

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1472 of 2019
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE)
NO. 5 of 2021
In R/CRIMINAL APPEAL NO. 1472 of 2019**

With

R/CRIMINAL APPEAL NO. 1276 of 2019

With

R/CRIMINAL APPEAL NO. 1343 of 2019

With

R/CRIMINAL APPEAL NO. 1492 of 2019

**With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE)
NO. 1 of 2023
In R/CRIMINAL APPEAL NO. 1492 of 2019
With
CRIMINAL MISC.APPLICATION (FOR JOINING PARTY) NO. 2 of
2019
In R/CRIMINAL APPEAL NO. 1492 of 2019**

With

R/CRIMINAL APPEAL NO. 1920 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI Sd/-

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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PRAVINSINH BAVUBHA ZALA
Versus
STATE OF GUJARAT

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Appearance in Criminal Appeal No.1472/2019:

MR G RAMAKRISHNAN(1390) for the Appellant(s) No. 1
MR.MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH
MR.BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal No.1276/2019:

MR.B.B.NAIK, SENIOR ADVOCATE WITH MR.S M KIKANI(7596) for the
Appellant(s) No. 1,2,3,4
MR.MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH
MR.BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal No.1343/2019:

MR.B.B.NAIK, SENIOR ADVOCATE WITH MR.S M KIKANI(7596) for the
Appellant(s) No. 1
MR.MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH
MR.BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal No.1492/2019:

MR.K.B.ANANDJIWALA, SENIOR ADVOCATE WITH MR YASH K
DAVE(10269) for the Appellant(s) No. 1
MR SAURIN A SHAH(791) for the Appellant(s) No. 1
MR.MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH
MR.BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal MISC. APPLICATION No.2/2019:

MR.J.M.PANCHAL, SENIOR ADVOCATE WITH MR PY DIVYESHVAR(2482)
for the PETITIONER(s) No. 1
MR SAURIN A SHAH(791) for the RESPONDENT(s) No. 2
MR.MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH
MR.BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal No.1920/2019:

MR.MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH

MR.BHARGAV PANDYA, APP for the Appellant(s) No. 1

for the Opponent(s)/Respondent(s) No. 2

RULE SERVED for the Opponent(s)/Respondent(s) No. 3,4,5

MR.B.B.NAIK, SENIOR ADVOCATE WITH S M KIKANI(7596) for the
Opponent(s)/Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 09/01/2024****CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)**

[1] These set of appeals are arising out of the judgment and order of conviction and sentence dated 20.06.2019 passed by the learned Sessions Judge, District - Jamnagar in Sessions Case No.148 of 2016.

[1.2] To be precise, the operative part of the impugned judgment and order are reproduced hereunder:-

"(1) As per section 235 (2) of the Criminal Procedure Code, accused No.1 Sanjivkumar Rajendrabhai Bhatt, presently residing at Ahmedabad and accused No.4 Pravinsinh Bavubha Zala, residing at Jamnagar are convicted for the offences punishable under sections 302, 323, 506 (1) read with sections 34 and 114 of the Indian Penal Code.

Both these accused are sentenced to undergo life imprisonment and fine of Rs.10,000/- (in words rupees ten thousands) each, for the offences punishable under section 302 read with sections 34 and 114 of the Indian Penal Code and in default of payment of fine, to undergo simple imprisonment for further period of one year.

Both these accused are sentenced to undergo rigorous imprisonment for one year and fine of Rs.5,000/- (in words rupees five thousands) each, for the offences punishable under section 323 read with sections 34 and 114 of the Indian Penal Code and in default of payment of fine, to undergo simple imprisonment for further period of three months.

Both these accused are sentenced to undergo rigorous imprisonment for two years and fine of Rs.5,000/- (in words rupees five thousands) each, for the offences punishable under section 506 (1) read with sections 34 and 114 of the Indian Penal Code and in default of payment of fine, to undergo simple imprisonment for further period of three months.

(2) *As per section 235 (2) of the Criminal Procedure Code, accused No.2 Dipakkumar Bhagwandas Shah, residing at Rajkot, accused No.3 Shaileshkumar Labhshankar Pandya, residing at Ahmedabad, accused No.5 Pravinshinh Jorubha Jadeja, residing at Jamnagar, accused No.6 Anopsinh Mohabbatsinh Jethva, residing at Limbdi and accused No.7 Keshubha Dolubha Jadeja,*

residing at Surendranagar are convicted for the offences punishable under section 323, 506 (1) read with section 34 and 114 of the Indian Penal Code.

Each accused in this case is sentenced to undergo rigorous imprisonment for one year and fine of Rs.5,000/- (in words rupees five thousands), for the offences punishable under section 323 read with sections 34 and 114 of the Indian Penal Code and in default of payment of fine, to undergo simple imprisonment for further period of three months.

Each accused in this case is convicted for the offences punishable under section 506 (1) read with sections 34 and 114 of the Indian Penal Code is sentenced to undergo rigorous imprisonment for two years and fine of Rs.5,000/- (in words rupees five thousands). In default of payment of fine, the accused shall further undergo simple imprisonment for three months.

(3) As per Section 235(1) of the Criminal Procedure Code, the accused no. 2, 3, 5, 6 and 7 are acquitted and released from the offence punishable U/s 302 r/w section 34 and 114 of the Indian Penal Code.

(4) The sentences imposed on the accused persons for the above offences shall run concurrently.

(5) As per the Victim Compensation Scheme U/s 357(a) of the Criminal Procedure Code, it is ordered to pay compensation as per rules to the widow of deceased

Prabhudasbhai Madhavjibhai Vaishnani and for the purpose of compliance to this order, a copy of the final order be sent to District Legal Services Authority, Jamnagar.

(6) As the accused persons of the case have been convicted, certified copy of this order be provided to each of the accused free of cost.

(7) The muddamal produced in this case be destroyed at the end of appeal period as per the provisions of the Criminal Manual.

(8) As the accused nos. 2, 3, 5, 6 and 7 have been acquitted from the offence punishable U/s 302 r/w section 34 and 114 of the Indian Penal Code, in case appeal is filed before the Honourable High Court to this effect, then in ordered to ascertain their presence, each of the accused shall furnish personal bond of Rs. 10,000/- and sureties of the like amount for the time of appeal period.

(9) Jail warrant of accused no. 1 and accused no. 4 be prepared."

[2] Against the aforesaid judgment, the convicts have preferred all these appeals which are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code"). Whereas the State has preferred Criminal Appeal

No. 1920 of 2019 under Section 378 of the Code against the order of acquittal passed by the learned Trial Court against the accused No. 2, 3, 5, 6 and 7 wherein they have been acquitted for the charges leveled against them under Section 302 of IPC. The Appeal filed by the convicts are against the common judgment and order of convictions rendered by the Court in Sessions Case No.148/2016, old case no. 35 of 2001, dated 20.06.2019.

[3] Facts emerging of the present case are as under:-

[3.1] That the FIR being C.R.No. 102 of 1990 came to be registered at Jamjodhpur Police Station on 18.11.1990 for the offences punishable under Sections 302, 323, 501(1), 114 and 34 of IPC. The said FIR was lodged by complainant Amrutlal Madhavji Vaishnani against original accused No.1 ASP Sanjiv Bhatt and accused No.4 Pravinsinh Zala and other accused persons. It is mainly states that on 30.10.1990 certain incident took place at Jamjodhpur, at that time police persons came to the house of the informant and his two brothers, namely,

Prabhudasbhai Vaishnani and Rameshbhai Vaishnani were taken to the Jamjodhpur police station where the informant went to the Jamjodhpur police station wherein, he has seen that ASP Sanjiv Bhatt and Pravinsinh Zala and other police persons and other constables to whom he had identified were beating his brothers with sticks and butt of rifle. Thereafter, brother of informant was taken to Jamnagar jail and then to Irvin Hospital for the purpose of treatment. Representation was made to police by his brothers however, no action was taken. It is also stated that brothers of the informant were released on bail. Thereafter, their brother had problem in urination and pelvis. They were therefore, taken to Gondiya Hospital, Rajkot and during the course of treatment, his brother Prabhudas Madhavji died. Thus it is alleged that all the accused had committed alleged offences.

[3.2] After registering the FIR, investigation agency had during the course of investigation 7 accused persons were arrested and thereafter, they were released on bail. However, it is pertinent to note at this stage that, after investigation was

carried-out the investigating agency for the purpose of filling charge-sheet submitted material of the investigation to the Home Department, State of Gujarat for obtaining sanctioned under Section 197 of the Code of Criminal Procedure, however, the same was refused. Investigating agency submitted final report for accepting 'A Summary', thereafter, the concerned Magistrate *vide* order dated 14.08.1995 issued show cause notice to the complainant and thereafter, through order dated 20.12.1995 learned Magistrate rejected 'A Summary' report of the investigating agency and issued process against all the accused in the offence punishable under Sections 302, 323, 506(1), 114 and 34 of the Indian Penal Code.

[3.3] Learned Magistrate committed case to Sessions Court at Jamnagar on 20.01.2001 and the same was registered as Sessions Case No.35 of 2001.

[3.4] Thereafter, charges were framed on 08.11.2012 by 5th Additional Sessions Judge, Khambadiya, District: Jamnagar. Later on, the said Sessions Case was renumbered as 148 of 2016.

[3.5] During the course of trial, prosecution has examined total 32 witnesses wherein the defense has examined 1 witness and accused No.3 - Sailesh Pandya examined himself before the court. It is also pertinent to note that 3 witnesses were examined as court witness as per the order passed by this Court in Special Criminal Application No.4115 of 2019 dated 16.04.2019.

[3.6] Statement of accused under Section 313 of the Code came to be recorded and after conclusion of the trial, trial court has passed impugned judgment, as observed hereinabove, against which the convicts as well as State of Gujarat have preferred respective appeals.

[4] These appeals when taken up for hearing at a relevant point of time on various dates intermittently. In respect of Criminal Appeal filed by Pravinsinh Bavubha Zala, accused No.4, it was admitted on 22.07.2019, whereas accused No.1 who preferred the appeal was admitted on 25.07.2019, whereas appeal filed by original accused Nos.2 & 5 to 7 was

admitted on 27.06.2019, whereas the appeal filed by accused No.3 was admitted on 04.07.2019 and the State of Gujarat who has preferred an appeal was admitted on 03.10.2019 and thereafter all appeals have been conjointly heard.

[5] It appears that during the passage of time, one Special Leave Petition (Criminal) Diary No.12067 of 2020 was also filed, wherein the Hon'ble Apex Court was pleased to pass an order on 20.08.2020, in which while dismissing SLP, a request was made to the High Court to finally dispose of pending criminal appeal considering the fact that offence was committed way back on 30.10.1990 and liberty was kept that in the event, the appeal is not taken up, fresh application for suspension of sentence may be filed. Thereafter, it appears that on 06.07.2022, the co-ordinate bench of this Court by detailed order has observed that appellants - convicts and their learned advocates are not ready to proceed with these appeals despite the fact that the Hon'ble Supreme Court had given direction to dispose of Criminal Appeals at the earliest before July, 2021 and as a last chance, appeals were adjourned on 18.07.2022.

[6] Later on, one review petition was also submitted before the Hon'ble Apex Court and under the guise of same, a request was made to postpone the hearing of Criminal Appeals and as such, as a last chance, time as prayed for was granted to the learned advocates for the appellant and adjourned the appeals to 27.07.2022. Again the same were taken up, and thereafter, from time to time, the request was sought and then it was stand over to 02.02.2023 and then thereafter, the matters traveled before the different benches and lastly has come up consideration before this Court with aforesaid background of facts. Hence, the request since was made by learned advocates appearing on behalf of the appellants as well as the State and keeping in view the specific directions, issued by the Hon'ble Apex Court for expeditious hearing of the appeals, we took up the final hearing of present Criminal Appeals wherein learned advocate Mr. G. Ramakrishnan has represented appellant in Criminal Appeal No.1472 of 2019 preferred by original accused No.4, namely, Pravinsinh Bavubha Zala, whereas learned senior advocate Mr. B.B.Naik with learned advocate Mr. S. M. Kikani

has represented original accused No.2 & 5 to 7, namely, Dipakkumar Bhagwandas Shah, Pravinsinh Jorubha Jadeja, Anopsinh Mohbatsinh Jethva & Keshubha Dolubha Jadeja in Criminal Appeals No.1276/2019 and 1343/2019, whereas learned senior advocate Mr. K. B. Anandjiwala with learned advocate Mr. Yash K. Dave appearing for the original accused No.1, namely, Sanjivkumar Rajendrabhai Bhatt (IPS) in Criminal Appeal No.1492 of 2019, whereas learned senior advocate Mr. J. M. Panchal with Mr. P. Y. Divyeshvar appearing for the applicant in Criminal Misc. Application No.2 of 2019 and learned Additional Advocate General and learned Public Prosecutor Mr. Mitesh Amin with learned APP Mr. Bhargav Pandya appearing on behalf of the State in Criminal Appeal No.1920 of 2019.

[7] Initially, learned advocate Mr. G. Ramakrishnan has led the hearing and opened the case on behalf of original accused No.4, Pravinsinh Bavubha Zala. Mr. Ramakrishnan, learned advocate has submitted that the prosecution has not established the case beyond reasonable doubt and the role

played by accused No.4 is to be taken as it is then mere allegations were about beating with sticks. It has been further submitted that even cause of death has also not been established beyond reasonable doubt and by taking evidence of the witnesses have submitted that even looking to the injuries which are reflecting on the medical papers, even charge of beating is also not established, a bare perusal of postmortem report is sufficient enough to indicate. It has been further submitted that the relevant witnesses which are material to throw light on the case of prosecution have not been examined at all. On the contrary, from the FSL report as well as postmortem report, it clearly indicates that appellant i.e. accused No.4 has not played any role which can establish the case against him. In fact, the deceased had never complaint about any physical torture, not before the Doctor nor before the concerned Magistrate where they were produced along with other accused persons and when the first treatment was taken at Rajkot Hospital except Rhabdomyolysis was though allegedly not established as the circumstances were not at all supporting. In fact, the injuries which might have occurred on account of

such beating and sit ups are not corroborated by any medical evidence. Even the injuries have also not been identified and as such a mere physical discomfort of the deceased cannot be attributed to the accused No.4. According to learned advocate Mr. G. Ramakrishnan, he is an innocent person and has wrongly been dragged into prosecution. In fact, the medical evidence if to be perused closely, there is no nexus with the injuries to the cause of death. Even the weapons of injuries "so called" were not produced before the trial court and as such even in the absence of weapons, the question of intent does not arise nor it is the case of prosecution that physical torture is in such a way that it may apprehend the life and as such in the absence of any concrete material, no offence of Section 302 can be said to be established and to strengthen his submissions, learned advocate Mr. G. Ramakrishnan has drawn our attention to the deposition of Dr. Sanjay Pandya at *Exh.743*, postmortem note of Prabhudas at page No.8053 *Exh.751* as well as FSL report at page 8071 and the other attendant circumstances and then has reiterated his submissions that accused No.4 is an innocent person, has not been dealt with properly.

[7.1] Learned advocate Mr. Ramakrishnan has further submitted that even examination of postmortem doctor is not revealing the clear cause of death and for that purpose has drawn our attention to the death certificate which has been issued by Dr.Gajera and has also taken up to the deposition of Dr. Shailesh Kalele, one of postmortem doctors at *Exh.749*.

[7.2] In addition to it, learned advocate Mr. Ramakrishnan has also taken us to the various depositions including that of panch witness Rajshree Bera and other relevant evidence of Dinesh Vachani, one of the witnesses of prosecution and by pointing out such kind of material from the record, a contention is retreated that accused No.4 cannot be said to have committed any guilt which may visit him to such an extreme penalty. According to learned advocate Mr. Ramakrishnan, even a conjoint reading of deposition of witnesses would not put the story of prosecution as probable. There are so many contradictions in the version of witnesses which may lead to only one conclusion that prosecution has not established the case beyond reasonable doubt. It has been contended before us

that deposition is taking place after a long lapse of period and as such the evidence led before the Court cannot be said to be that credible because human memory is not that sharp which may exactly points out what a transpires years back and that was the reason why the benefit of doubt deserves to be extended to the appellant.

[7.3] Learned advocate Mr. Ramakrishnan has then submitted that the cross-examination of relevant doctors and thereby contended that it is a clear error on the part of learned Judge to pass an order of conviction and as such the order being suffers from the vice of non application of mind and there are material contradicts which have not been taken into proper perspective, the order deserves to be corrected by allowing appeals submitted by the appellant.

[7.4] After referring to this, learned advocate Mr. Ramakrishnan has then said before the Court that additional circumstance and submissions would be made by the learned senior advocate Mr. B. B. Naik who is representing other co-accused and if necessary, he may later on add, but then had

completed the part of reading of evidence and then reiterated his submissions that accused No.4 deserves to be acquitted by setting the order of conviction.

[8] After completion of submissions of learned advocate Mr. Ramakrishnan, learned senior advocate Mr. B. B. Naik with learned advocate Mr. S. M. Kikani has commenced his submissions at great length. learned senior advocate Mr. Naik has first of all summarized the basic contentions and then has taken us to the most relevant part of evidence on record. The submissions of learned senior advocate Mr. Naik are to the effect that entire case is put up by the prosecution is not well founded nor supported by any cogent material. It has been pointed that except accused No.7, Keshubhai, the other six accused persons were on the contrary served elsewhere where they were never serving in Jamjodhpur. A test identification parade is not held by investigating agency so in absence of any identification parade to convict a person amongst to serious prejudice. It has been submitted that all accused persons are government employees and the alleged offence had taken place

during the discharge of their duty as police officers and all were on duty and as such for want of sanction under Section 197 of the Cr.P.C., the order is not sustainable. It has been submitted that when there is a documentary evidence, it is settled position of law that precedence must be given over oral evidence. If the relevant papers of charge-sheet of offence registered as C.R.No.I-96 of 1990 would be seen all alleged miscreants were arrested between 9.50 a.m. to 12.45 p.m. on that very day. Even the arrest was made by Circle Officer, Mr. K. N. Patel was also established to have taken place prior to 12.45 p.m. Mr. Thakur one of the officers, who arrested from the spot and if the circumstance of that along with the material if to be seen, the case is not established beyond reasonable doubt, and therefore, this is a fit case for extending benefit of doubt to the accused persons.

[8.1] Learned senior advocate Mr. Naik has then submitted that not a single weapon is recovered neither rifle nor stick at the instance of which the injuries has been caused. Even these police officers are from outside area, had no motive

and as such even motive is not established which would further weaken form the case of the prosecution and these material aspects, learned Judge has not appreciated properly. Learned senior advocate Mr. Naik has reiterated that accused No.1 was posted on 10.10.1990 whereas offence took place on 30.10.1990 so these officers did not have any motive to commit a crime since they are from outside area. The independent witnesses from Jamjodhpur as well as police officers of Jamjodhpur have not been examined and apparently there is a gross delay which would definitely a material circumstances to be considered in lodging the FIR. The alleged incident has taken place on 30.10.1990, whereas the brother had lodged the complaint i.e. his application was turned out the complaint is on 18.11.1990 and there is no explanation of delay.

[8.2] It has further been contended by learned senior advocate Mr. Naik that even the version of complainant Amrutbhai Vaiswani happened to be brother of deceased is also quite questionable and is not trustworthy, according to learned senior advocate Mr. Naik. Further even when both brothers of

the complainant that deceased as well as Ramesh Madhavji Vaiswani were taken to Virani Hospital for treatment they have not conveyed that they were tortured while in their custody. In fact, according to learned senior advocate Mr. Naik, there is a preplanned conspiracy hatched by prosecution against these police officers and somehow without passing any detail reasoned order a conviction is ordered against these accused persons. It has been submitted that originally 562 witnesses whose statements were recorded and then when the trial took place, the prosecution has said that there are some 300 witnesses relevant, but then when actual trial has commenced, only 32 witnesses have been examined and there is no attempt conveniently made by prosecution to prove the case beyond reasonable doubt. Learned senior advocate Mr. Naik has further submitted that there was a duty on the part of public prosecutor to produce all relevant facts and not to hide any material from the Court and unfortunately, according to learned senior advocate Mr. Naik, the public prosecutor has failed in discharge on his duty to put up the case as an officer of the Court. According to learned senior advocate Mr. Naik, even the

learned presiding officer i.e. the learned District Judge has also not discharged his function properly which has ultimately led the order which is not sustainable in the eye of law.

[8.3] Learned senior advocate Mr. Naik to support his submissions, as indicated above, has placed large number of decisions and has made an attempt to give more and more number of judgments on each of the points though proposition is almost same. However, be that as it may, by separate compilation following judgments have placed before us for consideration. Of course out of those, few have been pressed into service, which we will deal with and discuss in the later part of the present judgment, which are found to be most relevant to the submissions:-

- (1) 2015 (1) GLR 58.
- (2) 2016 (16) SCC 483.
- (3) 1981 (1) SCC 80.
- (4) 2010 (4) SCC 491.
- (5) 2013 (3) SCC 801.

- (6) 2006 (10) SCC 631.
- (7) 2016 (1) GLH 485.
- (8) 2012 (9) SCC 771.
- (9) AIR 1965 (SC) 328.
- (10) 2004 (4) SCC 714.
- (11) 2013 (5) SCC 277.
- (12) 2004 (4) SCC 158.
- (13) 2023 (1) SCC 83.
- (14) 1981 (3) SCC 191.
- (15) 2021 (3) SCC 661.
- (16) 2010 (10) SCC 677.
- (17) AIR 1968 (SC) 178.
- (18) 1990 (2) GLR 1325.
- (19) AIR 1954 (SC) 51.
- (20) 2014 (2) SCC 401.
- (21) 2011 (1) SCC 307.
- (22) 2012 (7) SCC 56.
- (23) 2018 (11) SCC 129.
- (24) 2002 (1) SCC 702.
- (25) 2004 (7) SCC 487.

(26) AIR 1974 (SC) 1822.

(27) AIR 1954 (SC) 31.

(28) 1976 (4) SCC 355.

[8.4] In addition thereto, learned senior advocate Mr. Naik has placed before us the written submissions on behalf of original accused Nos.2, 3, 5 to 7 and since the matter has been argued at length by him, we deem it proper to quote hereunder his written submissions:

"1.The death Certificate issued by Dr. Gajera in Ext. 744 page 7883-7885 contents are not proved and the contents of Ext. 753 pathology report by Dr. Tandon and Dr. Joshi is also not proved as per provisions of Evidence Act, section 61 to 67. The cause of death report by Dr. Kalele and Dr. Mangal Ext. 756 page 8081 is also not admissible in evidence at it is based on reports Ex5. 753 and Ext. 754.

