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IN THE COURT OF 3<sup>RD</sup> ADDITIONAL SESSIONS JUDGE,  
PANCHMAHALS AT HALOL.

**New Sessions Cases No.3 of 2017, 9/2017, 14/2017 & 25/2017**  
**The F.I.R. I C. R. No.33/2002 of Kalol police station. Ex.\_\_\_\_\_**

The State of Gujarat at Gandhinagar

**Complainant.....**

**V e r s u s**

**Sessions Case No.3 of 2017 [Old SC No.108 of 2003]:**

1. Mahesh Dinubhai Valand  
Age : 22 years  
Resi. at : Pingali, Ta-Kalol, Di-Panchmahals.
2. Rameshbhai @ Bhuriyo Shivabhai Harijan - Abated  
Age : 41 years  
Resi. at : Delol, Ta-Kalol, Di-Panchmahals.
3. Bharatbhai Muljibhai Brahmbhatt  
Age : 30 years  
Resi. at : Derol Station, Ta-Kalol, Di-Panchmahals.

**Sessions Case No.9 of 2017 [Old SC No.337 of 2004]**

1. Dankeshkumar Amrutlal Upadhyaya  
Age : 51 years  
Resi. at : Derol Station, Ta-Kalol, Di-Panchmahals.
2. Vinodbhai Muljibhai Barot  
Age : 48 years  
Resi. at : As above.
3. Brahmanand Kalicharan Sharma  
Age : 20 years  
Resi. at : As above.

4. Maheshkumar Kalicharan Sharma  
Age : 23 years  
Resi. at : Derol Station, Ta-Kalol, Di-Panchmahals.
5. Madhavkumar Radheshyam @ Kotwal Sharma  
Age : 21 years  
Resi. at : As above.
6. Kiransinh @ Bhali Jadiyo Takhsinh Solanki - Abated  
Age : 24 years  
Resi. at : As above.
7. Gopalbhai Bakabhai Rathod  
Age : 24 years  
Resi. at : Mohanpari.
8. Balvantsinh @ Jigabhai Takhsinh Panjroliya - Abated  
Age : 24 years  
Resi. at : Mohanpari.
9. Natvarsinh @ Tikabhai Zaverbhai Rathod - Abated  
Age : 24 years  
Resi. at : Delol, Ta-Halol, Di-Panchmahals.
10. Prakashkumar Bipinchandra Shah - Abated
11. Alkeshkumar Kishorbhai @ Mukhiyaji Vyas  
Age : 21 years  
Resi. at : Delol, Ta-Halol, Di-Panchmahals.
12. Rohitkumar Bhikhabhai Kachhiya  
Age : 26 years  
Resi. at : As above.
13. Dipakkumar Chhaganlal Parekh  
Age : 30 years  
Resi. at : As above.
14. Ratansinh Chandrasinh Gohil  
Age : 36 years  
Resi. at : Kandach, Gohil Falia, Derol Station, Ta-Kalol, Di-Panchmahals.
15. Vishnukumar Kalicharan Sharma  
Age : 26 years  
Resi. at : As above.

16. Kalpeshkumar Kalicharan Sharma  
Age : 20 years  
Resi. at : Kandach, Gohil Falia, Derol Station, Ta-Kalol, Di-Panchmahals.
17. Thakorbhai Muljibhai Barot  
Age : 40 years  
Resi. at : As above.
18. Sunilkumar Govindlal Gandhi  
Age : 30 years  
Resi. at : As above.
19. Narendrasinh Arjunsinh Lakum - Abated
20. Vipulkumar Kalidas Modiya  
Age : 30 years  
Resi. at : As above.
21. Rajubhai @ Mithun Ravjibhai Gohil - Abated

**Sessions Case No.14 of 2017 [Old SC No.173 of 2005]**

1. Niravkumar Gautambhai Patel  
Age : 24 years  
Resi. at : Ramnath, Ta-Kalol, Di-Panchmahals.
2. Dilipsinh Vanrajsinh Gohil  
Age : 44 years  
Resi. at : Kandach, Ta-Kalol, Di-Panchmahals.
3. Pradipsinh @ Lalabhai Gamirbhai Gohil - Abated
4. Jitendrakumar Ramanlal Shah - Abated
5. Kilol Rasiklal Jani  
Age : 29 years  
Resi. at : Delol, Ta-Kalol, Di-Panchmahals.
6. Dahyabhai Kuberbhai Patel - Abated  
Age : 59 years  
Resi. at : As above.
7. Suresh @ S. Kumar Natvarlal - Abated  
Age : 53 years  
Resi. at : As above.

8. Dilipbhai Ghanshyambhai Bhatt  
Age : 50 years  
Resi. at : Delol, Ta-Kalol, Di-Panchmahals.
9. Akshaykumar Madhusudan Shah  
Age : 29 years  
Resi. at : As above.
10. Budhabhai Keshribhai Rathod - Abated
11. Jogabhai Chunabhai Luhar - Abated
12. Narendrakumar Bhikhabhai Kachhia  
Age : 31 years  
Resi. at : Delol, Ta-Kalol, Di-Panchmahals.
13. Jinabhai Balwantbhai Rathod  
Age : 23 years  
Resi. at : As above.
14. Nashibdar @ Padhiyo Balwantsinh Rathod  
Age : 32 years  
Resi. at : As above.
15. Yogeshkumar Ramanbhai Patel  
Age : 28 years  
Resi. at : Kandach, Ta-Kalol, Di-Panchmahals.
16. Ashokbhai @ Don Chaturambhai Patel  
Age : 40 years  
Resi. at : Ramnath, Ta-Kalol, Di-Panchmahals.
17. Sureshbhai Gokalbhai Patel  
Age : 46 years  
Resi. at : Ramnath, Ta-Kalol, Di-Panchmahals.
18. Mukeshbhai Parshottambhai Jadav  
Age : 32 years  
Resi. at : Kalol, Di-Panchmahals.
19. Kirankumar Keshavbhai Harijan  
Age : 29 years  
Resi. at : Kalol, Di-Panchmahals.
20. Yogeshkumar Ramanlal Pandya  
Age : 47 years  
Resi. at : As above.

