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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.908 OF 2004
ALONGWITH
CRIMINAL APPLICATION NOS 556/2011, 606/2015, 941/2015,
1409/2015, 10/2017 AND 1646 OF 2017
IN
CRIMINAL APPEAL NO. 908 OF 2004**

- | | | |
|--|---|-------------------|
| 1] Mahiboob Daudsaheb Shaikh |) | |
| Indian, Aged 45 years, R/o 130 |) | |
| Railway Lines, Forest, Solapur |) | |
| (Appeal memo separately |) | |
| filed on 18/6/2018) |) | |
| |) | |
| 2] Imtiyaj Noormohammed Hundekari |) | |
| Indian, Aged – 20 years, R/o – Near |) | |
| Shobhadevi Nagar, Bhimashankar Nagar, |) | |
| Solapur. |) | |
| (Appeal memo separately filed on |) | |
| 21/6/2018) |) | |
| |) | |
| 3] Mashak Bakshubhai Pathan |) | |
| Indian, Aged – 26 years, Plot No – 47, |) | |
| Vijay Laxmi Nagar, Solapur. |) | |
| |) | |
| 4] Mohammed Rafiq Shamshoddinn Shaikh |) | Appellants |
| Indian, Aged – 40 years, Plot No.21, |) | (Original Accused |
| Vishnu Nagar Solapur |) | Nos 1,3,5 & 6) |

V/s

The State of Maharashtra	)	
(Vijapur Naka Police Station, Solapur,	)	
C.R. No. - 209/2002	)	Respondents.

ALONG WITH
CRIMINAL APPEAL NO. 854 OF 2004

- 1] Abdul Ajij Fakroddin Shaikh)
Age : 46 yrs. Occ:)
R/o. Plot No.88, Shobhadevi Nagar)
Solapur.)
)
2] Sadik Saipansab Shaikh)
Age: 38 yrs. Occ:)
R/o. Plot No.94, Vishnu Nagar,)
Part – 3, Solapur)Appellants
(Original Accused
Nos. 2 and 4)

V/s

The State of Maharashtra) Respondent.

ALONG WITH
CRIMINAL APPEAL NO. 759 OF 2018

Maheboob Dawood Shaikh)
Age : 62 yrs, Occu: Business)
R/at, Narpatgir Chowk,)
Audumbar Heritage,)
Mangalwar Peth, Pune)Appellant
(Original Accused No.1)

V/s

The State of Maharashtra)Respondent.

Mr. P.R. Arjunwadkar with Mr. Onkar Nagvekar and Mrs. Prabha Badadare, Advocates for Appellant Nos.3 and 4 in Appeal No.908 of 2004 and for Appellant Nos. 1 and 2 in Appeal No. 854 of 2004.

Mr. Shirish Gupte, Senior Counsel i/b Mr. Ganesh K. Gole with Mr. Ateet Shirodkar, Mr. Tejas Hilage and Ms. Supriya Kak, Advocates for the Appellant in Appeal No.759 of 2018.

Mr. H. J. Dedhia APP for Respondent/State in all the above Criminal Appeals.

Criminal Appeal No.759 of 2018 is not shown on board. Upon mentioning, the same is taken on board.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 20th JUNE, 2018

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] As orally permitted by this Court learned Counsel for Appellant/original accused No.1 has filed separate Memo of Appeal bearing No.759/2018 on 18/06/2018 and Appellant/ original Accused No.3 has filed separate Memo of Appeal bearing (St) No.744/2018 on 21/06/2018.

2] Appellants have approached this Court, being aggrieved by the Judgment and Order passed by the learned 1st Ad-hoc Additional District Judge, Solapur in Sessions Case No. 78 of 2003, thereby convicting the Appellants/ original accused Nos. 1 to 6 for the following offences and imposing sentences as narrated hereinbelow :

(i) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 147 r.w. 149 of Indian Penal Code and sentenced to undergo R.I. FOR ONE YEAR AND TO PAY FINE OF Rs 1,000/- (RS ONE THOUSAND ONLY) EACH IN DEFAULT TO SUFFER R.I. FOR THREE MONTHS.

(ii) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 148 r.w. 149 of Indian Penal Code and sentenced to undergo R.I. FOR ONE YEAR AND TO PAY FINE OF Rs 1,000/- (RS

ONE THOUSAND ONLY) EACH IN DEFAULT
TO SUFFER R.I. FOR THREE MONTHS.

(iii) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 302 r.w. 149 of Indian Penal Code and sentenced to suffer LIFE IMPRISONMENT AND TO PAY FINE OF Rs 10,000/- (Rs. TEN THOUSAND ONLY) EACH, IN DEFAULT TO SUFFER R.I. FOR TWO YEARS.

(iv) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable

under Section 307 r.w. 149 of Indian Penal Code and sentenced to undergo R.I. FOR TEN YEARS AND TO PAY FINE OF Rs 5,000/- (Rs. FIVE THOUSAND ONLY) EACH, IN DEFAULT TO SUFFER R.I. FOR ONE YEAR.

(v) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 427 r.w. 149 of Indian Penal Code and sentenced to undergo R.I. FOR ONE YEAR AND TO PAY FINE OF Rs 1,000/- (Rs. ONE THOUSAND ONLY) EACH, IN DEFAULT TO SUFFER R.I. FOR THREE MONTHS.

(vi) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq

Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 435 r.w. 149 of Indian Penal Code and sentenced to undergo R.I. FOR THREE YEARS AND TO PAY FINE OF RS. 2,000/- (Rs. TWO THOUSAND ONLY) EACH, IN DEFAULT TO SUFFER R.I. FOR SIX MONTHS.

(vii) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 295 r.w. 149 of Indian Penal Code and sentenced to undergo R.I. FOR ONE YEAR AND TO PAY FINE OF Rs 5,00/- (Rs. FIVE HUNDRED ONLY) EACH, IN DEFAULT TO SUFFER R.I. FOR TWO MONTHS.

(viii) Accused No.1 Mahiboob Daudsaheb Sahikh, accused No. 2 Abdul Ajit Fakroddin Shaikh, accused No.3 – Imtiyaz Noorahamad

Hundekari, accused No. 4 Sadik Saipansab Shaikh, accused No.5 Mashak Bakshubhai Pathan, accused No.6 Mahamad Rafiq Shamshoddin Shaikh are convicted under Section 235(2) of Cr.P.C. of offence punishable under Section 3 r.w. S. 25 of Arms Act and sentenced to undergo R.I. FOR THREE YEARS AND TO PAY FINE OF Rs 5,00/- (Rs. FIVE HUNDRED ONLY) EACH, IN DEFAULT TO SUFFER R.I. FOR TWO MONTHS.

3] The prosecution story, as could be gathered from the material placed on record, is thus :

4] On 11th October 2002, there were communal riots in Solapur City. The said date fell during the period when Navratri festival was being celebrated. In Vishnu Nagar area also, residents were celebrating Navratri festival. For the said purpose, a stage was erected near permanent temple of the Goddess. On the said day at around 4 to 4.30 P.M. Various persons, including P.W. 6 - Sunil Yadav - the first informant, P.W.11 – Mahadev Jadhav, P.W. 12 – Jagannath Shivshetti, P.W. 13 – Ramkrushna Sura and P.W. 14 – Iresh Kaki had

gathered there and were sitting on the stage where the idol of Goddess was displayed. When these persons were sitting on the stage, 10-12 persons from Muslim community arrived near the platform and they started abusing the Goddess in filthy and dirty language. It is the prosecution case that, shouting slogans, all these persons climbed on the platform. They broke the idol of Goddess and idol of Lion, amplifier, tape-recorder, mike etc. All these persons took out weapons from their persons.