2. The case paper Ext 679 to 732 page 7557 to 7724 produced by dr. Sapariya PW-21 Ext 677 page 977 clearly show that, there were no injuries on elbows and knees of the 25 persons examined by him. Similarly the case papers Ext 523 to 671 page 7275 to 7581 produce by Dr. N.H. Kalela PW 19 Ext 521 page 847 also clearly show that there were no injury on elbows and knees of the persons examined by him from 9.11.1990 onwards.

3. *The Public Prosecutor and the Presiding Officer of the Court has not performed their duties as per the provisions of Section 24 of the Criminal Procedure Code and section 311 of the Criminal Procedure Code, read with section 165 of the Evidence Act as laid down by this Honourable Court as well as Honourable Supreme Court of India by various judgments by not examining the independent witnesses and by not producing relevant papers seized by investigation officer of Jamjodhpur police Station personal which show that, they arrested 133 persons while rioting in the town between 9.15 a.m. and 12.45 p.m. on record.*

4. *The cross examination of shri K.N. Pansuriya PW 20 Exh.668 Page 960 pharماسist of Jamnagar sub Jail clearly reveals in para 15 page 969 (971 and 973) that in Jail Register, when the under trial prisoners are brought, in column no.17 for injuries there is nil entry made by this witness with his initial in case of deceased and other 132 accused persons of C.R.No.1 -96 of 1990.*

5. *Due to various reasons, like material independent witnesses, being police personal of Jamjodhpur who were on duty on 30.10.1990, the staff members of Mamlatdar Office, and Sub Treasury Office and who are residing in the Staff Quarters where is police station and lock up are situated, the trial is vitiated and due to failure of public prosecutor and learned Session Judge in performing there duty the accused persons suffered grave injustice and trial has resulted in miscarriage of justice which clearly show that the trial is not fair trial.*

6. *The investigating officer who recorded the statement of witnesses under Section 161 of Criminal Procedure Code are not examined and which has prejudicially affected the right of accused to brought improvements contradictions and omissions during the examination of witnesses.*

7. *There are many contradictions and inconsistencies in the depositions of PW 2 to 18 and PW 27 and 28 who are claiming to be eye witnesses. There is great difference in the time when deceased and PW-27 were brought to the police station which is 6.00 p.m. to 9.00 p.m. of 30.10.1990 where as they were arrested between 9.15 a.m. to 12.45 p.m. on 30.10.1990 by Circle Inspector, K.N. Patel at Jamjodhpur Police Station in connection with the C.R. No. 1-96 of 1990, when they were detained by Senior Police Sub Inspector Shri B.L. Thakur from the place where they were rioting and burning the cabins, residential houses and mosque and produced before shhri K.N.Patel. There is no corroborative evidence in single case to support the say of the PW-2 to 18 and PW 27 and 28 that, they were not arrested by police officers of Jamjodhpur Police Station between 9.15 a.m. to 12.45 p.m. on 30.10.1990 but they were brought to police station by accused persons from their houses and other places after 2.00 p.m. till late evening of 30.10.1990. It also clearly transpired that they were tortured witnesses so far as torture to deceased and PW-27 is concerned as all have said about the same verbatim.*

8. *There is delay in lodging the First information Report*

(FIR). The so call incident took place on 30.10.1990. They were taken to Bhanwad for production before Judicial Magistrate, in the early morning of 31.10.1990. Twenty five people out of 133 arrested on 30.10.1990 were sent with yadi signed by shri K.N.Patel, Circle Inspector to Primary health Centre, Bhanwad. At Health Centre they only said to the doctor PW-21 Shri Sapariya that police had beaten them None of 25 had stated before PW-21 when and where they were beaten by police and also no names of any of the police personal were given. Out of 25 persons, one person shri Manoj Pandharinath Sidhe has burn injuries on various parts of the body and in history he said that, he received the burn injuries when rickshaw which was burning exploded. This clearly support the case of the accused that, riots took place on 30.10.1990 at Jamjodhpur. Shri Manoj P. Sidhe is not examined during trial as witness. The fact riot is accepted by Learned Additional Advocate General while making his submission on behalf of State before the Court. The witnesses have shown. complete ignorance about riots in the morning of 30.10.1990 at Jamjodhpur. All these discripancies, which are very important and material, rendered the evidence of these witnesses unreliable and highly doubtful which cannot be accepted without corroboration from independent witnesses who are not examined by prosecution.

9. The proceeding filed by accused No.1 under section 311 of the Criminal Procedure by filing application Ext 830 before the Trial Court to examine independent witnesses as Court witnesses came to be rejected by trial court. He

filed petition under article 227 of the Constitution of India before this Honourable Court which partly allowed the petition by directing three witnesses to be examined as court witnesses under section 311 of the Criminal Procedure code. The further proceedings before the Honourable Supreme Court by Accused No.I was also not successful. It is submitted that proceedings are not binding to the other six accused as they were not party to the same. The said proceedings also cannot be used as res-judicata and estoppel against accused nos. 2 to 7. The principles of res judicata are not strictly applicable to criminal proceedings. Similarly the principal of issue estoppel will also not be applicable as it is basically principal of equity which has no place in criminal proceedings. The said proceedings also cannot amount to issue estoppel as jurisdiction of this court under Article 227 is neither appellate nor revisional jurisdiction and therefore, any order passed by Learned Single Judge, under Article 227 of the Constitution is not binding to this Honourable Court who is hearing this criminal appeal under section 386 of the Criminal Procedure code. It is further submitted that there cannot be estoppel against statutory provisions.

10. The accused persons were on duty on 30.10.1990 and they were sent by District Superintendent of Police, Jamnagar for maintaining law and order as riots had started at around 9.00 a.m. at Jamjodhpur by orders issued in afternoon of 30.10.1990. The accused persons are from office of Assistant Superintendent of Police Jamnagar Dhrafa Police Station and Okha Police Station. They went

Jamjodhpur as part of their duty and when the alleged incident took place they were on duty and they were in their uniform. It is therefore, necessary to obtain sanction under section 197 of the Criminal Procedure Code, and section 161 of The Gujarat Police Act which is not obtained by prosecuting agency and not granted by State Government.

11. This Honourable Court has wide powers under section 386 and 391 of the Criminal Procedure Court. This court has to reappraise the complete evidence and has to come to its own conclusions. The finding of trial court are not binding to this Honourable Court. This Honourable Court also has wide powers under section 391 of the Criminal Procedure Code to record additional evidence by itself or to direct the trial court to record the addition evidence and sent it to this Honourable Court to find out the truth and to do the justice if this court found the same necessary during the hearing of appeals. This Honourable Court has also power to quash the judgment of the trial court and remand the matter to trial court for limited retrial to record additional evidence.

12. The accused persons were not serving at Jamjodhpur when this incident has taken place, except accused no.7 who was serving as police constable who has not prepared any papers of this incident and C.R.No.1-96 of 1990. It is submitted that during the cross examination of court witness no.2 shri P.P. Pandey who was the Leader of the investigating team was shown various documents pertaining to wireless messages of District Head Quarters,

the station diary of Jamjodhpur Police Station expert opinion of Dr.H.L. Trivedi sought by shri Pandey. Weekly diary of C.I. K.N. Patel and P.S.I. Thakur etc. and he admitted that they were seized by him during investigation which are in favour of accused still the trial court has not exhibited the same in spite of application and oral request by advocates of accused person. Now as per the law laid down by Honourable Supreme Court that such documents can be taken into consideration and can be relied upon to decide the case of Ramaiah @ Rama Vs. State of Karnataka reported in (2014) 9 SCC 365 (Para 14). In this case none of the above referred documents were prepared by any accused persons.

13. The appellants original accused nos. 2, 3, 5, 6, and 7 are convicted by trial court for offences punishable under section 323 and 506(2) of the Indian Penal Code and imposed the sentence of two years and fine. It is respectfully submitted that all appellants have retired from Government Servant long back and are senior citizens. They are also not involved in any other case of similar nature after this case. It is therefore, prayed that in the facts and circumstances of the case, particularly that the incident is of 1990, trial continued for about 29 years and present appellants are not responsible for that, the Honourable Court may be pleased to quash and set aside the sentence imposed by the Court and they may be released on probation of good conduct under section 360 of the Criminal Procedure Code under section 4 of the Probation of Offenders Act, 1958."

[9] After completion of the submissions made by learned senior advocate Mr. B. B. Naik, who practically has covered up the entire evidences including the case law on each of the controversy raised in these set of Criminal Appeals, learned senior advocate Mr. K. B. Anandjiwala with learned advocate Mr. Yash K. Dave appearing for the original accused No.1, namely, Sanjivkumar Rajendrabhai Bhatt, who filed Criminal Appeal No.1492 of 2019 has vehemently contended that for the first time the accused No.1 posted on 10.10.1990 and the incident occurred on 30.10.1990. The accused No.1 i.e. Sanjivkumar Rajendrabhai Bhatt was posted at Bandobast who was summoned by the Superintendent of Police at Jamnagar and has reached the spot at around 1.00 p.m. According to learned senior advocate Mr. Anandjiwala before accused No.1 could reach the police personnel of Khambhaliya police station and Dhrafa police station already arrested 133 persons and control the riots and these persons were arrested between 9.15 a.m to 12.45 p.m. On that very day, one Hiniyatkhani lodged the complaint which was then registered as C.R.No.I-96/1990. In the said complaint the panchnama was also drawn, but the said

arrest panchnama though called for was not produced. In the said panchnama, according to learned senior advocate Mr. Anandjiwala, the injuries might have been reflected and recorded and as such the prosecution has withheld a substantial part of documentary evidence. Though, at a later point of time, the arrest panchnama was produced with the statement of accused No.1 recorded under Section 313 of the Cr.P.C. wherein no injuries were visible and as such referred to page No.1661 from paper-book No.2 compilation. It has been contended by referring to page No.1731 that deceased Prabhudas Madhavji was not having any visible injuries and as such the arrest panchnama which was prepared at a first available point of time ought to have been a material piece of evidence and as such, according to learned senior advocate Mr. Anandjiwala, for the circumstances which are stated in statement recorded under Section 313 of the Cr.P.C. accused No.1 is targeted. Though the seen of panchnama was prepared and drawn on that very day, on 30.10.1990, when the incident took place, even the case diary was also prepared but not produced. No doubt the team leader of investigating team has

been examined, but the other persons who are part of the team have not been examined. According to learned senior advocate Mr. Anandjiwala, even the sanction which was sought for and refused contains no reasons, no detail application of mind and as such the refusal of sanction in that manner ought not to have been ignored by the learned trial Judge. According to learned senior advocate Mr. Anandjiwala, the detail reasons are also given why the accused No.1 has been tracked and such detailing out is quite visible from the statement recorded under Section 313 of the Cr.P.C. On the contrary, subsequent to refusal of sanction 'A' summary was submitted which was challenged by the State Government by way of filing revision application, but at a later point of time, the revision application was withdrawn and that aspect ought not to have been ignored by the learned trial Judge.

[9.1] According to learned senior advocate Mr. Anandjiwala, three other persons had also filed private complaints and out of that, one of the private complaints was quashed on the ground of want of sanction and the Hon'ble

Court had not taken note of such order passed by the High Court. According to learned senior advocate Mr. Anandjiwala, even 17 injured witnesses who have been examined most of them might not have even sustained actual injuries, as described and for such kind of incident, an application which was submitted before the Sub Divisional Magistrate was treated as an FIR. It has been contended that over and above substantive evidence though available Court has asked questions for medical papers, which otherwise can be used merely for the purpose of corroboration and such kind of question ought not to have been asked. Apart from that, regarding the cause of death, which has been described the opinion of Dr. Mr. H. L. Trivedi, reflecting on page 1655, wherein it has been opined that approximately 95% patient can recover from such deceased, but then unfortunately, Dr.H.L.Trivedi has not been examined. Even, Dr. Gajera, who has not treated the deceased whose version is believed by the Court and the certificate issued by Dr.Gajera is exhibited in the said manner Dr. H.L.Trivedi's certificate ought to have been exhibited, even on the doctors from Hyderabad ought to have

been examined since the learned trial Judge has ample power. Learned senior advocate Mr. Anandjiwala by referring to the deposition of Amrutlal, the original complaint as P.W.28 from convenient compilation No.1, page 371, in which a reference is available of one Chimanbhai, who can throw some light on the incident has conveniently not been examined. In the same manner, Dr.Dinesh Bhatt who primarily treated the deceased is also not examined and as such, according to learned senior advocate Mr. Anandjiwala there appears to be a clear omission of material witnesses from being examined. By referring to page No.1183 of paper-book compilation evidence which is otherwise not admissible has been considered and by making further reference at page 1187 no complaint about physical torture was made still with a view to implicate accused No.1 along with other police personnel, an attempt is made to twist the evidence of those 17 injured witnesses. In fact, Amrutlal i.e. the complaint might not have seen the physical torture to the injured persons still his version has been given a substantial reliance and as such, according to learned senior advocate Mr. Anandjiwala, the witnesses who are not telling truth before the

Court have been relied upon. In fact, according to learned senior advocate Mr. Anandjiwala all three brothers including Chimanbhai Vachchhani who said to have visited police station are not telling truth before the Court. In fact, according to learned senior advocate Mr. Anandjiwala, the complainant i.e. Amrutlal has not visited the police station and for the first time he is revealing the particulars as if he is the eye witness. In fact, looking to the injuries certificates, the theory of crawling said to have been compelled is not believable or probable and as such this complainant cannot be said to be even an eye witness to the incident. In fact, according to learned senior advocate Mr. Anandjiwala, that is the gross delay of 20 days in lodging complaint i.e. on 18.10.1990 and there is no explanation about such delay and according to learned senior advocate Mr. Anandjiwala, these days have been used to create a material against the accused persons and as such when there is a live-link is missing and prosecution has not been able to established, the exercise undertaken by the Court is erroneous.

[9.2] According to learned senior advocate Mr.

Anandjiwala, the court witnesses who have been examined have not deposed before the Court in a responsive manner and as such though they were court witness their version is of no significance. The postmortem report has also not been so sound enough to generate a confidence since only signature is established and not the contents of the said report and the said report appears to have been prepared on the basis of Dr.Gajera's report who gave the opinion and as such according to learned senior advocate Mr. Anandjiwala, the prosecution has not been able to establish, the cause of death as well. According to learned senior advocate Mr. Anandjiwala, the material documents about MLC case ought to have been examined and looking to all these material, it cannot be said that death is homicidal death and unfortunately accused No.1 has been convicted for the offence punishable under Section 302 of the IPC. The basic requirement of establishing such offence is the element of intention which is not proved beyond reasonable doubt, even the exception to Section 300 which are reflecting on the statute book the prosecution has not been able to establish and as such when the death is a natural death has

no nexus with the injuries, the offence cannot be said to have been made out. According to learned senior advocate Mr. Anandjiwala, two other injured witnesses one Mr. Manoj P. Sidhe and Kishore Bhagwan Kasundara have also not been examined despite they have sustained injuries and as such when these sequence of material if to be looked into, it cannot be said that prosecution has been able to establish the case beyond reasonable doubt.

[9.3] In addition to this, learned senior advocate Mr. Anandjiwala has further submitted that Section 197 of the Cr.P.C. is mandatory provision and if the said provision has not been taken care of the prosecution fails and according to learned senior advocate Mr. Anandjiwala when the accused persons have been deputed to control and acted well within the discharge of their duties the sanction is must before prosecution and to substantiate his contention, learned senior advocate Mr. Anandjiwala has drawn the attention of decision delivered by learned Single Judge dated 24.04.2009 passed in Special Criminal Application No.970 of 2017, whereby the complaint

filed by three private persons came to be quashed only on the ground of Section 197 of Cr.P.C. and therefore, here is also case wherein the requirement having not been fulfilled of mandatory provision, the order is not sustainable in the eye of law. Rest of the contentions, learned senior advocate Mr. Anandjiwala has adopted that of learned senior advocate Mr. B. B. Naik appeared on behalf of other accused persons.

[9.4] To summarize his contentions and to submit facts before the Court the bullet points have been prepared by learned senior advocate Mr. Anandjiwala and placed before the Court on 14.12.2023 and by narrating such, contention has been raised that order of conviction is not sustainable in the eye of law. Following are the bullet points which are placed before the Court which we deem it proper to quote hereunder:-

"BULLET POINTS

➤ *This is a rare case where the deceased has died after 18 days of alleged incident without any injury on his person and the appellant accused person is convicted for murder and sentence to undergo life imprisonment.*

- *Alter arrest of L. K. Advani riots fled up in the country. On 30/10/1990 in village Jamjodhpur and in some parts of the Jamnagar district the riots took place in which the properties belonging to minor community i.e. Muslim were burnt, shops were also looted and burnt. About 50 incidents of rioting took place and The police distorted to bursting cells. About 13 cells were burnt. FIR was lodged by one Hiniyatkhan. On the strength of it, offence was registered vide C. R. No 1-96 of 1990 Qua rioting offences and TADA Act also.*
- *The police arrested about 133 persons in the morning during 9:15am and 12.30pm while the police of Jamjodhur police station and also Dhrapa Police Station. The police also drew the scene of offence panchnama.*
- *As per the arrest and personal panchnama of accused, in the process of arresting them, they have sustained stick injuries due to lathi charge. All the accused persons were kept at Jamjodhpur Police Station.*
- *After investigation in connection with C.R. No I-96 of 1990 the chargesheet was submitted. However under the instructions of government, the case was withdrawn from the file.*
- *That one of the injured persons namely Prabhudas Madhavji had some physical probem and therefore he was admitted on 12th for treatment at kidney hospital of Gondia*
- *After dialysis treatment he died on 18/11/1993.*

➤ *Amratlal i.e. the brother of deceased gave an application to SDM for directing The postmortem examination. The postmortem was done by Dr. Satish Kalele PW. 24. That the doctor who treated Prabhudas i.e. the deceased, is Dr. Sanjay Natwarlal Pandya PW,. 23. The postmortem was done. As per the postmortem report the cause of death is Actuarial Failure as a result of Rhabdomyolysis. There are so many reasons for causing Rhabdomyolysis. Due to injury on the muscles the protein would come out and it mixes with blood circulation and when it reaches to kidney the kidney cannot separate protein from the blood and that would damage the kidney. In para 27 the doctor has admitted that due to minor tissue hemorrhage if the protein mixes with blood in tissue particles it is not necessary that would cause Rhabdomyolysis. During examination he could not find damage to major tissues and major muscles. That application to SDM was treated as FIR and police started investigation. There is no explanation coming forth in FIR as to why the delay is caused. The delay is for more than 20 days. No explanation is coming forth.*

➤ *That looking to the evidence of Amratbhai the brother of deceased and Ramesh, would clearly show that Amratbhai is not deposing the true facts. PW 2 to 18 are not deposing in that deposition that at any time they had seen Amratbhai visiting Jamjodhpur police station so also his own brother Ramesh also does not say in his deposition that his brother visited Jamjodhpur Police Station along with Chimanbhai Vachchhani Chimanbhia Vachchhani is not examined.*

➤ *That all the witness who are examined in this case at*

initial stage, they did not give the name of policeman accused that they had assaulted on them. Amratbhai is not eye-witness.

➤ *That there is delay in recording the statement of four injured persons that to after lodging of FIR on 18/11/1990, till that stage no involvement of any of the accused persons comes forth. In the FIR, Aamratlal gave the names of two persons (i) Sanjivkumar R. Bhatt and (ii) head constable Pravinsinh Zala and for that he comes out with the say that he learnt those name on inquiry which is not admissible.*

➤ *That all the accused persons are police persons. To control the riots, they were posted and deputed for that purpose. In the process of controlling the riots they used forced to arrest any of the culprits then they are not committing any offence as such, as it is part of their duty. As per section 197 CRPC to prosecute the public servant the sanction is mandatory.*

➤ *That the government is also bias against the accused more particularly for accused no.1 Sanjiv Bhatt. After investigation the government refused to sanction for no reasons. That A summary report was submitted and the Ld. JMFC rejected the same by order dated 20/12/1995. Such a correspondence was made to the government and government directed the Public Prosecutor to file Revision Petition challenging the order of Ld. JMFC. The Revision was preferred vide Revision Application no. 21 of 1996. It remained pending before the court till 15/07/2011 i.e. the date on which the Public Prosecutor withdrew the*

application on direction being given by the state without any reason.

➤ *The accused no.1 Sanjivkumar R. Bhatt preferred an application before the Ld. Sessions judge for condonation of delay and that was rejected. The Ld. Session judge rejected the said application and therefore the said order was challenged before the Hon'ble High Court. That Hon'ble Mr. Justice Anant S. Dave directed to condone the delay and to hear the Revision Application. That was pending.*

➤ *Four accused persons independently preferred Special Criminal Applications before this Court for Quashment of the FIR for want of sanction this Hon'ble court Coram: Hon'ble Mr. K S Zaveri quashed the FIR(s) as there was no sanction. That evidence was fed thereafter the statements of the persons recorded. Detailed statement was given by the accused No.1 Sanjivkumar R. Bhatt in which he categorically stated that as he gave deposition before the commission, the highly placed politician and democrats took vengeance by not according sanction. The glaring example is the withdrawal of revision petition under the instruction of government in July 2011 without informing the accused that the Revision Application was withdrawn which was filed challenging not granting of sanction i.e. for rejection of A-summary report. or*

➤ *That there are no of documents to show on record that at every stage the material witnesses have not been examined though specifically requested shows the bias of special Public Prosecutor though there was delay in proceeding with*

the trial at the instance of Public Prosecutor-State as the revision was kept pending up to July 2011. The delay is almost 15-16 years that never read with the court but then any application for supplying document etc and to examine any witness, were given the court used to reject the same. The height of it that when the accused requested examine Dr.Reddy (Hyderabad). The Hon'ble Court granted the application and directed to produce after recess. The court knows it well that Dr. Reddy was residing at Hyderabad and cannot appear in Jamnagar court within two hours and therefore obviously the intention was not to examine such doctor. This is the manner in which the accused faced the trial for his lawful rights to examine the witness. That in the courts rejected and he had to approach Horn'ble Supreme Court by way of Special Leave Petition.

