for DNA testing at Andhra Pradesh FSL, Hyderabad. After testing, the sealed samples were returned and examined. A panchnama was prepared between 5:30 to 6 PM, documenting a yellow paper box sealed by A.P. FSL, Hyderabad, marked with "DNA/31/2002," which was kept in the muddamal room for making panchnama. The witness identified the original panchnama (Exh.93) and confirmed his and co-panch Amrutbhai Jojitabhai's signatures, as well as a yellow-sealed cover with signed slips.

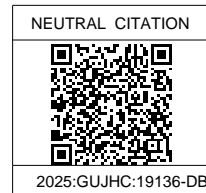
13.12 PW No.12, Exh.94-Amrutbhai Joytaram Patel is the Panch witness of the recovery of box in which ash and bone fragments were collected. In his chief, he has deposed that oOn 31-05-2008, the witness was called to Prantij Police Station for a panchnama of a sealed yellow box related to complainant Imran



Mohammad's case. The box was taken into custody in the presence of co-panch Voraji Sundarji Vanjara, and their signatures were recorded. He identified the original panchnama (Exh.93) and confirmed the yellow box from Hyderabad.

In his cross-examination, he has deposed that a court case was ongoing against him at the time, and a warrant was issued for his arrest.

13.13 PW No.13, Exh.96-Kanubhai Popatbhai Bhoi is the Panch witness of panchnama for collecting bone fragments from FSL. In his chief, he has deposed that on 28-09-2008, at 10:00 AM, the witness and co-panch Narsinhbhai Raval were called to Prantij Police Station by the Assistant Superintendent of Police, S.I.T. Gandhinagar, regarding a glass jar containing burnt bone fragments and ash received from Mumbai's Deputy High Commission and returned after forensic examination by Hyderabad F.S.L. The jar had a white metal lid and contained black and white bone fragments along with ash, which were examined, repacked, sealed with white paper slips, tied with a string, and stamped with Prantij Police Station's seal. **The witness confirmed his signature on the slip but noted that the jar was originally white.** He also identified the panchnama confirming the signatures of himself, the co-panch, and the police officer.



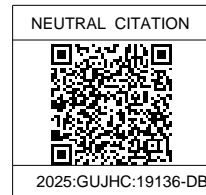
In his cross-examination, he has deposed that he could not determine whether the bones were human or animal.

13.14 PW No.14, Exh.98-Narsinhbhai Lilabhai Raval is the Panch witness of panchnama for collecting bone fragments from FSL. In his chief, he has deposed that on 28-06-2008, at 10:00 AM, the witness was called to Prantij Police Station for a panchnama along with co-panch KanuBhai PopatBhai. A glass jar containing bone fragments was shown and opened in their presence. After examination, the police resealed the jar, affixed a slip with the signatures of both panchas and the police. The witness confirmed his signature on the slip and also on the panchnama (Exh.97).

13.15 PW No.15, Exh.99-Balabhai Jethabhai Makwana is the Panch witness of seizure of attendance register. In his chief, he has deposed that on 26-09-2008, at 12:00 PM, the witness was called to Tajpur Kui Primary School by Assistant Police Superintendent, S.I.T. Gandhinagar, along with co-panch Jagatsinh Bhikhusinh Makwana. The attendance register of teachers from 1999 to June 2003 was presented with the help of the assistant teacher(co-panch). Upon checking the February 27-28, 2002, and March 1-2, 2002 entries, it was found that Mithabhai Parshottambhai Patel, Madhuben Mathurbhai Patel, and Balvantsinh Somaji Makwana were marked present. The police seized the register in the presence of both panchas. The sealed

register was later opened in court. That was shown to the witness, who confirmed it as the same register seized in his presence. Discrepancies (overwriting and erasures) were observed in Mithabhai's and Madhuben's attendance entries, which were sent for FSL examination. The panchanama (Exh.100) was prepared, bearing the witness's signature and the co-panch's signature along with the police officer's attestation. In his cross-examination, he has deposed that the witness, an M.A. graduate, acknowledged that the attendance records for March 1-2, 2002, had anomalies similar to Mithabhai's and Madhuben's columns.

13.16 PW No.16, Exh.101-Jagatsinh Bhikhusinh Makwana is the Panch witness of seizure of attendance register. In his chief, he has deposed that on 26-09-2008, the witness, a teacher on duty at Tajpur Kui Primary School, was called by S.I.T. police. With his assistance, the 2002 attendance register of Headmaster Mithabhai Parshottambhai Patel was retrieved from a locker in the classroom. The register, covering 1999 to June 2003, had entries for February 27-28, 2002, and March 1-2, 2002, showing the attendance of Mithabhai Parshottambhai Patel, Madhuben Mathurbhai Patel, and Balvantsinh Makwana. Discrepancies (overwriting and alterations) were found in Mithabhai's and Madhuben's columns, leading to its seizure for FSL examination in the presence of panchas and police. The panchanama (Exh.100) was prepared, with the witness signing

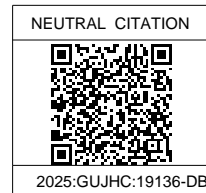


at Anu.No.2, and Balabhai Jethabhai signing as Panch No.1, along with the police officer's attestation.

In his cross-examination, he has deposed that on 28-02-2002, he was serving as a teacher in Bhiloda, Navapur village. Due to the Godhra riots, there were no clear instructions on school closures. If schools reopened and later declared holidays, attendance records had to be adjusted accordingly.

13.17 PW N.17, Exh.102-Dr.Arunsinh Kishorsinh Bhati is the Medical Officer. In his chief, he has deposed that he conducted post-mortems on Haji Yusuf Suleman Pelaghari and Mohammad Abdul Aswar. Yusuf's body was completely burned, showing signs that he had struggled before dying. His injuries suggested he was alive when set on fire, and he died from shock due to severe burns. Mohammad had a serious head injury before being burned. His brain had internal bleeding, and he died due to excessive blood loss from the head injury.

In his cross-examination, he has deposed that he prepared his reports after receiving police details. He confirmed that the police reports mentioned both victims were beaten before being burned. He agreed that some of Mohammad's external injuries alone might not be fatal, but internal injuries showed otherwise. He denied finding any chemical traces on Yusuf's body



and explained that if someone is burned alive, carbon particles would be found in their airways. He also said that Mohammad's head injury could happen from a fall but insisted that the injuries suggested he was assaulted. Lastly, he confirmed that the body positions and injuries indicated they were burned while alive and ruled out natural death.

13.18 PW No.18, Exh.107-Dr. Bharat Jitendrabhai Dabhi is the Medical Officer. In his chief, he has deposed that on 28th February 2002, the medical officer was on duty at Prantij Community Health Center when the police brought an injured person, Imran Mohammad Salim Daud, around 7 PM. The patient said he was injured by sticks and knives. The doctor found three injuries: (1) A deep cut on the back of the head, actively bleeding, requiring five stitches; (2) A cut on the left cheek, requiring one stitch; and (3) A deep wound on the left thigh, requiring two stitches. No fractures were found, and the injuries were fresh. The doctor confirmed the medical records. He stated that such injuries could be caused by multiple people attacking with blunt and sharp weapons.

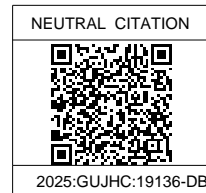
In his cross-examination, he has deposed that the injuries were minor. He agreed that if the victim had been wearing clothes, injuries No. 2 and 3 would have also caused cuts on the clothes. He also said that a person running through a barbed-wire



fence could get similar injuries, and the head injury could happen if someone fell on a hard surface.

13.19 PW No.19, Exh.111-Pravinbhai Jivabhai Patel is the witness, who who was resident of Janani Farm situated nearby place of offence. In his chief, he has deposed that on 28th February, 2002, around 6 PM, he was at home when he saw a jeep coming from Vadavasa Stand, followed by a mob of 150-200 people. The mob stopped the jeep, pulled out four men, and attacked them with sticks and weapons before setting the jeep on fire. Two of the men ran toward his house and later escaped toward Oran village. He tried calling the police but couldn't get through. Later, he saw a police van, informed the officers, and went with them. They found the two injured men in a field, one badly hurt. He helped them into the police van and then returned home. The next day, he gave his statement to the police and later to the SIT and DySP. He also saw a burned jeep with a dead body inside.

In his cross-examination, he has deposed that his earlier police statements did not mention details about the mob chasing the jeep, attacking people, or setting it on fire. He could not recognize anyone in the mob because it was getting dark. His house was about 150-200 feet from the road, and he was standing in the veranda at that time. He confirmed that British High Commission officials and local police visited him a week later but

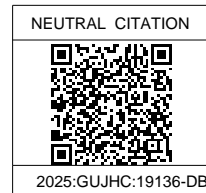


denied taking them to the place where the injured men were found. He also mentioned seeing light from a burning rubber factory around 6 PM that day.