21. Juthaji Taraji Marwadi  
Age : 48 years  
Resi. at : Kalol Talav, Kalol, Di-Panchmahals.
22. Sanjaykumar @ Lalo Sureshchandra Panchal  
Age : 35 years  
Resi. at : Kalol, Di-Panchmahals.
23. Sanjaykumar @ Chako Bachubhai - Abated  
Age : 26 years  
Resi. at : As above.
24. Ajaybhai Nanalal Soni  
Age : 39 years  
Resi. at : As above.
25. Bimalkumar @ Jagu Narendrabhai Suthar  
Age : 31 years  
Resi. at : As above.
26. Dolatsinh @ Ramanbhai Khumansinh Rathod - Abated

**Sessions Case No.25 of 2017 [Old SC No.113 of 2010]**

1. Prabhudas S. Kanojiya - Abated  
Resi. at : Chor Muvadi, Derol Station, Ta-Kalol, Di-Panchmahals.
2. Ashokkumar Shankarlal Mochi - Abated  
Resi. at : Derol Station, Ta-Kalol, Di-Panchmahals.

**Accused persons....**

**Appearance :**

Ld. APP Mr. R. D. Shukla for the Complainant-State.

Ld. Adv. Mr. G. G. Solanki and Mr. V. S. Pathak for the Accused persons.

## **C O M M O N   J U D G E M E N T**

1. This judgment shall dispose of S. C. No.3/2017, 9/2017, 14/2017 & 25/2017 arose from FIR No.I-33/2002 of Kalol Police Station. As the accused of each referred cases, are alleged to have had committed the offences in the course of same transaction, they were tried jointly. It may be stated that when the accused appeared before the sessions Court pursuance of a commitment of the case under section 209, the learned prosecutor described the charge under Section 143, 147, 148, 149, 302, 201, 395, 435, 436, 427, 333, 295, 153 (A), 323, 504, 502 of the IPC, as well as offence punishable under Section 135 of the Bombay Police Act, brought against the accused persons and stated by what evidence he proposed to prove the guilt of those accused. He thus opened the case.
  
2. Communal Violence in India is not a new phenomenon. Communal riots in India have persisted for long times and are usually caused by the trifle dispute and intolerance, manipulation of religious artifacts, intrusion by others on festivals, conflicting prayer time, dispute over places of worship, intermarriage, desecration of holy places, sexual offences rumors on issue of encroachments or the presence of anti India agents.  
  
On 27th February, 2002, Sabarmati Express rolled out of Godhra Station at 4:43 a.m. and barely run a kilometer, some one has pulled the emergency chain, bringing the train to halt at signal falia. The train was

carrying around 1700 pilgrims and Kar Sevaks to its final destination - Ahmedabad. The Kar Sevaks were returning from Ayodhya where V.H.P. had organized Purna Ahuti Mahayagna as part of its agenda to built Ram Mandir. At single falia strong mob, said to be more than a thousand strong then rushed towards the train and again began to pelt it with stones. It targeted three coaches which carried Kar Sevaks. Mob was armed with petrol bombs, acid bombs and swords etc.. The attackers poured petrol into the 5-6 compartment and then set it afire killing 59 passengers. 40 people also sustained injuries. Peace loving Gujarati people was shocked and became anguished by this incident. We have seen that then pseudo - secular media and politicians rubbed salt into wound of anguished people. Report says that sixteen of Gujarat's 24 Districts were engulfed in communal rioting - post Godhra riots. Nowhere mobs were less than 2-3000, more. Often they were more than 5-10,000 strong. There were spontaneous set of riots in Gujarat. They were not planned one, as described by pseudo-secular persons.

3. These are cases of post-Godhra riots. The F.I.R. No. I C. R. 33/2002 of Kalol police station describes four places which were Hot spot of communal violence. As per the FIR the Delol village, the Derol Railway Station area, Kalol bus stand area, Kalol talav slums areas, were engulfed in rioting. Mr.Patil the senior P. I., Kalol police station, himself become the complainant and it was registered against members of violent mobs

without naming any individual. According to the complainant the Vishwa Hindu Parishad called Gujarat Bandh on 28/02/2002 - a day after Godhra train carnage and pursuant to such declaration there was police settlement in area of Kalol and the complainant was on general patrolling with his police staff while C. I. P. Mr. Katara was in Kalol police station patrol, for keeping law and order. In his complaint, he described incidents of violence at five places as under:-

- (1) In the early morning of 28/02/2002 at Delol village, a Hindu fanatic mob of 500, made unlawful assembly, attached and vandalized and set on fire mosque. The police party warned the mob to disperse but mob was resistant and ultimately a policeman fired one round in air and the mob could be dispersed.
- (2) On 28/02/2002 at around 12:30 p.m., fanatical Hindu mob atleast 6 to 7 thousands attacked the slums behind Kalol bus stand and residences, shop cabins and vehicles were vandalized and set on fire. The mob dispersed only after police opened one round fire in air.
- (3) Thereafter fanatical Hindu mob of atleast one thousands, also attacked Derol station area and mob vandalized and set on fire vehicles, cabins-shops etc. there. The police team rushed there and dispersed the mob, upon two round of fire.



- (4) On 28/02/2002 at 13:35 to 15:10 hrs. at Sadak falia, near Kalol bus stand, there occurred communal violence. On one hand of road there was fanatic Hindu mob of 6 to 7 thousands armed with deadly weapons, while on other land Muslim mob of 3 thousands armed with deadly weapons clashed with each other shouting for killing and by pelting stones and setting on fire the residences, shops, vehicles etc. The C. P. I., Halol asked and warned the mobs to disperse, but both fanatical mobs continued clashes ignoring the warnings. Teargas shells were fired to control the mobs. The cross stone pelting caused injuries to police persons. Police team and officers were surrounded and caught between the mobs and no way, except firing upon mob was left. Local police as well as S. R. P. persons opened fire upon order of the Executive Magistrate and then the mobs dispersed but tense remained as it was.
- (5) On that day at 16:00 hrs. again fanatical mob started sone pelting at Kalol bus stand and Radheshyam Complex and set the shops on fire. Upon order from the Executive Magistrate, the police persons again opened fire there and mob was dispersed. After 16:10 curfew was imposed in whole Kalol city.