➤ *That the proceedings conducted were not fair. The Special Public Prosecutor has posed himself as persecutor. Out of 330 witnesses he examined 18 injured witnesses. The police officers who had carried out investigation are not examined here. The other interested and important material witnesses have been dropped. Looking to all these aspects it is made crystal clear that deliberate attempt is made by the prosecution to see that accused should not get any opportunity to defend himself properly."*

[10] As against this, learned Additional Advocate General & learned Public Prosecution Mr. Mitesh Amin appearing with learned Additional Public Prosecutor Mr. Bhargav Pandya for

the respondent - State has been pointed certain material from the record to counter the submissions made by learned senior advocates appearing on behalf of the respective appellants. First of all on the issue of fair trial which is said to have not been conducted against the accused persons. Learned Additional Advocate General & learned Public Prosecution Mr. Amin has submitted that there must be a fair trial qua the society and the victims as well and this concept is not only for the purpose of favouring accused persons. In fact, by sequence of events, the contentions, which have been raised with regard to no fair trial is not sustainable and for that, learned Additional Advocate General & learned Public Prosecution Mr. Amin has drawn our attention to the fact that on 12.02.2019 at pages 8 to 95 of paper-book compilation, the prosecution has closed its evidence and after that closure one of the accused persons gave an application for transfer of a case on 16.02.2019 since the evidence was closed, the said application came to be rejected *vide* order dated 19.02.2019 and the said issue has become final and for that purpose a reference is made to pages 8307 to 8325 of paper-book compilation. At that stage, later on, on

25.02.2019, the accused persons gave an application under Section 91 of the Cr.P.C. for production of document and whatever certain documents were available where very much produced by the prosecution and extended all cooperation about such production request. Thereafter, it appears that one of the accused gave an application under Section 311 of Cr.P.C. on 05.03.2019 much after the closure of evidence by prosecution. For examining some 40 witnesses, the said application was rejected which is reflecting on page 8881 of paper-book compilation. Against the said decision, Special Criminal Application No.4115 of 2019 was filed which was dealt with on 16.04.2019 and the list appended to the said as part of *annexure-Z* which later on turned out to be in the form of pursis submitted by defence advocate on page 9209. Against the said issue, the proceedings have initiated right up to the Hon'ble Supreme Court, but then looking to the manner in which trial was getting delayed, the Hon'ble Supreme Court has disposed of the said SLP by way of observations and directions to decide expeditiously the trial of the case and as such looking to these chronology of events, it cannot be said in any way that any

prejudice has caused from the side of prosecution to the accused persons.

[10.1] According to learned Additional Advocate General & learned Public Prosecution Mr. Amin even prosecution has kept present those witnesses which was ordered but they have conveniently not been examined by the defence themselves and they have practically been dropped and for substantiating this stand, a reference is made to pages 9149, 9175, 9187 and 9197 from paper-book compilation and as such more than an adequate opportunity has been extended to the accused persons to examine the witness as per their choice still the defence has not avail such opportunity and as such, at this stage, they cannot raised such element of any prejudice.

[10.2] Learned Additional Advocate General & learned Public Prosecution Mr. Amin has then submitted on the issue of invoking Section 391 of the Cr.P.C. at this stage, the same is not desirable in view of the fact that out of 40 witnesses which the defence has initially desire to examine, the reduced to 20 and out of that also, as said earlier, some of the witness have not

been conveniently examined by them, and as such, now at this stage, as per their wish and desire, this power under section 391 of the Cr.P.C. after fulfilled adjudication cannot be resorted to. In fact, on the issue of examination of witness, a reference is made by learned Additional Advocate General & learned Public Prosecution Mr. Amin to a decision dated 24.08.2022 decided in Criminal Misc. Application No.01 of 2022 in Criminal Appeal No.1429 of 2019 and then a reference is made to a decision of Hon'ble Apex Court which dismissed the SLP No.9445 of 2022 filed by one of the accused on 10.05.2023 and as such at this stage of appeal, now in the background of this fact no grievance can be raised by the appellants especially when more than adequate opportunity was extended to the defence.

[10.3] Learned Additional Advocate General & learned Public Prosecution Mr. Amin has vehemently submitted that it is very unfortunate that the advocates on behalf of the accused persons have made certain averments in the ground of appeal memo attributing against the learned Judge at the instance of

one of accused persons and by referring to page Z.15 paragraph 6.4 from Criminal Appeal No.1492 of 2019. Learned Additional Advocate General & learned Public Prosecution Mr. Amin has further submitted that this attribution was thoroughly uncalled for, deserves deprecation though the same has been permitted to be deleted by the High Court on 24.09.2019. So with a view to prejudice the Court though ample opportunity availed after order of conviction and they are again trying to misdirect the Court from the core issue.

[10.4] In respect of sanction under Section 197 of Cr.P.C., learned Additional Advocate General & learned Public Prosecution Mr. Amin has submitted that a reference is made of the learned Single Judge's order dated 24.04.2009 while quashing private complaints for want sanction under Section 197 of the Cr.P.C. It has been submitted that order if to be closely perused is not laying down any clear ratio, and therefore, no reliance can be made by the learned advocates appearing for the appellants. Learned Additional Advocate General & learned Public Prosecution Mr. Amin has submitted

that in fact there were four private complaints and one more private complaint then the three which have been dealt with by the learned Single Judge, the 4th one is submitted by Mahesh Damji Chitroda who was one amongst 40 witnesses to be examined, as requested in an application under Section 311 of the Cr.P.C. submitted by the accused. Now his criminal quashing petition in which also issue of sanction is very much entangled is pending before the Court and as such when two other quashing petitions, namely, Criminal Misc. Application Nos.1799/1996 and 5959/1999 are pending the issue of Section 197 cannot be said to have attained finality by virtue of order of learned Single Judge dated 24.04.2009 and a reference is also made of the order dated 05.05.2022 and the order passed by Hon'ble Apex Court on 05.09.2022 passed in SLP No.7186 of 2022, it has been contended that Section 197 issue raised is of no significance and not favourable to the accused persons in any form.

[10.5] In addition to this, learned Additional Advocate General & learned Public Prosecution Mr. Amin has submitted

that incident has occurred on 30.10.1990 in which there are more than 100 persons were nabbed by the police and case of the prosecution is that these injured persons were met to sit ups in the police station where beaten up when they were in police custody. This fact is not in dispute and substantiate by as many as 17 injured witnesses. Even approximately 25 injured persons were first taken to Bhanvad Primary Health Centre in which yadi which was submitted reflects that they have received injuries and when the issue was raised with regard to that yadi, the prosecution has examined as many as three persons and therefore, when the ocular evidence is clear enough of these injured witnesses who have specifically identified the role there is a hardly any reason to doubt about minor discrepancy even if that of yadi. According to learned Additional Advocate General & learned Public Prosecution Mr. Amin in all the trials, the identification parade is not a must especially when the injured witnesses are clearly indicating the circumstance. So the identification parade loses its significance when injured witnesses are deposing and here is the case in which the substantial cross-examination of these injured witnesses have

also been undertaken and if the tenure of deposition to be seen it has remained consistent and credible and as such the case put up as if they have not received any injuries in the police station is falling down from the injured witnesses deposition. So when these evidence is clearly indicating about the episode which took place while injured witnesses were in custody. The conduct of these police officers need not required compliance of Section 197 of the Cr.P.C. In fact, a substantial evidence is to that extent that persons were dealt with while they were in custody and the manner in which they have been physical tortured, as indicated, the same is outside the scope of the duty of police officers and therefore, no sanction is required under Section 197 of the Cr.P.C.

[10.6] To substantiate his submissions, learned Additional Advocate General & learned Public Prosecution Mr. Amin has made a reference to the deposition of Dr. Shashikant at *Exh.677* as well as the deposition of P.W.6. So when there is a clear assertion visible form the deposition itself there is hardly any reason to prove the case in a microscopic manner. The

presence of injured witnesses is sufficient enough once that evidence is found to be credible and three independent court witnesses have also supported and as such the conjoint reading of deposition of all these witnesses who have been examined is clearly indicating that the case has been proved by prosecution beyond reasonable doubt on the basis of conjunctures and surmises which are tried to be projected by the learned advocates for the appellants a well reasoned order based upon proper adjudication of trial cannot be set at naught. Learned Additional Advocate General & learned Public Prosecution Mr. Amin has then submitted that looking to the evidence the story of false implication is out of place to be believed and for that a reference is also made to *Exh.773* an independent version. Learned Additional Advocate General & learned Public Prosecution Mr. Amin has then exhaustively dealt with each of the contentions raised by learned advocates for the appellants and has submitted that out of these witnesses who have been examined i.e. from P.W.2 to P.W.28 almost all except to the independent injured witnesses. On the issue of non examination, learned Additional Advocate General & learned

Public Prosecution Mr. Amin has further elaborated by pointing out that out of all 72 injured witnesses majority on them have visited Jamjodhpur Community Health Center where Dr.Kalola was in-charge of of Primary Health Center who has been examined as P.W.19. Out of those 72 who have visited, P.W.3 was also examined and some 25% who have been sent to Bhanvad Primary Health Center, out of which P.W.2, 5 & 6 have been examined. So as many as 10 witnesses have been examined by prosecution to corroborate the case of the prosecution. The medical case papers which were prepared of these witnesses were very much produced on which even detail cross-examination has also taken place. The theory of creation of document therefore is a brainchild of the representative of appellants and it is not possible to be believed. The accused No.1 has gone to that extent that believe the version which he has given in Section 313 of the Cr.P.C. and all witnesses have live before the Court, even Public Prosecutor has also not discharged his duty and even the learned Judge has not discharged his duty and as such discard all the evidence of injured eye witnesses and just believe the version which has

been given by accused No.1 when the same is not corroborate by any independent witness. An attempt is made to divert the attention from the core issue of the present case by citing circumstance about his statement after June and July, 2022 made against highest machinery of governance is not believable at all and cannot come to the rescue of accused No.1 when he is confronted with 18 injured witnesses version, supported by medical papers and independent witnesses and therefore, no case is made, according to learned Additional Advocate General & learned Public Prosecution Mr. Amin. The evidence of accused No.3 i.e. Sailesh Pandya is having no good credential is having an antecedent and criminal case about corruption is also pending against him and as such to rely upon his version is a very weak piece of evidence. On the issue with regard to court witnesses, a grievance which is tried to be raised is ill-founded as per the say of learned Additional Advocate General & learned Public Prosecution Mr. Amin especially in view of the fact that court witness No.2 was very much examined who was one of the investigators of the case and so long his evidence is believable raises no suspicious cannot be said to be irrelevant to

the stand simply because it is not convenient to the appellants. In fact, the court witnesses have consistently submitted that injuries have been caused on account of torture by the police when they were in the custody. So far as proving about logbook is concerned, the defence has not produced rather dropped by way of pursis and as such, now at this stage, cannot raise his grounds to distract the basic substratum of order of the order of conviction.

[10.7] To strengthen his submissions, learned Additional Advocate General & learned Public Prosecution Mr. Amin has drawn our attention to the deposition of P.W.23 as well as medical evidence which is at Exh.744 and referred to the back side of page 7835 of paper-book compilation including the opinion of Dr.Gajera on whose basis Dr.Pandya has opined and when a reference is made which is reflecting on page 7885 of paper-book the non examination of Dr. Gajera cannot be said to be fatal to the prosecution in any manner. In fact, one of doctors who is conducted postmortem examination is very much examined and Dr.Mangal is one of the members of postmortem

team need not be examined when Dr.Kalola has been examined. Had there been any inconsistency probably Dr.Mangal's evidence was required, but here is not a case wherein any such remote inconsistency is visible, cross-examination has taken place at length. Hence, when a case is substantially well supported by oral as well as documentary evidence there is hardly any error found in the judgment impugned.

[10.8] Learned Additional Advocate General & learned Public Prosecution Mr. Amin has further submitted that an issue has been raised by one of the learned senior advocates that charge of Section 302 of the IPC is not established, but then a reference deserves to be made of Section 300 of IPC wherein intention and knowledge both are available of causing harm which may result into a death then certainly the charge is established looking to the evidence on record. It might not be that intention may not be there but when knowledge is specially established the required of Section 300 of the IPC is proved in the present case on hand and as such a conviction under Section 302 of the IPC is thoroughly justified and there is no

error committed while passing an order of conviction against the appellants accused and as such the appeals filed by the appellants accused be dismissed in the interest of justice.

[11] *In chorus*, learned senior advocate Mr. J. M. Panchal appearing with learned advocate Mr. P. Y. Divyeshvar has submitted that it is fortunate that the advocate appearing on behalf of accused have not raised any issue with regard to locus of the complainant, but here is the case in which the complainant is having very much a locus to assist the Court and for that purpose a reference is made to the observations contained in paragraphs 19 and 22 from the decision of Hon'ble Apex Court reported in (2022) 9 SCC 321. With a view to assist, learned senior advocate Mr. Panchal has submitted that as said that material witness has not been examined, but here is the case in which one of doctors from the postmortem team has already been examined and therefore, non examination of Dr.H.L.Trivedi is of no significance and as such from this point, a reference is made to the observation contained in paragraph 9 from the decision delivered by Hon'ble Apex Court reported in

(1994) 2 SCC 677. Further a reference has also been made to substantiate the doctor's opinion who conducted the postmortem which is more preferable and therefore, non examination of another Dr.H.L.Trivedi is of no consequence. The observations contained in paragraphs 31 and 35 from the decision reported in (1997) 7 SCC 156 is relied upon. Learned senior advocate Mr. Panchal has submitted that how homicidal death is to be proved which is well guided by one of the decisions delivered by Hon'ble Apex Court reported in (2008) 13 SCC 515 observations of paragraph 8, according to learned senior advocate Mr. Panchal are sufficient enough to indicate that there is an enough corroboration to establish that here is a homicidal death and the prosecution has proved. Further a reference has also been made to the decision of Hon'ble Apex Court reported in (2004) 13 SCC 308 in which observations have been made in paragraphs 8 and 9 on the issue of a reference to evidence of eye witness. By citing these judgments, a contention is raised that when there is a clear evidence of eye witness and thereto injured eye witness such evidence is to be preferred with emphasis and mere suggestion

in sufficiency or more probabilities have no place when such clear evidence is available on record.

[11.1] Learned senior advocate Mr. Panchal has submitted that even on the issue of custodial torture how police record is to be appreciated is also well guided by two decisions of Hon'ble Apex Court reported in *(1985) 1 SCC 552 (paragraphs 19 and 20)* and *(1997) 1 SCC 416 (paragraphs 20 and 25)* and therefore, when there is a clear evidence police papers cannot be show heavily relied upon to arrive at a just decision and police record not to be given that much importance to discard a clear version of injured eye witness. It has further contended that evidence of injured eye witnesses when is sound and credible and consistent the motive aspect is not to be given that much importance and what would be correct way of weighing the evidence of injured witness two decisions delivered by Hon'ble Apex Court are very material to the issue and as such learned senior advocate Mr. Panchal has made a reference to it which are reported in *(2012) 4 SCC 79 (paragraphs 30 and 31)* and *(2015) 11 SCC 69 (paragraphs 28, 29, 30 and 31)* and as

such when this kind of material is very much available on record of injured witnesses, the mere lapse of time not to be given any favour to the accused persons. One another decision is submitted to substantiate his stand, a decision delivered by Hon'ble Apex Court reported in *(2007) 10 SCC 161 (para 9)*.

[11.2] In respect of non examination of witnesses, again one another decision is cited by learned senior advocate Mr. Panchal by referring to head note B contained in a decision reported in *(2004) 13 SCC 308* and by referring to and submitting at length, it has been contended that here is the case in which prosecution has proved the case beyond reasonable doubt from all angle the conviction deserves to be confirmed.

[12] In rejoinder, learned senior advocate Mr. B. B. Naik has reiterated his stand which otherwise has taken and has referred to the deposition of P.W.23 and Dr.Kalola's evidence. An attempt is made to analysis the evidence by contending that Dr.Pandya has not indicated in his cross-examination that protein level was not proper, on the contrary, protein level was not high and when that be so, the cause of death cannot be said

to have been proved so succinctly. A reference is made to yet decision by learned senior advocate Mr. Naik which is reported in *(2014) 9 SCC 365 (paragraph 14)* and has tried to submit that case has not been proved beyond reasonable doubt.

[12.1] Though, learned senior advocate Mr. B. B. Naik has given a long list of judgments but has made a reference only of following judgments:

- (1) *2006 (4) SCC 584.*
- (2) *2020 (7) SCC 695.*
- (3) *2019 (16) SCC 712.*
- (4) *2019 (20) SCC 481.*
- (5) *2016 (3) SCC 135.*
- (6) *2017 (13) SCC 98.*
- (7) *2017 (13) SCC 597.*
- (8) *2008 (16) SCC 417.*
- (9) *2002 (1) SCC 702.*
- (10) *AIR 1956 SC 44.*
- (11) *2019 (20) SCC 593.*
- (12) *2022 (2) SCC 89.*

[13] Learned senior advocate Mr. K. B. Anandjiwala then also has reiterated his submissions which are already recorded hereinbefore and has submitted that at least when two views are possible the view which may be possible in favour of accused to be taken and at least this is the case in which the benefit of doubt deserves to be given.

[14] In addition to this, learned advocate Mr. G. Ramakrishnan appearing on behalf of accused No.4 has also submitted that to prove the charge No.1 the onus clearly lies on the prosecution and charge must be corroborated by postmortem note and if the Ultrasound Sonography Report dated 17.11.1990 to be seen of Virani Hospital case is not proved beyond reasonable doubt and the story of torture in the custody is not believable. Some lapses have been left by learned Additional Advocate General & learned Public Prosecution Mr. Mitesh Amin in dealing with a clear stand, first the learned Additional Advocate General & learned Public Prosecution Mr. Amin has not dealt with the destruction about MLC documents as per the Government Resolution and as such

according to learned advocate Mr. Ramakrishnan all these documents which are tried to be relied upon by the prosecution are fabricated and not matching with the document which were in existence and therefore, the entire prosecution is based upon a fabricated document. In fact, learned Additional Advocate General & learned Public Prosecution Mr. Amin has also not answered or explained the role played by local police as well as the police officers who reached on the spot after all those who have been arrested before 12.45 p.m. on that day. In fact, according learned advocate Mr. Ramakrishnan the role of local police in indulging physical torture has not been explained by the prosecution and as such the role alleged these police officers is not worthy of acceptance since prior to their reaching the local police has already done the act even it is alleged to have been done while they were in police custody. According to learned advocate Mr. Ramakrishnan a dropping of witnesses one by one pursis of defence how can it be used against the accused persons especially when it is the duty of prosecution to independently established the case and learned advocate Mr. Ramakrishnan has submitted that accused No. 4 has no

antecedents of any custodial torture. On the contrary, he is recipients of several awards / rewards in his entire career and he got due promotion and superannuated and as such even if the conduct of accused No.1 is established then accused No.4 cannot be dragged on his alleged role and accused No.4 has no connection with the conduct of accused No.1 who filed affidavit or asserted about Godhra episode in commission and as such accused No.4 is an innocent person may be acquitted. Accused No.4 has merely remained as a security assistance to accused No.1 and as such the conduct of accused No.1 cannot be allowed to fall back upon accused No.4 and as on date, accused No.4 is around 70 years of age, suffering from several elements like blood pressure, diabetes and he is languishing in jail. By referring to the language of Section 197 of the Cr.P.C., learned advocate Mr. Ramakrishnan has submitted the Court should not have taken cognizance and as such entire trial for want of sanction is vitiated and the order of conviction is unsustainable and as such by submitting this, learned advocates appearing on behalf of appellants have submitted that order impugned be quashed and set aside.

[15] To examine the rival submissions and the material on record and to consider the stand of the appellants before dealing with their stand and to conclude, we deem it proper to reflect certain significant analysis of evidence as a whole and as such we hereunder would like to analysis the evidence which is placed before dealing with the stand of the appellants.

[16] **Discussion and analysis of evidence.**

[16.1] Having heard learned Counsel appearing for the parties and the material placed on record it would emerge that, FIR No. 96 of 1990 registered at Jamjodhpur police station on 30.10.1990 and all the apprehended accused of the said case were apprehended from their respective residence by different police persons during evening to night and were brought to Jamjodhpur police station, while the said persons were in custody, they have received injuries and were compelled to do excessive sit ups and crawling. Thereafter, because of the said incident, one Prabudasbhai Vaishnani died and therefore his brother Amrutlal Vaishnani gave a written complaint to Sub Divisional Magistrate which was registered as FIR bearing no.102 of 1990.

[16.2] PW Nos.2, 5 and 6 are witnesses who were examined whereas medical officer PW No.21 - Dr. Sapariya working at primary health center Bhanvad on 31.10.1990 as per police Yadi Exh.678 was also examined.

[16.3] It would emerge from the record that Exh.678 is police yadi forwarded by Bhanvad police to Medical Officer Primary Health Centre, Bhanvad on 31.10.1990 stating and mentioning in it that the named 25 accused persons of FIR No, 96 of 1990 registered at Jamjodhpur police station, were physically submitted for medical treatment as they have received injuries as they were in mob and when police tried to arrest them during irregular running and as they fell down, they have received injuries and they required treatment for it. Police also requested for medical opinion and certificate. Out of 25 named accused of this yadi / letter prosecution had examined 3 persons named PW No.2 Dineshbhai Kalubhai Vachani, Sarjukumar Mohanlal PW No-5 and Arvindkumar Babulal as PW No-6.

[16.4] Prosecution had submitted medical case papers as well as medico legal certificate of injured persons examined at Bhanvad Primary Health Centre on 31.10.1990 along with list of documents at Exh.676.

[16.5] Prosecution has also relied upon yadi / letter dated 31.10.1990 forwarded by PW No.21 Medical Officer Primary Health Centre, Bhanvad District: Jamnagar to circle police inspector Bhanvad mentioning therein that 8 injured persons named in Yadi are required to be referred to Irvin Hospital, Jamnagar as they have received more injuries and these injuries may be in the nature of fracture. This Yadi is placed on record at Exh.730. Prosecution has also relied upon one another Yadi/letter of PW No.21 Medical Officer, Primary Health Centre, Bhanvad, Jamnagar forwarded to Bhanvad police also dated 31.10.1990 stating and mentioning therein names of 17 injured persons who were treated by undersigned medical officer who needs further follow-up treatment. This letter also refers to one another similar letter written for 8 injured persons referring them to medical expert. This letter referring about 17 injured persons is placed by prosecution at Exh.731.

[16.6] At this stage we would like to refer the deposition given by the PW No.2, 5 and 6.