13.20 PW No.20, Exh.112-Alkaben Pravinbhai Patel is the witness, who was resident of Janani Farm situated nearby place of offence. In his chief, she has deposed that on 28th February, 2002, around 6 PM, she was at home with her family when she heard a mob shouting near the petrol pump in front of their farm. A jeep was stopped, and the people inside ran away while the mob chased them. Four men got out of the jeep and ran through nearby fields. Later, her husband told her that two of them were injured, one seriously. She saw smoke coming from the burning jeep at a distance. Her husband told her that one person had been burned to death by the mob. Since she saw the mob from far away, she could not recognize anyone. The police recorded her statements on 1st March, 2002, 1st April, 2005 and 22nd October, 2008.

In her cross-examination, she has deposed that in her 1st March, 2002, statement, she had mentioned seeing four people running from the jeep and noticing smoke from the burning vehicle about 10 minutes later.

13.21 PW No.21, Exh.113-Ramilaben Rameshbhai Patel is the witness, who was resident of Janani Farm situated nearby place of

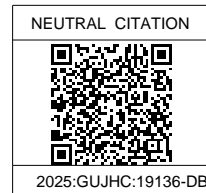


offence. In her chief, she has stated that on 28th February, 2002, around 6 PM, she saw a mob near Vadwasa petrol pump stopping a jeep and attacking its passengers, who fled into the fields. Later, Pravinbhai informed the police and later told the family that one person was seriously injured, another had minor injuries, and the mob had set the jeep on fire, with a burnt body found nearby. She did not recognize anyone in the mob and saw the incident from a distance. In her cross-examination, she has deposed that her testimony was entirely based on Pravinbhai's account.

13.22 PW No.22, Exh.114-Gangaben Ambalal Patel is the witness resident of Janani Farm situated nearby place of offence. In her chief, she has deposed that on 28th February, 2002, around 6 PM, she saw a mob near a petrol pump stopping a jeep and attacking its passengers, who fled into the fields. Pravinbhai later informed her that two people were injured, one seriously, and the jeep was set on fire, burning one person to death. She did not approach the jeep, see how many fled, or identify anyone in the mob. Her statements were recorded in 2002, 2005, and 2008.

In her cross-examination, she has deposed that her statement was based entirely on Pravinbhai's account and that she had no direct knowledge of the incident.

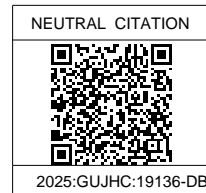
13.23 PW No.23, Exh.115-Vasantbhai Hathibhai Patel is the



FLS officer. In his chief, he has deposed that From 20th May to 24th May, 2002, lie detector tests were conducted on all six accused after informing them about the procedure and obtaining their written consent. They were given the opportunity to provide their written statements, which were submitted as evidence. The test results indicated that accused no. 1, Mithabhai Pashabhai Patel, and accused no. 5, Rakeshbhai Babubhai Patel, were not lying, while accused no. 3, Chandubhai Prabhudas Patel, and accused no. 6, Kalabhai Hirabhai Patel, were found to be lying. Accused no. 2, Rameshbhai Madhabhai Patel, and accused no. 4, Manojbhai Keshabhai Patel, showed suspicious responses.

In his cross-examination, he has deposed that according to Human Rights Commission guidelines, lie detector tests should be conducted in the presence of a defense lawyer, but in this case, the tests were carried out with the written consent of the accused. The witness did not verify whether the police obtained court permission for conducting the tests. Additionally, the witness admitted that while polygraph tests detect physiological changes when a person lies, there is no legally or scientifically established standard to measure deception and acknowledged that psychological effects can influence physical responses.

13.24 PW No.24, Exh.134-Rameshbhai Jivabhai Patel is the witness, who was resident of Janani Farm situated nearby place of



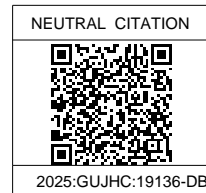
offence. In his chief, he has deposed that he is a teacher from Hajipur, stated that on 28th February, 2002, he learned from his brother Pravinbhai that a mob had burned a Tata Sumo and attacked its passengers near their farm. Two injured passengers were taken by the police, while two others fled into the fields. He did not know who was in the mob. His statements were recorded in 2002, 2005, and 2008.

In his cross-examination, he has admitted having no direct knowledge and that his statement was based solely on Pravinbhai's account.

13.25 PW No.25, Exh.135-Ambalal Jivabhai Patel is the witness, who was resident of Janani Farm situated nearby place of offence. In his chief, he has deposed that on 28th February, 2002, he learned from his younger brother, Pravinbhai, that a mob had burned a Tata Sumo and attacked its passengers near their farm. He had no personal knowledge beyond what Pravinbhai told him.

In his cross-examination, he confirmed his statement was based solely on Pravinbhai's account. He mentioned a visit from British High Commission officials but could not recall the date or details of their conversation.

13.26 PW No.26, Exjh.136-Mahammadkhalid Abubakar Karkun is the witness, who informed relative of victim. In his chief,

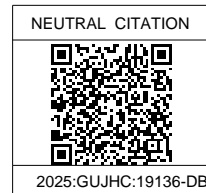


he has deposed that he is a lawyer and journalist, met Prantij Police Inspector D.K. Vankar on 1st March, 2002, to inquire about incidents following the Godhra case. The PI informed him that on 28th February, 2002, a mob attacked a Tata Sumo near Vadwasa Patiya, assaulting the driver and passengers, setting the vehicle on fire, and killing the driver, Yusuf. Four passengers escaped, but two were later found injured. The witness conveyed this information to their families in Lajpur, Navsari. On 3rd March, 2002, the police searched for two missing persons but found only one stranded individual. The witness gave a statement to the police that day.

In his cross-examination, he has confirmed visiting Prantij Police Station on 1st March, 2002, for about 30-45 minutes in the morning and that the PI had informed him about the Vadwasa Patiya incident.

13.27 PW No.27, Exh.137-Manubhai Somabhak Patel is the truck owner. In his chief, he has deposed that he is a transport business owner, stated that his driver, Dalpatsinh, returned with a tempo on 28th February, 2002, but was advised not to operate it due to the bandh. Dalpatsinh left for Prantij around 6:15 PM. The next day, the witness learned about a Tata Sumo being set on fire near Vadwasa Patiya.

In his cross-examination, he has confirmed that



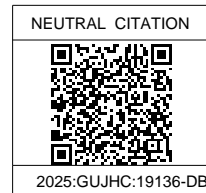
Dalpatsinh returned a week later but never mentioned witnessing the incident.

13.28 PW No.28, Exh.139-Narendrakumar Dhirubhai Patel is the witness, who was working a clerk in the Collector Office. In his chief, he has deposed that he submitted certified copies of public notifications issued under Sections 37(1) and 37(3) of the Mumbai Police Act, 1951, dated 13th February, 2002, along with an extraordinary gazette copy, collectively marked as Exhibit 140.

In his cross-examination, he admitted that he could not confirm how the notification was publicized in the area.

13.29 PW No.29, Exh.141-Shaileshkumar Ratilal Mistri is the Deputy Mamlatdar, who prepared map of scene of offence. In his chief, he has deposed that in February 2005, while serving as a Circle Officer in Prantij, he received a police request to prepare a site map based on a panchnama. He visited the site on 5th March, 2002 and, finding no panch witnesses, prepared the map independently. He submitted it to the Mamlatdar's office the same day.

In his cross-examination, he has deposed that the map was based solely on the panchnama and did not reflect the actual site conditions on the day he created it.



13.30 PW No.30, Exh.145-Laxmansinh Mulsinh Rahevar is the policeman, who was on duty in police van. In his chief, he has deposed that in February 2002, the deponent, an ASI at Prantij Police Station, was on patrolling duty during Gujarat Bandh when he saw a burning Jeep near Vadwasa Patiya and a fleeing mob. A burnt body, later identified as driver Yusuf, was found near the Jeep. Two injured men, Mohammed Aswar and Imran Daud from England, were found nearby. Imran said they were attacked by a mob, and his uncles fled. Aswar was taken to Prantij Civil Hospital, where he was declared dead, while Imran received treatment. The police reported the incident, and Imran later filed a complaint.

In his cross-examination, he has deposed that he did not see Imran's uncles fighting the mob, and Imran did not indicate their direction. Imran lost consciousness in the police vehicle. Aswar was alive when taken to the hospital but was later declared dead. The police were unaware of violence in the area before reaching the scene. The deponent denied witnessing armed men chasing a Tata Sumo and had not previously mentioned the presence of 15-20 armed individuals.

13.31 PW No.31, Exh.146-Kalusinh Bhavansinh Makwana is the eyewitness, but he has been declared hostile.

13.32 PW No.32, Exh.146-Badarsang Nansang Makwana is



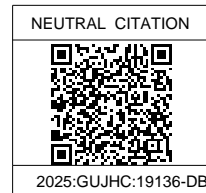
the eyewitness, but he has been declared hostile.