Abstracts of F.I.R. reveals that Hindu as well as Muslim fanatical mob was involved in violence and in referred manner committed offences punishable u/s 145, 143, 147, 148, 149, 435, 436, 333, 323, 504, 427, 506(2) of the IPC and u/s 135 of the G. P. Act. It is required to be stated that initially there was no charge of offence u/s 302 of IPC against the unlawful assemblies of both Hindu and Muslim communities.

4. On 1/3/2002 the Railway Police Station, Godhra received information that one unknown dead body is lying in Railway Colony of Derol Railway Station and he is victim of violence registered as I C. R. No.33/2002 of Kalol police station. The A. S. I. Godhra Railway Police was deputed to visit the spot. He inspected the spot and prepared inquest panchnama in presence of two panchas and sent report to the Executive Magistrate seeking inquest process u/s 174 of the Cr.PC. The A. S. I. of Godhra Railway Police Station also drew panchnama of scene of occurrence in presence of the referred panchas. Thereafter A.S.I. Godhra Railway Police Station recorded statements of (1) Mr.Jaswantbhai Kalubhai Solanki (2) Mr.Sardar Mangalbhai Solanki, police men Derol Station (3) Mr. Vinodchandra P. Vyas, Station Superintendent of Derol Railway Station, as he found that cognizable offence of murder was committed within Railway limit. The P. S. I. Railway police station, Godhra had sent the said unknown body for its post mortem to Godhra General Hospital on 2/3/2002 and Dr. J. J. Shrimali carried out post mortem of the body. As

per the P. M. report the deceased died due to shock of extensive burns. At the time of inquest panchnama it was noted that the deceased had worn 'ash coloured pantaloonaaloon'. As we know that all cognizable offences committed against person or property within Railway limit should normally be dealt by Railway police but police manual provides that it can be dealt with by Railway police or the District Police whichever is nearer to the scene of occurrence. In case on hand though one unknown person was killed by mob within Railway colony, the case was afterwards dealt with by the Kalol police, upon due correspondence. In cases occurring in districts traversed by Railways in which it is not possible at once to fix the police jurisdiction within which an offence has been actually committed nearest police station shall be the proceed for the registration and investigation of offences. So in this case initially Railway police inquired into matter of unknown dead body found in Railway Colony Derol Station. But afterward Kalol police carried out further investigation.

5. The F.I.R. shows that the District Police and S. R. P. have used fire arms [teargas shells, bullets]. As per the S.O.P. for crowd control, the police officials may use fire arms in self-defence or defence of others against imminent threat of death or serious injuries. According to Investigating Officer of this case firing was done under order of superior officers and the Executive Magistrate of local jurisdiction. On 28/2/2002 Mr. Patel Sr.

P. I., Kalol recorded statements of police officials who opened the fire from the arms, in process of dispersal of violent assemblies.

6. On 5/3/2002 Mr. Patil Senior P. I. proceeded to the spots of violences and ascertained the damage done to residences, shops, cabins, lorry, vehicles, timber yard, religious place etc. and prepared 12 pages running panchnama, describing therein, various places affected by the violence dated 28/2/2002. The panchnama was drawn in presence of two panchas. Then Mr. Patil Sr. P. I. also visited the victims of violence to record their statements u/s 162 of the Cr.PC. The case diary shows that during 5/3/02 to 30/3/02 he recorded statements of (1) Mr.Ishaq S. Pinjara (2) Mr. Jagdish M. Darji (3) Mr. Mahesh M Darji (4) Mr. Jayanti G. Kansara (5) Mr. Madhavlal R. Patel (6) Mr. Abdul I. Shaikh (7) Mr. Yakub R. Shaikh (8) Mr. Mustaqsha AR. Diwan (9) Mr. Nileshkumar D. Parikh (10) Mr. Ashlamsha Aayubsha Diwan (11) Mr. Sabbirkhan Ajijkhan Pathan (12) Mr. Umar H. M. Shaikh (13) Mr. Burhanuddin F. Vora (14) Mr. Ibrahim K. Fakir (15) Ms. Nurjahabibi R. Shaikh (16) Mr. Iqbal I. Shaikh (17) Mr. Irfan M. Ghanchi (18) Mr. Ramjani A. Kanjariya (19) Mr. Maksud A. Vora (20) Mr. Nasruddin M. Shakla (21) Mr. Mohd. Hanif A. Kanjariya (22) Mr. Shabbir I. Pathan (23) Mr. Shresh S. Suthar (24) Ms. Sahenazbibu Muvel (25) Mr. Munam M. Mirka (26) Mr. Husain M. Saban (27) Mr. Sattar I. Zarodiya (28) Mr. Mehbub A. Hathida (29) Mr. Iqbal A. Davda (30) Mr. Kamarali M. Khatri and (31) Mr. Hanif N. Pathan.

In the statement of witness Mr.Nasuruddin M. Shakla, dated 12/03/02, it was revealed, that his son Mr. Irfan Shakla was on truck since 25/2/02 and one Mr. Bharatbhai Bhurabhai was travelling with his son as cleaner in Truck No. GJ GG 1942 and that he has heard that his son Mr. Irfan Shakla was killed by mob near Derol Railway crossing, by setting on fire the truck and the truck is lying totally abandoned there. On 17/3/2002 one Mr.Haji Abdulsattar Abdulla Tasiya had given typed application to Mr. Desai, Dy. S. P. Halol Division stating therein names of 11 persons and mob, with allegation that they killed his son Harun Tasiya and then Harun's body was thrown in Ablazed timber shop of Mr. Siddiq Ismail Tasiya. The I. O. recorded Tasiya's statement on that very day. Thereafter also his statements were recorded on different dates. On 1/4/02 the Scientific Officer of F. S. L. alongwith Mr. Patil Sr. P. I. visited the places of occurrence at Delol, Kalol Sadak Falia, Derol Station, Derol Village and suggest the I.O. to take various samples [Muddamal] for forensic examination in presence of panchas namely Mr. Rasulkhan N. Pathan and Mr. Abdul Adam Padaviya.