[16.7] Evidence of PW 2 - Dineshbhai Karabhai Vachchani states about incident having taken place on 30.10.1990. In the evening of 30.10.1990 at around 06:00 O'clock he was returning back from his field and he found police near the place and person named Narendrabhai stopped him. Little later, from Darbargadh road police jeep came and stood at the place where witness was told to stop. Another police jeep also came there and witness and few others were beaten by stick and were taken in that police jeep to Jamjodhpur Police Station. After taking witness and others to police station around 20-25 persons brought at police station were kept in lockup room and others were kept outside lockup room. Police brought many other persons and all were kept at police premises and police continued to bring different person upto 10 O'clock in the night. Before witness and others were taken to Bhanvadh Dispensary these persons were made to do sit-ups, crawl, and were beaten by sticks as well as through butt of rifle by different police

persons and this was suffered by each and all one after other. So far as witness is concerned, he states that he was made to do around 80 to 90 sit-ups and was also made to crawl, was also beaten and was again made to crawl. He states that he knows deceased Prabhudasbhai and his brother Rameshbhai, they were brought during night hours and they were also made to suffer beating of police doing of sit-ups as well as crawling. These two brothers were made to do sit-ups, crawling, etc. for 3 to 4 times. He states that when they asked for water instead of giving water they were beaten. Witness also states that deceased Prabhudasbhai was also unable to stand and walk on his own and he was only able to stand up if he got support. Witness was taken to Bhanvadh Dispensary. Deceased and his brother were not taken to Bhanvadh Dispensary. Police persons have threatened them for not stating anything against police when they were taken to doctor and were also threatened for not stating anything against police when they were taken to court and thereafter, they were placed at Jamnagar Jail. Witness further states that condition of deceased Prabhudasbhai was not good inside jail and he was unable to walk without help of two

persons even for going for nature's call. Witness states that he came to know about death of Prabhudasbhai. Witness states about he being able to identify police persons stated by him. He names one of the accused as Bhatt saheb and other accused as Pandya saheb, but, these two accused were not present in the Court as they had given exemption application and have accepted that they don't dispute their identity and he identifies other police accused who were present in the Court. During cross- examination defense has confronted witness on the ground that whatever has been stated in examination- in-chief is not stated by witness in his police interrogation and the police statement. But witness has denied about it. In paragraph 36 of the deposition/cross-examination, witness has categorically stated that all the 7 accused were seen by him at police station. In paragraph 47 of deposition/cross-examination witness expressed his ignorance about Bandhcall-Bharat Bandh declared by Vishva Hindu Parishad on 30.10.1990. Witness also gives names of certain person who were brought at police station and were arrested like witness. In paragraph 51 and 52 of deposition/cross-examination witness denies about he having

received injuries by persons of Muslim Community and when witness was brought to police station he was already injured. In paragraph 57 of the deposition/cross-examination, witness is again confronted by defense by suggesting him that on the day of incident witness and others and mob were damaging and robbing houses of minority community and at that time persons of minority community ran after them and they beat witness and others by sticks and wooden logs. In paragraph 57 of the deposition/cross-examination, witness is again confronted with suggestion that witness has received injuries as they were running to save themselves from persons of minority community who were chasing witness and others and while running and on fall witness received head injury. In paragraph 67 of the deposition/cross-examination, witness is again confronted by suggestion that witness have not stated before any one that while he was in a mob because of fall, irregular running he received head injury and police came and police took him to police station. In paragraph 69 of deposition/cross-examination, witness denies another suggestion put to him about he and others were in a mob gathered for damaging Razvi Mosque and

he being caught by P.S.I. Thakor and was brought to police station by P.S.I. Thakor and was handed over to C.P.I. Patel. In paragraph 72 of the deposition/cross-examination, contradiction of police statement put to witness is denied by witness and he asserts that they were made to do sit-ups. In paragraph 86 of the deposition/cross-examination suggestion is put to the witness to which he answers that when he was made to crawl he was beaten. He further reiterates in paragraph 87 about crawling and in the same paragraph he further reiterates about he being made to crawl and being beaten by different police persons. In paragraph 90 he again identifies accused Pandya saheb.

[16.8] At this stage we would like to refer the deposition given by the PW No.21 Dr. Sapariya Medical Officer of Primary Health Center, Bhanvadh has given his evidence at Exhibit-677 and in paragraph 18 of his deposition he states about PW 2-Dinesh Karabhai Vachchani being brought to him on 31.10.1990 and PW 2-Dinesh Karabhai Vachchani gave history before him that police had beaten him. PW 21-Dr. Sapariya describes

injuries suffered by Dineshbhai in paragraphs 18/1, 18/2 and 18/3. He also produced OPD Case papers of this witness Dinesh Karabhai Vachchani i.e. PW 2, which is admitted at Exhibit-710 and PW 21 also placed Medico-Legal Certificate of this witness Dinesh Karabhai Vachchani at Exhibit 711.

[16.9] Similarly PW No.5 Sarjukumar Mohanbhai Santoki states about incident having taken place 30.10.1990 and in the evening of that he was present at his home and police came and entered his house and one police person named Sanjiv Bhatt who was wearing particular T-shirt beat him by Gedi and he was forced to sit in police jeep and he and few others were taken to Jamjodhpur Police Station. Other persons were also present and were brought to Jamjodhpur Police Station. Sanjiv Bhatt was also present at Police Station. He and other police persons were beating them and they were made to do sit-ups during night hours. Police also brought Prabhudasbhai Vaishnani and Rameshbhai Vaishnani during night hours and they were also beaten and all were made to do sit-ups, crawl and were also beaten and police continued same during night. Police

threatened them for not complaining against police before anyone and also not to complaint to Judge saheb and because of fear of police, they did not complain before Judge saheb. Witness also states about he, Rameshbhai and Prabhudasbhai were so beaten and were unable to walk without support. He again states that he was beaten by Sanjiv Bhatt. He identifies accused Sanjiv Bhatt in the Court. Witness also identifies another accused Pravinsinh Bavubha Zala in the Court. He also states that while in jail Prabhudas and Rameshbhai Vaishnani and also one Maheshbhai Naginbhai, whose condition was deteriorating and were sent to Irvin Hospital, Jamnagar from jail for further treatment. Witness came to know about death of Prabhudasbhai. During cross-examination witness is confronted regarding evidence submitted by him as contradictory as witness has not stated anything in his police statement to which witness denies categorically. Witness also denied a suggestion that witness and two others were beaten by mob when they went to Muslim area. Witness also denies in paragraph 31 a suggestion put to him that workers of Vishva Hindu Parishad and Bajrangdal were rioting and witness was also among them

and he received injury while rioting. In paragraph 34 of his deposition, witness again volunteers and states that police have threatened them for not disclosing injuries on that person to any one or else they will receive further beating.

[16.10] At this stage we would like to refer the deposition given by the PW No.21 Dr. Sapariya Medical Officer of Primary Health Center, Bhanvadh has given his evidence at Exhibit-677 and in paragraph 6 of his deposition he states about PW 5-Sarjukumar Mohanlal Santoki being brought to him on 31.10.1990 and PW 5-Sarjukumar Mohanlal Santoki gave history before him that police had beaten him. PW 21-Dr. Sapariya describes injuries suffered by PW 5- Sarjukumar Mohanlal Santoki in paragraphs 6/1 and 6/2. He also produced OPD Case papers of this witness Sarjukumar Mohanlal Santoki i.e. PW 5, which is admitted at Exhibit-686 and PW 21 also placed Medico-Legal Certificate of this witness Sarjukumar Mohanlal Santoki at Exhibit 687, Dr. Sapariya further deposed that police again brought PW 5-Sarjukumar Mohanlal Santoki in the noon of 31.10.1990 at 14:15 hours as PW 5-Sarjukumar Mohanlal Santoki was feeling dizzy, difficulty in walking and

pain in both the legs and, hence, PW 21- Dr. Sapariya referred PW 5-Sarjukumar Mohanlal Santoki to Irvin Hospital, Jamnagar and he also submitted referred note prepared by him, admitted at Exhibit-685.

[16.11] Similarly PW No.6 Arvindbhai Babulal Gharsandiya states that incident took place on 30.10.1990. He was at his home. Police came in jeep. Police asked about his cast. He told that he is Patel and police persons took him in their jeep to police station. He also saw one another person in the jeep whose name was Mukeshbhai. Large number of persons were present at police station and they all were made to do sit-ups and crawl by police persons and were also beaten by police. This incident of sit-ups, crawl, beating continued up to late midnight and police took around 25 to 30 persons along with him to Bhanvadh Dispensary. Witness states about persons named Prabhudasbhai Madhavbhai who was along with them in lockup and has died. Witness identifies accused named Shailesh Labhshankar Pandya as police person who came to his home and took him in police jeep. Witness also identifies police

persons who were present at police station and are referred in his deposition and two such police persons identified by him are accused Sanjiv Rajendra Bhatt and Pravinsinh Bavubha Zala. During cross-examination, witness is confronted that his version is contradictory that he has not stated relevant version of his examination-in-chief in his police statement during interrogation, which witness denies. In paragraph 20 of his deposition during cross-examination, witness denies a suggestion made by defense that mob of 500 persons were causing damage to Rizvi Masjid and also pelting stones on the houses of Muslim Community and witness was in the mob and at that time police came and along with other witness was taken to police station. Witness also denies a suggestion that at that time during stone pelting and irregular running witness received injuries. In cross-examination witness further asserts about he being compelled to crawl and his shirt and lungi were stained with blood because of injuries on his person. In paragraph 28 during cross-examination witness again asserts that they were made to do sit-ups and crawling.

[16.12] Now at this stage we would like to refer the deposition of PW No.21 Dr. Shashikant Vallabhdas Sapariya, Medical Officer of Primary Health Center, Bhanvadh has given his evidence at Exhibit-677 and in paragraph 13 of his deposition he states about PW 6- Arvindkumar Babulal Garsandiya being brought to him on 31.10.1990 and PW 6- Arvindkumar gave history before him that police had beaten him and both his legs and back had pain. PW 21-Dr. Sapariya describes injuries suffered by PW 6- Arvindkumar Babulal Garsandiya in paragraphs 13/1 and 13/2. He also produced OPD Case papers of this witness Arvindkumar Babulal Garsandiya i.e. PW 6, which is admitted at Exhibit-700 and PW 21 also placed Medico-Legal Certificate of this witness Arvindkumar Babulal Garsandiya at Exhibit-701.

[16.13] Similarly PW No. 27 Rameshchandra Madhavjibhai who is real brother of deceased Prabhudasbhai states about there being Gujarat Bandh Call on 30.10.90 and all markets as well as his shop in Jam Jodhpur remained closed. Witness, his brother Prabhudasbhai were at home and in the evening Police

persons in their jeep came to their home and witness as well as Prabhudasbhai were asked to sit in their police jeep and thereafter along with others they were taken to Jam Jodhpur Police Station. After reaching there they were beaten up with sticks. Police persons who beat them up were accused Sanjiv Bhatt, other accused persons named Pandya Saheb, Shah Saheb, Pravinsinh Jadeja, Anoopsinh, Pravinsinh Jhala, Keshubha and others. Witness further asserts that accused Sanjiv Bhatt was exhorting other police persons for severely beating them even if they die. Thereafter, witness, his brother Prabhudasbhai and other persons who were brought to Police Station were made to do sit ups. They both brothers were even made to do sit ups until they fell down and also suffered dizziness. Thereafter, they all were made to crawl. Certain persons amongst them were taken to Bhanvad Dispensary, they both brothers requested to take them to Bhanvad Dispensary but they were not taken. Thereafter, they were taken to court of Magistrate Saheb but as they were threatened and intimidated for making them to suffer more, they didn't say anything. Thereafter, they were taken to Jamnagar Jail. Physical condition

of him as well as his brother Prabhudabhai was bad. His brother's physical condition was severely bad and he had respiratory problem also. They both were examined at jail dispensary and his brother Prabhudasbhai was also taken to Irvin Hospital. After they both came out from jail they both were admitted at Gondhia Hospital, Rajkot and his brother Prabhudasbhai died on 18/11/90. He identified before court police persons who beat them. Police persons identified by him are accused persons named Pandya Saheb, Pravinsinh Zala, Keshubha, Anoopsinh and Pravinsinh Jadeja. Other accused persons named Sanjiv Bhatt Saheb and Shah Saheb were not present and as recorded in para 9/2 of deposition these two accused had given application seeking exemption as they don't dispute their identity. Witness is confronted with his police statement that whatever is stated by him in examination in chief is not stated by him in his police statement. Witness categorically denies the same. Witness denies suggestion put to him that incident of fire and loot were occurring in the areas where minority community persons are residing and they suffered injuries as these persons of minority community chased

them and also beat them. In para 16 of deposition witness states that they realized about their arrest in same offence when they were produced before the court. In para 21 of the deposition witness is also confronted about he having identified accused persons as accused persons were present in the court, reporting of incident in different newspapers and presence of accused during trial, to which witness denies and volunteers that at relevant point of time accused persons were called by their name and hence he identified them.

In Para-22 witness further asserts that police came in the evening at their home, his brother Amubhai was also in the home and police picked him and his brother Prabhudas bhai with them. On comforting witness, he accepts that his brother Amubhai is organiser of VHP. In Para-24 of deposition witness is confronted with identity of police persons to which witness states that Bhatt Saheb was present when he was picked from his home and was also present at police station. In Para-25 of the deposition witness is confronted by suggesting him that till Prabhudasbhai died they didn't gave names of police persons who beat them to any of their treating doctors to which witness

states that if they gave names of police persons then doctors would not treat them. In Para-29 of his deposition witness is confronted by suggestions that they were in mob which had gathered and proceeded to damage and torch shops and resident of persons belonging to muslim community and while they were in mob they both were arrested from the mob by Police Sub Inspector Thakor which is categorically denied by witness. He also denies that he and his brother both face difficulties as both were in mob and had irregular running. Witness also denies that his brother Prabhudas bhai had kidney problem as he runs shop of pesticides and witness further states that his brother is a farmer. Witness also denies that as they are involved in TADA Case and that they are giving false deposition.

[16.14] Now at this stage we would like to refer that PW No. 27 Rameshchandra Madhavjibhai is examined by PW No.20 Kantilal Nathabhai Pansuriya, Junior Pharmacist working in Jamnagar Jail Dispensary who examined PW No.27 Rameshbhai on 01.11.1990 and also submitted his medical case papers which is admitted at Exh.670 which bears handwriting and

signature of PW No.20 Kantilal. These medical case papers admitted at Exh.670. PW No.20 Kantilal had deposed about it in his evidence in Para-5 and Para-6 of his deposition which also states about PW No.27 had pain in both the legs and is unable to walk and was subjected to sit-ups and had pain in his body, pain in thigh and is also having body temperature which is also stated in his medical case papers admitted at Exh.670.

[16.15] We would also like to refer that PW No.27 was released from jail he visited Community Health Centre, Jamjodhpur and Medical Officer present there named Dr. Nileshkumar Hargovind Kalola examined him along with in all 72 injured persons. Dr. Kalola is examined by prosecution as PW No.19 and in Para-4 of his deposition PW No.19 Dr. Kalola had deposed about PW No.27 Rameshchandra visited him on 09.11.1990 and Dr. Kalola after examining him had narrated injuries found on his person in 4/1 of his deposition and had also produced and admitted PW No.27 Rameshchandra's OPD Case papers and medico legal certificate which also bears his handwriting and signature at Exh-526 and Exh-527.

[16.16] Similarly prosecution has examined real brother of P.W.No. 27 Rameshchandra and deceased Prabhudabhai at PW No. 28 who is first informant of this case named Amrutlal Madhavjibhai. P.w.No 28 Amrutlal on death of his real brother Prabhudasbhai had addressed an application to Sub-divisional magistrate Jamnagar on 18-11-90 stating therein about police atrocities suffered by his brother and they being picked from their home on 30-10-90. P.W.No.28 also states that he went to Jam Jodhpur Police Station for getting their further release from police custody but when he reached police station his brother was beaten by police persons, two of them are accused persons named Sanjiv Bhatt and Pravinsinh Zala. So far as other police persons are concerned he does not know them by name but he can identify if he sees them. He stated that he told police persons to not beat his brother but Bhatt Saheb and Pravinsinh had threatened him to go away from there or else he would also receive same fate, hence, out of fear P.W.No.28 ran away. He also stated that after his brother got bail he had problem of pain while urine and trouble while urine as well as in pelvis and also that his kidney is also affected and was admitted in Gondhia

Hospital Rajkot and in the morning of 18/11/1990 his brother Prabhudasbhai died in the hospital. Hence, he requested Sub Divisional Magistrate Jamnagar through this application to perform post mortem of his brother Prabhudasbhai's dead body. This application is ultimately treated as first information report which got registered at Jamjodhpur Police Station vide CR.No.102 of 90 and admitted at Exhibit 773 during recording his evidence as P.W.No.28.

PW No.28 Amratlal also states in his evidence that incident took place on 30.10.1990 and in the evening of that day 2 to 3 police persons came in their police jeep at his residence and were inquiring about him saying where is Amratbhai and he hence, hide himself while his two brothers Prabhudasbhai and Rameshbhai were picked by police. Thereafter, PW no.28 Amratlal went to police station with son of MLA of their area and they found Prabhudasbhai, Rameshbhai and others being beaten at police station by different police persons of whom he saw Sanjiv Bhatt, Pravinsinh Zala and other police persons he can identify if he sees them. During deposition accused Sanjiv

Bhatt was not present in the court and as mentioned in the deposition he is not disputing his identity so far as other accused are concerned, he had identified all other accused named Pravinsinh Zala, Dipak Shah, Sailesh Pandya, Kesubha, Anopsinh and Pravinsinh Jadeja. He further states that at police station he requested Sanjiv Bhatt as to why his brothers Prabhudasbhai, Rameshbhai and others are beaten to which witness was also threatened and was asked to leave that place or else he will also receive the same fate. On 08.11.1990 his brothers were released from jail and when they came home they had trouble in urine and were also vomiting. Before his brothers were admitted in the hospital of Dr.Sanjay Pandya at Rajkot they had taken treatment of Dr. Dinesh Bhatt, they also underwent urine and blood test, his brother Prabhudasbhai was also administered two bottles and as his brother had severe kidney problem they were advised to take necessary treatment and hence, his both brothers were admitted at Gondiya Hospital, Rajkot and were treated by Dr. Sanjay Pandya and during continuation of treatment his brother Prabhudasbhai died on 18.11.1990. On receipt of dead body of Prabhudasbhai

dead body was taken to Irvin Hospital, Jamnagar for performing post-mortem and for performing post-mortem as told by hospital's doctor permission of Sub Divisional Magistrate is required, application was submitted to SDM which he submitted and is duly exhibited at Exh.773 which is at Page-8145 of paper book. PW No.28 Amratlal is confronted with various questions put to him about he having not stated relevant part of his evidence in his FIR Exh.773 to which witness has answered that his application Exh.773 was given for the purpose of performing post-mortem on dead body of deceased Prabhudasbhai. In Para-23 of his deposition he further asserted police van came at their home in the evening at around 8:00. In Para-28 of his deposition he further asserts that when police came at their home and when they inquired about Amubhai, Amubhai, hehide himself. In the same para he further asserts that on the basis of noise of severe beating he had stated that police persons were beating. He also asserts that in his police statement out of 7 to 8 police persons he knows 2 of them and he gave names of Sanjivbhatt and Pravinsinh Zala which he came to know when he came outside his home after his brothers were picked from home.

PW No.28 is also confronted in Para 28 of his deposition about he having not given any complaint against police persons to which witness replies that atmosphere was fearful and thereafter, he remained occupied with the medical treatment of his two brothers. In para 29 witness further asserts that his brothers had urine problem, vomiting and respiratory issues when they were at Jamjodhpur. In para 38 of his deposition, he denies that he is able to identify accused persons as he remains present in court since 1990 as also he remains present in Khambhaliya court. In para 33, witness accepts suggestion put to him that he had no enmity with any police person before present incident. In para 34 he denies suggestion put to him that his two brothers were present at the place where incident of torching and looting were happening in the Muslim community area while they were present there, mob of Muslim community inflicted injuries on them. Witness also denies further suggestion that while irregular running happened at that time his brothers received injuries. In para 37 he also denies another suggestion that his brother Prabhudasbhai has

stone (urine) trouble. Witness volunteers that he was told about his brothers having injury in the nature of muscle spasm. He also denies about Prabhudas having kidney problem by inheritance and lastly in para 38/1 he denies that whatever has been stated by him against accused persons is on the guidance of local MLA and his son.

[16.17] Hereafter we would like to discuss evidence of other 11 injured witnesses. These witnesses after their release from Jamnagar Jail had visited and also medically examined themselves before PW No.19 Dr. Nileshkumar Kalola, Medical Officer working at Community Health Center, Jamjodhpur at relevant point of time i.e. between 30.10.1990 to 21.11.1990. These witnesses are PW 3, PW 4, PW 8, PW 9, PW 10, PW 13, PW 14, PW 15, PW 16, PW 17 and PW 27. These witnesses and in all 72 injured persons had visited PW 19 - Dr. Kalola between 09.11.1990 to 21.11.1990. Evidence of these 11 witnesses is briefly discussed hereunder.

[16.18] PW No.3 Vinodbhai Valjibhai Banugariya is examined at Exhibit-348 who asserts that he was picked along with others

by police persons, were also beaten by police persons and in police jeep they were taken to police station. Witness names one of the police person was accused Keshubha. While on way to police station police picked one another person named Dinesh Bhagvanji (PW 2) and thereafter, they were taken to police station. While at police station everyone was beaten by police. Witness also names one another police person present there as accused Shailesh Pandya. He also states that they were all made to do sit-ups and crawl. According to witness, persons present in the ground of police station were around 40 to 50. In paragraph 3 of his evidence, witness states about presence of deceased Prabhudasbhai at police station who was also made to do sit-ups. He names police persons as Pravinsinh Zala, Shailesh Pandya and Sanjiv Bhatt. He also states that Pravinsinh Zala was also abusing him by saying your father Sanjiv Bhatt has come, now get transfer here. He implicates Sanjiv Bhatt, Pravinsinh Zala and Shailesh Pandya by stating that they were beating them and they made them to do sit-ups. He also states that before they were taken to Bhanvadh, they were intimidated by accused Shailesh Pandya and Sanjiv Bhatt by threatening

that if anyone complain's to saheb they will receive further beating and due to this threat they did not complaint to Magistrate saheb. He also states that thereafter they were taken to Jamnagar Jail and his toilet stain pent was washed by him and he wore it thereafter. While in Jamnagar Jail, condition of Prabhudasbhai was serious and he was taken to Jamjodhpur for further treatment. Witness identifies accused Pravinsinh Bavubha Zala and because of passing of 25 years, he is unable to identify Shailesh Pandya saheb and Sanjiv Bhatt. In paragraph 23 of the deposition, he states that in a room within Jail there were around 100 persons who were arrested. He also responded to a suggestion that while in jail he told doctor that they are beaten by police. In paragraph 32, he denies suggestion put to him about he being caught from mob and members of mob had received injuries in confused running and stone throwing. He also denies that all 133 accused arrested in TADA case and placed in jail, had given false police statement on instructions of politician. In paragraph 33 he also reiterates that he knows the name of police persons who had beaten them and he gives names of such police persons by naming Keshubha,

Pravinsinh, Shailesh Pandya and Sanjiv Bhatt. He also explains that at the time of incident they were naming each other and therefore he came to know these names. PW 3 is examined by PW 19 Dr. Kalola at Community Health Center, Jamjodhpur on 09.11.1990 and his OPD case papers as well as injury certificate are submitted through him, which bears PW 19's handwriting and signature and are admitted in evidence at Exhibits-532 and 533.