13.33 PW No.33, Exh.148-Navalsinh Gambhirsinh Jhala is the policeman, who was on duty in police van. In his chief, he has deposed that he was driver-head constable at Prantij Police Station, was on patrol during Gujarat Bandh. On February 28, near Vadwasa Patiya, he saw a burning Tata Sumo and a mob fleeing. Staying in the police vehicle, he learned from officers that a man inside the vehicle had burned to death. A local alerted them about two injured men nearby; one, Imran, approached the police, and both were taken to the hospital, where one was declared dead.

In his cross-examination, he confirmed he never left the vehicle, didn't see motorcycles, and the police vehicle's headlights were off.

13.34 PW No.34, Exh.149-Jyotindra Natvarlal Joshi was the surveyor. In his chief, he has deposed that he was District Land Record officer, visited Tajpur for work on 28th February, 2002. After finishing by 1:15 PM, he sent his official vehicle back to Himmatnagar and was dropped off in Gandhinagar around 3:30 PM. He denied knowledge of any incidents.

In his cross-examination, he confirmed learning later that the rider who dropped him off was Rameshbhai Patel and denied any interaction with a mob.

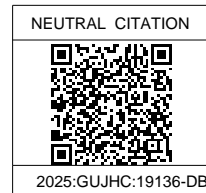


13.35 PW No.35, Exh.150-Somsinh Bhupsinh Makwana was the owner of motorcycle. He has denied of having any knowledge of any incidents. Accused no.3 Rameshbhai Madhabhai return motorcycle to him.

13.36 PW No.36, Exh.151-Kodarbhai Vashrambhai Rabari is the policeman, who was on duty in police van. In his chief, he has deposed that he was involved in investigating the aftermath of violence, including recovering 232 bone fragments, ash, and wire pieces, which were sealed for forensic analysis. He assisted the British High Commission in obtaining remains for testing. He also conducted searches for missing persons, visited affected sites like a burned factory, and recorded witness statements.

In his cross-examination, he confirmed his role but stated that he did not take statements from present laborers.

13.37 PW No.37, Exh.154-Subamiya Dolubha is the policeman, who was on duty in police van. In his chief, he has deposed that he was PSO at Prantij Police Station on 28-02-2002, registered an FIR based on Imran Mohammad Salim Daud's complaint about a mob attack. He recorded it in the station diary, sent a copy to the court, arranged inquest panchnamas, and informed the DySP. In his cross-examination, he admitted that he was unaware of the complainant's medical treatment and did not

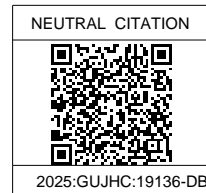


personally provide the FIR copy.

13.38 PW No.38, Exh.159-Rajendrasinh Harisinh is the IO. In his chief, he has deposed that he was on duty at Prantij Police Station on 01-03-2002, conducted a panchnama of the deceased Mohammad Aswar's blood-stained clothes post-mortem, sealing them under official supervision. He also authenticated a fax message sent on 02-03-2002 to the DSP and Deputy Himmatnagar, reporting the release of two bodies to relatives and ongoing efforts to trace missing persons.

13.39 PW No.39, Exh.162-Rashiahemad Abduljabbar Sufi is the witness and relative of the victim. In his chief, he has deposed that his relatives from England were attacked near Prantij while traveling in a Tata Sumo, resulting in two deaths and one injury. Upon learning this, he and others went to Prantij, coordinated with the police, and received the bodies. He confirms signing the receipt and states that the attack was mob-led upon identifying them as Muslims. He had no conversation with the injured Imran.

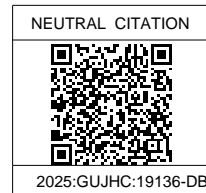
13.40 PW No.40, Exh.164-Suleman Mahammad Gharada is the witness and relative of the victim. In his chief, he has deposed that he received a phone call about an incident near Prantij, where a mob attacked and burned a vehicle carrying NRI travelers, killing two people. He informed the victims' families, and a group,



including him, went to Prantij to collect the bodies. Both Hindu and Muslim community members were present. The survivor, Imran, also returned with them to Lajpor. His statement was recorded by the police on 09-05-2002.

13.41 PW No.41, Exh.165- Rashidbhai Ahemad Pelagar is Witness (relative of victim). In his chief, he has deposed that the deponent, a resident of Lajpor and a farmer, stated that on 25-02-2002, his relatives from England, along with his nephew Yusuf, traveled in a Tata Sumo to visit tourist sites. While returning via Prantij, a mob attacked and burned their vehicle, killing Yusuf and Mohammad Aswar. Two others escaped. On 02-03-2002, family members, including Rasid Jabbar Sufi, Narendra Pandya, and others, brought back the bodies and survivor Imran. The missing persons, Sakil and Saeed, remain untraceable. Prantij police recorded his statement on 09-05-2002.

13.42 PW No.42, Exh-166-Narendrabhai Ratilal Pandya is Witness-known to victim family. In his chief, he has deposed that In March 2002, the deponent learned that a mob near Prantij burned a Tata Sumo, killing Yusuf and Mohammad Aswar, while Imran was injured. He traveled to Prantij with the police, identified the bodies, and returned to Lajpor with them and Imran, who was scared and didn't speak Gujarati. His statement was recorded on 02-03-2002.

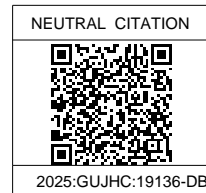


In his cross-examination, he has deposed that he confirmed having no personal knowledge beyond police information and being with Imran for about 8-9 hours.

13.43 PW No.43, Exh-167-Salimbhai Nathabhai Multani is Witness who collected the dead body. In his chief, he has deposed that the deponent learned that a mob burned a Tata Sumo near Prantij, killing Yusuf Pelaghar and Mohammad Aswar, while Imran was injured. He, along with others, visited Prantij police station, identified the bodies, and brought them back to Lajpor. His statement was recorded on 02-03-2002.

13.44 PW No.44, Exh-168 -Yakub Ahemadbhai Lulat (Sunni Vahora) is Witness owner of Tata Sumo. In his chief, he has deposed that the deponent, a resident of Nasilpur, engaged in farming and transport, owned a Tata Sumo (GJ-21-1414), driven by his relative Yusuf Pelaghar. In February 2002, four individuals from London, including Imran, Shakil, and others, visited Lajpor and took the vehicle for a trip. On 01-03-2002, he learned via a call that a mob near Prantij had burned the vehicle, killing Yusuf and Mohammad Aswar, injuring Imran, while two others fled. The bodies were later brought to Lajpor for burial. His statement was recorded on 10-05-2002.

In his cross-examination, he has deposed that the

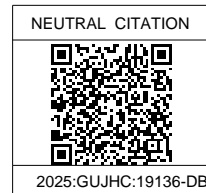


deponent stated that he had not visited Prantij immediately after the incident and only went months later to collect his burned vehicle and report to the police. He confirmed that two missing individuals had taken shelter in a teacher's house but later disappeared. This information was given to him by Imran three to four days after the incident.

13.45 PW No.45, Exh-172 - Rasiklal Narangbhai is Officer from FSL who examined attendance register. In his chief, he has deposed that the deponent is the Deputy Chief State Examiner of Questioned Documents at the Directorate of Forensic Science, Gandhinagar, with expertise in document examination and forgery detection. He has extensive training and experience in forensic document analysis. The SIT referred case documents to his office on 10-10-2008 for examination. Using scientific tools like VSC 5000 and microscopes, he examined the questioned documents, identifying alterations. His expert opinion, dated 12-11-2008, includes findings supported by 21 digital photographic prints.

In his cross-examination, he has deposed that the deponent confirmed preparing digital data and a CD for testing. However, he acknowledged that the investigating officer did not request a copy of the data or CD.

13.46 PW No.46, Exh-178 -Dalpatsinh Kanaji Makwana is an



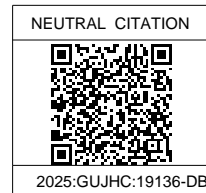
Eye witness. The said witness has been declared as Hostile.

13.47 PW No.47, Exh-189 - Ashokkumar Badaji Pandor is an Executive Magistrate. In his chief, he has deposed that the deponent served as the Executive Magistrate and Mamlatdar at Prantij in 2002. On 28-02-2002, he received an inquest request from Prantij Police Station for the bodies of Yusuf Pelaghar and Mohammad Aswar. He verified and signed the document (Exhibit-157) and proceeded with the necessary formalities.

In his cross-examination, he has deposed that the deponent admitted that he did not personally investigate the bodies or record any statements. He also confirmed that a curfew was imposed in Prantij around midnight on 28-02-2002.