5] It is the further prosecution case that, while those persons were destroying the idol of Goddess, the deceased Chandrakant Mhetre came there on motorcycle from eastern side. Those 10-12 persons felt that, Police Officer was coming on motorcycle. Hence, they started running towards Nai Jindagi Chowk. Initially, those 10-12 persons ran towards southern side and thereafter started running towards eastern side. Deceased Chandrakant stationed his motorcycle near the stage or platform and started following them. P.W. 6 – Sunil Yadav, P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki alongwith other persons, started following the deceased Chandrakant Mhetre. While they were so following, four persons from Muslim community came

there from opposite direction i.e. from Noorani Chowk. The 10-12 persons to whom they were following and some persons coming from opposite direction came together and started advancing towards the deceased and the aforestated witnesses. One of the said persons, who was coming from opposite side, was accused No.1 – Mahiboob Shaikh. He gave directions to other persons saying *“Kato Todo Khalas Karo”*. According to P.W. 6 – Sunil Yadav - the first informant, accused No.3 – Imtiyaz Hundekari and Rahiman Chitapure (Juvenile) assaulted Chandrakant Mhetre by a sword. One Umar Shaikh thrust knife in the stomach of Chandrakant Mhetre and others had assaulted Chandrakant Mhetre by swords. Chandrakant Mhetre fell down on the ground. It is the prosecution case that, thereafter these 15-16 persons proceeded towards the platform. They pushed away motorcycle of Chandrakant Mhetre. They poured kerosene on it, set it on fire by a matchstick and thereafter they ran away. When those persons, after assaulting Chandrakant Mhetre, were advancing towards stage, at that time P.W.6 – Sunil followed them from his house. P.W. 6 – Sunil and other office bearers of the Mandal, lifted Chandrakant Mhetre and brought him near the stage. P.W. 6 immediately telephoned the cousin of Chandakant Mhetre viz.

Gurusidha Mhetre. He also called Trax jeep by making telephone. Thereafter, P.W. 6 and others lifted Chandrakant and kept him in the said jeep. Chandrakant had head injuries, hand injury and injury on stomach and there were plenty of injuries on his person. According to the prosecution, when they were lifting and keeping Chandrakant Mhetre in the jeep, one person by name Ambaji Gandhi, arrived there. The said Ambaji Gandhi told them that, he had received head injury. He further told them that, he was also assaulted by same persons who had assaulted Chandrakant Mhetre. According to P.W. 6 – Sunil, the said Ambaji Gandhi, who is also P.W.17, was taken in the said jeep. According to P.W.6, thereafter, the said jeep was taken towards civil hospital. In the jeep, P.W. 12 Mahadev Jadhav and P.W. 13 – Ramkrushna Sura had also accompanied the deceased and P.W. 17 – Ambaji Gandhi.

6] According to P.W. 6 – Sunil, after departure of jeep to civil hospital, he went to his home. At around 8.00 P.M., one person came to his residence and informed him that, Chandrakant Mhetre was no more. Immediately, after receipt of the information about death of Chandrakant Mhetre, P.W. 6 informed other persons residing near his

house and thereafter went to Vijapur Naka Police Station. According to him, he had narrated entire incident to police. Accordingly, police had scribed his complaint as per his narration. He was shown this complaint. The contents of the complaint were read over to him and thereafter he put his signature on it.

7] It can further be seen from the evidence of P.W. 12 – Jagannath as well as the evidence of P.W. 23 – PI Gajanan Huddedar, IO that, on the way, when deceased Chandrakant and P.W. 17 – Ambaji Gandhi were taken towards civil hospital in a jeep, one police jeep came from opposite direction. Hence, the jeep was halted. Bhimashankar Mhetre, cousin of the deceased, who was in the jeep, got down from the jeep and narrated the incident to PI Huddedar and requested that, one police constable be deputed alongwith them for their escort. Accordingly, PI Huddedar deputed police constable Sriman alongwith Bhimashankar and others for escorting them to civil hospital. The deceased Chandrakant was brought to hospital. He was examined by P.W. 4 – Dr. Shashikant Pakale who was, at the relevant time, attached to Casualty Department. He examined Chandrakant Mhetre and noticed that, his condition was very poor and he was in a drowsy

condition. Taking into consideration the nature of serious injuries, he was referred to Surgery Department. However, Chandrakant Mhetre succumbed to his injuries in a short period. An autopsy of the dead body of Chandrakant Mhetre was carried out by P.W. 16 – Dr. Pradeep Jaykumar.

8] From the material placed on record, it would reveal that, on the basis of oral complaint of P.W. 6 – Sunil Yadav, Crime No. 209 of 2002 came to be registered. From the evidence of P.W. 23 – PI Gajanan Huddedar, it would reveal that, he had initially assigned the case to P.W. 22 – PI Mahesh Joshi. PI Mahesh Joshi recorded statement of five witnesses on 11th October, 2002 itself, including that of P.W. 11 - Mahadev Jadhav and P.W. 14 – Iresh Kaki. On 12th October 2002, he visited civil hospital and drew inquest panchanama between 8.30 to 10.15 A.M. On the same day, he recorded supplementary statement of the complainant Sunil as well as other persons. On 13th October 2002, he visited the place of occurrence and drew spot panchanama. On 13th October 2002, he recorded statement of four persons, including that of P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura. On 15th October 2002, he recorded statement of Rajmukar Sriman. On

23rd October 2002, he recorded statement of injured Ambaji Gandhi (P.W.17). He also seized the clothes on the person of Ambaji Gandhi on 23rd October, 2002.

9] It is the prosecution case that, P.W. 23 – PI Huddedar, who was in-charge of the Police Station, was on leave between 15th October, 2002 till 29th October, 2002. On resuming his duty on 30th October, 2002, he again took over the investigation of the said crime. He carried further investigation, including seizure of blood-stained clothes of the witnesses. It is the further prosecution case that, on memorandum under Section 27 of accused No.5 – Mashak Pathan, on 10th November, 2002, the sword used in the crime came to be recovered from tin-sheets of the house of the said accused. It is further the prosecution case that, in the meantime, either wife or mother or brother of accused persons produced blood-stained clothes of accused persons before the Investigating Agency. On 13th November 2002, accused No.1 – Mahiboob Shaikh and subsequently on 21st November 2002, accused No.7 – Gulam Shaikh, were shown to be transferred from another C.R. to the present C.R. It is further the prosecution case that, subsequently, at the instance of other accused

persons, the weapons which were used in the crime, also came to be seized. After completion of investigation, charge-sheet came to be filed in the Court of Chief Judicial Magistrate, Solapur. Since the case was exclusively triable by the Sessions Judge, it came to be committed to the Sessions Court.