[16.19] Prosecution has examined PWNo.4 Naginkumar Pragdas Agrawat at Exhibit-389. He states that incident had taken place on 30.10.1990. Witness is Poojari at Laxminarayan Temple, Jamjodhpur. In the morning of 30.10.1990, one reporter named V. V. Vachchani came to him and asked for giving him amplifier (mike) to declare in public openly that police persons are beating persons of village and reporter wants to publicize as there is curfew, villagers should not leave their respective homes and for that cause witness had given amplifier to the reporter. According to witness, this reporter is also employee in the office of Mamlatdar. Witness states that in the night around

8 O'clock he was at his temple and he was performing Aarti as it was Dev Diwali and around 9:00 O'clock two police persons came in the temple and witness was called outside the temple. Police asked witness about other persons of Patel community and also asked about giving 10 names of persons of Patel community, which witness denied and witness was taken to police station in the night at around 09.00 to 09.30. When witnesses reached to police station he saw around 40 persons in compound of police station. Few others were sitting at different other places. Large numbers of police persons were present. He also saw Prabhudasbhai and Rameshbhai of Jamjodhpur. He further states that he saw IPS Officer Sanjiv Bhatt coming there and he immediately ordered other police persons to make them to do sit-ups till he orders no and thereafter, police persons present there started abusing them, beating themm with sticks and making themm to do sit-ups. They also made them to crawl and he was feeling excessive weakness. Witness further states for two hours they were made to do sit-ups, crawling and at that time Sanjiv Bhatt was present. According to witness one person present there was wearing nameplate of Bisht. Thereafter, they

were produced before Magistrate saheb but as they were fearful, they did not complaint against police and they were also instructed by police to not complaint or else they will be beaten more. Thereafter, they were taken to Jamnagar Jail, where his as well as Prabhudasbhai's, one Sarju Sankoti's condition remained bad. Some of them were taken to Irvin Hospital and after being examined and treated at Irvin Hospital, they were brought back. Prabhudasbhai's condition remained severely bad and he was unable to stand up, was unable to even sleep and remained incapable to discharge his daily call. Prabhudasbhai could not walk without some other's support. Witness identifies police person in the Court and these accused persons are Sanjiv Bhatt saheb and Pravinsinh Zala. Witness is unable to identify others. In paragraph 14, witness denies that on the day of incident he was actually beaten by persons of Muslim community as well as persons of minority community as witness has gone in their area and hence, he suffered injuries. He also denies that while running away from there he fell down and he suffered injury. In paragraph 26 of his deposition, witness is describing his injury. He states that he had injuries on his both

legs, calf and both elbows and had also signs of Bharod (bruise) on his legs. In the same paragraphs in reply to suggestion put to him witness voluntarily states that after beating and making him to do sit-ups he fell down and became unconscious. In paragraph 28 he denies suggestion put to him that he got injuries while confuse running, while he was in mob when police came. In paragraph 38 in one another suggestion put to him he denies that he is a worker of V.H.P. and on the day of incident he along with others went to torch houses of Muslim community, hence, police arrested him and to take revenge of it, he had given false statement. In paragraph 43 witness also denies that community of Kadva Patidars had a huge vote- bank and this community had influenced Government for withdrawing case of TADA against them and in paragraph 44 witness also denies that he is Poojari in temple run by Kadva Patel Administered Trust and he is dependent on Kadva Patel Community and to support that community he is giving false evidence. Witness is examined by PW 19 - Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury

certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-562 and Exhibit-563.

[16.20] PW No.8 Bhikhubhai Khimjibhai Sitapara states that on 30.10.1990 police picked him from his home as he belongs to Patel community and he along with others whose names are given by him were taken to police station. While at police station he also saw deceased Prabhudasbhai and his brother Rameshbhai. They are also beaten and they were also made to do sit-ups and crawl. He also states that two police persons were beating them and act of beating continued till saheb asked them to beat. After their production before Judge saheb they were taken to Jamnagar Jail and while in jail physical condition of Prabhudasbhai was extremely serious. During identification of accused persons in Court, he identifies accused Pandya saheb and Pravinsinh Zala and for being unable to identify Sanjiv Bhatt he states that due to passage of time he could not identify him. In paragraph 13 he states that he submitted before Judge saheb when he was produced before Court that he was picked

from his home and was put in lockup. In paragraph 20 he denies that on the day of incident he was a member of mob who were damaging residence and shops of persons of Muslim community and in that incident police arrested him. He also denies that as he had personal relations with Prabhudasbhai and Rameshbhai he had given false statement before police and also on that ground he has given false evidence. Witness is examined by PW 19 - Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-656 and Exhibit-657.

[16.21] PW No.9 Hasmukhbhai Laxmanbhai Khant is examined at Exhibit-479. He states that incident took place on 30.10.1990. On that day there was Bandh called and at around 9 in the night, police came at his home and he was picked by police and was taken to police station. According to him one of the police person was named Keshubhai. He also states that his father came to save him but he was also picked and taken to

police station. At police station he saw around 80 to 100 such persons. He saw deceased Prabhudasbhai and brother Rameshbhai at police station. When he was produced before Court out of fear he did not say anything. They were taken thereafter to Jamnagar Jail. From jail somewhere taken to Irvin Hospital. While in jail condition of Prabhudasbhai was serious. He identifies accused Keshubha Dolubha Jadeja. In paragraph 10 witness states that while in jail he reported to jail staff and doctor that he was beaten but nobody heard his complaint. Witness is examined by PW 19 Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-586 and Exhibit-587.

[16.22] PW No.10 Mahendrabhai Nanjibhai Sapariya is examined Exhibit-481 who states that incident took place on 30.10.1990. He was at his home, police came, he was beaten by police and was picked by police in their jeep and was taken to police station. Persons who were brought to police station of

which somewhere kept in lockup room and others kept outside lockup room. Police persons were beating and were compelling to do sit-ups and crawling. Prabhudasbhai and Rameshbhai were also there, they were also beaten and were made to do sit-ups. On the next day they were produced before Court and because of police having beaten us they were fearful and hence they did not say anything before the Court. Thereafter they were taken to Jamnagar Jail. Along with them Prabhudasbhai and Rameshbhai were also there. He met them. Their condition was serious and they were unable to either sit or stand. After being released from jail Prabhudasbhai was taken to Rajkot clinic and little later he came to know that Prabhudasbhai expired. In paragraph 4 of the examination-in- chief witness stated that police persons who had beaten them if shown to him he can identify them and after inspecting accused persons in Court witness stated that person who has beaten them as also deceased Prabhudasbhai and his brother Rameshbhai is not present. Police person who had beaten them and whose name he knows is Bhatt saheb but he is not present in the Court. As recorded in the evidence accused Sanjiv Bhatt was not present

in the Court when this witness gave his deposition and had given application for exemption stating that he is not disputing his identity. In paragraph 20 of the deposition, witness denies that as Rameshbhai and Prabhudasbhai are having personal relationship with him to help them he is giving false statement and also giving false evidence. Witness is examined by PW 19 Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-606 and Exhibit-607.

[16.23] PW No.13 Nitinbhai Gulabchand Shah is examined at Exhibit-498. He states that incident took place on 30.10.1990. While near Vasantpura Patiya at Jamjodhpur police jeep came and police persons talked to him. 3 to 4 police persons came to him and started beating him with stick and was picked from there, placed in police jeep and was brought to police station. At police station he was beaten by person named Pravinsinh Zala and Shaileshbhai Pandya. Other persons were also brought at

police station in police jeep. He saw Prabhudasbhai and Rameshbhai. They were also beaten. During night they were again beaten. Police persons who were beating us were Pravinsinh Zala, Shaileshbhai Pandya and Sanjiv Bhatt. On the next day they were produced before Judge saheb but they did not complaint because of fear of police. When they were released from jail Prabhudasbhai was also released from jail but he was not able to walk. In paragraph 3 of his evidence witness stated that he can identify police persons who were beating them. He identified accused Shailesh Pandya and Pravinsinh Zala and also stated that Sanjiv Bhatt is not present. It is mentioned in the deposition that accused Sanjiv Bhatt had given application seeking exemption. In paragraph 8 of deposition, witness accepts that police persons who picked him from Vasantpurna Patiya and placed him in police jeep and in same paragraph he denies that he was in a mob along with other persons of village, day of incident being day of Bharat- bandh. Residence and shops of persons of Muslim community was torched and damaged and were irregular running at that time witness present there and police arrested him. He also denies in

the same paragraph that accused Pravinsinh was shown to witness and because of that witness identifies Pravinsinh in the court. Witness is examined by PW 19 Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-544 and Exhibit-545.

[16.24] PW No. 14 Dineshbhai Bhagvanji is examined at Exhibit:503. He states that incident took place on 30.10.1990 and on that day when he was at Jamjodhpur Octroi Naka, police jeep was placed there. He was called by police and was beaten by stick and thereafter was caught and placed in police jeep. They were brought to Jamjodhpur Police Station. In police station there were around 30 to 35 police persons holding sticks and they were beating them. They received different injuries. He also received stick injuries. Other persons who were arrested were also brought at police station compound. Police persons were beating with sticks on back side of the body, on

thighs, etc. Police persons were also compelling them to do sit-ups, crawl. Prabhudasbhai was made to do sit-ups. In the night at around 08:00 they were brought out of lockup room and were again beaten. Police person named Pravinsinh was playing prominent role and all police persons were abiding with say of other accused named Pandya saheb and Sanjiv Bhatt saheb. They were produced before Bhanvadh Court and thereafter, while in jail condition of Prabhudasbhai was found extremely serious. He was unable to sit and was having bodily problem. In paragraph 4 of the deposition witness states that if he sees Pandya saheb, Sanjiv Bhatt and Pravinsinh he can identify them and thereafter, he identifies Pravinsinh, Shailesh Pandya and as accused Sanjiv Bhatt saheb was not present, there is note put in deposition that he had given report and he is not disputing his identity. In paragraph 9 witness denies that because of personal reason and also with a view to take revenge he is giving false evidence on oath. In paragraph 10 he also denies that on the day of incident he was present at a place where instances of torching and looting were taking place in the area of Muslim community and because of confuse running he received injuries.

In paragraph 13 witness states that while they were in jail, injuries on their person was noted in the Jail Register. In paragraph 14 witness denies a suggestion that a mob of around 500 persons who had proceeded in the village to implement bandh call and during such proceedings houses and shops situated in Muslim community area were torched and during that time police came and witness was arrested from that place. Witness in the same paragraph denies that Rameshbhai (one of the injured and brother of deceased) being organizer of Vishva Hindu Parishad and also a member of Patel Community as like him. He had given police statement as explained to him and to help. He also denied that before he came to Court names of accused persons stated in his statement was shown to him and thereafter, when the names of accused persons were called out he saw them and hence, he is able to identify them. Witness is examined by PW 19 Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-542 and Exhibit-543.

[16.25] PW No. 15 Kiritkumar Laljibhai Sinojiya is examined at Exh.505. He states that incident took place on 30.10.1990 and he was at his home with his family members. Police came at around 11:00 morning. He saw Bhatt saheb and Pravinsinh Zala in civil dress who came inside along with other police persons and started beating them and abusing them. Witness also states that from his home police persons went to home of Praful Ravji Sunojiyo and brought 4 persons from there who were also beaten. He was beaten at police station by Bhatt saheb and others and they were placed in a room. Thereafter, Prabhudasbhai and Rameshbhai were also brought and were beaten with sticks. They along with others were made to do sit-ups. Prabhudasbhai while doing sit-ups fell down and he was told by police that wherever is your brother askhim to present himself. Prabhudasbhai was also made to crawl. In the late night at 11:00 they were again beaten by Bhatt saheb, Pandya saheb, Pravinsinh and other police persons. Thereafter some injured persons were taken to government dispensary and thereafter, they were produced before the Court of Magistrate saheb but as

they all were beaten they were fearful and hence, they did not complain to Magistrate saheb. Thereafter, they were taken to Sabarmati jail. Condition of Prabhudasbhai was extremely serious. He was not able to stand and kept sleeping and after release from jail he took treatment at Jamjodhpur Government Hospital. During test identification parade in court, witness identified Pandya saheb, Pravinsinh Zala. Sanjiv Bhatt saheb was not present and he had given report about he, not disputing his identity. In paragraph 8 of the deposition witness accepts that on the day of incident Prabhudasbhai and Rameshbhai were brought to police station at 8.00, 8.30. In paragraph 12 witness denies that to help Prabhudasbhai as he belong to Patel community as like him and also of the same village he had given false statement and also false deposition. In the same paragraph he also denies that accused Pravinsinh Zala was shown to him and therefore, he had identified Pravinsinh Zala in the Court. Witness is examined by PW 19 - Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical

papers are admitted in evidence as Exhibit-558 and Exhibit-559. This witness had visited and was examined by Dr. Kalola on 09.11.1990 as OPD No. 19042. Though both the certificate describe same injuries Exhibit-558 rightly states name of PW No.15 but Exhibit- 559 shows incorrect name of some other injured person.

[16.26] PW No. 16 Ramnikbhai Harjibhai Balochiya examined at Exhibit-506. He states that incident had taken place on 30.10.1990. He was at his home along with his family members. Police came to his home and he was taken to police chowki. Police persons were beating them. They were made to do sit-ups. In the early morning they were taken to Bhanvadh Police Station and thereafter, they were produced before Judge saheb but as they were fearful of police they did not complain against police and thereafter they were sent to Jamnagar Jail. Witness states that he was not knowing other persons but in jail he came to know about Prabhudasbhai and Rameshbhai. Prabhudasbhai was unable to stand hence, kept sleeping. He states that he can identify police who picked him. Witness

identified accused Pravinsinh. Witness states that he could not see accused Sanjiv Bhatt as he found him absent. In deposition it is also stated that accused Sanjiv Bhatt has given report of exemption and he is not disputing his identity. In paragraph 13 witness denies that on the say of Rameshbhai Vaishnani he had given false statement and he is also giving deposition. Witness also denies that as Prabhudasbhai was fat person he was unable to walk. Witness is examined by PW 19 - Dr. Kalola at Community Health Center, Jamjodhpur on 12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-667 and Exhibit-667.

[16.27] PW No. 17 Shantibhai Ghelabhai Rabadiya examined at Exhibit-508 who had stated that incident took place on 30.10.1990. He was at his home, police persons came to his home and he was picked from his home, he was also beaten, his mother tried to save him but his mother was pushed back by police. As witness was placed in police jeep, he was told about

which community he belongs to, to which witness said that Patel. Witness states that among police persons one was Pandya saheb. He was taken to police station. Thereafter other persons were also brought by police. Sanjiv Bhatt saheb came and he told police persons that put him in lockup room. Bhatt saheb told other police persons to make them all to do sit- ups till he comes. One such person suffered fracture but Bhatt saheb said show me your fractured leg and that person showed his fractured leg but Bhatt saheb gave push with his leg on that person's fractured leg. Bhatt saheb also abused him and told him to do sit- ups and thereafter, everybody was told to do sit-ups. Police continued bringing other persons. Rameshbhai and Prabhudasbhai also came. Shailesh Pandya saheb, Bhatt saheb and Pravinsinh Zala saheb beat them with sticks. Again they were made to do sit-ups and crawling. They were told by Pravinsinh Zala for not making complaint against police person before Magistrate saheb and because of that threat and intimidation of Pravinsinh Zala they did not made any complaint as they were fearful and thereafter, they were taken to Jamnagar Jail. Inside jail condition of Prabhudasbhai was

troublesome. He was not able to stand and was also not able to walk without any other support. Witness states that he can identify Sanjiv Bhatt, Pandya Saheb and Pravinsinh Zala. He identified Pandya Saheb and Pravinsinh Zala. Sanjiv Bhatt is not identified as he had given exemption application stating that he is not disputing his identity. In paragraph 10 of the deposition witness accepts that on the day of incident there was a Bandh call and incident of loot and torching had taken place in the village. Witness denies in the same paragraph that he was arrested as offence was registered against him. In paragraph 16 witness states that Pravinsinh Zala was holding revolver. In paragraph 17 witness denies as he is of Patel Community to help complainant side on instruction he gave false statement. In the same paragraph witness also denied that accused Pravinsinh was shown to him outside Court and because of that, witness identified Pravinsinh inside Court. In paragraph 18 witness denies that, he was part of the mob which was torching and looting houses and shops in the Muslim community area and witness was arrested from the mob. Witness is examined by PW 19 - Dr. Kalola at Community Health Center, Jamjodhpur on

12.11.1990 and this doctor witness has submitted OPD case papers as well as injury certificate which bears handwriting and signature of doctor and these medical papers are admitted in evidence as Exhibit-530 and Exhibit-531.

[16.28] Evidence of PW No. 27 who is also amongst above mentioned 11 witnesses is already referred herein above.

[16.29] Now we would like to discuss evidence of PW No.7, PW No.11, PW No.12 and PW No.18 remaining injured persons examined by prosecution here under.

[16.30] PW No. 7 Chetankumar Prataprai Jani is examined at Exh.443 who states that, on 30.10.1990 he was at his home and in the evening, police persons who were one constable Laljibhai of his village and one another Pravinsinh Zala (tall), came inside his home and said he is Chetan, take him, hence, Pravinsinh Zala took him and brought him outside his home and he saw three police jeeps, out of which one jeep was of Superintendent of Police Sanjiv Bhatt, Police Sub- Inspector Shaileshbhai Pandya of Dhrafa and other unknown persons were also there in

the 3rd jeep. Mahesh father of witness and witness were made to sit in the jeep in which unknown persons were sitting. Pravinsinh Zala hit slaps on all three of them on way. Other persons were also caught from their home. They were brought to Jamjodhpur police station. Some of us were taken inside police station and others were kept outside. Pravinsinh Zala beat them by saying to them that you are indulging in riots to which he said that, they are straightforward businessmen and thereafter, they were taken in police lockup room. Thereafter, police persons named Laljibhai who was a constable, came with a list and from that list he spelled out some names and told him to show their homes but as he was not knowing them he refused to show their homes. Pravinsinh beat him and he also took his revolver and targeted him. He was insisted to show their homes but as he was not knowing about their homes he didn't show anyone's homes. While he was at police station, he saw Superintendent of Police Sanjiv Bhatt, Pravinsinh Zala, Shailesh Pandya and few others of which some belongs to my village. Sanjiv Bhatt, Shailesh Pandya, Pravinsinh Zala and other police persons were severely beating them. They were beating by thick

sticks and they also made them to do sit-ups and also to crawl. Police persons also brought 2 persons who were known to him who were Rameshbhai Vaishnani and Prabhudasbhai Vaishnani who also received the same fate. Pravinsinh Zala hit him on thighs and he was also made to do sit-ups. Next day in the morning police persons took few persons to Bhanvad Government Dispensary. He was not taken to dispensary and thereafter, they were taken to Magistrate Saheb but because of fear of police they didn't complain to Magistrate Saheb and from Court they were taken to Jamnagar Jail. Inside jail they were given treatment of ointment as they were having pain. On applying ointment, Rameshbhai and he got relief from pain but Prabhudasbhai didn't get any relief hence, he was taken again to the doctor to which doctor told him that due to your fatty body and that you are made to do sit-ups he had body pain while inside jail, for 8 to 10 days Prabhudasbhai was unable to stand-up, hence, he kept sleeping. After being released from jail he went to get treatment at Irvin Hospital and after completion of treatment he came to Jamjodhpur and at Jamjodhpur he came to know that, Prabhudasbhai and Rameshbhai are taking treatment

at Gondiya Hospital, Rajkot and few days thereafter, he came to know that Prabhudasbhai died while undergoing treatment. Witness in Para-7 identified Superintendent of Police Sanjiv Bhatt, PSI Shailesh Pandya and Pravinsinh Zala. Witness gave statement before police about the incident. In cross-examination of the witness, he denies about he having gone to village even though there was a Bandh Call. He states that, after being released on bail he had filed complaint against Pravinsinh Zala in Bhanvad Court. He also states that after being released on bail he went to Irvin Hospital for treatment and he also told doctor that he was beaten by police. Witness also denies that his father since years is an active member of Vishwa Hindu Parishad (VHP) and Rastriya Sevak Sangh (RSS). Witness states that, Bharat Bandh call was given by BJP. Witness also states that he knows Rameshbhai Vaishnani and his brother Prabhudasbhai Vaishnani since more than 15 years. He also states that they have brothers named Amubhai Vaishnani and Dhirubhai Vaishnani. He also states that he had filed complaint against Sanjiv Bhatt and Pravinsinh Zala about this incident in Jamjodhpur Court on 30.11.1990 and he also states that he had

given deposition in his complaint proceedings. He states that, his complaint proceedings were challenged by Pravinsinh Zala through Special Criminal Application No. 970 of 2007 and in all three proceedings in the nature of Special Criminal Applications were initiated in which order of issuance of process got dismissed. In Para-28 of his deposition, witness states that, in the matter of his private complaint bearing Criminal Case No. 90 of 1992 he had cited two witnesses named Hitesh Vrajlal Rawal and Vinod Vrajlal Rawal who are brothers and he saw them in lockup room on the day of incident but he didn't know when they were brought by police. In Para-36 witness denies that he is giving false evidence as his father is a leader of BJP and Amubhai Vaishnani who is brother of Rameshbhai and Prabhudasbhai, is President of VHP. Witness also denies that, he had become false witness to help them. Witness denies that, on the day of incident he was in a mob which had indulged in torching residents and shops of persons belonging to Muslim community and as police came there, because of irregular running he received injuries.

It is pertinent to state here that has examined No.26 PW Dr. prosecution Navinchandra Kanjibhai Hariya Medical Officer at G.G.Hospital Jamnagar who had stated about this witness being medically examined by him on 10.11.1990 and had also issued certificate to that effect as referred in the deposition of PW No.26.