13.48 PW No.48, Exh-190 - Prakashchandra Popatlal Raval is Talati-cum-Mantri who registered the death. In his chief, he has deposed that Talati-cum-Minister of Oran confirmed that the deaths of Mohammad Aswar and Saeed Daud were recorded in the village register based on a police report, citing communal riots as the cause. The original register was produced, and a certified copy was submitted.

13.49 PW No.49, Exh-192 - Mustufakhan Bismillahkhan Tuar is Owner of the factory. In his chief, he has deposed that the witness, a factory owner in Prantij, stated that he had closed his



factory on 28-02-2002 due to Gujarat bandh and evacuated his Muslim workers for safety. Later that day, a mob set his factory on fire, which he saw from a distance but couldn't approach due to ongoing riots. He filed a police complaint on 05-03-2002 but had no information on who was responsible. He later learned about an attack on a Tata Sumo vehicle near Vadwasa Patiya. Upon returning months later, he found that the police had collected bones from his burned factory but was unaware of their origin.

In his cross-examination, he has deposed that he confirmed visiting his factory with the police on 03-03-2002, where a detailed panchnama was made, and no bones were initially found.

13.50 PW No.50, Exh-193-Takhatsinh Bhaktisinh Makwana is an Employee working in the burnt factory. In his chief, he has deposed that the witness, a factory worker, said that on 28-02-2002, their employer took Muslim workers away before a mob set the factory on fire. He and his coworkers ran away. Later, he heard that a Tata Sumo was burned nearby but didn't know who was involved. Months later, he learned that the police found bones in the factory. He gave statements in 2005 but didn't know anything more.

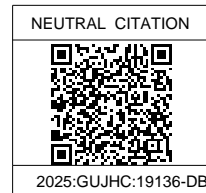
13.51 PW No.51, Exh-194-Chandusinh Javansinh Makwana is an Employee working in the burnt factory. In his chief, he has



deposed that the witness, a worker at the factory, stated that on 28-02-2002, their employer took Muslim workers away due to the tense situation. Soon after, a mob approached the factory, so he and two others left for their homes. Later, he saw smoke coming from the factory as it was set on fire. The next day, he heard that a Tata Sumo was stopped, its passengers attacked, and the vehicle burned. Three months later, when the factory reopened, he learned that the police had found bones inside. He gave statements in 2005 but had no further information.

13.52 PW No.52, Exh-195-Ganpatbhai Somabhai Prajapati is an Employee working in the burnt factory. In his chief, he has deposed that the witness, a factory worker, stated that on 28-02-2002, after the factory owner took Muslim workers to safety, a mob of about 150 people approached. Fearing violence, he fled. Later, he saw smoke from the factory and informed the owner. He later learned about riots and a burned Tata Sumo. After returning, he heard that police found bones and ashes in the factory godown. He gave statements in 2005 but had no further information.

13.53 PW No.53, Exh-196-Aslambhai Pirubhai Sipai is an Employee working in the burnt factory. In his chief, he has deposed that the witness worked at the factory for five years. On 28-02-2002, due to Gujarat bandh, the owner took Muslim workers to safety, advising Hindu workers to stay or leave. Later, the factory

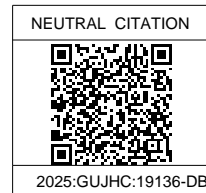


was set on fire. The witness doesn't know who was responsible or about the bones found by the police. His statement was recorded on 06-04-2005.

13.54 PW No.54, Exh-197-Basirbhai Jamalbhai Sipai is an Employee working in the burnt factory. In his chief, he has deposed that the witness left the factory on 28-02-2002 with Muslim workers as advised by the owner. Later, he learned that a mob burned the factory. He stayed in his hometown and resumed work after five months. He has no knowledge of the attackers. His statement was recorded on 06-04-2005.

13.55 PW No.55, Exh-198-Rajatbhai Navibhai Sipai is an Employee working in the burnt factory. In his chief, he has deposed that the witness, a factory worker, left on 28-02-2002 after the owner evacuated Muslim workers due to riots. Later, he heard the factory was burned by a mob. He has no knowledge of those involved and gave his statement on 06-04-2005.

13.56 PW No.56, Exh-199-Sabirbhai Nabibhai Sipai is an Employee working in the burnt factory. In his chief, he has deposed that the witness, a factory worker, stated that on 28-02-2002, the factory owner evacuated Muslim workers to Prantij. Later, he heard that a mob burned the factory and a Tata Sumo. He has no knowledge of who was responsible. His statement was recorded on



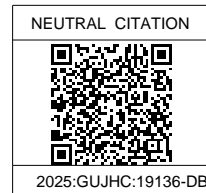
01-04-2005.

13.57 PW No.57, Exh-200-Prakash Somalal Shah is an Additional secretary Home Department. In his chief, he has deposed that the witness, a former Additional Secretary, stated that he reviewed case documents, instructed the Deputy Secretary to draft a report, and forwarded it to the Additional Chief Secretary, who approved it. A notification under IPC 153A was issued regarding the Prantij incident.

In his cross-examination, he has deposed that he admitted government approval was necessary but denied that the notification was issued without proper review.

13.58 PW No.58, Exh-202- Arvindkumar Nahnalal Dave is an Owner of the Petrolpump. In his chief, he has deposed that the witness, a manager at Punjab Automobiles, stated that the petrol pump was closed on 28th February, 2002, due to the Gujarat bandh. Four days later, he learned that a Tata Sumo was burned, and a person was killed nearby. His statement was recorded on 19th January, 2005.

In his cross-examination, he has deposed that he had two years of experience but was unaware of any government order for petrol pump security during riots.



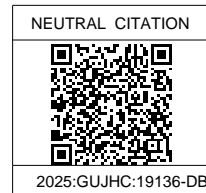
13.59 PW No.59, Exh-203 -Yashwantsinh Tejsinh Chauhan is On duty Police Van. In his chief, he has deposed that An ASI on bandobast duty in Prantij on 28th February, 2002, saw a burning Tata Sumo with a charred body nearby. A group of 15-20 people was seen fleeing. Two injured men were rescued, one of whom later died. He reported the incident but could not identify the attackers.

In his cross-examination, he has deposed that he confirmed seeing arson incidents along the highway but couldn't recognize the assailants or understand the injured man's language.

13.60 PW No.60, Exh-204, Ramanbhai Lalabhai Vankar is On duty Police Van. In his chief, he has deposed that on 28th February, 2002, while on bandobast duty near Prantij, the head constable saw a burning Tata Sumo and a mob fleeing. Upon reaching the spot, they found two injured men, Imran Daud, who identified himself and mentioned his missing relatives, and Mohammed Aswar, who was later declared dead.

In his cross-examination, he has deposed that he could not recognize the attackers due to distance, was unaware of nearby fires or petrol pump conditions, and stated Imran spoke in Hindi.

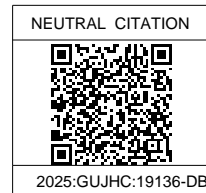
13.61 PW No.61, Exh-205-Jashvantbhai Bhimabhai is Writer of Investigation Officer. In his chief, he has deposed that the



deponent, a police constable since 1981, was working as a writer for PI D.K. Vankar at Prantij Police Station in February 2002. On 28th February, 2002, he was on patrol duty near Vadwasa Patiya when he saw a burning Tata Sumo vehicle, a group of people running away, and injured victims. One survivor, Imran Daud, identified himself and mentioned his missing relatives. Another injured person, Mohammad Aswar, was taken to the hospital but was declared dead. The deponent helped record statements, write the FIR, and assist in the investigation under PI Vankar. He confirmed that the FIR was in his handwriting and recognized signatures on official documents.

In his cross-examination, he has deposed that he said he did not know who the attackers. He also mentioned that Imran spoke in broken Gujarati and was not unconscious when taken to the hospital. He denied claims that multiple complaints were written by him that day.

13.62 PW No.62, Exh-212 - Chhaganbhai Jivabhai Bharwad is an Investigation Officer. In his chief, he has deposed that in 2004, as PI at Prantij, the deponent, following SP's instructions, reported adding IPC 201 to FIR No. 26/02 after the charge sheet. Reports were submitted to the Judicial Magistrate and Sessions Court. No other involvement.



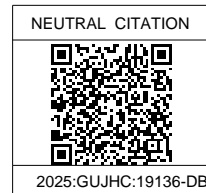
13.63 PW No.63, Exh-213-Hitendrakumar Ramjibhai Choudhary is an Investigation Officer. In his chief, he has deposed that in 2004-05, as DySP in Himmatnagar, he investigated Prantij FIR No. 26/02, recorded 40-45 statements, and later handed over the case.

In his cross-examination, he has deposed that he confirmed no court order for further investigation and no report against PI Vankar.

13.64 PW-64, Exh.214-Manoharsinh Gulabsinh Vaghela, is Dy.S.P., who took over the investigation on 09.05.2005. In his chief, he has deposed that he questioned people near the crime scene, including those at farms, factories, shops, petrol pumps, and hotels, but found no useful evidence. He submitted a detailed report to the court on 14-06-2006 and later reported at Prantij court on 14-06-2009. During the investigation, he looked into missing witness Shakeel Abdul Sayeed and possible involvement of other accused but found nothing significant.