On 10/4/2002 when Mr. Patil Sr. P. I., recorded statement of one Mr.Abdulkadir Mohd. Padva and shown him recovered pantaloons, then the said witness identified the pantaloons to be of his son Mr. Rasul Amin Padva. On 11/4/2002 the Investigating Officer recorded statement of Mr. Abdul Rehman Hajimohmad Shaikh wherein it is alleged that the Hindu Mob killed his uncle Mr. Usabbhai Ibrahim Shaikh in fields behind their

homes. They killed him inflicting blow of sharp weapons and then poured Kerosene like liquid and burnt him. The said witness did not choose to show the place of occurrence to I.O., and therefore, alleged place of occurrence was not inspected by the I.O. As witness Mr.Haji Abdulsattar A. Tasiya has given version as to murder of his son, on 19/4/2002 the I. O. proceeded the spot alongwith him and two panchas to timber shop of Mr.Siddiq Tasiya. There he prepared detailed panchnama and collected ash and pieces of bones, seized and sealed those things in container after marking it. On 3/8/2002 Mr.Patil, Investigating Officer sent, the container having pieces of bones, collected by him on 17/3/02, to the Forensic Science Laboratory, marking it as Parcel 'G' and sent questionnaires. He asked opinion of Scientific expert on points (i) Whether the pieces of bones pertain to human being or it is of other creature (ii) Whether the pieces of bones are of a man or a woman and (iii) Approximate age of that human being. The said Parcel 'G' was further sent to H.O.D. Anatomy Department, Medical College, Vadodara. During the investigation Mr.Patil Sr. P. I., he also arrested the accused and drew panchnama in that regards. After arrest of the accused, identification parade in presence of the Executive Magistrate and the victims, were also conducted during the investigation. He recovered various arms from the accused persons in presence of panchas. Later on different charge-sheets were filed against different offenders. Then Ld. Judicial Magistrate after compliance of Section 207 of Cr.PC, committed

cases to this Court. My Ld. Predecessor framed charges of trial of referred offences to which the accused persons pleaded not guilty and claimed trial.

7. The facts as projected in the charge are :

(A) That on 28.02.2002. The Vishwa Hindu Prishad called "Gujarat Bandh" on 28.02.2002 - a day after the Godhra train carnage. Pursuant to declaration of Bandh there was police settlement and the complainant was on patrolling with his police staff, keeping law and order. On that day during 9:00 a.m. to 4:00 p.m., Anti Muslims riots erupted in reaction of Hindu Kar Sevaks, travelling in the compartments of Sabarmati train. A Hindu fanatical mob by atleast 6 to 7 thousands, violating the notification of District Magistrate under Section 37(1) (3) of the B.P. Act, made unlawful assembly, armed with deadly weapons like Sphere, Sward, Dhariya, Sticks inflammable Carriages had attacked residency, shops, cabins, vehicles and religious places of Muslim Community, looted, raised and set on fire. At Derol Station that mob killed (1) Ruhul Amin Padava (2) Harun Abdul Sattar Tasiya and (3) Yusuf Ibrahim shaikh by inflicting deadly wepones, then burnt them causing disappearance of evidence of offence.

(B) That the Muslim Community while acting in self defense, there occurred cross stone pelting, which also caused injuries to Police persons.

(C) That accused persons were part of violent Hindu mob who were targeting properties of Muslims, that the Muslim mob also resisted and there occurred cross stone pelting, that both the mobs had become uncontrollable and continued stone pelting which caused injuries to police person on duty and the police had to resort on firing.

(D) That the accused were part of the said mob and they have thus committed offence punishable under Sections 143, 147, 148, 149, 302, 201, 395, 435, 436, 427, 333, 295, 153 (A), 323, 504, 502 of the IPC as well as offence punishable under Section 135 of the Bombay Police Act.

8. Prosecution in support of present case examined total 130 witnesses and produced numerous documentary evidences. **We are aware of the maxim, "Evidence has to be weighted and not counted.** In cases on hand the Ld. Prosecutor submitted number of evidences but he could not prove the aforesaid charges beyond reasonable doubt. The prosecution has examined total 33 panchas, in support of its case and also laid 24 panchnama. It may be stated that Panchnama is an important aspect of investigation. The Police Officer during the course of investigation has to



prepare contemporaneous records in respect to 1) Scene of offence, things observed and found at the place of offence. 2) Person of the accused at the time of his arrest things or articles found from his possession or on his possession are required to be noted in Panchnama. 3) The Police Officer has also to prepare records in respect to recoveries as well as discoveries during course of investigation. 4) The police officers have also to carry out searches and seize relevant materials for the purpose of proving charges in trial. Similarly, Police Officers has to arrange for inquest and identification parades of person and articles.

9. According to case of prosecution, the cause of alleged incident is reaction of Sabarmati Train Carnage at Godhra on 27th February, 2002 and the alleged crimes [dated 28/02/02], were committed by Hindu Fanatical mob, wherein the accused persons are participants with motive to retaliate. Let me state that any facts of case show cause of the crime, is relevant u/s 7 of the I. E. Act and the facts showing the motive of the accused is also relevant u/s 8 of the I. E. Act. So far as point of cause for the alleged crime is concerned, the version of Ld. Prosecutor is acceptable, but on the point of motive Ld. Prosecutor failed to prove that fact. Let me state that motive is not ingredient of any offence. Motive if put forward by the prosecution, it has to be fully established like any other incriminating material. In case on hand the prosecution proves violence by unlawful assemblies and damages done to properties but it can not

establish linkage of accused persons with violence hence aspect of motive of unlawful assembly pales into insignificance.

- 10.** As per the case of Prosecution on 28/2/02 Hindu violent Mob killed three Muslims namely (1) Mr. Ruhul Amin Padva (2) Mr. Harun Abdulsattar Tasiya and (3) Mr. Yusuf (Isub) Ibrahim Shaikh. Each of the deceased were killed at three different places.