[16.31] PW No.11 Hasmukhbhai Madhabhai Sapariya as witness no.11 at Exh.496. According to him incident took place on 30.10.1990 and curfew was imposed in the village as Bharat Bandh Call was given on that day and a lot many police including police from outside had come. Incident of riot had taken place in the village and brother of witness named Jamanbhai was searched by police. On 30.10.1990 police came to his house in search of his brother Jamanbhai but took some articles from his home with them. On 31.10.1990 police came in the morning, his brother Jamanbhai was not present, police persons came at his home including PSI Okha and Shah Saheb. He didn't knew other police persons. His aged father was sought to be taken by police and he requested police for not harassing

him and police then pushed his father and took him with them in the jeep to the house of Dudhiben Kalavadiya in search of his brother Jamanbhai. Ultimately, police took him to the police station and after reaching police station, police persons named Shah informed his superior that brother of Jaman has been caught. He was beaten by police persons on his thighs and buttocks. He was also made to do sit-ups by PSI of Dhrafa Pandya Saheb and thereafter, he was kept in lockup room. he was released on bail. According to witness, cause of this incident is that, few days' back, there was conflict between police and villagers because of one theft incident which happened at Tulja Jewellers Shop in Jamjodhpur. This conflict between police was with PSI named Sisodiya Saheb. Witness also states that villagers went to police station for making necessary representation and at that time Sisodiya Saheb fired in air and because of this conflict brother of witness Jamanbhai went on fast and this incident caused transfer of Sisodiya from Jamjodhpur to Vadodara and this made police to go against his brother Jamanbhai. Witness identified Okha PSI, Shah Saheb whose name is Dipak Shah, witness also identified Dhrafa PSI

Pandya Saheb. During the cross-examination in Para- 15 witness denies a suggestion that, on 30.10.1990 witness went to see the site of incident or he went with the intention of robbing and at that time police persons present at the site arrested witness from there. In Para-17 witness states that after being released on bail he went to private doctor for medicine and when he was interrogated by police he submitted private doctor's certificate. In Para-19 witness denies a suggestion in the morning (on the day of his deposition) witness along with other witness as well as complainant Vaishnani were standing outside circuit house and from circuit house accused Shah came out who was shown to him by complainant and because of that he had identified accused Shah in the court.

[16.32] PW No.12 Jayantibhai Bhavanbhai Delvadiya at Exh.497, according to him incident had taken place on 30.10.1990. He states that, he went to the house of his friend named Pravingiri Tulsigiri somewhere in the evening, at 08:30 police came and took witness, Pravingiri with them, he saw Bhatt Saheb, Pravinsinh, Keshubha and other police persons.

They were taken in police jeep at police station. On reaching police station they were beaten and were kept in the compound opposite lockup room. Police continued to bring other persons from the village in jeep. Persons who were brought by police including Prabhudasbhai and Rameshbhai. They were made to crawl and were made to do sit-ups and were also made to do same by Pandya Saheb, Bhatt Saheb, Keshubha, Pravinsinh and other police persons. Witness identified accused Pravinsinh and Pandya Saheb in the court and he found Bhatt Saheb was not present in the court. It is mentioned in the deposition that accused Sanjiv Bhatt had given application for his exemption. In the early morning of next day, some 20 to 25 persons were taken to dispensary and thereafter, all were taken to Magistrate Saheb but because of fear of police they didn't complain against police. Thereafter, we were taken to Jamnagar jail and some 5 to 7 persons were taken to clinic. In jail Rameshbhai and Prabhudasbhai were with them. Prabhudasbhai was not well and he was walking with support. Thereafter, they were released on bail. Prabhudasbhai and Rameshbhai went to private hospital and he came to know about death of

Prabhudasbhai. His statement was recorded by police. In Para-7 of the deposition witness states that Prabhudasbhai and Rameshbhai are residing at a distance of around half kilometre from his house and he had no personal relations with Prabhudasbhai and Rameshbhai. In Para-8 of the deposition, witness denies suggestion put to him that, he had identified Pravinsinh in Court today because in the morning at 10:30 he and other witness were present near circuit house with complainant Rameshbhai at that time Pravinsinh was shown to him by them.

[16.33] PW No. 18 Babubhai Ravjibhai Kantariya at Exh.511. According to him incident took place on 30.10.1990. When he was at his home with his family members and at around 9:00 in night his house was knocked and he opened his house and he show police persons who told him to come with them and to sit in jeep and he was taken to police station. After reaching police station he was beaten, he saw many other persons like him are there, he also saw Prabhudasbhai and Rameshbhai who were severely beaten and they were made to do sit-ups and crawling.

He can identify one person from amongst police persons who were beating them, that person was physically tall and one another person was named as Bhatt Saheb. Police persons were also abusing them and they were threatening them by saying that brother and nephew of Chimanbhai are beaten what have you done to Bhatt Saheb. Witness further states that because of threat of police they didn't complain before Judge Saheb, Bhanvad and thereafter, they were taken to Jamnagar jail. Condition of Prabhudasbhai inside jail was extremely bad. Witness identified accused in court who was described by him as tall, as Pravinsinh Zala and he further states that Bhatt Saheb is not present in the court today. Witness in cross-examination in Para-8 denies a suggestion that on 30.10.1990 though curfew was imposed and he went in the area where people of Muslim community were residing and at that place while irregular running he was caught. In Para-9 witness denies that he is giving false evidence in support of his statement. In Para-14 he also denies suggestion that during irregular running and as he fell down he received injuries. In Para-16 witness denies suggestion that he was arrested from the scene of

incident in the noon of 30.10.1990 by PSI Thakor of Jamjodhpur. He also denies that because of political pressure he has created false statement and had given false deposition.

Injuries and Cause of death of deceased Prabhudas

[17] So far as death of deceased Prabhudasbhai is concerned prosecution has examined following different witnesses who were working as medical officers at different places and had examined deceased Prabhudasbhai as well as have conducted postmortem of deceased Prabhudasbhai. These witnesses are already mentioned hereinabove but relevant and pertinent part of their evidence stating injuries on person of Prabhudasbhai as also his cause of death is narrated hereinbelow.

[17.1] Prosecution's witness Kantilal Pansuriya who is examined as PW 20 was working as Junior Pharmacist at Jamnagar Jail and deceased Prabhudasbhai visited him at Jail Dispensary on 01.11.1990 and informed him that he is unable to stand, sit and he had pain in the thighs of both legs, has

stomach pain and his both legs have become stiff because of sit-ups and he can only stand and sit with the help of other and is feeling dizziness, pain in chest and is also having body temperature. PW 20 gave Prabhudasbhai medicines and recommended Prabhudasbhai for further treatment and examination at Irvin Hospital, Jamnagar. He also states that he had prepared case papers of Prabhudasbhai in his handwriting and it bears his signature, which is at Exhibit-669. On examining Exhibit-669 what has been stated by Prabhudasbhai to PW 20 Kantilal is appropriately stated in Jail Dispensary, District Jail, Jamanagr's case papers bearing no.780. Along with Exhibit-669, another document with it, is also submitted by PW 20, which also states about Prabhudasbhai being examined at Irvin Hospital, Jamnagar by Dr. Solanki (M.S. Ortho.) who states about Prabhudasbhai being examined and treated as an outdoor patient on 03.11.1990 by Ortho. Surgeon who diagnosed Prabhudasbhai being Myalgic both lower limbs. Medical term Myalgic means extreme tiredness. One another medical paper also submitted by PW 20 along with Exhibit-669, which relates to Prabhudasbhai being examined on 03.11.1990 shows that

Prabhudas Madhavjibhai had pain in both lower limbs, history of sit-ups and Myalgia. Medical term Myalgia means pain in muscle or group of muscles. Concerned doctor had prescribed necessary medicines. This witness has also produced forwarding letter signed by him on behalf of medical officer District Jail Dispensary, Jamnagar addressed to RMO, Irvin Group of Hospital, Jamnagar stating therein about referring Prabhudas Madhavji and few others to Irvin Hospital for further examination and treatment. Same is also referred in document submitted along with Exhibit-671. In cross-examination in paragraph 10 of this witness he states that if medical officer is not available, he used to give preliminary treatment. In paragraph 16 of the cross-examination witness denies about he having created false case papers and also having stated false fact in it at the instance of complainant side.

[17.2] Dr. Nileshkumar Hargovind Kalola is examined as PW 19 at Exhibit-521 who was working as Medical Officer at Community Health Center, Jamjodhpur and had occasioned to examine around 72 injured persons and also examined

Prabhudasbhai on 09.11.1990. In paragraph 3 of the deposition of Dr. Kalola had described injuries found on the person of Prabhudasbhai. According to him, injury no.1 relates to pain on both buttocks and thighs and also on both calf. After examining Prabhudas Madhavjibhai, witness in his handwriting had issued medical case papers submitted at Exhibit-524 and had also given Injury Certificate bearing his handwriting and signature at Exhibit-525. This witness had also produced other injured persons, medical case papers as well as injury certificate, which is elaborated in examination-in-chief up to paragraph 74. In paragraph 87 of the cross-examination, witness states that tenderness is a medical term which can be ascertained by examining injured person clinically on the part where injured is complaining about pain. On further confrontation witness denies that, medical term tenderness is only perception of an injured person and he also states that injured persons are required to examine clinically to verify whether injured person actually is suffering tenderness or not. In paragraph 88 witness denies that medical papers are subsequently prepared by him at the instance of complainant side.

[17.3] Prosecution had examined Dr. Sanjay Natvarlal Pandya of N. M. Virani Hospital, Gondhiya Trust, Rajkot, a qualified Nephrologists-Kidney Specialist as PW 23. Prabhudasbhai was admitted at this hospital on 12.11.1990. He underwent dialysis on 12.11.1990, 15.11.1990, 17.11.1990. He was also given medicine and other treatment. Witness submitted in all 37 documents relating to his medical examination treatment, medicines, etc. which are submitted at Exhibit-744. Witness in paragraph 7 also states about Dr. Gajera working in his hospital as medical officer who issued death certificate of Prabhudasbhai who while undergoing treatment died on 18.11.1990. According to him death certificate bears signature of Dr. Gajera which he identifies and So far as handwritings are concerned, witness states that handwritings are likely to be of Dr. Gajera. Both certificates are same and as per death certificate, cause of death mentioned in it is acute renal failure secondary to rhabdomyolysis with uremia with cardio respiratory arrest. Simple meaning of medical term rhabdomyolysis is damage to kidney. Witness has also given

cause of death in paragraph 8 of his examination-in-chief, which according to him is deterioration of kidney because of damage to muscle affecting heart and lungs resulting in death. In paragraph 9 of examination-in-chief, witness opines that if a patient is subjected to repeated sit-ups, crawling then it would lead to deterioration of kidney and in the present case patient has died because of deterioration of kidney. In paragraph 11 witness further testifies that Prabhudasbhai had given history to him that before 13 days he had undergone excessive exertion, his urine output is reduced since 7 days, had complaint of haematuria and had also complaint of breathlessness. Medical term haematuria means pressure of blood in urine. Paragraph 11 testimony of witness narrated by him in paragraph 11 is also supported from medical papers submitted at Exhibit-744. Within 37 medical case papers submitted by witness at Exhibit-744 within it there is a document wherein there is mention of patient namely Prabhudasbhai having expired at 04:00 AM on 18.11.1990 and within same bunch of papers under the head medical cause of death it is stated to be of acute renal failure secondary to rhabdomyolysis with uremia with cardio

respiratory arrest. This medical papers are part of indoor continuation sheet i.e. indoor case papers having mention of medical cause of death. This witness has also produced medical case papers of another injured patient named Rameshbhai brother of Prabhudasbhai. This witness is extensively cross-examined by defense. Deceased Prabhudasbhai underwent all kind of tests namely dialysis, urine test, blood test, sonography, X-ray, etc. In paragraph 23 witness asserts about urea in blood and creatinine are two relevant factors for deciding kidney failure. In context of this documents within Exhibit-744 is examined both blood urea and serum creatinine are severely found on higher side on 15.11.1990 as per pathology report. In paragraph 27 witness asserts that kidney report of Prabhudasbhai is bad. In paragraph 28/1, witness further asserts that it is not true that by more walking and doing excessive sit-ups would not lead to kidney failure. In paragraph 29 that witness further testifies that it is not true that opinion with regard to cause of death given by him in examination-in-chief (paragraph 9) is not true. In paragraph 31 witness states that he had studied at Institute of Kidney Disease And Research

Center, Ahmedabad. In the same paragraph witness is subjected to various questions and the answers given by him further supports opinion of cause of death given by witness. In answer to one such question, witness clarifies that damage to muscle would result into rhabdomyolysis as damage and injury both are same. He further clarifies that the injury does not only mean physical injury. In paragraph 34 witness is again asserting about treatment given by him and also his opinion with regard to cause of death of deceased Prabhudasbhai and lastly in paragraph 36, witness denies that through Dr. Gajera false opinion of cause of death is given and he also denies that he is giving false testimony.

[17.4] Prosecution has examined Dr. Satish Dinkarbai Kalele as PW 24 who was Assistant Professor in the Department of Forensic Medicine at M. P. Shah Medical College, Jamnagar in 1990. He states that on 18.11.1990 he along with Dr. H. M. Mangal in panel performed and conducted postmortem examination of deceased Prabhudasbhai. Witness submits postmortem report at Exhibit-751. Postmortem report is signed

by witness Dr. Kalele as well as Dr. H. M. Mangal. Witness submits document Exhibit-752 under title Short Report addressed by Panel Doctors to the Sub-Divisional Magistrate, Jamnagar. Which is signed by witness Dr. H. M. Mangal. Witness also submits document Exhibit-753 i.e. Pathology report received by Panel Dr. H. M. Mangal. Witness also submits documents of Histopathology report, Microbiology examination. Witness identifies his signature as well as Dr. Mangal's signature on all above-referred documents. Pieces of liver, kidney, stomach, etc. were subjected to chemical analysis and the report of chemical analyst is also placed on record by witness at Exhibit-755. In paragraph 19 of examination-in-chief, witness on the basis of pathology report submitted at Exhibit-753 has given evidence on it and in paragraph 22 of examination-in- chief witness testifies that after examining above- referred documents i.e. Exhibit-753 to Exhibit-755 panel doctors have given their opinion as to final cause of death and according to them it is "acute renal failure as a result of rhabdomyolysis". Panel doctors have given final cause of death at Exhibit-756, which bears signature of witness as well as Dr.

Mangal. In paragraph 23 witness opines about cause of acute renal failure can occur because of excessive stress and damage to kidney. Doing of excessive sit-ups and crawling would also damage kidney. This witness is extensively cross-examined by defense by putting him various and different questions with regard to cause of death given by them as well as reasons for giving cause of death. In paragraph 27 witness states that it is not true that in present case due to hemorrhage in muscles, muscle particles and protein was found in blood, which is not cause of rhabdomyolysis, is not true. In paragraph 30 witness denies that he has created report Exhibit-753 subsequently-afterthought. Witness is also cross-examined on the principle of probabilities and possibilities and in paragraph 41 witness denies that all documents referred by him i.e. Exhibit-751 to Exhibit-755 are prepared and created on the guidance of politicians.

[17.5] Considering the evidence of cause of death given by different doctors as narrated hereinabove, doctors have fully testified that due to Prabhudasbhai being made to do repeated

excessive sit-ups, he felt extremely tired and suffered exertion, which ultimately led to damage to his kidney leading to acute renal failure. Evidence of PW 23 and PW 24, so far as cause of death testified by them remained unshaken.

[18] Now we would like to refer evidence of other witnesses.

[18.1] Other witnesses examined by prosecution are PW No. 1 who stood as Panch Witness of scene of offence panchnama; PW 22 working as Registrar-cum-Nazir in the Court of Judicial Magistrate First Class at Jamjodhpur who submitted papers relating to FIR No. 96/1990 registered at Jamjodhpur Police Station, an offence registered against above-referred injured witnesses and others, which ultimately after filing of charge-sheet, registered as Criminal Case No. 229 of 1991 and Criminal Case No. 114 of 1991, which were withdrawn by an order of Court dated 14.10.1992; PW 25 who was working as District Collector, Jamnagar who states about incident relating to law and order having happened on 30.10.1990 and imposition of curfew on that day in Jamjodhpur; PW 29 who was working as Police Inspector at Jamjodhpur Police Station who submitted

documents in the nature of True Copies of certain FIR proceedings including station diaries, etc.; PW 30 Devendrakumar Bechardas Patel one of the investigating officer of FIR No. 102/1990 registered at Jamjodhpur Police Station i.e. present case; PW 31 Balvantsinh B. Jadeja who was working as Writer of Police Inspector R. K. Swami of Jamnagar City 'B' Division Police Station on 18.11.1990 and who originally recorded FIR of first informant-PW 28 Amrutlal Madhavjibhai Vaishlani and PW 32 Shailesh Ramnikbhai Babariya who was working with Police Sub Inspector B. C. Patel of Jamjodhpur Police Station in November, 1990.

[19] Relevant application and orders passed during trial proceedings.

[19.1] After examining above-referred witnesses, prosecution closed their evidence by giving closing pursis on 12.02.2019 submitted at Exhibit-808.

[19.2] At this stage it is pertinent to note that on 25.02.2019, accused no.2, 4, 5, 6 & 7 submitted application

under Section 91 of Cr.P.C. with a prayer of production of documents as narrated in the application. This application is submitted at Exhibit-815. This application was allowed.

[19.3] On the same day i.e. on 25.02.2019, accused no.3 also submitted different application also under Section 91 of Cr.P.C. with a prayer for producing before Court, station diary of certain period relating to FIR No. 96/1990 registered at Jamjodhpur Police Station. This application is submitted at Exhibit-816. This application was allowed and police was directed to submit required documents for the inspection of the Court.

[19.4] Accused No.1 gave different application on 05.03.2019 with a prayer of production of certain documents at Exhibit-829, which came to be rejected vide order dated 12.03.2019. This order came to be challenged by accused no.1 before this Court through Special Criminal Application No. 4116 of 2019, which came to be partly allowed vide oral order dated 16.04.2019. Order of this Court appears to be complied with at Exhibit-915 and Exhibit-917.

[19.5] On 05.03.2019, application Exhibit-830 was given by accused no.1 under Section-311 of Cr.P.C. for summoning witnesses, which as per this application prayed for summoning in all 43 witnesses.

[19.6] On 11.03.2019, on behalf of accused no. 1, Declaratory Pursis was given for ignoring certain documents as prayed for production under Section 91 of Cr.P.C. and also for omitting/deleting certain witnesses prayed for summoning under Section-311 of Cr.P.C. This Declaratory Pursis is submitted at Exhibit-837.

[19.7] On 18.03.2019 prosecution submitted documents as prayed and ordered below Exhibit-815.

[19.8] Application for summoning 43 witnesses under Section 311 of Cr.P.C. given at Exh-830 was rejected by Sessions Court and thereafter, order of Sessions Court was challenged before Hon'ble High Court by filing Special Criminal Application No. 4115 of 2019 and by oral order passed in this

proceedings dated 16.04.2019, Sessions Court was directed to examine 03 witnesses as referred in application Exhibit-830 namely (1) P. P. Pandey, IPS; (2) H. P. Singh, IPS who are investigating officers and (3) T. S. Bisht, IPS as court witnesses under Section-311 of Cr.P.C. and 24 other witnesses as mentioned in Annexure 'Z' under Section-233 of the Cr.P.C. Annexure 'Z' is dated 22.04.2019. On 21.05.2019 accused no.1 gave pursis stating that he does not wish to examine any witnesses mentioned in Annexure "Z". This pursis is at Exhibit-937.

[19.9] Oral Order dated 16.04.2019, referred hereinabove passed in Special Criminal Application No. 4115 of 2019 was challenged by original complainant in S.L.P. No. 4993 of 2019 before Hon'ble Supreme Court, which got disposed of without any interference in the oral order dated 16.04.2019 with a direction to conclude trial positively by 20.06.2019. Accused No. 1 also independently challenged above-referred oral order dated 16.04.2019 by filing Special Leave to Appeal (Crl.) No. 5243 of 2019 but could not get any relief.

[20] **Discussion and analysis of evidence recorded after closure of prosecutions evidence.**

[20.1] Evidence of accused Shailesh Labhshankar Pandya is recorded at Exhibit-838. This accused is original accused no.3. According to his evidence, on the day of incident i.e. on 30.10.1990 in the noon at around 12:45 on instruction of District Superintendent of Police witness was assisting local police of Jamjodhpur as incidents had happened in Jamjodhpur and he was performing his duty of town patrolling from 15:00 to 24:00hours on 30.10.1990 and he continued to do that up to 03:00 hours on 31.10.1990. Accused no.3 has relied upon his weekly diary and stated that except that he performed duty of Bandobast i.e. maintaining law and order with other 6 accused persons and he had not done any other work with them. In the examination-in-chief witness has denied evidence given by PW 3-Vinodbhai Valjibhai, PW 4-Naginkumar and PW 5-Sarjukumar as well as other witnesses. Accused also deposed that he has not arrested any accused of FIR No. 96 of 1990 but he is falsely roped in the present case. During cross- examination of accused

no.3 he asserts that, after his retirement he has started practicing law since 2013. During cross-examination, witness has accepted about different cases having been filed against him and proceedings pursuant to it are also initiated against him and in some proceedings he is found guilty. He also states that he reached Jamjodhpur on 30.10.1990 and that he had no enmity with witnesses who had given evidence against him and witnesses also had no enmity with him. Accused / witness is also put questions relating to the incident of PSI of Jamjodhpur, J.T.Sisodiya, which happened in September 1990, conflict between Jamjodhpur police and people of Jamjodhpur etc., to which witness/accused states that he do not remember. He further states on 30.10.1990 around 100 to 125 police persons were engaged in Police Bandobast and he reported to his superior i.e. accused no.1-Sanjiv Bhatt while joining Bandobast. He accepts that weekly diary of police officers are maintained by them and is required to be sent to higher officer every week.

[20.2] Defense witness no.1 is Dr. Pankaj Ratilal Shah who deposed that he works at Institute of Kidney Disease and

Research Center, Ahmedabad. Dr. H.L.Trivedi is bedridden since last three years and is unable to communicate and presently he is under treatment at Institute of Kidney Disease and Research Center, Ahmedabad. He submits letter dated 04.09.1991 signed by Dr. H.L.Trivedi Saheb and identifies the signature of Dr. Trivedi but he admits that he had no personal knowledge with regard to contents of that letter, hence, that letter is admitted in evidence at Exhibit-868 only for the purpose of identifying signature of Dr. H.L.Trivedi.

[20.3] Mr. H.P.Singh is examined as Court Witness no.1 who states that he is one of the investigating officer of the present case and has prepared draft charge-sheet of the present case and submitted to his higher officer. This Court witness is cross-examined by accused no.1 and 3 by their advocates. Other accused persons namely accused no.2 and accused no.4 to 7 have also cross-examined this Court Witness through their advocates. During cross-examination, witness denies that all 133 accused of TADA Case were arrested by PSI Thakor on 30.10.1990 in the morning between 09:00 to 12:15 on

30.10.1990 and he also denies that Panchnama to that effect was drawn accordingly. Witness during cross-examination also denies that accused no.2 reached Jamjodhpur at around 03:45 hours in the noon and accused no.3 and 4 reached Jamjodhpur at 12:45 in the noon and accused no.6 reached Jamjodhpur in the evening at 10:00 on 30.10.1990. Witness also denies that accused no.7 was posted at some bank on 30.10.1990. Witness also denies that at the instance of complainant side he had prepared false draft charge-sheet. In the cross-examination of this witness by prosecution, witness accepts that after examining material of investigation he had prepared draft charge-sheet as offence was disclosed against all accused persons and after preparing the same, he forwarded his draft charge-sheet to his higher officer. He also accepts that any police officer and/or police person while on duty had no authority and/or power to cause any physical harassment to any person and/or beat any person.