In cross-examination, he has admitted to continuing the investigation unofficially with trusted staff after submitting Report No. 215.

13.65 PW-65, Exh.216-Vasantbhai Maknabhai Solanki is a Police Videographer. In his chief, he has deposed that on 08-05-

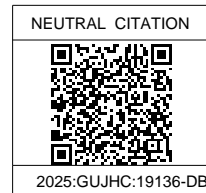


2005, his statement was recorded by SIT officer Himanshu Shukla. He worked as a photographer at Himmatnagar Police Headquarters and had completed a police photography course. On 08-05-2008, under official orders, he took 37 photographs of the crime scene and surrounding areas, developed them at a local lab, and submitted them along with his report for the investigation.

13.66 PW-66, Exh.223-Suleman Ahemadbhai Pelagar, is a relative of the victim. In his chief, he has deposed that in 2002, his sons Yusuf and Mahammadbhai were killed when a mob attacked and burned their vehicle. Two passengers escaped, but two are still missing. Survivor Imran said he was beaten and robbed. The police took the deponent's statements in 2002 and 2008.

In his cross-examination he has deposed that he couldn't identify the attackers since Imran was unconscious at the time.

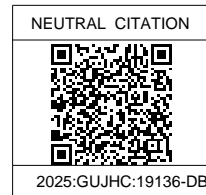
13.67 PW-67, Exh.224-Ayeshaben Suleman Pelagar, is also relative of the victim. In her chief, she has deposed that in February 2002, her son Yusuf was driving a Tata Sumo with four visitors from England, including Mahammadbhai. On 1st March 2002, she received news that a mob attacked and burned the vehicle near Prantij, killing Yusuf and Mahammadbhai, while two passengers escaped. The next day, their bodies were brought



home, and last rites were performed. Survivor Imran later revealed that the attackers looted their valuables. Two missing passengers, Shakil and Saeed, remain untraced. The police recorded her statements in 2002, 2006, and 2008, but she had no additional details about the missing persons or the attackers.

13.68 PW-68, Exh.239-Imran Mahammadas is a injured complainant and his deposition is taken by widow conference from Yorkshire, England. In his chief, he has deposed that he is a British national and he came to India in February 2002 for a holiday with his uncles, grandmother, and companion Mohamed Asvar. On February 28, while traveling from Jaipur to Navsari in a Tata Sumo with driver Yusuf Pelagar, they were attacked by a mob near Prantij on National Highway-8. The mob, armed with weapons, stopped their vehicle, questioned their religion, and assaulted them upon learning they were Muslims. Yusuf was burned inside the vehicle, while Imraan and the others were beaten as they tried to escape. His uncles were last seen struggling with the mob before disappearing. Police arrived after 10 minutes, rescued Imraan and Mohamed Asvar, and took them to the hospital, where Asvar was declared dead. Despite multiple investigations, his uncles remain missing. Imraan later identified some attackers based on memory but admitted difficulty due to the passage of time.

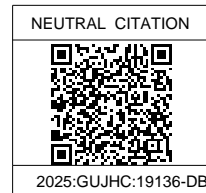
In his cross-examination, he has confirmed receiving



legal aid but denied having pre-prepared questions from the prosecution. He acknowledged filing a petition in the Supreme Court, where he mentioned a petrol pump attendant witnessing the attack. He admitted that in his 2008 statement, he had expressed difficulty identifying the accused due to the passage of time. He also confirmed reviewing correspondence between the British High Commission and Gujarat Police. However, he denied the defense's claim that he had not disclosed details about the attackers' appearance in 2002. The Court would further discuss evidence of this witness, in particular on the issue of identification in the Court.

13.69 PW-69, Exh.241-Bilal Mahammad Safiqdawood, in his deposition has stated that he is a relative of the victim, an IT Operations Manager. In his chief, he has deposed that he arrived in India from England on February 22, 2002, for Eid. On 1st March 2002, while in Bombay, he learned about the attack near Prantij, where his brother Saeed Mahammad went missing. He later visited the crime scene with British High Commission officials and police, finding burnt human bones and ashes in a factory. A doctor suggested the remains could be human. The remains were handed over to the British High Commission for DNA testing. Despite multiple efforts, his brother remains missing. He recorded his statement with Prantij police on 9th March 2002.

13.70 PW-70, Exh.29-Abdulbhai Ismail Dawood, is relative of the victim. In his chief, he has deposed that his son Sakil and nephew



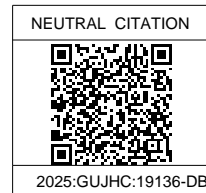
Saeed came from England in February 2002. On February 28, 2002, a mob attacked their Tata Sumo near Prantij, killing Yusuf and Mahammad Aswar. Imran survived but was injured. Sakil and Saeed went missing. Later, burnt bones found in a factory were identified as Saeed's remains, but Sakil's whereabouts remain unknown.

In his cross-examination, he has deposed that he avoids discussing the incident with Imran due to its mental impact on him.

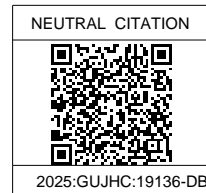
13.71 PW-71, Exh.250-Ayeshabanu Abdulbhai Dawood is a relative of the victim. In her chief, she has deposed that she resides between Lajpur and England, returned to India in November 2001. On February 19, 2002, her son Sakil, grandson Imran, nephew Saeed, and Mahammad Aswar arrived from England and stayed with her. On February 25, they, along with driver Yusuf Peragar, went sightseeing but were attacked near Prantij on February 28 by a mob that set their vehicle on fire. Yusuf and Mahammad Aswar were killed, while Imran survived with injuries. Sakil and Saeed went missing. Later, burnt bones found in a factory were confirmed to be Saeed's, but Sakil remains untraced.

In her cross-examination, she has deposed that she never discussed the incident with Imran due to his trauma. She also confirmed that she did not see the incident personally.

13.72 PW-72, Exh.258-Dalpatbhai Karshanbhai Vankar, is an

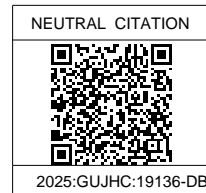


Investigation Officer, who served as Police Inspector at Prantij Police Station from November 1999 to August 2002. In his chief, he has deposed that on 28th February, 2002, due to the Gujarat bandh following the Godhra incident, extensive law and order arrangements were made in Prantij and along National Highway-8. At 19:00 hrs, a wireless message reported a burnt Tata Sumo near Vadavasa village with a charred body beside it and two injured individuals, one of whom later succumbed at Prantij CHC. Survivor Imran Mohammad Salim Daud (UK resident) identified the deceased as Mohammad Abdul Hai Aswar, and an FIR was filed. On March 1, 2002, an inquest panchnama was conducted, and postmortem reports confirmed burn injuries as the cause of death for Yusuf Pelagar and hemorrhagic shock for Mohammad Aswar. Statements from local witnesses and survivors were recorded, and the deceased's family was informed. Between March-April 2002, the British Deputy High Commission investigated two missing British nationals, with local journalists and police officers involved. On 8th March, 2002, British officials, along with Surat and Sachin police, visited Prantij Police Station, where suspected human remains were found and sent for forensic analysis. Despite ongoing riots and multiple murder cases, additional police and home guards were deployed for law enforcement. On 26/04/2002, accused Rakeshbhai Babubhai Patel and Kalabhai Hirabhai Patel were arrested, and their physical condition was documented in a



panchnama. They were remanded until 29/04/2002. During interrogation, accused Rameshbhai Madhabhai Patel disclosed that the Hero Honda motorcycle (GJ-9 L 3535) used in the crime was borrowed from Somshih Bhupatsinh, leading to its seizure. As the accused remained uncooperative, a Lie Detector Test was scheduled from 20/05/2002 to 24/05/2002 at FSL Ahmedabad. Meanwhile, the British Deputy High Commission, Mumbai, circulated posters of missing persons Shakil Abdul Hai Daud and Saeed Shafiq Daud across Gujarat. The investigation included medical reports, crime scene mapping, and evidence collection. On 25/05/2002, an additional charge under IPC Section 153(A) was recommended, and after approval from the Gujarat Home Department, a chargesheet was filed against six accused in the Judicial Magistrate's Court, Prantij, marking the completion of the investigation.

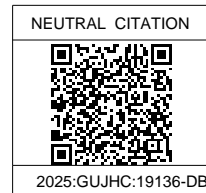
In his cross-examination, he has deposed that he first learned about the case on 28/02/2002 at 19:00 hrs and visited Prantij CHC for two hours. The FIR registered by PSO Subamiya Dolubha Parmar did not mention motorcycles chasing the Tata Sumo or any looted belongings. During site inspection on 03/03/2002, no human remains were found at the burned rubber factory, and the burnt Tata Sumo was not seized due to workload issues. The witness admitted filing an affidavit in the Supreme



Court regarding anonymous complaints but denied manipulating witness statements or creating false evidence. He also admitted that statements under CrPC Section 164 were not recorded.