(1) The Hindu Mob chased Mr. Ruhul Amin Padva from crossing gate near Derol Railway station up to the Derol Railway Colony. Then inflicted deadly weapon upon him and burnt him alive there.

(2) Mr.Harun Abdulsattar Tasiya was also killed in Delol/Derol stn area by sharped weapon and then thrown in Ignited Timber Shop of Mr.Siddiq Tasiya.

(3) Mr.Yusuf(Isub) Ibrahim Shaikh was killed at Delol, in farm behind the residence of Mr.Abdul Rehman Shaikh.

Ld. Prosecutor has examined PW-1 Mr. Bhailal S. Harijan who is panch of scene of offence at Derol Station Colony, where dead body of unknown person was lying. The PW-1 also took part in inquest panchnama drawn on corpus. Through examination-in-chief of the said witness, the Ld. Prosecutor produced panchnama of the scene of offence at Ex.103 and inquest panchnama has also been admitted in record vide

Ex.102. The PW-129 Dr. J. J. Shrimali had conducted post mortem on the unknown body on 2/3/02. I have perused the post mortem report, which shows (a) ante mortem injuries of muscle deep wounds. (b) The cut and Lacerated wounds were found at right arm pit and abdomen and there exist bruises in right fingers. (c) As per the P. M. report the body was burnt up to 88% and it was opined that the deceased died due to shock of extensive burning.

As the Railway police had recorded statements of Gate man of Railway crossing situated near the Derol Railway Station and of other police men on that station, the Ld. Prosecutor applied to call all of them witness, however except PW-70 Mr. Jayraj C. Harijan, other witnesses could not be found. The PW-70 Mr. Jayraj C. Harijan turned hostile. Ld. Prosecutor could not lay any evidence regarding Homicidal Death of that unknown person. As per the case of the prosecution PW-56 Mr. Abdulkadir M. Padva who is father of one Mr. Ruhul Amin Padva was searching his son, but could not find. Then he approached Kalol police. Mr. Abdulkadir had identified a pantaloons worn by his son, which was said to be recovered by IO from the dead body found in Railway colony.

11. It is pertinent to note here that not a single witness had identified body recovered from Railway colony of Derol Station. What the PW-56 Mr. Abdulkadir identified, is a pantaloons recovered by the I.O., which was taken out from that dead body. The said witness identified the pantaloons

shown to him by police. Mere identification of pantaloons by its colour only, is weak evidence. In this case, if we looked into case diary, the police states two incidents were occurred at the Gate of Railway crossing near Derol Railway Station. One Mr.Irfan Shakla is also said to have had disappeared from that place when he was with his Truck and another Mr.Ruhul Amin is also said to have had disappeared from same place, when he was as Cleaner in Truck. There is no eye witness in the case, who have had seen killing of the said persons. The A. S. I. Railway Station, Godhra did not choose to collect soil samples, attached to the said corpus. When we see the Panchnama of scene of offence Ex.103 and inquest panchnama of the dead body Ex.102 if seen next to next with testimony of related witness, they are contradictory. It was stated in Ex.102 & Ex.103 that nothing was recovered from that dead body. Then from where the I.O. obtained the pantaloons which was afterwards shown to Mr.Padva. The presence of inflammable or inflammatory substance was not found to suggest that the victim was burnt alive by that substance. It may be stated that investigation need calmness, in his process. A calm mind views thing better than one stirred by emotions. A day after Godhra Train Carnage, the Railway Police was put under immense pressure by Pseudo-Secular politician and media. I will not blame the A. S. I. for not collecting such samples because I recollect the situation at the time of post Godhra riots.

12. To prove killing of Mr.Harun Abdulsattar Tasiya by Hindu mob the Ld. Prosecutor has examined PW-37 Mr.Haji Abdulsattar A. Tasiya, PW-76 Mr.Shabbir S. Luhar, PW-73 Mr.Siddiq Ismail Tasiya, PW-77 Mr.Ishaq Abdulsalam Tasiya, PW-71 Mr.Rameshchandra K. Parmar, PW-72 Mr.Mahesh R. Rana & PW-78 Mr.Vijaysinh K. Parmar. I have scrutinized their depositions and found that PW-71, PW-72, PW-76 and PW-78 are hearsay witnesses of the referred facts. In examination-in-chief PW-37 has deposed that "on day of alleged occurrence, Hindu communality have given bandh call. That time he was at home in Derol Station. Mobs of Hindu came and set on fire shops, residences and a timber shop. At that time he hide on upper floor of his house.... My son Harun went down to ask for help and then killed by mob, as he caught in their hand.... he saw there were 200 to 300 persons in mob. Amongst the mob several persons are from Derol Station. He saw accused Vinod Brahmbhatt in the mob. There were other accused also, but they are not present in the court. "In cross-examination he admits that "he came to know about death of his son on next day and that his neighbours had told that the fact, that he has not named Vinodbhai Brahmbhatt to be part of mob, in his police statement."

According to police case Mr.Harun Abdulla Tasiya was killed near Mosque of Delol, then he was thrown in timber shop which was already set on fire by the mob. The PW-73 Mr.Siddiq Ismail Tasiya whose timber shop was set on fire by the mob, turned hostile in the case.

Deposition of father of deceased Harun is not reliable. His version is also contradictory to his previous statement, that is to say, his application addressed and sent to the D.S.P., Panchmahals at Godhra reveals contradiction.

On 19/4/02 the I.O. had inspected timber shop of Mr.Siddiq Ismail Tasiya and collected sample quantity of ash and pieces of bones from the place. It was sent for scientific opinion. The Prosecution has produced Ex.112 to show that the samples collected from the spot of alleged murder of Harun Tasiya, were sent to the FSL and to Anatomy Department, Medical College, Vadodara. On 13/9/02 the Assistant Professor, Anatomy Department, Medical College, Vadodara issued certificate Ex.824 stating that the material [pieces of bone Mark G] sent to us in small tin box contains completely burnt and charred and from the available specimen, it is not possible to opine for origin whether Human or animal age and sex. In the circumstances, automatically rule of 'Corpus delicti' was required to be considered and the bones found from timber shop of Mr.Siddiq Tasiya can not be considered to be of missing person Mr.Harun A. Tasiya.