10] The learned Trial Judge initially framed charge below Exhibit-3. Subsequently, the same came to be modified below Exhibit-39. The charge was read over and explained to the accused who were originally eight in number. The accused pleaded not guilty and claimed to be tried. At the conclusion of trial, the learned Trial Judge passed an order of conviction, as aforesaid, against original accused Nos. 1 to 6. However, accused Nos. 1 to 6 were acquitted of the offences punishable under Section 188 of the Indian Penal Code and under Section 37(1) read with Section 135 of the Bombay Police Act. Insofar as accused Nos. 7 and 8 are concerned, they were acquitted of all the charges. Being aggrieved by the order of conviction and sentence, as aforesaid, these appeals have been filed by the Appellants. During pendency of Appeals, accused No.4 – Sadik Saipansab Shaikh has died and as such, appeal stood abated against

him.

11] We have heard Mr. Gupte, learned Senior Counsel appearing on behalf of accused No.1, Mr. Arjunwadkar, learned Counsel appearing on behalf of accused Nos. 2, 4, 5 and 6 and Mr. Satyavrat Joshi, learned Counsel appearing on behalf of accused No.3.

12] Mr. Gupte, learned Senior Counsel, submitted that insofar as accused No.1 is concerned, he has been totally falsely implicated in the present crime. It is submitted that, perusal of FIR lodged by P.W. 6 – Sunil, would reveal that there is not even a mention with regard to accused No.1 in the FIR. It is submitted that, as a matter of fact, at the relevant time, accused No.1 was already in police custody. The learned Senior Counsel submitted that, the accused was an editor of newspaper in Solapur. Accused No.1 had exposed many ministers and politicians and other higherups. He was a prominent leader of Muslim Organization. He submitted that, only in order to take a revenge, accused No.1 has been falsely implicated. All the learned Counsel appearing on behalf of the Appellants have vehemently attacked the evidence of P.W. 6 – Sunil Yadav, P.W. 11 - Mahadev

Jadhav and P.W. 14 – Iresh Kaki, who are eye witnesses. It is submitted that, their evidence is full of omissions, contradictions and improvements. It is submitted that, by no stretch of imagination, evidence of these witnesses can be said to be credible. It is submitted that, Investigating Agency, with the help of these witnesses as well as P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura, have created a story so as to implicate the people from Muslim community. The learned Counsel submitted that conviction on the basis of the evidence of such witnesses would not be sustainable in law. It is further submitted that, from the material placed on record, it would reveal that the investigation has not been conducted in a fair and impartial manner but it was one sided, so as to ensure that the persons from Muslim community are implicated in the said crime. The learned Counsel therefore submitted that, the prosecution has failed to prove the case beyond reasonable doubt and as such, appeals deserve to be allowed and the order of conviction and sentence deserve to be set aside.

13] Mr. Dedhia, learned APP, submitted that no interference is warranted in the present appeals. He submitted that, all these

witnesses are natural witnesses. He submitted that, their statements are recorded immediately on the date of incident. It is submitted that, there is no reason as to why these witnesses should falsely implicate the present Appellants. It is submitted that, merely because there are some minor variations in the evidence of witnesses, that cannot be a ground to discard their testimony. The learned APP further submitted that, on the contrary, if their evidence would have been similar, the same would have been attacked on the ground that their evidence is stereotype and as such, the witnesses are tutored. It is further submitted that, merely because there are certain lacunae in the investigation, that cannot be a ground to acquit the accused, when the evidence of eye witnesses clearly implicate them. It is therefore submitted that the present appeals are without merit and liable to be dismissed.

14] With the assistance of the learned APP and the learned Counsel appearing on behalf of the respective Appellants, we have scrutinized the entire evidence.

15] Though, it is not even the case of the defence that the death of

the deceased is not homicidal, it will be relevant to refer to the injuries sustained by the deceased. P.W. 16 – Dr Pradeep is a medical expert, who has conducted postmortem of the dead body of the deceased. From his evidence as well as from postmortem report, it could be noted that the deceased had sustained following external and internal injuries:

“External injuries:

- (1) Incised wound behind left ear parietal region about 3" x ½".
- (2) Incised wound on occipital region about 4" x ½".
- (3) Incised wound on right parietal region 4" x ½". Piece of bone was removed (skull bone).
- (4) Incised wound on vault of skull about 2" x ½" bone seen clinically.
- (5) Incised wound on right side of occipito parietal region 4" x ½".
- (6) Incised wound on right occipito-parieto region, injury" above injury No.5, 3" x ½", two in numbers.
- (7) Incised wounds (five in numbers) about 5" x ¼", on right upper arm, vertically and horizontally placed.
- (8) Stab wound on right side of abdomen, 3" from umbilicus, 2 " x 1" Cavity deep.
- (9) Stab wound below umbilicus, 3" below about 2" x 1/4" Cavity deep.

(10) Stab wound on left side of abdomen, 5" from umbilicus, 2" x 1" x cavity deep.

(11) Chopp wound on right wrist joint, 4" x 3" length, bones and joints are visible and the hand is connected with skin only.

(12) Sutured wound above and side of left wrist joint, about 4" in length.

(13) Left hand middle finger perimal phalangeal amputation seen.

(14) Incised wound on right palm, 3" x 1".

"Internal injuries:

(1) Injuries under the scalp-there was sub scalpular hematoma all over scalp, within # of skull bone, coincident with skull injuries No.3, 4 and 5 in column No. 17.

(2) Skull there was # of right parietal region about 3" in length, # vault of skull about 3" in length, # occipital bone about 5" in length.

(3) Brain-Congested and cedematus, Sub-dural hamotoma all over brain marked left, parietal and right frontal region."

16] Though the prosecution has examined as many as 23 witnesses, the perusal of record would reveal that, the evidence of following witnesses would be relevant viz. (1) P.W. 1 – Sunil Yadav, (2) P.W. 11 – Mahadev Jadhav (3) P.W. 12 - Jagannath Shivshetti,

(4) P.W. 13 - Ramkrushna Sura, (5) P.W. 14 – Iresh Kaki, (6) P.W. 22 – PI Mahesh Joshi, (7) P.W. 23 – PI Gajanan Huddedar, IO, (8) P.W. 20 – PSI Namdeo Shinde and (9) P.W. 19 – PHC Dilip Ingale. Out of these witnesses, P.W. 11 – Sunil Yadav was the first informant as well as eye witness of the entire incident. P.W. 11 – Mahadev and P.W. 14 – Iresh were also eye witnesses of entire incident. P.W. 12 – Jagannath and P.W. 13 – Ramkrushna have witnessed part of the incident. However, they have accompanied the deceased in the jeep when the deceased as well as P.W. 17 – Ambaji who was the another injured person, were being taken to the civil hospital. P.W. 20 - Namdeo Shinde was PSI, who had taken the complaint of the first informant P.W. 6 – Sunil through his writer Rathod. P.W. 19 – Dilip was Thane Amaldar to whom the complaint lodged by P.W. 6 – Sunil with PSI Shinde, was forwarded. P.W. 22 – PSI Joshi had conducted investigation between 11th October, 2002 and 24th October, 2002. P.W. 23 – PI Huddedar is an Investigating Officer, who has conducted the investigation from 30th October, 2002. It is further to be noted that on the date on which the incident occurred i.e. on 11th October, 2002, PI Huddedar was in-charge of Vijapur Naka Police Station.

17] We will first examine the evidence of three eye witnesses, including that of the complainant.