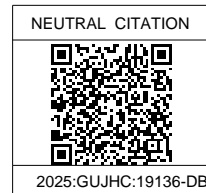
13.73 PW-73, Exh. 272-Basirahmed Abduljabbar Sufi is relative of the victim. In his chief, he has deposed that he last visited India about two and a half years ago and first came in January 2002 with his family. He knew Imran, Shakeel, and Saeed, who lived in the UK and arrived in India in January 2002. While returning from Delhi, their vehicle was attacked near Oran village, where the driver was burned alive. The victims ran for shelter; Imran was stabbed, and Mohammad Aswar was attacked, while Saeed and Shakeel tried to escape but were left amidst the mob. The British High Commission was informed, and later, the witness visited Prantij with officials, where bones were found at a factory site and sent for forensic testing. Newspaper ads and posters were placed for information, and a fax later confirmed Saeed and Shakeel's deaths. The witness suspects Pravinbhai Jivabhai Patel and others were involved.

In his cross-examination, he has admitted that he did not personally witness the killings of Saeed and Shakeel and was informed through official communication. He acknowledged that he had no direct knowledge of how the mob formed or who led the attack. He also confirmed that he did not inform Imran Dawood



about the faxed information regarding Saeed and Shakeel's deaths. Additionally, he conceded that his statement was primarily based on information received from the British High Commission and other sources rather than firsthand observation.

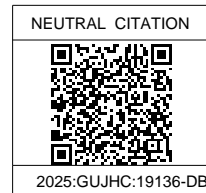
13.74 PW-74, Exh.293 or 293(A)-Iyan Riyask is a Vice Consul at the British Deputy High Commission in Mumbai and his deposition is taken by video conference from Yorkshire, England. In his chief, he has deposed via video conference that he visited Prantij in March 2002 to investigate the murder and disappearance of British nationals at the request of Bilal Dawood. Before the visit, he met the Additional Commissioner of Police, Ahmedabad, who arranged security. On 8 March, he, along with Bilal Dawood and police officers, visited the Prantij Police Station, the highway where the burnt Tata Sumo was found, Jananni Farm, and a nearby factory. A local woman stated that the victims had sought refuge at the farm before being chased by a mob. At the factory, Reakes discovered bone fragments and ashes, which the police collected. The remains were later examined by Dr. Dongre at Prantij Hospital, who confirmed them as likely human. On 9th March, he revisited Prantij Police Station, urged further investigation, and facilitated the transfer of bone fragments to the British Deputy High Commission in Mumbai, from where they were sent to the Hyderabad Forensic Laboratory. DNA analysis confirmed that one



fragment belonged to Saeed Dawood.

In his cross-examination, he admitted not taking photographs or recording names of local informants but stated that Bilal Dawood had a camera. He used personal notes for reference.

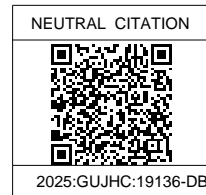
13.75 PW-75, Exh.297-Howard Ronald Parkinson is a former British Deputy High Commissioner in Mumbai and his deposition is also taken by video conference from Yorkshire, England. In his chief, he has deposed that on 22nd April, 2002, his staff member Ian Reakes received an anonymous call about British nationals being attacked and burnt in a pressure pipe factory near Oran village, Prantij, allegedly involving Badalji Nanji Darbar Makwana. In response, Parkinson wrote to the Gujarat DGP on 26 April, 2002, requesting an investigation and enclosed an anonymous fax listing ten suspects. Earlier, he had sent letters on April 5 and 15, 2002, regarding the missing British nationals, referring to an anonymous letter stating they were killed and burnt, also naming a local teacher as an alleged perpetrator. His April 5 letter, signed on his behalf by Ian Reakes, urged police action. On May 3, 2002, Gujarat Police responded, confirming the arrest of six accused on April 26, 2002, though they were not the same individuals named in the anonymous letters. Police sources indicated the missing British nationals were murdered, but there was no independent eyewitness confirmation. On May 7, 2002, the British Deputy High Commission



received another anonymous fax in an Indian language, translated by consular staff, stating that the missing persons were burnt alive and naming four "tarafdars" (witnesses). Parkinson clarified that translations were for his understanding and originals were forwarded to authorities.

In his cross-examination, he admitted uncertainty about the accuracy of translations, as no official translator was used, confirmed that none of the anonymous letters claimed an eyewitness, denied authorizing Suresh Grover to represent him, and stated that his employee Yasmin Jaswal set up his Skype testimony.

13.76 PW-76, Exh.306-Jivabhai Ratnabhai Prajapati, is a Dy.S.P., Investigating officer and investigated an anonymous complaint forwarded by the SP. In his chief, he has deposed that he conducted inquiries, recorded statements, and consulted local leaders to maintain communal harmony. Field visits and verifications revealed that several accused individuals either did not exist or had strong alibis. No substantial evidence supported the allegations, and the complaint was deemed baseless. Findings were documented and submitted to the SP, with no further instructions received. The investigation was conducted alongside other significant law enforcement duties.

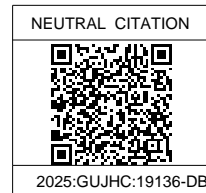


In his cross-examination, he confirmed that the anonymous complaint lacked credibility.

13.77 PW-77, Exh.313-Nitirajsinh Dahyabhai Solanki, is a former DSP of Sabarkantha. In his chief, he has deposed that he confirmed receiving and forwarding official letters related to an investigation. He submitted key documents as evidence and stated that no further action was needed after the inquiry.

In his cross-examination, he admitted that details about the accused and witnesses were based on the Prantij PI's report.

13.78 PW-78, Exh.323-Himanshu Radhevihari Shukal, is an Investigating Officer (SIT). In his chief, he has deposed that he was appointed on 09-04-2008 by IGP, CID Crime, and SIT, taking over the case as per Supreme Court's directions (W.P. No. 109/2003) and submitting a CrPC 173(8) report before the Sessions Court. He investigated the crime scene, issued reward posters, and contacted key witnesses, including Imran Mohammad Dawood. BDHC officials assisted in locating human remains at a factory, which forensic tests confirmed as bones and ashes. Land records linked Rameshbhai Patel to the crime scene, while tampered school records suggested Mithabhai Patel fabricated an alibi. DNA samples were verified, BDHC Mumbai reports were obtained, and witnesses confirmed robbery and looting.

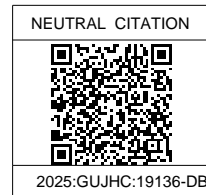


In his cross-examination, he has admitted that the complainant failed to identify the accused due to the time lapse, similar tampering was found in other school records, and no direct witness placed the accused at the scene. No weapon or material evidence was recovered, financial verification of the deceased's money was not conducted.

13.79 PW-79, Exh.327-Karamshibhai Nagjibhai Solanki, is a Head Constable worked at Prantij Police Station under PI D.K. Vankar and later PI P.M. Solanki. In his chief, he has deposed that he wrote two reports under PI Solanki's instructions, one dated 19-08-2002 to the Taluka Development Officer and another dated 20-08-2002 to the Talati of Oran Gram Panchayat. He identified PI Solanki's signatures on these reports.

In his cross-examination, he has admitted that he had no knowledge of the investigation details, whether a charge sheet was filed, or the truthfulness of the report's contents.

13.80 PW-80, Exh.350-Kundabhai Jivrajibhai Golaniya, is a F.S.L. Officer who prepared transcript from CD of deposition of complainant. In his chief, he has deposed that he received two DVDs from the Principal Sessions Judge, Sabarkantha, in 2013, reviewed them, and prepared transcripts. He confirmed that FSL Gandhinagar's physics division handles such tasks and that



transcription accuracy may vary between officers. He did not use voice isolation technology in this case.

In his cross-examination, he has deposed that he acknowledged that different officers might interpret recordings differently.

13.81 PW-81, Exh.363-Niraj Arvindbhai Pancholi is also F.S.L. Officer who prepared transcript from CD of deposition of complainant. In his chief, he has deposed that he has transcribed court-ordered DVDs in 2013 with D.G. Shah. Due to recording issues like unstable camera positions and varying audio clarity, some parts were unclear. The final report, submitted on 06-03-2014, used lab systems for speech analysis and took about a month to complete.

14. The Court may now refer to the judgment of the Apex Court on the issue of the scope of interference in Acquittal Appeals.