[20.4] P. P. Pandey is examined as Court Witness No. 2 at Exhibit-958. According to his evidence, he was the head and

supervisor of the investigation team of this case. During his investigation, he had recorded statements of different witnesses of different places as like Jamjodhpur, Bhanvadh and Jamnagar. This witness is cross-examined by accused no.1 and 3 through their advocates as well as accused no.2 and accused no.4 to 7 through their advocates. In Para-3 of his cross- examination witness accepts that it was the suggestion of accused Bhatt to take opinion of Dr. H.L.Trivedi. In Para-22 of deposition, witness accepts that police officers on their own and in their way are maintaining weekly diary. He also accepts that he has not verified facts narrated in weekly diary received during investigation and in Para-23 witness accepts that it is true that during investigation it has revealed that 133 persons had received injuries only through police and not in any other manner.

[20.5] T. J. Bisht is examined as Court Witness No.3 who states that on 30.10.1990 in Jamnagar District different incidents of torching and damaging had happened and he was in-charge of law and order on that day. In the noon of

30.10.1990 witness received message about such incidents also have happened in Jamjodhpur and in the evening he left for Jamjodhpur. Upon reaching Jamjodhpur he visited places where incidents have happened and gave necessary instruction for maintaining law and order and in the night he came back to Jamnagar. Such incidents had also happened in Jamnagar. This witness is cross-examined by all the accused through their advocates. In Para-10 of the deposition, witness accepts that it is true that investigation of FIR registered at Jamjodhpur police station vide C.R. No. 96 of 1990 under TADA was under supervision, monitoring and visitation of accused Sanjiv Bhatt.

[21] Reasoning and findings.

We have gone through the entire evidence laid by all the parties.

[21.1] Evidence of above-referred injured eye-witnesses as well as first informant who also is an eye-witness though not injured have fully supported case of prosecution with regard to injured witnesses being picked from their home, brought to

Jamjodhpur Police Station and while in police custody different accused persons beating them, making them to repeatedly do sit-ups, crawl and also abused them, etc. To cover this act of beating and other kinds of physical harassment, police had created document dated 31.10.1990, which is in the nature of forwarding letter from Bhanvadh police to Medical Officer, Primary Health Center, Bhanvadh stating therein names of 25 injured persons with request to medically treat them and also to give opinion certificate as these injured persons were in mob and while irregular running, when police attempted to apprehend them, they fell down and suffered injuries. This forwarding letter is admitted at Exhibit-678 page 7553. As discussed above, out of these 25 injured persons, 3 injured persons are examined by prosecution as PW 2, PW 5 and PW 6 who have very clearly stated that they were beaten by police and PW 21-Dr. Shashikant Vallabhdas Sapariya, Medical Officer at relevant point of time working at Primary Health Center, Bhanvadh in his deposition has stated injured persons examined by him pursuant to forwarding letter Exhibit-678 have stated before him that they were beaten by police. Hence, forwarding

letter of Bhanvadh police stating cause of injuries to injured person is totally falsified. During testimony of PW 21-Dr. Sapariya, he had submitted injury certificate and other medical case papers of all injured persons examined by him pursuant to forwarding letter Exhibit-678. These medical certificate and medical case papers of different injured persons are duly admitted in evidence, exhibited and are part of paperbook. Dr. Sapariya is also extensively cross-examined by defense. In paragraph 43 of cross-examination witness denies that different medical case papers and injury certificates submitted by him are created documents and injured persons have not suffered injuries as mentioned in injury certificate. In same paragraph, witness asserts that some of the injured have suffered fracture injuries. In paragraph 46, witness is confronted with the medical term bruise. In the same paragraph, during cross-examination, witness is shown Medico-Legal Certificate issued by witness bearing handwriting and signature of witness belonging to injured Ravjibhai Hirjibhai Sinojiya was shown to him and admitted in evidence at the request of defense and was exhibited at Exhibit-732. This witness in paragraph 29 during

examination-in-chief is also shown two forwarding letters dated 31.10.1990 addressed to Bhanvadh police signed by witness. These letters are admitted at Exhibit-730 as well as Exhibit-731 which are about referring 08 injured persons to Irvin Hospital, Jamnagar and also referring further follow-up treatment of other 17 injured persons. This witness in paragraph 47 has denied that case papers submitted by him are got up subsequently-afterthought and has also denied that these injuries certificates are got up documents and created subsequently as injured persons are known to him and to help them and as they are of village Jamjodhpur, they are created and is giving false evidence. Besides it, prosecution has examined PW 19-Dr. Nileshkumar Kalola who had examined around 72 injured persons after they got released from Jamnagar Jail. Medical Case papers of these injured persons examined by Dr. Kalola who was working as Medical Officer, Community Health Center, Jamjodhpur are admitted and duly exhibited and are part of paperbook.

[21.2] Evidence of injured eye-witnesses are required to be appreciated differently than any other eye-witnesses as injured witnesses do not have tendency to falsely implicate innocent persons, more particularly, when injured witnesses have no enmity with the accused. Here in the present case large number of persons received injuries, which are almost more than 70 in numbers, out of which 18 injured persons are examined by prosecution. Considering their evidence nothing is emerging so as to believe that injured witnesses have any enmity with any of the accused persons. Hence, there is no element of enmity so far as implication of accused persons in the commission of offences as stated in version described by these witnesses. Though an attempt is made by defense about injured persons having received injuries when they were part of a mob, who were torching and damaging properties belonging to Muslim community but that suggestion put in cross-examination is not only clearly and categorically denied by all the witnesses but also from the evidence of these witnesses, such defense is found unbelievable and unacceptable. Fact which emerges from the evidence is that injured witnesses as well as other injured

persons were picked from their place of residences in the evening and even in night of 30.10.1990 and were brought by different accused persons at Bhanvad police station and they were beaten, made to do repeated and excessive sit-ups, crawl, etc. So far as version of these witnesses given by them in their examination-in-chief is concerned, defense had made an attempt in cross-examination by asking different questions, which are in the nature of contradiction suggesting that mostly whatever stated by them in their examination-in-chief, was not stated by them in their police statement. Such question put to witnesses is categorically denied by each and every witnesses. Defense has neither proved nor even has whispered about proving such omission, which would be in the nature of contradiction to evidence of PW 30- Devendrakumar Bechardas Patel who was one of the investigating officer nor to Court witness no.1-H. P. Singh and Court witness no.2-P. P. Pandey who even according to defense and their application given under Section-311 of Cr.P.C., were important witnesses so far as investigation of present case is concerned, hence, there is no reason for disbelieving evidence of these witnesses. So far as first

information report is concerned, information about offence committed by accused persons was given by PW 28 on 18.11.1990 i.e. after about 18 days, but, considering the evidence of injured witnesses, certain doctor witnesses and Pharmacist of Jail's evidence it has clearly emerged that offence of beating injured witnesses and other injured persons was disclosed on 31.10.1990, more particularly, through PW 21-Dr. Shashikant Vallabhdas Sapariya, Medical Officer working at Primary Health Center, Bhanvadh. So far as causing of injury and physical harm, etc. is concerned, it is also emerging through evidence of Jail Pharmacist i.e. PW 20-Kantilal Nathabhai Pansuriya and thereafter, when injured persons were released from Jamnagar District jail and they went for treatment before PW 19- Dr. Nileshkumar Kalola. In view of this material, delay of around 18 days in registration of FIR given by PW 28 will not discredit evidence of injured eye-witnesses more particularly when FIR is given on the very day on which Prabhudasbhai Madhavjibhai expired. So far as independentness of injured witnesses and first informant are concerned, they are all independent witnesses as they belong to

particular village named Jamjodhpur and they reside there. Only because they are resident of one particular village or that two injured persons are brothers or that first informant is brother of two injured persons will not take away independentness of these witnesses so as to discard them. Evidence of these witnesses is found to be inspiring confidence in the case of prosecution and considering the defense and the cross-examination of these witnesses, evidence has remained unshaken, creditworthy and trustworthy. So far as role played by different accused is concerned, prominent and important role from the act of picking persons from their houses, bringing them to police station, beating them, making them to do repeated and excessive sit-ups, crawling etc. is attributed to accused named Sanjiv Bhatt who holds highermost rank among the police persons are concerned arraigned as accused in the present case and his exhortation to other police persons for beating witnesses, making them to do sit-ups is narrated by witnesses in their evidence, which is similar to the role of other accused named Pravinsinh Zala. These two accused persons are identified by different witnesses in the Court. On most of the occasions,

accused Sanjiv Bhatt was found absent and had given exemption application where he states that he is not disputing his identity. Similarly, all other remaining five accused persons are also identified by different witnesses as narrated in the evidence referred hereinabove. An attempt is made by defense while cross-examining witnesses by questioning them that witnesses were not knowing any of the accused persons prior to 30.10.1990. Some of the witnesses are also questioned that as accused persons were attending court proceedings, they had seen accused persons time and again. On some occasions witnesses are also questioned that accused persons were shown to them prior to their court identification but ultimately when witnesses had occasioned to see each and every accused not only for sometime but also continuously from the evening of 30.10.1990 through night and up to next day till they were produced before court and during this period they had reason to know accused persons not only by their physical appearances but also by name and that they have successfully identified accused persons before court, hence, there is no reason to disbelieve witnesses on the ground of their identification before

the court and in such type of cases non-performing of test identification parade will not discredit evidence of witnesses when they had all reason to identify them and have successfully identified them in court. Evidence of injured eye-witnesses is duly and ably supported by oral and documentary medical evidence and the same is found consistent with each other.

[21.3] So far as injuries found on the person of Prabhusadbhai and as his kidney problem described by PW 23-Dr. Sanjay Pandya as also PW 24-Dr. Kalele who performed postmortem, is consistent medically as well as is consistent with the ocular version of injured witnesses and first informant who had stated about deceased Prabhudasbhai being made to do excessive sit-ups and that made him excessively tired which damaged his muscles of both lower limb, which ultimately led to damage to kidney and also affecting his heart and lungs as well. Evidence of these doctor witnesses are also required to be seen alongwith evidence of injury on person of Prabhudasbhai given by PW 20-Kantilal Pansuriya, Pharmacist of Jamnagar Jail and also evidence of injury on him given by PW 19-Dr. Nileshkumar

Kalola. Even after extensive cross-examination of different doctor witnesses on the score of injuries and cause of death of Prabhudasbhai, medical evidence fully inspires confidence in the case of prosecution and is found to be credible and trustworthy. In view of it, applying Section-299 & Section-300 of IPC and more particularly clause (fourthly) of Section-300, death of Prabhudasbbhai is an act of murder. Exception placed in Section-300 of IPC would not be applicable in the present case.

[21.4] It is also pertinent to state here that during pendency of this appeal, accused no.1- Sanjivkumar Rajendrabhai Bhatt submitted an application bearing Criminal Misc. Application (For Additional Evidence) No.1 of 2022 in Criminal Appeal No. 1492 of 2019 for adducing additional evidence for examining expert namely Dr. M. Narayana Reddy, Hyderabad. This application was submitted under Section-391 of Code of Cr.P.C., which came to be rejected by judgment dated 24.08.2022 against which this accused preferred S.L.P. No. 9445 of 2022 before Hon'ble Supreme Court, which came to be dismissed / disposed off on 10.05.2023.

[21.5] So far as evidence of doctor witnesses is concerned, more particularly evidence of different doctor witnesses such as doctor witness who treated deceased Prabhudasbhai, doctor witness who conducted postmortem of Prabhudasbhai as also Pharmacist who recorded complaint and injuries of deceased Prabhudasbhai and doctor witness who examined deceased Prabhudasbhai after he was released from jail, no conflict and inconsistency is found within them and this medical evidence is in consonance and consistent with direct evidence adduced by prosecution of injured witnesses and first informant. So far as death ensued of Prabhudasbhai is concerned, if examined from the evidence of treating doctor PW 23 and doctor who performed postmortem i.e. PW 24, it is established that death is ensued from the intentional bodily injury and harm caused to him, which is found to be sufficient to cause death.

[21.6] Death certificate of Prabhudas Madhavji Vaishnani is submitted through PW 23-Dr. Sanjay Natwarlal Pandya, this witness in Para-6 of his deposition has submitted 1 to 37 medical papers of Prabhudasbhai, which are jointly exhibited at

Exhibit-744. These papers i.e. Exhibit-744 are within paperbook. So far as these case papers are concerned, it includes admission paper, OPD paper, indoor case paper, nursing chart, investigation reports etc. as well as death certificate, as stated by witness in Para-6 of his deposition. So far as indoor case papers of Prabhudasbhai are concerned, they are also within this paper-book and within these indoor case papers at Page-7885 under the title of medical cause of death, wherein, cause of death is opined as acute renal failure secondary to rhabdomyolysis with uremia with cardiorespiratory arrest and this is opined on 18.11.1990 and the immediate earlier document of indoor case paper is Page No-7835. In context of these indoor case papers of Prabhudasbhai if one examines document at Page- 7881 and Page-7883 (both are similar death certificates) then cause of death as mentioned in indoor case papers at Page-7885 as well as in death certificate at Page-7881 and Page-7883 both are same and doctor who had actually treated Prabhudasbhai from 12.11.1990 till the date of his death i.e. 18.11.1990 is examined by prosecution and he is PW 23. Furthermore, in Para-8 & 9 of PW-23's deposition, witness has

testified about cause of death of deceased as well as PW 23 is already subjected to extensive cross-examination by all accused. Besides this, in Para-36 of PW 23's evidence, defense has suggested that at the instance of complainant side, witness had given false opinion through doctor Gajera, hence, through witness PW 23 cause of death as mentioned in indoor case papers of Prabhudasbhai as well as death certificate is proved.

[21.7] So far as document in the nature of medical papers of Prabhudasbhai submitted by PW 24 is concerned, they are submitted and admitted through PW 24-Dr. Kalele. Exhibit-753 is Pathology Report admitted through PW 24 in Para- 16, 19, 22 of PW 24's deposition, wherein, he clearly states that on the basis of postmortem report, pathology report was prepared and his colleague/panel doctor received that pathology report and he identifies the signature of panel doctor namely Dr. H. M. Mangal as receiver of this pathology report and this witness is extensively cross-examine over this document i.e. Exhibit-753 in Para-29, 30 and 41, hence, there is no reason to discredit or doubt document at Exhibit-753. Similarly, Exhibit-754 is

Histopathology Examination, Microbiology Examination document for which witness no. 24 has given his evidence in Para-17 who states about opinion given by Dr. M. M. Baxi. This document also bears signature of panel postmortem doctor namely Dr. H. M. Mangal and there is a reference of postmortem of Prabhudasbhai as Postmortem No. 394/90. So far as Histopathology Examination is concerned, there is reference of required Histopathology Examination in Para-11 of deposition of this witness. Furthermore, in Para-22, this witness has also stated that they have opined on cause of death after examining Exhibit-753 to Exhibit-755. Defense during cross-examination of this witness in Para-26 and 41, has cross-examined on histopathology case, hence, there is no reason to doubt authenticity of Exhibit-754.

[21.8] Upon examining evidence of PW 21-Dr. Sapariya, different injured persons examined by him having different injuries, some of them also having injuries on elbow as deposed by him for injured named Mukesh Vitthaldas Sapariaya in Para-4, Manoj Vithhalbhai Kalariya in Para-9, Prafulkumar Maganlal

Sureja in Para-11, Kishor Bhagwanbhai Kasundra in Para-24. Few others had received injuries on hand who are referred as injured persons named Ravjibhai Hadjibhai Sinojiya in Para-3, Pravinkumar Bhagwanji in Para-5, Shashikant Mohanlal Vachhani in Para-7, Kadabhai Devjibhai Kalariya in Para-12, Mukeshkumar Mohanlal in Para-14, Shantilal Bhanjibhai Vachchani in Para-19 and most of the injured examined by this witness has also suffered injuries on thighs and buttocks. Similarly, injured persons examined by PW 19-Dr. N. H. Kalola had also injuries on elbow as described in his evidence for injured PW 27 Rameshchandra Madhavjibbhai in Para-4 of his deposition and injured Vinod Vrajlal Raval as described in Para-15, injured Kiritbhai Valjibhai Sinojiya examined as PW 15 and referred in Para-20 of deposition of this doctor witness, Bharat Jerambhai Rabadiya Para-21, Manvar Rognath Jivabhai Para-23, Bakori Dineshkumar Maganlal, Para-27, Liladhar Shankarlal Para-39, Hareshkumar Mohanlal Para- 42, Jamnadas Haribhai Para-43, Shantilal Bhanjibhai Para-46 and most of the injured persons had injuries on thighs, calf, buttocks, wrist, etc.

[21.9] As already discussed, even after closure of evidence by prosecution different accused persons had given application under Section-91 of Cr.P.C., which are partly allowed by Presiding Officer and required documents were submitted by prosecution. Some prayers relating to Section-91 of Cr.P.C. were also agitated before this Court, which also came to be considered in favour of accused and relevant documents were submitted before the Court of Sessions. An Application for summoning large number of persons under Section-311 of Cr.P.C. though not considered by Presiding Officer/Sessions Judge and agitated before this Court. Out of large number of witnesses, which were around 42 witnesses, three witnesses were ordered to be examined as Court witnesses and other 24 witnesses as submitted by accused were ordered to be considered to be examined as defense witnesses under Section-233 of Cr.P.C. The order of this Court was challenged before Hon'ble Supreme Court but order passed by this Court was confirmed and thereafter, Presiding Officer did examine required three witnesses as court witnesses and 24 witnesses as desired by accused to be examined as defense witnesses were

dropped by accused. Three witnesses examined as Court witnesses are also cross-examined by all defense advocates for their respective accused persons. These court witnesses were also cross-examined on the issue of 133 persons being arrested from town between 09:15 a.m. to 12:45 p.m. but these witnesses have not agreed to this suggestion put to them.

[21.10] PW 2-K. N. Pansuriya, Pharmasict working at Jamnagar jail had submitted medical case papers of deceased Prabhudasbhai as well his brother PW 27-Ramesh Madhavji as well as his forwarding letter stating therein name of deceased Prabhudas Madhavji addressed to RMO of Irvin Hospital, which bears his handwriting and signature and who is cross-examined extensively on these contemporaneous documents.

[21.11] Prosecution has examined 32 witnesses whose evidence is discussed hereinabove. Thereafter, on the order passed by Presiding Officer/Sessions Judge under different applications submitted under the provision of Section-91 of Cr.P.C., prosecution submitted different documents as ordered and thereafter when issue arising under Section-91 of Cr.P.C.

other required documents are also submitted by prosecution. As per order passed by this Court in a petition moved by accused under Section-311 of Cr.P.C., three police persons were examined as court witnesses and accused though desired to examine 24 witnesses as defense witness, did not examine any of them and had dropped all defense witnesses.

[21.12] Prosecution has examined PW 30- Devendrakumar Bechardas Patel, one of the investigating officer; two other police persons as PW 31 and PW 32 and most importantly as desired by accused as 'crucial witnesses who investigated the offence in question' such as P. P. Pandey, H. P. Singh who have been examined as Court witness no.1 and court witness no.2 respectively who are also duly cross-examined by all the accused through their respective lawyers.

[21.13] Evidence of PW 2 to 18 and evidence of PW 27 and 28 are sufficiently discussed above. So far as arrest of these witnesses on 30.10.1990 in the morning of 09:15 am to 12:45 pm is concerned, there is no legally acceptable material on record even to prima facie believe it, hence, what is required to

be examined is evidence of above said witnesses. Two police persons as referred by appellants are K. N. Patel and B. L. Thakur. So far as, these two police persons named K. N. Patel and B. L. Thakur are concerned, they are not even named in application Exhibit-830 given under Section-311 of Cr.P.C., wherein, it is averred in Para-1 that 'present application is preferred on behalf of the accused persons.....' As such in Annexure-Z i.e. list of witnesses to be examined as defense witnesses one witness is referred as B. C. Thakor but along with other he is also dropped and not examined.

[21.14] PW 21-Dr. Shashikant V. Sapariya had examined around 25 injured witnesses and in his evidence, he has clearly stated that all the injured witnesses have reported to him and they are beaten by police. Even one injured named Manoj Pandharinath Sidhe who had suffered injuries on his person, which are described as injury no.7 to 10, which according to witness's evidence, is possible by stick and even this injured had reported to witness that police had beaten him. So all the injured persons examined by witness Dr. Sapariya had reported

to him that they are beaten by police and doctor witness had also mentioned in injury certificate issued by him about different injuries, etc. Hence, in this reporting though there is no mention of names of police and place where they are beaten yet if these witnesses examined by prosecution which also includes PW 2, 5 and 6 who were examined by Dr. Sapariya and also examined by prosecution and in their evidence i.e. evidence of PW 2, PW 5 and PW 6, fact of they having been beaten by particular police, from where they were picked, where they were taken thereafter etc. is narrated and also discussed hereinabove. Now so far as happening of riot and imposition of curfew are concerned, it is already emerging from the evidence of PW 25-Jamnagar District Collector Haribhai V. Patel.

[21.15] On 05.03.1990 on behalf of accused no.1 application under Section.311 of Cr.P.C. was submitted at Exh.830. In Para-1 of this application it is contended that 'the present application is preferred on behalf of the accused persons and more particularly accused no.1....' same came to be rejected by Presiding Officer / Sessions Judge on 12.03.2019 with liberty to

file application under the provisions of Section-233. Against this order accused preferred Special Criminal Application No.4115 of 2019 which came to be decided by this court (Ld. Single Judge) vide oral order dated 16.04.2019 through which three witnesses namely P.P.Pandey IPS, H.P.Singh IPS being investigating officer and T.S.Bisht IPS shall be examined as Court witness under Section-311 of CRPC and as per Annexure-Z submitted by petitioner accused witnesses mentioned in it (24 witnesses) be examined as defence witnesses in accordance with the provision i.e. Section-233 of CRPC. This order was challenged by original complainant / first informant in SLP No.4993 of 2019 which came to be decided on 24.05.2019 with further order directing Trial Court to positively conclude Trial by 20.06.2019. Accused No.1 also independently challenge the order of this court (Ld. Single Judge) but no relief was granted. Pursuant to the order passed by this Court (learned Single Judge) three witnesses were examined as court witness who were extensively cross examined by all accused persons. Considering the same and also considering the fact that other accused namely accused no.2 to 7 though had not given

separate application but they participated in this proceedings and they also had cross examined all the three court witnesses and all the above referred orders of this court as well as Hon'ble Supreme Court is part of the record of this proceedings remaining accused now cannot say that proceedings initiated by accused no. 1 initially decided by Ld. Presiding Officer this court and also by Hon'ble Supreme Court is not binding to them.