18] P.W. 6 – Sunil Yadav states that, he was serving as moulder in foundry of one Fayyaz Khan and his working hours were from 9.00 A.M. to 5.30 P.M. every day and though he had attended his duty from 9.00 A.M. on 11th October 2002, on account of communal riots, his proprietor sent him home at about 12.30 P.M. He states that, he returned to home at 1.00 P.M. He took lunch and remained in home till 4.00 P.M. At around 4.15 P.M., he came near the stage, which was erected for the purpose of celebration of Navaratri festival. The other persons residing in the locality, including P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki were sitting on the platform. When they were sitting, at around 4.30P.M., 10-12 persons from Muslim community arrived near the platform. They started abusing the Goddess in filthy and dirty language. They broke the idol of Goddess and Lion and other material on the stage. The 10-12 persons took out weapons from their persons. Amongst those persons, he has identified some persons to be accused Nos. 2, 3, 4, and 5. He sates that, Chandrakant Mhetre came on his motorcycle from the

eastern side and those 10-12 persons, thinking that Police Officer was coming on motorcycle, started running towards Nai Jindagi Chowk. The 10-12 persons first ran towards southern side and thereafter they started running towards eastern side. Chandrakant Mhetre stationed his motorcycle near the stage and started following them. He further states that, he along with P.W. 11 – Mahadev and P.W. 14 – Iresh and other persons, started following Chandrakant Mhetre. While they were following Chandrakant Mhetre, four persons from Muslim community came from opposite direction i.e. from Noorani Chowk. He further states that, 10-12 persons to whom they were following and four more persons coming from opposite direction, came together and started advancing towards them. He states that, he could identify those four persons, one amongst them was accused No.1 – M. D. Shaikh. He states that he does not know the name of other persons. Accused No.1 gave direction to other persons saying “*Kato Todo Khalas Karo*”. Accused No. 3 – Imtiyaz and accused Rahiman Chitapure (Juvenile) assaulted Chandrakant Mhetre by a sword. Umar Shaikh thrust knife in the stomach of Chandrakant Mhetre and others assaulted him by swords. Chandrakant Mhetre fell down on the ground. Thereafter, again, those 15-16 persons advanced towards the platform. They

poured kerosene on the motorcycle of Chandrakant Mhetre and set it on fire by a matchstick. Thereafter, those persons ran away. At that time, witness and others accompanying him were at the backside of the stage by concealing their persons. He further states that, when those persons, after assaulting Chandrakant Mhetre, were advancing towards the stage, at that time he followed them from his house. Thereafter, he alongwith other office bearers of Mandal, lifted Chandrakant Mhetre and kept him near the stage at a distance of 350 to 400 feet. He states that, his house is situated at a distance of 50 feet away from the spot where Chandrakant Mhetre was lying. He immediately phoned cousin brother of Chandrakant viz. Gurusiddh Mhetre. The witness himself called a Trax jeep by making telephone call for removal of Chandrakant Mhetre. Thereafter, they lifted him and kept him in the said jeep. He states that, Chandrakant sustained head injuries, hand injury and injury on stomach and there were plenty of injuries on the person of Chandrakant Mhetre. He states that, Chandrakant Mhetre was breathing. He states that, while they were lifting and keeping Chandrakant Mhetre in the jeep, at that time, one person by name Ambaji Gandhi arrived there and he told them that he also received head injury. He further told them that, he was also

assaulted by same persons who had assaulted Chandrakant Mhetre. He states that. Ambaji Gandhi also disclosed the names of the assailants. As such, Ambaji Gandhi was also taken in the said jeep. In the said jeep, alongwith injured persons, P.W. No.12 – Jagannath, P.W. 13 – Ramkrushna were also accompanying them.

19] P.W. 6 – Sunil Yadav further states that, after departure of the jeep to civil hospital, he went to his home. On the same day, at around 8.00 P.M., one person came to his residence and informed that, Chandrakant Mhetre was no more. After receipt of the information about death of Chandrakant Mhetre, he had informed the other persons residing nearby his house and thereafter went to Vijapur Naka Police Station. He has narrated entire incident to police. Accordingly, police had scribed his complaint as per his narration. The said complaint is at Exhibit-67. He further states that, at the time of occurrence of incident of assault on Chandrakant Mhetre, he (witness) had worn banian and full pant on his person and that, there were blood-stains on his banian. He further states that, hence the police had seized his banian. In his cross-examination, he states that he had only once signed at Police Station. He states that, on 11th October

2002, he had gone to Police Station at around 8.00 P.M. He states that, his signature was put by him at around 11.00 P.M. or 11.30 P.M. There are various omissions and contradictions in his evidence. However, he states that police were in hurry and therefore though he wanted to mention many things in the complaint, the same were not recorded by the police. He further states that in spite of his request to the police to write names of some of the accused, police did not listen to him. It will be relevant to refer to the following part of his cross-examination from paras 14 and 15 :

“14/-I have not stated before police Chandrakant Mhetre started running after those persons. I have stated before police that I myself, Iresh Kaki, Mahadu Jadhav, Kashinath Chavan, Ravi Kalyankar followed Chandrakant Mhetre. As police were in hurry and because of lot of interruption caused to police while scribing my complaint it is not so mentioned in my complaint I have stated before police that those 10 to 12 persons came via Noorani Chowk towards western side and then come towards eastern side. As police were in hurry and because in interruption caused to them it is not so mentioned in my complaint. I have stated before police amongst those 4 persons one of them was M.D. Shaikh and I do not know names of other persons. The police replied to me better first to record

name of assailants and then to record names of others. Those 4 persons assembled with 10 to 12 persons before assault took place on Chandrakant Mhetre. I have stated before police that accused No.1 was giving directions to other accused persons saying "

" As police were in hurry, shortage of police staff, interruption caused to police by phone calls etc while scribing my complaint the police might have forgotten to so mentioned in my complaint. I have stated before police that besides accused Rahman, Imtiyaz and Umar Shaikh other accused persons had assaulted Chandrakant Mhetre by sword. As police were in hurry and because of interruption caused to them while scribing my complaint as narrated herein above by me it is not so mentioned in my complaint. I have stated before police that Umar Shaikh had thrust knife in the stomach of Chandrakant Mhetre. For aforesaid reasons the police had not so stated in my complaint. I know Umar Shaikh, so also Rafique Shaikh. I have stated before police that after assault Chandrakant Mhetre had fall down on the ground. For aforesaid reason as narrated by me herein above the police had not so stated in my complaint. I have stated before police that the motor cycle of Chandrakant Mhetre was pushed on the ground and that kerosene was poured on it. For aforesaid reasons the police had not stated so in my complaint. I have stated before police that Myself along with my colleague had concealed our presence behind the back side portion of stage and watching the incident. For aforesaid reasons the police had not so stated in my complaint. I have stated before

police that from my house I came near stage. For similar reasons as stated aforesaid by me the police had not so stated in my complaint. I have not stated before Police that there was distance of 350 to 400 feet between the place where Chandrakant Mhetre was lying and the stage. I have not stated before police that the distance of 50 feet between my house and the place where Chandrakant Mhetre was lying.”

“15/-.....I have not stated in my complaint before police that at the time of incident I had worn banian and pant on my person. I do not remember whether I have stated before police that while lifting Chandrakant Mhetre in the jeep there were blood stains on my banian. I have not stated in my complaint before police that Rafique Shaikh had thrust knife in the stomach of Chandrakant Mhetre. My statement in my complaint that Rafique Shaikh had thrust knife in the stomach of Chandrakant Mhetre is not correct statement. I say it is incorrectly recorded by police. It is not happened that accused Rahaman and Imtiyaz Hundekari had thrust knife in the abdomen of Chandrakant Mhetre.”