Corpus Delicti is a common law rule that was initiated over 300 years ago. Corpus delicti is a Latin Phrase that means body of the crime. Corpus delicti applies to all crimes, but it is considered to be an especially important concept within any murder investigation. There should be a

body or at least a body of evidence for police to work with before the charge someone with a murder case. When someone goes missing and police don't have a body or at least a body of evidence, how police can further proceed or work with which don't exist. It is general rule not to convict anybody unless Corpus delicti can be established, that is until the dead body has been found.

Ld. Prosecutor has examined PW-5 Mr.Badrubhai Ahmedbhai Shaikh who was panch in course of drawing panchnama Ex.112. By way the said panchnama I.O. had collected pieces of bones from burnt timber-shop of Mr.Siddiq Tasiya. PW5 turned hostile and except the presence of his signature on panchnama, he denied to have knowledge of process and the place of execution of panchnama. The Ld. Prosecutor has produced map-sketch prepared by the Circle Officer, Kalol. It may be stated that recitals in the map would remain hearsay evidence, in the absence of examination of the person, who is alleged to have given information recorded in map. Prosecution has not called Circle Officer as witness in this case. So map-sketch produced by Prosecution were discarded from evaluation of evidence.

According to the case of Prosecution one Mr.Ysub (Isub) Ibrahim Shaikh was also killed by Hindu Mob. A Hindu Mob killed him inflicting sharped weapons in farm, behind house of Mr.Abdul Rehman Shaikh. The I.O. did not inspect alleged place of offence. Even no eye witness or other evidence of murder of Yusub I. Shaikh was found. In investigation,

perhaps the I.O. did not find these allegations to be true versions. However, upon surmise only the I.O. has mentioned name of Yusufbhai I. Shaikh to be killed by the accused persons.

In view of above discussion I hold that the Prosecution failed to prove homicidal death of alleged victim (1) Ruhul Amin Padva (2) Harun Abdulsattar Tasiya and (3) Yusufbhai Ibrahim Shaikh.

13. As I have stated in para 7 that Panchnama is an important aspect of investigation and the I.O. during his investigation prepares contemporaneous record of scene of occurrence or spot of offences. The Prosecution has examined PW-2 Mr.Avesh Yusufbhai Mokariya and PW-28 Mr.Salimbhai Umarbhai Ghanchi who were panchas when Mr.Patil visited places of occurrences on 5/3/02 at Delol village, Derol Station, Derol village and Kalol Town. The said panchnama is exhibited at Ex.106. Both the panch witness turned hostile. The author of panchnama died before he can be called as witness. In the circumstances though contents of Ex.106 are proved, it does not prove the fact that it was prepared, as per the process shown in it.

Ld. Prosecutor has examined PW-6 Mr.Mustufakhan N. Pathan and PW-11 Mr.Anavarbhai A. Shaikh who were panchas when I.O. inspected slums around Kalol Talav. Both the Panchas did not support prosecution case. That panchnama is at Ex.114. Again I would say though its



contents are proved, the Prosecution can not prove that it was prepared as per process shown in it.

The Scientific Officer was also called by I.O to visit and guide in local inspection of places of occurrence at Delol, Kalol Sadak falia, Derol station, Delol village. The Scientific Officer had asked to collect the ashes from the places, which were alleged to have had set on fire by Hindu Fanatical Mob. The PW-9 Mr.Rasulkhan N. Pathan and PW-3 Mr.Abdul A. Mandaviya turned hostile and did not support case of prosecution even after cross-examination. Ld. Prosecutor has produced Muddamal Ravangi [Container A, B, C, D, E, & F] vide Ex.118, Ex.122, Ex.823 to the F.S.L., Vadodara. The expert Mr.Chapaneriya has reported vide Ex.820 that no petroleum Hydro Carbon substance were found in ashes of container C to F but it was found in ashes in container A and B. It was alleged that one Mr.Bipinchandra R. Shah supplied Kerosene to the Hindu Mob which was used in arsoning of properties of Muslim. There is no direct or indirect evidence to prove alleged fact. Merely because Mr. Shah was Government licensee supplying Kerosene, he was implicated in the case. The Report of F. S. L. expert suggest that samples of ash collected from most of the places, was not having petroleum Hydrocarbon.

The PW-35 Mr.Jagdish M. Darji and PW36 Mr. Mahesh M. Darji, who were said to be eye witnesses of violence and arsoning in Derol Station area turned hostile. The PW-38 Mr.Irfan Mohhamed, PW-40 Mr.Iqbal

Umar Shaikh, PW-41 Mr.Iqbal Musha Shaikh, PW-43 Mr.Faruq R. Shaikh, PW-44 Mr.Mustufa I. Shaikh, PW-46 Mr.Adam I. Shaikh, PW-49 Mr.Kalekhan B. Pathan, PW-50 Mr.Jafarkhan H. Pathan, PW-51 Mr.Sirajuddin N. Kansara, PW-53 Mr.Mohd. Iqbal A. Tasiya, PW-54 Mr.A. M. Pathan, PW-55 Mr.Javedkhan Pathan, PW-69 Mr.Abdul Razaq R. Tap, PW-73 Mr.Siddiq I. Tasiya, PW-79 Mr.Abdulbhai I. Shaikh, PW-80 Mr.Yakubbbhai R. Shaikh, PW-82 Mr.Mohd. Hanif A. Kanjariya, PW-83 Mr.Shabbirkhan I. Pathan, PW-84 Mr.Munafbhai M. Mirza, PW-85 Mr.Mohd. Ishaq S. Pinjara, PW-86 Mr.Hussain Majeed Suban, PW-87 Mr.Sattar I. Jarodiya, PW-88 Mr.Mohd. Hanif N. Pathan, PW-89 Mr.Mehbub A. Hathila, PW-90 Mr.Salim N. Kansara, PW-91 Ms.Roshanbibi A. Malek, PW-92 Mr.Aslamsha A. Diwan, PW-93 Ms.Haleemabibi I. Ganchi, PW-94 Mr.Burandudden F. Vohra and PW-125 did not support the case of prosecution. None of these witnesses has ever given name of anybody as accused of violence. None of these witness gives version as to any role of the accused in the crime. Ld. Prosecutor has also called PW-95 to PW-125 as his witnesses. But none has supported the case.