In ***Mallappa and others (supra):-***

35. So far as the question of independent appreciation of evidence by the High Court is concerned, be it noted that the High Court was fully empowered to do so, but in doing so, it ought to have appreciated the evidence in a thorough manner. In the present case, the High Court has not done so. Even the aspects discussed by the Trial Court have not been fully

addressed and the High Court merely relied on a limited set of facts to arrive at a finding. The factors which raised reasonable doubts in the case of the prosecution were ignored by the High Court. For instance, the contradictions pertaining to time, which were carefully analyzed by the Trial Court, were not examined by the High Court at all. Similarly, the contradictions qua the nature of injuries were also not discussed. In an appeal, as much as in a trial, appreciation of evidence essentially requires a holistic view and not a myopic view. Appreciation of evidence requires sifting and weighing of material facts against each other and a conclusion of guilt could be arrived at only when the entire set of facts, lined together, points towards the only conclusion of guilt. Appreciation of partial evidence is no appreciation at all, and is bound to lead to absurd results. A word of caution in this regard was sounded by this Court in *Sanwat Singh v. State of Rajasthan* 9 , wherein it was observed thus:

“9. The foregoing discussion yields the following results: (1) An appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) The principles laid down in *Sheo Swarup* case [LR 61 IA 398] afford a correct guide for the appellate court’s approach to a case in disposing of such an appeal; and (3) The different phraseology used in the judgments of this Court, such as, (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons”, are not intended to curtail the undoubted power of a appellate court in an appeal against acquittal to review the entire

evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”(emphasis supplied)

36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

15. In case of ***Bhaskar Rao and Another (supra)***, in para-23, the Apex Court has observed as under:-

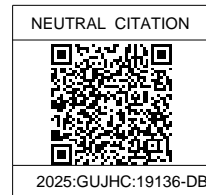
“23. Before we proceed to analysis of the case, we must first focus on the aspect concerning the standard the High Court has to apply, while hearing a case against an acquittal order of the trial court. In the case on hand, the trial court, followed by a full-edged trial, comes to the conclusion and by cogent reasoning acquits the accused. In such a case the appellate Court is further burdened with the task of re-examining the innocence of the accused. In such cases, the appellate Court is expected to be very cautious and its interference with the order of acquittal is called for only when there are compelling reasons and substantial grounds. In other words, the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their

evidence can be reversed only for very substantial and compelling reasons [refer Surajpal Singh & Ors. v. The State, 1952 CriLJ 331].”

16. With the aforesaid principles in mind, the Court may proceed to analyze the issue raised. From the pleadings and the arguments advanced, the issue that consideration can be exhibited as under:-

- I. Whether the identification of the accused by the injured eye-witness is sufficient substantive evidence under Section 9, Indian Evidence Act, 1872?
- iv. Whether absence of test identification parade is fatal to the identification of the accused in the Court?
- iii. Whether not holding of test identification parade by the Prosecution ought to result in a negative inference against the Appellant by the Learned Trial Court?
- iv. Whether alleged omission to mention description of the accused in the complaint and in the statements recorded under Section 161, Code of Criminal Procedure, 1973 (hereinafter ‘CrPC’) is fatal to the identification of the accused in the Court?
- v. Whether naturally identifying the accused in the Court is not sufficient and substantive evidence to convict the accused of the offences alleged against them?”

17. The entire arguments revolve around the identification



of the accused at the hands of the witnesses. The Court may consider that the prosecution on the basis of the medical evidence been able to establish homicidal death of the individual and injury sustained by the prosecution witnesses, however, an important and relevant fact needs to be established is the role played by each of the accused and whether they were part of the mob. The only witness around whom the entire case is balanced on PW-68. The complainant, an appellant at Exh-239.

18. The Court may reproduce the exact questions and answers of the appellant (PW No.68, Exh.239), which would be relevant, which are as under:-

“Question No.18:- Can you describe what happen to all of you on 28th February 2002, while you were travelling from Jaipur to Navsari?

Ans.: - At 05:30, we were travelling on national highway No.8 near Prantij. We asked Police Officer that everything is safe? The Police Officer has given indication and we assured that road is safe and we can go ahead.

Question No.27:- After proceeds (sic) what did you notice?

Ans.: - At about 06:00 pm, when we were going towards Navsari on national highway No.8, on road Prantij to Ahmedabad, a mob of 15 to 20 persons standing with



sticks, scrapers and knives. Persons standing on the road aged about 25 to 30 years.

Question No.33:- Thereafter what happened to you everybody?

Ans.: - Our driver Yusuf Peragar tried to drive, but the mob followed us on foot.

Question No.34:- Thereafter, what happened?

Ans.: - As our vehicle moved one another mob on National Highway No.8 in addition by this time now there were about 10 motorcycles following us.

Question No.35:- Thereafter, following the situation can you go ahead?

Ans.: - The block has been put on road which Yusuf Peragar has tried to avoid by driving alongside of the road and then back on to the road. Having noticed that they were grater persons in the mob that spread for quire distance, driver Yusuf Peragar turned vehicle around and tried to drive backwards.

Question No.37:- Thereafter, what happened?

Ans.: - mob attacked to the vehicle parked, mob pulled out all of us from the vehicle then started to beat us by sticks and scrapers and all of us tried to escape. We run towards farmhouse at approximately distance of 200 meters from the Tata Sumo Jeep.

Question No.49:- Apart from this person can you remember other persons from the mob?

Ans.: -49 There was another individual with a knife in

his hand who asked me if I was a Muslim and asked me to remove my trousers to check if I was circumcised or not, which I refused to do. This person was about 5'5" tall, medium built wearing brown shirt. Another individual, whom I recall was 5'7" tall, he was well built and was wearing gray trousers and gray shirt. He was round face, dark skin and wearing lot of rings on his fingers and thin gold chain on his neck. Some of the gold rings had stones/gems. All the rings were of gold.

Question No.68:- Can you identify the persons who were in the mob?

Ans.68 I can try.

Note:- At this time, accused are shown one by one by camera to the complainant and to see them he told that,

They look somewhat like them and they are almost like them in the mob. It has been long time now almost 8 years.

18.1 In the cross-examination, the appellant has deposed as under:-

Question No.7:- During your entire examination in chief, you have referred to the documents those are lying with you?

Ans.: No, it is my notes.

Question No.8:- You have filed some petition in Supreme Court of India?

Ans.: Yes.

Question No.10:- In the said petition, you have mentioned “there is a petrol pump located at the place where the incident took place, the attendant at the petrol pump who reside on its premises witness the incident”. Have you mentioned it in the Supreme Court of India?

Ans.: Yes

Question No.11:- In your statement dated 27th December 2008 you have mentioned like this, “On being asked whether I would be able to identify the accused in the test identification parade. I wish to state that due to passage of time, I will not be able to identify them in test identification parade.”?

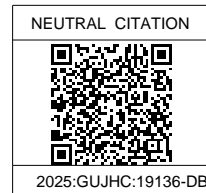
Ans.: My statement was recorded on 27th December 2008 by police. This statement was recorded at Bombay by SIT.

Question No.12:- This statement was recorded by Himanshu Shukla, Assistant Superintendent of Police, SIT. In the said statement you have mentioned that due to passage of time you were not in a position to identify the accused in the identification parade?

Ans:- Yes, that is right.

Question No.15:- You did not disclose the details regarding appearance of persons of mob in the year 2002 before Police?

Ans.- It is not true that I did not disclose the details of appearance of the persons of the mob in the year 2002 before Police.



19. With regard to the identification of the accused, the Court may also refer to the evidence of PW-72, the First Investigation Officer examined vide Exh-258. From his testimony, the Court may extract the relevant portion to the evidence.

“(30) The yaadi was addressed to Mamlatdar, Prantij, vide outward no. 775/02, with a copy of panchnama drawn in respect of the place of occurrence, for preparing a map of place of occurrence. The same is produced vide Exh. No. 209 in this case. It bears my signature. A detailed yaadi was addressed to British Deputy High Commission, Mumbai, to give understanding to the complainant to appear at Prantij Police Station for conducting identification parade of the accused persons. It is the same as is produced vide Exh. No. 226. The same was forwarded through fax from Reliance Telecommunication, Prantij. I am shown a receipt in respect of having faxed at Exh. No. 227 and it is the same receipt. The statements of witness Manubhai Somabhai Patel, residing at Vadvasa, Suresh Laljibhai Joshi, the owner of Chamunda Hotel situated near the place of occurrence and Bahadursinh Saini, Manager of Amrita Hotel, etc. were recorded.

“(31) On 19/05/2002, British Deputy High Commission, Mumbai, forwarded a copy of analysis report of muddamal forwarded by Forensic Science Laboratory, Hyderabad. It is mentioned in the aforesaid report that the name of missing person Sayeed Shafik Daud was traced. It is the same report as is produced vide Exh.

No. 171 in this case. On the same day, British Deputy High Commission, in its report, stated that complainant Imran Mohmmmed Salim Daud has been given understanding to appear at Prantij Police Station for identification parade of the accused persons. I am shown Exh. No. 228. It is a letter forwarded by Mr. Iyan Rickson to send samples for D.N.A. test and F.S.L. test. I addressed a letter dated 25/07/2092 (sic) to the Director, F.S.L., Hyderabad, Andhra Pradesh, in respect of D.N.A. test and for getting samples back. It is the same letter as is produced vide Exh. No. 229.