He further admits in his cross-examination that, on the date of lodging of the complaint, he did not find it necessary to point out the blood-stains on his banian to the police. He further admits that he, on his own, did not inform the police that there were blood-stains on his

banian. It is the police who had called him at the Police Station alongwith his blood-stained banian. He has further admitted that, since Chandrakant Mhetre was to come at the place for performing pooja, he had gone there. He further admits in his cross-examination that, he left the Police Station at around 11.00 P.M. He further admits that, he does not know that Police Inspector Joshi, who was attached to Vijapur Naka Police Station, was present at the Police Station, when he had gone to Police Station on 11th October, 2002. He further admits that, he had not gone to civil hospital to see Chandrakant Mhetre, after he was admitted. He further admits that, he was not aware as to in which hospital Chandrakant Mhetre was taken by jeep. He further states that, he does not remember whether he made inquiry as to in which hospital Chandrakant Mhetre was taken for treatment. He further states that, he did not feel it necessary to go and see where he was taken to hospital. He states that, he did not feel it necessary to accompany Chandrakant Mhetre alongwith others while he was being removed to hospital by jeep. The reasoning given by this witness is that, since he was frightened, he did not go with them to the hospital. He further admits that, immediately after removal of Chandrakant Mhetre to hospital, he did not go to Police Station to

lodge complaint, though he felt necessary to lodge complaint immediately. He further states in his evidence that, after Chandrakant Mhetre fell down and assailants started running towards pandal, he and his colleagues started following those persons, though he admits that, he felt it necessary to remove Chandrakant Mhetre to hospital before following those assailants.

20] The next eye witness is P.W. 11 – Mahadev Jadhav. He states that, he was serving as driver of one Ratan Gangaram Shivsingwale. On 11th October 2002, he had gone to attend duty. However, he was told by his employer that, since there was bandh, he should not take out his vehicle from the house. He therefore returned to his home. He was in his house till 4.00 P.M. At around 4.15 P.M. to 4.30 P.M., he went to Vishnu Nagar since there was ceremony arranged of performing pooja of Goddess Shakti Devi. Pooja was to be performed at 5.30 P.M. at the hands of Chandrakant Mhetre. He states that, alongwith him, P.W. 6 – Sunil and P.W. 14 – Iresh were also sitting on the stage. He states that, there were some other persons in the surrounding area and amongst them were P.W. 12 - Jagannath and P.W. 13 – Ramkrushna Sura. He further states that, 10-12 persons

belonging to Muslim community started running towards stage by giving slogans "*Allah Takdir Bachha Bachha Kahata Hai Hamara Islam Sachha Hai*". They started abusing the Goddess in filthy and dirty language. Rest of the narration given by him is almost similar to that of P.W. 6 – Sunil. He also states about accused No.1 saying to other persons pointing out at Chandrakant Mhetre that. "*Saleko Maro Todo Khalas Karo*". He states about six persons assaulting Chandrakant Mhetre and Chandrakant Mhetre falling down on the ground and the remaining persons still assaulting him. He states that, P.W. 17 - Ambaji Gandhi was also there. After seeing the assault on deceased Chandrakant Mhetre, Ambaji Gandhi started running towards house. He was also accosted by accused persons i.e. M. D. Shaikh and others. Mashak Pathan assaulted Ambaji. After assaulting Ambaji, all persons started advancing towards the stage. This witness has also identified the accused in the Court. He states that, thereafter, aforesaid persons came to the stage of Goddess. He states that, they also followed them. They saw that motorcycle of Chandrakant Mhetre was lying near stage and set on fire. Thereafter, all of them ran towards Shobha Devi Nagar. He further states that he and his companions phoned to residence of Chandrakant Mhetre and called vehicle. The jeep of

Chandrakant Mhetre arrived. They lifted Chandrakant Mhetre and kept him in the jeep. Thereafter, Chandrakant Mhetre and Ambaji Gandhi were removed to civil hospital. He states that, while removing Chandrakant Mhetre in jeep, he was saying “Wachwa Wachwa”.

21] In his cross-examination, P.W. 11 admits that there was profuse bleeding from the body of Chandrakant Mhetre. However, there were no blood stains on his clothes, though there were blood-stains on his hands. Suggestions were given to this witness that, deceased Chandrakant Mhetre was head of Majrewadi Branch of Shiv-sena Party and that, prior to Chandrakant, his employer Shivsingwale was the head of Shiv-sena party of that area. In his cross-examination, though he admits that, there was Navrati festival at Mhatre Vasti, he states that, it was not celebrated in their area and he could not tell the distance between his house and the place at Mhetre Vasti where Navratri festival was being celebrated. It will be relevant to refer to the following part of the cross-examination of this witness in para 6 and 7 :

“6/-.....I did not fear after seeing taking of swords by those persons from their persons. Nobody rush at me to assault. So also those 10

to 12 persons did not rush at other persons who were present surrounding to Pandal. There were about 30 persons from Vishnu Nagar were present near the Pandal. The incident lasted till 15 to 20 minutes. During period of 15 to 20 minutes I myself on my own did not inform police. I did feel necessary to intimate police about the incident however I did not inform police. I did not apprehend danger to my life and therefore did not run away from that spot to save myself I did not apprehend danger to my life that those assailants would also assault me.

(Due to recess Cross examination deferred).

13-10-2003.

Sd/- x.x.x.

Ist Ad-hoc A.S.J. Solapur

Resumed on S.A. After recess.

Cross examination by Advocate

Shri R.N. Shaikh for all accused persons.

7/- . There was no apprehension in my mind that the assailants would also assault me. I cannot assign any reason why I had not run away from that spot.....”

22] P.W. 11 further states in his cross-examination that, after the incident, he went home. He remained at home till 10.30 P.M. or so. He states that, during night, he learnt that Chandrakant Mhetre was no more. He states that, there was a rumor in the locality of Mhetre Vasti about death of Chandrakant Mhetre. However, he did not

narrate about those persons from whom he learnt about death of Chandrakant Mhetre. About witnessing the incident by him, he volunteers that, he did narrate the incident to other persons who were residing in locality. He states that, he did not feel it necessary to go to civil hospital. He states that, even after learning about death of Chandrakant Mhetre, he did not go to civil hospital, nor did he go to residence of Chandrakant Mhetre. After his dispersing from the place of incident, he met Sunil Yadav only after receipt of summons from the Court. He states that, he had gone to police chowky at around 10.45 P.M. He states that, he went to police chowky to narrate the incident witnessed by him and he narrated the incident to police. He states that, it was noted by the police, though he does not remember whether he had signed the said statement. He states that, he remained in the police chowky for half an hour. Various omissions and contradictions have been brought on record in his cross-examination. He further states that, when they proceeded towards motorcycle of Chandrakant Mhetre, he was lying near Murtuz Fabrication and he was alive. He admits that, there was respect in his mind about Chandrakant Mhetre and he felt it necessary to rescue Chandrakant to provide him immediate medical aid. He further

admits that, it was necessary first to approach Chandrakant Mhetre where he was lying, than following those assailants. He admits that, the incident of assault on Chandrakant Mhetre was going on for 10/15 minutes. He further admits that, when Chandrakant was being assaulted, he did not make any attempt to phone or call any other persons. He further admits that, he did not advise Chandrakant Mhetre, not to chase those assailants since they were holding weapons with them. He further admits that, no one else who were present near the stage, advised Chandrakant Mhetre not to chase those assailants as they were holding weapons with them.