**The Prosecutor who afraid from specific community lead N.G.O. rarely have recourse.** In present case the Prosecutor unnecessarily prolonged the case by calling as many as witnesses. In our country the standard of truth amongst the population is very low. In this case testimonies of almost all witness revealed to be wholly unreliable.

Several persons of Muslim community who were said to be victims of communal violence in Delol, Derol, Kalol etc. had made oral and written representations of their grievance, before different higher authority, these are at Ex.840 and Ex.840-A etc. I have gone through their written allegations and their statements in police diary. Upon perusing those allegation keeping them next to next. **I found that every time they introduced new story.**

14. Upon evaluation of testimonies of PW-42 Mr.Ismail P. Ganchi and PW-45 Mr.Sattar I. Shaikh, I found that they gave names of five accused in their examination in chief but afterwards they deviated in cross-examination. Their testimonies do not create any confidence. There occurred serious doubt about identity of the accused being the culprit. During the investigation, most of the accused were implicated in alleged offence only on the basis of statement of co accused. Their arrest and recovery of weapons, were done through panchnama. None of the panch witness supported case of prosecution as to recovery of alleged weapon. Mere recovery of weapon is not sine quo non to connect the accused with crime. There is no direct evidence in case which shows specific accused was holding and using specific weapon at the time of violence. There is no direct evidence against any accused to have had involved in arosining on 28/2/02 at places shown in the charge-sheet.

15. The Prosecution has also produced Ex.805 panchnama of identification parade. Mr. J. K. Jadav, then Mamlatdar, Kalol was examined as PW-128, the PW-128 carried out process of identification parade of accused persons in presence of victim and panchas. Let me state that identification of an accused person and/or identification of properties, muddamal articles etc. is important aspect of investigation. The I.O. has to see that proper test identification parade of an accused person is held as expeditiously as possible so that best corroborative evidence is available before the Court to fix the identity of the accused. The delay in arranging identification parade or non-observations of standard safeguards in conduct of the identification parade may diminish the value of evidence in a criminal trial. In this case identification parade was conducted too late and considering the other relevant facts of the case, in my view, that can not be relied upon.
16. **In case of communal riots a large number of persons is generally involved and the evidence is often entirely of a partisan character. There is moreover, great danger of innocent persons being implicated along with the guilty, owing to the tendency of the parties in such cases to try to implicate falsely as many of their enemies as they can. Therefore possibility of innocent persons being falsely implicated, should always be borne in mind by the Judge.** In case on hand the Prosecution witness, particularly, Muslim witnesses who are alleged

sufferers of riots have given widely divergent version of the riots. Therefore prosecution is failed to prove, the factum of movement of mob, as mentioned in F.I.R. and in charge-sheet. Though F.I.R. was registered promptly but it was against mobs of both the communities, without naming anybody.

17. In FIR the police has not mentioned which of the communities had assaulted police person and caused injury to them by pelting the stones. During investigation, I. O. found that two police persons namely Mr.Katara and Mr.Ramabhai got injuries on their heads by stone pelting of mob. The Prosecutor has not chosen to call Mr.Katara [then C.P. I.]. It called Mr.Ramabhai (Injured police man) as witness. The PW-69 Mr.Ramabhai D. Bamaniya has stated that he got injuries on his person. However, no medical certificate showing injury to him has been produced. In the circumstances it would never be just to make accusation u/s 333 of the IPC, against any of the accused.
18. The prosecution has examined total 10 police witnesses, PW 62 Mr.Udesinh Pratapsinh, PW63 Mr.Dhirubhai, PW64 Mr.Yashwantsinh D. Zala, PW65 Mr.Khatubhai Lakhabhai, PW66 Mr.Pravinsinh D. Zala, PW67 Mr.Jitendra M. Nayee were police personnel deployed on streets during the riots. None of them has identified miscreants, even during the investigation and during the trial. All these police witnesses can be

believed for few facts e.g. that on 28/2/02, Hindu Muslim Mobs were involved in communal violence against each other, that many properties were vandalized and set on fire by the mobs, that two police men got injuries by stone pelting, that the District Police Personnel as well as S. R. P. Personnel thrown teargas shells towards mob and also opened fire on order of their competent authority.

19. To establish the fact that on 28/2/02, there was uncontrollable violence between Hindu and Muslim mobs, and fact that the policemen resorted to use fire only with the object of dispersing a riot, the Ld. Prosecutor has examined PW-64 Mr. Y. M. Zala (SRP), PW-66 Mr. P. D. Zala (SRP) and PW-67 Mr. J. M. Nayee(SRP). He produced a letter of P. I. 'B' company Commander, SRP - 3 at Ex.835. Upon evaluation of said evidences, it is proved that in exigencies the police was constrained to open fire because in spite of all precautionary measures taken by Kalol police, the unruly mobs continued indulging in violent acts, causing damages to victims. Their oral evidence also proves that they resorted to firing after order passed by the Executive Magistrate.

At the time of aforesaid violence police also dropped teargas shells. Ld. Prosecutor has examined PW-57 Ms.Hayatanbibi and PW-58 Ms.Sahenazbib, who injured either by dropping of teargas shell or/and arm firings, by the police. If we read deposition of referred officials of SRP together with deposition of these lady witnesses, it can be inferred

that those ladies were part of Muslim violent mob. The I O could have asked to these ladies who was with them in Muslim violent mob.