..... It is true that complainant has never told me about the age, appearance and height of assailants, who attacked him. It is not true that charge sheet has been filed by creating false evidences so as to save Gujarat Police, particularly myself from criticism.”

20. To answer the issues which arise and as enumerated in the preceding paras, the Court may refer to the decisions of **P. Sasikumar (supra)**. This judgment of the Apex Court which examines the relevance of the ‘dock identification’ in absence of Test Identification Parade. The Apex Court has laid down as under:

“12. It is well settled that TIP is only a part of Police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial. This identification has

been made in Court by PW-1 and PW-5. The High Court rightly dismisses the identification made by PW-1 for the reason that the appellant i.e., accused no.2 was a stranger to PW-1 and PW-1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW-1 made for the first time in the Court was not proper. However, the High Court has believed the testimony of PW-5 who has identified accused no.2 under similar circumstances. The appellant was also stranger to PW-5 and PW-5 had also seen the accused i.e., the present appellant for the first time on that fateful day i.e. on 13.11.2014 while he was wearing a green colour monkey cap. The only reason assigned for believing the testimony of PW-5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning. We are afraid the High Court has gone completely wrong in believing the testimony of PW-5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: Kunjumon v. State of Kerala (2012) 13 SCC 750).

13. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity

of the present appellant i.e. A-2 beyond a reasonable doubt. The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of *Rajesh v. State of Haryana* (2021) 1 SCC 118 and therefore TIP may not be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

14. The relevance of TIP has been explained by this Court in a number of cases (Please see: *Ravi Kapur v. State of Rajasthan* (2012) 9 SCC 2841, *Malkhansingh and Ors. v. State of Madhya Pradesh* (2003) 5 SCC 7462).

15. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of *Jayan v. State of Kerala* (2021) 20 SCC 38 and *Amrik Singh v. State of Punjab* (2022) 9 SCC 402 . In *Jayan* (supra), this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in

the following words: "It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy." (Para 18)

21. Yet another pronouncement of the Apex Court in case of **Venkatesh and ors. (supra)**, where the conviction was for Section-366 of IPC allowing the appeal of the convict, one of the reasons assigned was first time identification in the trial Court. The Apex Court in Para-15 has held as under:

"15. Furthermore, no identification parade has been conducted in the present matter. While identification by a witness in a given case for the first time in witness box would be permissible, the substantial gap of approximately eight years raises serious concern regarding identification. If no identification parade of the unknown accused persons took place, their identification in the Trial Court, for the first time, would cast a serious doubt on the veracity of the prosecutions case."

22. With the aforesaid principles laid by the Apex Court,



this Court having scrutinized the testimony of the eye-witness; PW-68 and the Investigating Officer; PW-72. This Court is of the view that the I.O. made an attempt to carry out the T.I.P. during the course of investigation by the first I.O. However, for the reasons mentioned in his deposition, the T.I.P. could not be proceeded, the Court does not find any reason to attribute any malafide to the role of the I.O. Thereafter, the manner of the identification during the testimony of PW-68 and that too via video conferencing and the answers being given by PW-68 on the issue of identification, the Court is of the view that such an identification may not be treated as an absolute identification to be a substantive evidence on which a conviction can be based or more so, an acquittal can be reversed.

23. The Sessions Court also while dealing with this issue has taken into consideration the evidence of the witness PW-68 as also the FIR at Exh 240 and the evidence of the IO PW No.72 Exh.258 and accepted the argument of the defence that the description of the accused given by the witness denying investigation was only about the height, clothes and approximate age. Even in the FIR itself, no description of the accused was given. Therefore, the Sessions Court has rightly concluded that such an identification (Dock) cannot be the sole ground to base conviction.

24. The contention is raised by the appellant by invoking Section-9 of the Indian Evidence Act. No doubt, as the

identification of an accused when establishes the identity of an individual as an accused is indeed a relevant fact. Applying the same to the facts of the present case, when PW-68 in Dock identification via video conference identifies the accused as a part of the mob, obviously this witness who is stranger in the area and to the accused once identified, the accused would establish a circumstance of presence of the accused in the mob and the place and time of the offence. However, the case laws on the point developed over the period has created various safeguards which are required to be kept in mind by the Courts before accepting the Dock identification as an absolute evidence under Section-9. On this line, judgment in case of **Ram Babu v/s. State of U.P.** reported in **2010 (5) SCC 63** to hold that the facts which establish the identity of an accused is relevant fact, however, in the very judgment of the Apex Court also held that T.I.P. is a part of investigation and if adequate precaution are ensured then such evidence can be used for corroboration and thereby to strengthen the trustworthiness of the substantive evidence, i.e. dock identification. In the same year, judgment was rendered by the Apex Court being in case of **Mulla & Anr. Vs. State of Uttar Pradesh** reported in **AIR 2010 SCA, 942** has laid a principle in para-32 as under:-

“32. Therefore, the following principles regarding

identification parade emerge:

[(1) an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses;

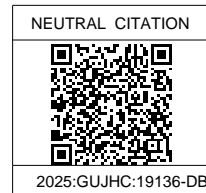
(2) this condition can be revoked if proper explanation justifying the delay is provided; and,

(3) the authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses.]”

25. In case of ***Rajesh Govind Jagesha Vs. State of Maharashtra*** reported in ***AIR 2000 SC 160***, the Apex Court held that if the T.I. Parade is held after an unexplained delay, the accused is entitled to benefit of doubt. Thereby emphasizing on the proper and timely conducting of T.I.P., similar view is expressed in case of ***Raj Nath Vs. State of Uttar Pradesh*** reported in ***AIR 1988 SC 345*** holding that any delay in T.I.P. detracts from the credibility of the identification. In present case, there was no T.I.P. admittedly and PW-68 is a stranger to the area and the people consisting the mob, the Dock identification is for the first time after a gap of 6 years. Therefore, the Court has no hesitation to conclude that the Dock identification of the accused in the manner described in the preceding paras can not be treated as a relevant fact established by prosecution to convict the accused.

26. The Court may also test the reliability of PW-68, the appellant on the basis of the version depicted by him in so far as the mob is concerned. This witness has deposed that the vehicle was intercepted by a mob of 15 to 20 people, where as the mob consisted of large number of people. An independent witness, PW-19, Pravin Patel, Exh-111 in his chief has mentioned that the Jeep vehicle was followed by a mob as of 150 to 200 persons. This version is consistent even in his cross.

27. The Court may also address the ancillary issues as the same were raised by either side during the course of arguments. The arguments of the appellant were broadly restricted to the issue of identification of the accused at the same time the respondents had raised an issue of the identification of the deceased. It is argued that the procedure adopted in carrying out the panchnama at the factory to collect the bone fragments and the same being handed over to the officers of British High Commission is unknown to investigation. The procedure adopted during investigation is that the Investigation Officer carried out the panchnama in presence of panch witnesses at the factory Exh-87. The fragments of bones collected were preserved and handed over the official of British High Commission. In turn, these collected articles and the DNA samples of the relatives drawn were sent to FSL, Hyderabad for analysis and the Report of the analysis was placed on record vide



Exh-171. It is pertinent to observe that the said Exh-171 was admitted by the defence in the trial. The purpose of the entire exercise was to establish an identity of a British National, who has died in the mob attack and which is established by FSL report. Therefore, the Court does not deem it fit to dwell on the issue raised by the respondents regarding the extra-legal procedure adopted to collect the evidence.

28. The issue of carrying out the lie-detection test of the accused though not argued, the Court has gone through the relevant evidence, where all the accused were subjected to lie-detection test and their reports are also on record vide Exh 131. The conclusion of FSL report on each of the accused-respondents also exonerates the accused from being in the line of suspects.

29. The issue therefore, arises that how at all the names of the accused surfaced during the course of investigation and on what basis the respondents were subjected to investigation and trial. The root lies in the anonymous fax letter which was addressed to British High Commission, which narrated the names of the respondents as accused persons. The Court may refer back to the evidence of PW No.75, Exh.297, an officer of British Consulate and who have referred to an anonymous fax with names of 10 suspects, which he in turn had forwarded to Director General of Police and the Investigating Officer. Therefore, the initiation of



the investigation is also based on an anonymous fax message and not on the basis of the evidence of any independent eyewitness.

30. For the foregoing reasons, the Court does not find any reason to interfere with the impugned judgment and order of acquittal passed by the Principal District and Sessions Judge (Specially Designated Court), Sabarkantha at Himmatnagar in Sessions Case No.70 of 2002. The appeal therefore deserves to be and is hereby dismissed. Bail bonds stand discharged. Records and Proceedings be sent back to the concerned Sessions Court.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SHITOLE