23] The another eye witness is P.W. 14 – Iresh Kaki. In his evidence, he also states that, he alongwith others, including P.W. 6 – Sunil and P.W. 11 – Mahadev were present on the stage. Similarly, others, including P.W. 12 - Jagannath and P.W. 13 – Ramkrushna were also present in pandal. Then he gave narration of the incident. He states that, 10-12 persons came from Shobhanagar and started advancing towards them. They were giving slogans which are reproduced hereinabove. He further states that while giving slogans, which are reproduced hereinabove, they climbed on the stage. They

started abusing the Goddess in filthy and dirty language. They lifted the idol of Goddess and threw away on the street. They took out the weapons from concealed portion of their persons and started throwing away the articles which were kept for performing pooja. Meanwhile, Chandrakant Mhetre started coming towards stage on his motorcycle. Those persons, who were present on the stage, after seeing Chandrakant Mhetre coming on motorcycle, felt as if police person is coming, because of his physical structure. Hence, they started first running to southern side and then towards western side. Chandrakant Mhetre, after reaching the stage, parked his motorcycle near the stage and started chasing those 10-12 persons. The said witness alongwith P.W. 6 – Sunil, P.W. 11 – Mahadev and others followed Chandrakant Mhetre by running. At Murtuza Fabrication, four other persons joined those 10-12 persons, one of them was M.D. Shaikh. He said to others “*Saleko Maro Todo Khalas Karo*” Thereafter, accused No.3 – Imtiyaz and Rehman Chitapure (Juvenile) assaulted Chandrakant Mhetre, as a result he fell down. After seeing Chandrakant Mhetre being assaulted, Ambaji Gandhi started proceeding towards his house. One of the assailants said “*Saleko Maro Isko Bhi Masti Ayee*”. Thereafter, accused No.5 and one Navshad Hundekari assaulted Ambaji Gandhi by the

sword. Thereafter, all of them ran towards the stage side. This witness and others also proceeded to stage through another lane. When they reached near the stage, they saw motorcycle of Chandrakant Mhetre was burning. He states that, he and others orally reported this to P.W. 11 – Jagannath and P.W. 13 – Ramkrushna. Thereafter, all of them went to the spot where Chandrakant Mhetre was lying. They lifted Chandrakant Mhetre and brought him towards the stage. At that time, his intestine had come out and he was pressing the same by hand. Meanwhile, Trax jeep of uncle of Chandrakant Mhetre came there. Bhimashankar Mhetre arrived there on his motorcycle. They kept Chandrakant Mhetre and Ambaji Gandhi in the jeep. He states that, at around 10.00 P.M., he learnt that Chandrakant Mhetre was no more. Thereafter, he went to Vijapur Naka Police Station. His statement was recorded by police. He further states that, after a lapse of one month, as per directions of police, he himself, P.W. 6 – Sunil and P.W. 13 – Ramkrushna handed over their respective shirts to police.

24] In his cross-examination P.W. 14 states that, he went to Police Station at around 11.15 P.M or so. He states that, when he

went to Police Station, he did not see P.W. 6 - Sunil Yadav. He further states that, he did not see any other persons, including P.W. 13 – Ramkrushna at the Police Station. He states that, when he had been to temple at 10.00 P.M., he learnt about death of Chandrakant Mhetre. Though he admits that, distance between his house and the house of Ambaji Gandhi is about 150-200', he did not inform the family members about Ambaji Gandhi. He admits that, P.W. 6 – Sunil Yadav was alongwith him all along till arrival of Trax jeep. He states that, Ambaji Gandhi was present at a distance of 10' away from the place where Chandrakant Mhetre was lying and he was frightened. He states that, he was also frightened and was standing by the side of road. He states that, after a lapse of one month, he himself had gone to Police Station and produced blood-stained white shirt before the police. Various omissions and contradictions have been brought on record in his cross-examination. He states that, after the assault on Chandrakant Mhetre, within 5-6 months they went to that spot. He states that, there was some difficulty to go over the spot where Chandrakant Mhetre was lying. The witness volunteered that, they felt fear in their mind. He states in his cross-examination that, it did not happen that in his presence Sunil Yadav phoned for Trax jeep.

25] P.W. 12 – Jagannath Shivshetti is also a driver by profession. He states that, on 11th October, 2002 at around 5.00 P.M or so, he was present near pandal, erected for performing celebration of Navratri festival at Vishnu Nagar. On that day, pooja of Goddess was to be performed at the hands of Chandrakant Mhetre. He states that, some persons were present on the stage and some persons were present near pandal and they were P.W. 6 – Sunil, P.W. 11 – Mahadev and P.W. 14 - Iresh and others. He states that, he alongwith some others were present by the side of pandal. He narrates about 10-12 persons from Muslim community, running towards pandal, giving slogans which are reproduced hereinabove. They climbed on the stage, lifted the idol of Goddess and thrown it from the stage and were throwing away other material. He further states that, those persons took out concealed weapons from their persons. Meanwhile, Chandrakant Mhetre came from opposite direction towards stage on the motorcycle. Then he gave similar narration as given by other witnesses about those persons feeling that he was a Police Officer and therefore they started running towards backside portion of the pandal. He states that, those persons started running towards Nai Zindagi Chowk. He states that, Chandrakant Mhetre, P.W. 6 – Sunil Yadav,

P.W. 11 – Mahadev and others, started chasing those persons by running. He remained on the spot where he was standing in a frightened position and also other persons were present near him where he was standing. After sometime, some Muslim persons came towards pandal from southern side i.e. from backside of pandal. He has identified those persons to be accused No.1 and other accused. They removed petrol pipe of motorcycle of Chandrakant Mhetre and set it on fire. M.D. Shaikh was saying to others “*Todo Fodo Kato Sale Ko Mat Chhodo*”. After setting the motorcycle on fire, those persons ran away. After lapse of some time, P.W. 6 – Sunil arrived there. He told him that, Chandrakant Mhetre has been assaulted near Murtuz Steel Fabrication. He therefore, alongwith P.W. 6 – Sunil, P.W. 11 – Mahadev, P.W. 13 - Ramkrushna and P.W. 14 – Iresh and others went towards the place where Chandrakant Mhetre was lying. Thereafter, they brought Chandrakant Mhetre near pandal. There were many injuries on the person of Chandrakant Mhetre and blood was oozing. Meanwhile, Trax jeep arrived. Thereafter, Bhimashankar arrived on his motorcycle. Chandrakant and Ambaji were kept in the jeep. He, alongwith others, including P.W. 13 – Ramkrushna took Chandrakant Mhetre And Ambaji Gandhi in a jeep to civil hospital. While they were

proceeding towards civil hospital, on their way police van was seen by him at Venu Gopal Nagar. After seeing the police vehicle, jeep was halted. Bhimashankar requested police that one police constable be deputed alongwith them to hospital. Accordingly, police constable accompanied them to civil hospital. Chandrakant Mhetre was moaning and was saying that Sadique Shaikh, Mashak Pathan, Imtiyaz Hundekari, Aziz Shaikh, Rahiman Chitapure, Umar Shaikh, Chandsab Banglorewala and others had assaulted him. He states that, Chandrakant told to them that, he was assaulted by swords and knife. He states that, thereafter, jeep was taken to civil hospital, Solapur. Both the injured persons were admitted in the hospital. After sometime, he learnt that Chandrakant Mhetre was no more. On the same day, at around 11.15 P.M., he went to Vijapur Naka Police Station. His statement was recorded by police.