[21.16] As per the evidence of injured eye witnesses as well as first informant all the injured persons were picked by different accused persons from their residence and were brought to Jamjodhpur police station and this happened in the evening of 30.10.1990 and during the intervening night of 30.10.1990 and 31.10.1990 all this injured persons / prosecution witnesses while in police custody i.e. custody of accused person were beaten, made to do sit-ups and crawling etc. Hence, this act of accused persons of picking injured persons and others from their residence bringing them to police station and while they were in custody beating them making them to do sit-ups, crawl etc. cannot be considered as an act of this police persons

of discharging their official duty and therefore, when this acts are not committed while discharge of their duty and as such acts committed are found to be serious offences committed by different accused persons, requirement of procuring sanctioned of the government as provided in Section-197 of Cr.P.C. is not required. Similarly this acts also cannot be considered to have been done under colour of police officer's duty or authority and therefore, there is no application of Section-161 of Gujarat Police Act. Also, it would be relevant to examine evidence of court witness no.1's evidence Para-5 and evidence of court witness no.2's Para-23.

[21.17] During the course of arguments evidence of all the witnesses i.e. witnesses examined by prosecution, court witnesses, deposition of accused Saileshbhai Pandya and also deposition of witness examined by defence are thoroughly and extensively read by different Ld. Advocates appearing on behalf of appellants and is also re-read by Public Prosecutor. Hence, while deciding all the appeals this court has reappreciated entire evidence as required under the Provisions of CRPC more

particularly under Section- 386 of it. On reappraisal of entire evidence as well as the basis of submissions made on behalf of different appellants no case is made out for this court to take further evidence under the provisions of Section-391 of Cr.P.C.

[21.18] With regard to various documents pertaining to wireless messages, station diary, weekly diary of C.I. (Circle Inspector) K.N.Patel and PSI Thakor etc. which are referred in evidence of court witness no.2 P.P.Pandey. Examining evidence of court witness no.2 P.P.Pandey, during cross examination in Para-6 witness is accepting that he has recorded statement of PSI B.L.Thakur as well as weekly diary of PSI B.L.Thakur in Para-7 court witness no.2 is also accepting that he has recorded statement of above referred K.N.Patel and has also collected his weekly diary of a particular period. In Para-8 witness is also accepting that he has collected log book of a particular vehicle of a particular police constable, considering this cross examination witness is not asked anything about the contents of this documents and so far as PSI B.L.Thakur is concerned he is one the proposed defence witness as per Annexure-Z but

defence has chosen not to examine him as like many other police persons whose names are mentioned in Annexure-Z. Considering this so far as weekly diary of PSI B.L.Thakur and weekly diary of K.N.Patel as well as log book of this vehicle is concerned whatever is the contents in it are not only not proved but no questions pertaining to contents of these documents is put to court witness no.2. Furthermore these witnesses are not examined either as prosecution witnesses, court witnesses (as per order) nor defence witnesses. Hence, appreciating the contents of these documents for proving defence is legally not acceptable. So far as expert opinion of Dr. H.L.Trivedi is concerned sufficient elaboration on it is made. In context of this fact's reliance is placed on judgment reported (2014) 9 SCC 365 for exhibiting above referred statements and relying them for proving the defence of appellants. If one examines the facts of this judgment more particularly in Para-44 it is clearly stated in it that concerned witness namely PW No.8 was examined by prosecution who had drawn Mahazar at a particular place i.e. place of cremation. Hence, this document named Mahazar produced prepared by witness namely PW No.8 was examined

various questions on it were put to him and only as it was not exhibited document it was not accepted by High Court but as witness who prepared Mahazar who was subjected to various questions put to him about Mahazar was examined as PW No.8 and only document was not exhibited Hon'ble Supreme Court accepted that document and believed the same in context of evidence of PW NO.8. as against it facts of this case are strikingly dissimilar in comparison to Hon'ble Supreme Court's Case.

[21.19] Through defence witness no.1 Dr. Shah opinion of Dr. H.L.Trivedi is submitted but as doctor Shah had no personnel knowledge regarding contents of Dr. Trivedi's opinion. Contents of Dr. Trivedi's opinion remained not proved. As such while appreciating medical evidence it is always required to give primacy to the evidence of doctor who have treated either injured or deceased and the evidence of doctor who performed postmortem. Such evidence is more qualitative than any other medical evidence if the same is found consistent. In the present case so far as evidence of Dr. Sanjay Pandya is concerned it is found to be more acceptable and qualitative as

he being qualified nephrologist and also having treated deceased Prabhudas for almost 10 days. Similarly evidence of Dr. Kalele is also qualitative as he performed postmortem of deceased Prabhudas and this evidence of this witnesses along with other doctor witnesses is consistent with ocular evidence also therefore, this court would preferred this proved evidence in comparison to any other.

[22] Now in respect of the decisions which have been tried to be relied upon by the learned senior advocate appearing on behalf of the appellants, perusal thereof closely would indicate that background of the facts appearing to be quite different, but to see whether such proposition can be applied here or not, we consider herewith the said decisions.

[22.1] The decisions reported in 2015 (1) GLR 58, 2016 (16) SCC 483, 1981 (1) SCC 80, 2010 (4) SCC 491, 2013 (3) SCC 801 and 2006 (10) SCC 631 are on the issue of proving document and content and for that a reference is made to Section 61 to Section 73 of Evidence Act.

[22.2] Now these judgments are relied upon for the

purpose of appreciating opinion certificate of Dr. H.L.Trivedi and now in this context, we have already discussed critically about evidentiary value of this certificate and we have found that opinion certificate given by Dr. H.L.Trivedi is not proved in accordance with law. So far as other medical certificates / documents relied upon by prosecution are concerned, perusal thereof would indicate that through different doctor witnesses these documents are sufficiently proving the case of prosecution.

[22.3] In respect of another set of judgments reported in 2016 (1) GLH 485, 2012 (9) SCC 771, AIR 1965 (SC) 328, 2004 (4) SCC 714, 2013 (5) SCC 277 and 2004 (4) SCC 158 are concerned, the said decisions have been brought to our notice to indicate that duty of Public Prosecutor by referring Section 24 of the Code. We reiterate that we have sufficiently discussed at length hereinabove that learned Special Public Prosecutor after examining as many as 32 witnesses has closed the prosecution evidence and these witnesses some of them are police witnesses as well as investigating officer and we found

that as far as possible the public prosecutor has made an attempt to establish the case and we are of the opinion that duty assigned to the public prosecutor has been satisfactorily discharged more particularly when the evidence was recorded after couple of years.

[22.4] In respect of other judgments reported in 2023 (1) SCC 83, 1981 (3) SCC 191, 2021 (3) SCC 661, 2010 (10) SCC 677, AIR, 1968 (SC) 178 and 1990 (2) GLR 1325 are concerned 27. AIR 1954 (SC) 31 are concerned, the said judgments are on the issue of Section 311 of the Code read with Section 165 of Evidence Act. Having perused these decisions, we must place a mention here that an application under Section 311 of the Code was given and decided by learned Presiding Officer and this issue was not agitated either before this Court or before the Hon'ble Supreme Court where the proceedings went on one of the issues. Pursuant to it 3 witnesses were already examined as Court Witnesses and all these Court Witnesses, according to us, were extensively and satisfactorily cross-examined almost by all original accused and as such we don't see that Presiding Officer

has failed to utilize his power under Section 165 of the Evidence Act read with Section 311 of the Code. Hence, the judgments are of no assistance to the appellants.

[22.5] So far as other set of judgments are concerned, which are reported in AIR 1954 (SC) 51, 2014 (2) SCC 401, 2011 (1) SCC 307, 2012 (7) SCC 56 and 2018 (11) SCC 129 are pointed out with a view to raise an issue with regard to fair trial not made available to the accused. Now with a view to see whether these judgments are of any assistance or not, we may point out that issue of fair trial no doubt to be applicable to the accused but to the society as well as victim. So far as fair trial to the accused is concerned considering the record of the case, as we have pointed out, the accused persons have substantial agitated almost all issues which they intended to agitate before various forums. Even, during examination of different witnesses, the learned Presiding officer had permitted all the accused persons to cross-examine each and every witness to the satisfaction of different accused persons. As such after declaring that accused intends to examine 24 witnesses accused

as declared then the said witnesses were not indented to be examined as defence witnesses. From the record, it also appears that some of the defence witnesses were summoned but were not present on service of summons but they were not examined. Even from the record, it appears that as per the direction of Hon'ble Supreme Court, learned Presiding Officer was directed to complete the trial of the main case within a stipulated period and when such directions were being processed we don't see any reason that accused did not have any fair trial in fact at every stage, the opportunity was given sufficient enough and as such the issued relating to fair trial not been provided, is not acceptable.

[22.6] In respect of the decisions which are referred to reported in 2002 (1) SCC 702, 2004 (7) SCC 487 relates to non-examination of witnesses / police officers who have recorded statement of witnesses under Section 161 of Code. Perusal of the judgments would clearly indicate that in the background of facts on hand the same are not having any assistance and this is so in view of the fact that we have already discussed about

examination of one prosecution witness D.B.Patel who is one of the investigating officers and as far as Court Witnesses No.1 and 2 are concerned, are also one the investigating officer. So far as cross-examination of these witnesses are concerned, accused persons have not put to them any omission which may amount to contradiction. So far as examination of different witnesses are concerned, they have categorically denied about they having not stated the facts narrated by them in their examination in chief, in their police statements. Considering this, it was for defence to prove the contradictions if are available either from prosecution witness D.B.Patel and / or from Court Witness no.1 and 2 Mr.H.P.Singh and P.P.Pandey respectively and therefore, we don't see any reason that judgments cited on the issue are assisting the appellants in any case.

[22.7] So far as judgments reported in AIR 1974 (SC) 1822 it is substantially about the duty of investigating officer and we have said in earlier part of our order that from the evidence of investigating officer and other police witnesses we don't believe

that investigator has not performed his duty and therefore the judgments are not applicable.

[22.8] In respect of other judgments reported in AIR 1954 (SC) 31 and 1976 (4) SCC 355 are concerned the same are on the issue of non-examination of important witnesses. We have seen that prosecution has examined large number of injured eye witnesses and eye witness who also happened to be the first informant, the relevant medical witnesses and other witnesses including Police Witnesses, Collector, Panch and few others witnesses prosecution has left any effort to produce important material witnesses from being examined. Even some of the witnesses as per the prayer of accused persons have been put for examination as court witnesses and accused after declaring that he intend to examined 24 witnesses as defence witnesses but ultimately they themselves did not examine ultimately and as such now cannot raise any grievance since they allowed the adjudication to went on.

[22.9] In respect of other two decisions reported in 2006 (4) SCC 584 and 2020 (7) SCC 695 are on the issue of Section-

197 of the Code about requirement of sanction. On this issue, we have discussed at length that in view of facts and circumstances of the case requirement of obtaining sanction is legally not warranted. If one looks at the facts of the judgment cited in the case of *Sankaran Moitra*, then facts of said Moitra's case where it is said that sanction is required is strikingly dissimilar to the facts and circumstances of the case on hand. The facts of present case are grave and serious and cannot be considered as an act committed by police persons while discharging their official duty and the same applies to the judgment of D.Devaraja. Appellants have relied upon few other judgments more particularly one such judgment delivered in Special Criminal Application No. 970 of 2007 against which Public Prosecutor has relied upon oral judgment dated 05.05.2022 rendered in Criminal Misc. Application No. 1799 of 1996 with Criminal Misc. Application No. 5959 of 1999 which was also agitated by accused by filing SLP No. 7186 of 2022 which was decided on 05.09.2022 and as such these judgments are of no assistance to the appellants.

[22.10] In respect of the decisions reported in 2013 (5) SCC 714, 2019 (16) SCC 712, 2019 (20) SCC 481 and 2001 (4) SCC 759 which judgments are relating to invocation of Section 391 of the Code which issue also connecting with the fair trial and since that issue has been discussed by us at length, no case is made out by the appellants to permit to adduced additional evidence in any form and therefore, these judgments are of no assistance to the appellants.

[22.11] So far as other judgments large in numbers starting from 2016 (3) SCC 135 to 1988 CRI. L.J. 1390 these judgments are pertaining to the trial, non- examination of independent witnesses, drawing of adverse inference under Section 114 of Evidence Act and also about the power of appellate court under Section 386 of Code, and also sanction etc. Perusal of the said decisions would indicate that on all these issues we had more than sufficiently discussed each and every aspects emerging from the evidence on record and a further summary of certain case laws on the issue of Sections 61 to 73, 165 of the Evidence Act, we to some extent would like to analysis to material on record.

[22.12] Learned senior advocate for the appellants have placed reliance upon the decisions on the point of how to prove document and content therein by placing reliance upon Sections 61 to 73 of the Evidence Act. It has been held in the said decisions that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is further observed that neither mere admission of a document in evidence amounts to its proof nor mere giving of an exhibit to a document dispensed with its proof, which is otherwise required to be done in accordance with law.

[22.13] Thereafter learned counsel for the appellants have placed reliance upon decisions rendered by the Hon'ble Supreme Court as well as this Court on the point of Section-165 of the Evidence Act and Section 311 Cr.P.C. The Hon'ble

Supreme Court has observed that once Section 165 of the Evidence Act empowers the Court to ask questions relevant, irrelevant, related or unrelated to the case to the party to ascertain the true facts, party may not answer the questions but it is not permitted to tell the Court that question put to him is irrelevant or the facts the Court wants to ascertain are not in issue. Exercises of such a power is necessary for the reason that the judgment of the Court is based on the relevant facts which have been duly proved. It is an extraordinary power conferred upon the Court to elicit the truth and to act in the interest of justice. Wide discretion has been conferred on the Court to act in exigencies of justice require. The power is to be exercised with an object to subserve the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth.

[22.14] On the point of fair trial, learned counsel for the appellants have placed reliance upon certain Supreme Court decisions as observed hereinabove. In the aforesaid cases, the Hon'ble Supreme Court mainly observed that denial of an

opportunity to recall the witnesses for cross-examination would amount to condemning the appellant without giving him the opportunity to challenge the correctness of the versions and credibility of the witnesses. The ground of fairest opportunity to the accused to prove his innocence is the object of every fair trial. It has been further observed that fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial must be accorded to every accused in the spirit the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. It necessary requires a trial before an impartial Judge, a fair executor and atmosphere of judicial calm.

[22.15] Thereafter on the point of non-examination of witnesses police officer who recorded the statement of witnesses under Section 161 Cr.P.C., the learned counsel for the appellants have placed reliance upon certain decisions which

are referred hereinabove. The Hon'ble Supreme Court has observed that non-examination of the Investigating Officer is not fatal to the prosecution case when no prejudice was likely to be suffered by the accused. It has further been observed that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution was of no consequence and under such circumstances no prejudice had been caused to the accused by such non-examination.

[22.16] Learned counsel for the appellants thereafter have referred decisions which are referred hereinabove on the point of sanction under Section 197 Cr.P.C. The Hon'ble Supreme Court has mainly held that, to decide whether sanction is necessary, the test is whether the accused is totally unconnected with the official duty or whether there is a reasonable connection with the official duty. In the case of an act of policeman or any other public servant unconnected with the official duty, there can be no question of sanction.

[22.17] On the point of additional evidence at the stage of

appeal under Section 391 Cr.P.C. also, learned counsel have placed reliance upon various decisions as observed hereinabove, the Hon'ble Supreme Court in the said decisions has mainly held that the scope and object of a provision of Section-391 Cr.P.C. to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Powers must be exercised judiciously and not capriciously or arbitrarily. An application under Section 391 Cr.P.C. must not be allowed only to fill up a lacuna in the case of a prosecution, or of the defence or to the disadvantage of the accused. Further the additional evidence must not be received as a disguise for re-trial or to change the nature of the case against either of the parties. Therefore, the power conferred under Section-391 must be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and must be exercised with great caution and circumspection.

[22.18] As we discussed above, we are not disputing the proposition of law laid down by the Hon'ble Supreme Court in

any of the judgments which are referred to and indicated hereinbefore but the same in the background of this peculiar facts of the case on hand are not possible to be applied as a straitjacket formula especially when the background of the facts is altogether on a different circumstance.

[22.19] At this stage, we may recollect the salutary proposition laid down by Hon'ble Apex Court regarding applying on the judgment, we deem it proper to quote hereunder the relevant observations contained in paragraph 64 from the decision delivered by the Apex Court in the case of *State of Madhya Pradesh Vs. Narmada Bachao Andolan and Another* reported in (2011) 7 SCC 639:-

"64. The Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that

judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide MCD v. Gurnam Kaur, Govt. of Karnataka v. Gowramma and State of Haryana v. Dharam Singh)"

[22.20] So considering the aforesaid principle also, we are of the view that decision tried to be relied upon are not of any assistance.

[23] At this stage, we may indicate that perusal of the judgments which have been relied upon by the learned senior advocate Mr. J. M. Panchal appearing on behalf of the informant who would clearly indicate that the manner and method in which the prosecution to examine and to what extent the issue about material witness having not been examined can be considered. We deem it proper to considered the judgment of Hon'ble Apex Court reported in (2022) 9 SCC 321 at this stage precisely paragraph 19 and 22 and about the doctors' opinion how the Court should consider the evidence and as such perusal of these judgments reported in (1994) 2 SCC 677, (1997) 7

SCC 156 and (2008) 13 SCC 515 including (2004) 13 SCC 308 these judgments have sufficiently assisted the Court in arrive at a just conclusion.

[23.1] Relevant observations i.e. paragraphs 8 & 9 which are in the case of **Ram Swaroop versus State of Rajasthan** reported in **(2008) 13 SCC 515**, we deem it proper to reproduce hereunder:-

"8. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference.

18.... Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitnesss version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post- mortem features which he noticed

in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice.

Similar view has also been expressed in [Mange v. State of Haryana \(1979\(4\) SCC 349\)](#), [State of U.P. v. Krishna Gopal and Anr. \(AIR 1988 SC 2154\)](#) and [Ram Dev and Anr. v. State of U.P. \(1995 Supp. \(1\) SCC 547\)](#), [State of U.P. v. Harban Sahai and Ors. \(1998 \(6\) SCC 50\)](#) and [Ramanand Yadav v. Prabhu Nath Jha & Ors. \(2003\(12\)SCC 606\)](#).

9. The trial court and the High Court have analysed in great detail the evidence of PWs. 3 & 4, which clearly bring out the accusations against the accused appellant. There are certain minor variations which do not in any way corrode the credibility of the prosecution version. The trial court and the High Court were, therefore, justified in placing reliance on their evidence and holding the accused appellant guilty. We do not find any merit in the appeal which is accordingly dismissed."

[23.2] Also the relevant observations i.e. paragraphs 8 & 9 which are in the case of ***State of M.P. versus Dharkole Alias Govind Singh and Others*** reported in ***(2004) 13 SCC 308***, we deem it proper to reproduce hereunder:-

"8. Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

9. It is trite that where the eye-witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

[23.3] In addition thereto, learned senior advocate Mr. Panchal has also specifically pointed out two important judgments about the custodial torture and in that how police record is to be appreciated. The decisions of the Hon'ble Apex

Court reported in *(1985) 1 SCC 552 (paragraphs 19 and 20)* and *(1997) 1 SCC 416 (paragraphs 20 and 25)* are well guided. Hence, perusal of such, we deem it proper to consider the same. Further the judgments of learned senior advocate Mr.Panchal reproted in *(2012) 4 SCC 79, (2015) 11 SCC 69, (2007) 10 SCC 161 and (2004) 13 SCC 308* are of much assistance and having considered the same, we are of the opinion that appellants have not made out any case to either interfered with the impugned judgment of conviction nor to substitute the view. Upon critical analysis of material on record and the proposition of law laid down by various decisions, we see no merit in any of the contentions which have been raised by the learned senior advocate for the appellants. Each of the contentions have been evaluated by us and we found no merit in such contentions looking to the material on record. Hence, the judgments which are tried to be pressed into service are of no assistance. Large number of judgments are placed before the Court though few are referred to and relied upon but with a view to see that since those judgments are tendered, we deemed it proper to considered those judgments as well.

[24] In view of the aforesaid discussion we are of the view that submissions canvassed by the Ld. Counsels of appellants / convicts are misconceived. Hence, we are of the view that Trial Court has not committed any error in passing of the impugned judgment and therefore, no interference is required in the present appeals. We are of the view that prosecution has proved case against respective accused / convicts and hence, no interference is required in the impugned judgment and order passed by the Ld. Trial Court.

[25] In addition to the aforesaid critical analysis of evidence assessed by the learned trial Judge, we also on our independent look, perusal and scrutiny of evidence found that the conclusion arrived at by the learned trial Judge in passing an order, impugned in this proceeding, is in consonance with material on record and in accordance with law and there is no element of perversity of any nature. We also found that the demeanour of the witnesses appears to have been properly understood and examined by the learned trial Judge and as such passing of an order of conviction, impugned deserves to be

confirmed and as such we hereby confirmed the order of learned trial Judge and are of the considered opinion that appeals filed against the said judgment and order lack merit for consideration. Hence, we hereby dismissed the appeals filed by the accused persons.

[26] In view of the aforesaid discussion and overall detail analysis of evidence has led us to only one conclusion that even the appeal filed by the State Government against the judgment of acquittal is not worthy of acceptance. Accordingly, we dismiss the appeal i.e Criminal Appeal No.1920 of 2019 filed by the State. All connected applications stand consigned to records. At this stage, we have been reported that original accused No.1 - Sanjiv Bhatt and original accused No.4 - Pravinsinh Zala are already in custody, whereas other accused persons i.e. accused No.2, 3, 5, 6 and 7 are on bail and therefore, their bail bonds are cancelled hereby.

Sd/-

(ASHUTOSH SHASTRI, J.)

Sd/-

(SANDEEP N. BHATT, J.)

Further Order

After pronouncement of the judgment, a request is made by learned senior advocates appearing on behalf of the respective appellants that bail bonds, which are till today are continuing may be extended and continued for a reasonable period of time so as to enable them to approach the higher forum. Accordingly, in the facts and circumstances of the case, we deem it proper to grant eight weeks' time from today to surrender and till that period of eight weeks bail bonds are ordered to be continued in so far as accused No.2, 3, 5, 6 & 7.

Sd/-
(ASHUTOSH SHASTRI, J.)

Sd/-
(SANDEEP N. BHATT, J.)

DHARMENDRA KUMAR