20. The PW-220 Mr.Rumalbhai Varsingbhai was police station officer at Kalol police station. He had registered F.I.R. as per Sec.154 of the Cr.PC and deputed investigation to Mr.Patil. He sent wire message for that which is at Ex.827. The PW-127 Mr. J. K. Sonara had also investigated the offence but upon his transfer PW-130 carried out further investigation. The PW-127 had recorded statements of Mr.Irfan M. Musalman and Isad A. Kasiya but as they were hearsay witnesses, they were dropped by the Ld. Prosecutor.

Investigation of this crime prolonged too much due to continued and repeated written allegations by person of Muslim community. The first and last I O died before they can be called as witnesses. The PW-130 Mr. H. M. Vala is one of the police officer who investigated this offence. As he was posted as P.S.I., Kalol from 25/10/02, he is acquainted with the case and acquainted with the handwritings - signatures of Mr. R. J. Patil[IO]. During his deposition he first produced documents related to process on dead body found in Railway colony Derol station. The Ex.828 is letter to examine Magistrate seeking inquest process on dead body, Ex.829 is inquest form Ex.830 is receipt of dead body issued by M. O., Ex.831 is request to M. O. to preserve the dead body in cold room,

Ex.832 and Ex.833 shows that dead body was given to social worker to bury it. The Ex.837 is report of P.S.I., Godhra who initially inquired the matter as to dead body found in Railway colony. PW-130 Mr.Vala has deposed that he studied all case papers and during his tenure he arrested several accused persons, who were absconding at the time of previous charge-sheets. Then availed sanction of Dy. S. P. to file charge-sheets against those accused. During his deposition the Prosecutor has placed various written complaints addressed to different authority, which are connected to this incidents.

21. Mr.Gopalsinh G. Solanki, Ld. Advocate for the accused person has submitted that most of the witnesses shown in the police charge-sheet had applied to the Executive Magistrate and had sought compensation, as the Government of Gujarat announced compensation to be paid to victim and towards damage suffered in the riots. It is submitted that for availing compensation, each and every victim has to file application for relief alongwith affidavits, that when these witnesses approach the Executive Magistrate to seek relief, none of them have implicated any Hindu individual to be involved in alleged violence, that on the contrary, each of them had stated that there was one Hindu Fanatical Mob.

Above facts came on record in cross-examination of PW130. He admits that 'એ વાત ખરી છે કે આ ગુન્હાની તપાસ દરમ્યાન મેં, સાહેદોએ કાલોલ એકઝીક્યુટીવ મેજીસ્ટ્રેટ સમક્ષ જે વળતર મેળવવા માટે સોગંદનામા કરેલા હતા,



તે સોગંદનામાની નકલ મેળવીને, તપાસના કામે સામેલ રાખેલ હતી. એ વાત ખરી છે કે તે તમામ સોગંદનામામાં કોઈ વ્યક્તિ (આરોપી)નું ગુન્હાની ભુમીકા સાથેનું નામ ન હતું.'

It may be stated that testimony of I.O. is very important but in absence of supporting evidence, the Prosecution can not prove the case. In case on hand when so called eye witnesses are not credible and when there is no reliable evidence as to damage to properties and where the evidence of recovery is incomplete, the testimony of PW-130 Mr.H. M. Vala is not enough to prove the case.

- 22. A charge of rioting presupposes the existence of an unlawful assembly with a common object as defined in section 141 of the Indian Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. The offence of unlawful assembly is aggravated if a person joins an unlawful assembly armed with any deadly weapon(Sec.145). In case on hand the prosecution failed to prove recovery and seizure of weapons from the accused person, through independent witness. There is no direct evidence which can link any five accused, out of these accused person with the alleged offence. The court is to see that no innocent persons**

**being implicated alongwith guilty owing to tendency of the parties in communal rioting case to try to implicate falsely as many of their opposite community.** In cases of communal riots cases the police usually prosecute members of both the community. But it is for the court to ascertain in such cases, which of the two version is correct and the court can not shirk this duty on ground that the police did not ascertain which of the stories was true. In case on hand members of both communities suffered damages to properties and the police personnel sustained injuries by stone pelting from Muslim mob. In spite of that **the prosecution is not able to call section 149 in aid, because there is no certainty that there was atleast five persons in mob sharing the common object.**

I have studied ingredients of all the Sections applied in the case but none of ingredient of any section, is proved against these accused.

23. The prominent Gujarati Author and once great Congress leader, Kanhaiyalal Munshi [1887-1971] has once said 'If every time there is inter-communal conflict, the majority is blamed regardless of merits of the question. The spring of traditional tolerance will dry up.' [Source Pilgrimage to freedom by K. M. Munshi P 312 published by Bhartiya Vidhya Bhavan]. In case on hand the police has unnecessarily implicated accused in alleged commission of crime. Police implicated prominent Hindu persons of the area Doctor, Professor, Teacher, Businessmen,

Panchayat official etc. hails to of a Hindu community. Due to uproar of pseudo-secular media and organization, the accused persons have unnecessarily to face prolonged trial.

24. In the result, I hold that the Prosecution can not succeed as it has not substantially proved the very story it alleged. Hence I pass following final order.

### **ORDER**

1. There is no evidence that the accused persons committed the offences u/s 143, 147, 148, 149, 302, 201, 395, 435, 436, 427, 333, 295, 153 (A), 323, 504, 502 of the IPC as well as offence punishable under Section 135 of the Bombay Police Act. Therefore under the provisions of section 232 of the Cr.PC I am recording this order of acquittal of all the accused persons shown in the caption of this Judgment.
2. Each accused shall execute bail-bond of Rs.10,000/- [Rupees Ten Thousand Only] with surety, to appear before the higher court, as and when the appeal court issues notice in respect of any appeal or petition filed by the State.
3. The Nazir of this Court, shall disposed of non-valuable muddamal, as prescribed in criminal manual, after completion of appeal period.

4. The copy of this Common Judgment shall be placed with other connected Sessions Cases.

Pronounced in the open Court today, this 12<sup>th</sup> day of June, 2023.

Date : 12/06/2023.

Place : Halol.

P. P. Joshi

[ Harsh Balkrishna Trivedi ]  
3rd Additional Sessions Judge,  
Panchmahals at Halol.  
[UIC No. GJ-00576]