26] In his cross-examination, P.W. 12 states that, he alongwith Nagnath Pagdyakaul and P.W. 13 – Ramkrushna went to Police Station. They went by walking. They left civil hospital at around 10.00 P.M. Though he admits that, he was knowing that curfew was imposed on account of riot situation, he did not take any assistance of

police in order to go to Police Station. He states that, they remained at civil hospital for about 3-4 hours and no police officer from Vijapur Naka Police Station came to civil hospital while they were so present at the civil hospital. He however admits that, police who had come with them in vehicle was present in civil hospital. He further admits that, there was police chowky at the distance of 10' in front of Casualty Department. He further admits that, they had not gone immediately to police chowky to lodge complaint. He further admits that, Bhimashankar Mhetre, Nagnath Pagdyakaul and P.W. 13 – Ramkrushna were also standing in front of police chowky at that time. He further admits that, at that time, so many police personnel and staff members were visiting the hospital because riot took place on that day. He admits that, in his presence Bhimashankar or P.W.11 – Ramkrushna or Nagnath Pagdyakaul did not lodge complaint with police chowky at civil hospital, Solapur. He further admits that, at the threshold of Casualty Department, there was public telephone installed which could be operated by coin. He also admits that, there was also telephone available in the police chowky. They however did not phone to Vijapur Naka Police Station from civil hospital, informing them about the incident. He further admits that, in their presence,

police constable did not inform the Police Station on phone. Though he admits that, Sunil Yadav was his friend, he did not have friendly relations with Chandrakant Mhetre. He states that, on 11th October 2002, he did not meet Sunil Yadav after departure from civil hospital. He states that, his statement was recorded first by police constable. He states that, police did not record his statement on 13th October, 2002. On the said date, he was out of station. He states that, it did not happen that kerosene was poured on motorcycle and it was set on fire in his presence. He further states that, he does not know as to who had broken the amplifier, speakers and other articles. He states that, he remained at the Police Station for about one hour. The learned APP had sought permission of the Trial Court to declare this witness as hostile and cross-examine him. After permission was granted, witness stated in his cross-examination that, he had not witnessed the incident and that is why he had deposed that he does not know the assailants of Chandrakant Mhetre.

27] The evidence of P.W. 13 – Ramkrushna Sura is also on the similar lines. He states that, on 11th October 2002, at around 5.00P.M., pooja of Goddess was to be performed at the hands of

Chandrakant Mhetre. Therefore, he alongwith Nagnath and P.W. 12 – Jagannath were waiting for Chandrakant Mhetre near stage. P.W. 6 – Sunil, P.W. 11 – Mahadev and others were sitting on the stage. At that time, 10-12 Muslim persons started advancing from Shobhadevi Nagar towards them. They were giving slogans, which are reproduced hereinabove. They also started abusing the Goddess in filthy and dirty language. Thereafter, they climbed on the stage, broke the idol of Goddess and Lion and also destroyed other material. In the meanwhile, Chandrakant Mhetre started coming on motorcycle from Shobhadevi Nagar side towards them. After seeing Chandrakant Mhetre, 10-12 persons started running away towards southern side. They were saying “police van came”. Rest of the evidence of this witness is similar to that of P.W. 12 – Jagannath. He states that, after motorcycle was set on fire, those persons went towards Shobhadevi Nagar. After departure of those 15-16 persons, Sunil Yadav rushed at pandal and informed about Chandrakant Mhetre being assaulted, as also informed that there was no one to assist him and requested them to assist him. Thereafter, he alongwith 4-5 persons went to the spot. They lifted Chandrakant and kept him in the pandal. Chandrakant Mhetre had sustained four injuries on his abdomen. Meanwhile,

driver of Bhimashankar Mhetre brought his jeep. Bhimashankar also arrived there by his motorcycle. They lifted Chandrakant and kept him in jeep and also Ambaji Gandhi who had sustained injury to his person. He states that, he himself, P.W. 12 – Jagannath, Bhimashankar and Nagnath were in the jeep. He states that, one police jeep had halted at Venugopal Nagar. After seeing police jeep, their jeep was stopped. Bhimashankar got down from the said jeep and approached the police. He took assistance of one police. The said police sat in their jeep. Thereafter, they started towards civil hospital. Part of his evidence is recorded in question answer form. It will be appropriate to reproduce the same.

Q: What had happened in the jeep?

Ans: Bhimashankar Mhetre questioned Chandrakant Mhetre replied to Bhimashankar Mhetre that MD Shaikh was saying that 'Maro, Todo, Khalas Karo'.

Q: Whether Chandrakant Mhetre told names of assailants?

Ans: He disclosed names of Ajij Shaikh, Shaikh, Sadik Shaikh, Mashak Pathan, Imtiyaz Hundekari, Rahiman Chitapure, Naushad Hundekari, Umar Shaikh, Chandsab Banglorewala Thereafter we went to Civil Hospital.”

He states that, thereafter, Chandrakant Mhetre was taken inside the hospital and within 10-12 minutes, they were informed that Chandrakant Mhetre was no more. He states that, thereafter, at around 10.00 or 11.00 P.M., he himself, Nagnath Pagdyakaul, Vitthal Dikshit went to Vijapur Naka Police Station. They reported the incident to the police. Their statements were recorded. He states that, there were blood-stains on his pant. He was asked to leave the pant at Police Station by police on the next day. He states that, in the Police Station, he had pointed out blood-stains on his pant to the police. He further states that there were blood-stains only on his pant and not on the clothes of other persons who accompanied him. It will be relevant to refer to following deposition of this witness from para 3:

“3/-.....The police had told me that there were blood stains on the banian of Sunil Yadav. I was also shown the banian of Sunil Yadav having blood stains by the police. Clothes of Ambaji Gandhi were also shown to me in the police station on the same day. One shirt and one trouser (Payjama) of Ambaji Gandhi having level were shown to me by the police. The banian was lying on table at police station when we went to police station.....”

He states that, on 11th October 2002, he himself and others on their own went to the Police Station.

28] In the cross-examination of P.W.13 – Ramkrushna Sura, various omissions and contradictions have been brought on record in his cross-examination. It will be relevant to refer to the following deposition of this witness in his cross-examination from para 5 :

“5/-.....Bhimashankar Mhetre was remained in Civil hospital with doctors for 2-3 hours. While Bhimashankar was so present in Civil Hospital, I was also present with him. Alike me Nagnath Pagdyakol, Jagannath Shivshetti and other 2-3 persons were also present in Civil hospital along with Bhimashankar Mhetre and myself. While we were so present alongwith Bhimashankar Mhetre, he did not tell anything to doctor regarding the incident. While I was so present along with Bhimashankar Mhetre, he did not tell anything to doctor about whatever facts narrated by Chandrakant Mhetre on the way to Civil Hospital. I do not remember whether police who had come with us to Civil hospital, met doctor, while admitting Chandrakant Mhetre in the hospital. The police who had accompanied with us in hospital was seen by me in the hospital. Said police remained with us in the civil hospital for about one hour.”

He further admits in his cross-examination that, he did not inform police about the incidence. Though he admits that, there is police chowky in the campus of civil hospital, he states that there was no police at police chowky. He states that, he does not know whether

there is police chowky in front of Casualty Department in civil hospital. This witness further states that, he had not gone to Police Station on 13th October, 2002 nor police had come to his place. It will be further relevant to refer to his following deposition from para 9 :

“9. On the very next day of incidence, I learnt that complaint has been lodged about the incidents. Said fact was learnt by me from Sunil Yadav, in the evening of next day incidence. It is true till evening of next day of incidence, I was not aware as to who had lodged complaint about the incidence. On 11-10-2002 when my statement was recorded, I was not knowing whether Sunil Yadav has lodged complaint before police. I have not stated before police that Sunil Yadav had lodged complaint about incidence. I am read over portion bracketed marked A. I cannot assign any reason, why it is to mentioned by police in my statement.....”

29] Having considered the evidence of aforesaid witnesses, who are either eye witnesses or witnesses who had accompanied the deceased, we will consider the evidence of Police Officers.

30] P.W.20 – PSI Namdeo Shinde has recorded the First Information Report. He states in his cross-examination that, on 11th October 2002, he was on duty at Vijapur Naka Police Station. On the

same day, riot took place in Solapur City between Muslim and Hindu communities. They were on high alert and busy entire day. On 11th October 2002, Sunil Yadav came to Vijapur Naka Police Station. His complaint was scribed by him through writer Rathod. He states that, the complainant, after recording his complaint, signed on it in his presence. He has also signed on the complaint. He states that, thereafter, the complaint was handed over to P.S.O. for registering C.R. Thereafter, he proceeded for Bandobast duty. In his cross-examination, he states that on 11th October 2002, he was patrolling in the jurisdiction of ITI police chowky. In the evening, he had gone to Vijapur Naka Police Station. He states that, on 11th October 2002, after interval of every two hours, he was going to Vijapur Naka Police Station. He states that, on 11th October, 2002 besides him, no other Police Officer was present at the Police Station. He states that, on 11th October, 2002, he left Vijapur Naka Police Station at 10.30 P.M. He states that, he did not feel it necessary to visit the Police Station after recording the complaint of Sunil Yadav. He states that, on the very same day, again at 12.00 midnight, he had visited Vijapur Naka Police Station alongwith PC Rathod. At that time, no Police Officer was present at Vijapur Naka Police Station. However, he was told by

P.S.O, that after his departure, some Police Officers had visited the Police Station and they had also left the Police Station. He was told by P.S.O. that P.I. Huddedar and P.I. Joshi had visited Vijapur Naka Police Station after his departure at 10.30 P.M. He further states that, he did not make inquiry of the C.R. recorded on the complaint of Sunil Yadav. He states that, he learnt when he went to Police Station at midnight that, P.I. Joshi and P.I. Huddedar were patrolling in the jurisdiction of Police Station between 10.30 P.M. to 00.15 A.M. It will be relevant to refer to the following part of his cross-examination :

“5. I did not raise any obstruction while the complainant was narrating the incident. It is not happen that some portion narrated by complainant was left out or omitted by me from his complaint. It is not happened because I was in hurry some portion narrated by complainant remain to be recorded in his complaint. It is not happen while recording complaint I had to leave the police station and again after arrival the work of recording complaint was commenced.”

“5. The complainant had not stated before me that accused No.1 M.D. Shaikh to other accused persons, “Maro, Kato, Todo Saloko”. The complainant had not stated before me name of accused Mashak Pathan. It is true the complainant had not stated before me that Umar Shaikh thrusted knife in abdomen of Chandrakant Mhetre. It is true the complainant had not stated before me that Chandrakant

Mhetre came by Bajaj Boxer motor cycle from eastern side. It is true complainant had not stated before me in which directions those said persons had gone. It is true complainant had not stated before me that he himself along with Iresh Kaki, Mahadu Jadhav, Kashinath Chavan, Ravi Kalyankar followed Chandrakant Mhetre. It is true the complainant had not stated before me that amongst those four persons accused M.D. Shaikh was with those persons. It is true complainant had not stated before me that other persons were assaulting Chandrakant Mhetre by swords.”

31] The next witness is P.W. 22 – P.I. Mahesh Joshi, who was the first Investigating Officer. He states that, during 1st October 2001 to 31st October 2002, he was attached to Vijapur Naka Police Station as Police Inspector (Crime). On 11th October 2002, C.R. No. 209/2002 was assigned to him for investigation. He states that, first he perused the complaint. On 11th October 2002, he recorded statement of five witnesses, including P.W. 11 – Mahadev Jadhav, P.W. 14 – Iresh Kaki. He states that, on 12th October 2002, he drew inquest panchanama of dead body between 8.30 P.M. to 10.15 P.M. Then he recorded supplementary statement of complainant Sunil Yadav on 12th October, 2002. He states that, he drew seizure panchanama of clothes of deceased between 10.30 A.M. to 11.00 A.M. at civil hospital, Solapur.

On 13th October 2002, he drew spot panchanama of the place of incident in the presence of two panchas. He states that, on 13th October 2002, he recorded statement of four witness, including P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura. He further states that, on 15th October 2002, he recorded statement of police constable Rajaram Sriman. On 23rd October 2002, he recorded statement of injured witness Ambaji Gandhi (P.W. 17).

32] In his cross-examination, P.W.22 states that, he had taken over charge of actual investigation on 11th October, 2002 at around 10.30 P.M. He further states that, he was not present at the Police Station while complaint of Sunil Yadav was being registered. He states that, he has not maintained diary of investigation of 11th October, 2002. He states that, on 11th October 2002, he returned to Police Station at around 10.30 P.M. He admits that, prior to registration of the present C.R., there were some other C.Rs in connection with the riot, including C.R Nos. 206 to 208 of 2002. He further admits that, accused in connection with C.R. of Sadar Bazar Police Station and Salgar Vasti Police Station were also kept in the lock-up of Vijapur Naka Police Station. He further admits that, during night between

11th October 2002 and 12th October 2002, accused M.D. Shaikh was in the lock-up of Vijapur Naka Police Station. A suggestion was given to this witness that on 11th October 2002, at around 3.30P.M., P.I. Kharbas of Sadar Bazar Police Station, detained accused No.1 M.D. Shaikh in the lock-up of Vijapur Naka Police Station. It will be relevant to refer to following part of his cross-examination from para 7 :

“7. On 23.10.2002 Ambaji Gandhi had come to police station. On 11.10.2002 itself I learnt that one witness by name Ambaji Gandhi is injured while making investigation. This fact was learnt by me at about 10.35 PM on 11.10.2002. At the same time I had also learnt that Ambaji Gandhi is lying in Civil Hospital for serious head injury and other injuries. It is true inspite of serious head injury to Ambaji Gandhi, I had not immediately visited to Civil Hospital to record his statement. I say for about 12 days Ambaji Gandhi was admitted in Civil Hospital. It is true during this period of 12 days I had not gone to see Ambaji Gandhi at civil hospital. The dying declaration was not recorded by anyone. On 12.10.2002 in the morning I had given oral direction to Detection Branch of my police station to inform Ambaji Gandhi attend the police station when he discharge from the hospital or to inform his physical health. I was in touch with detection branch of my police station about getting information of the health of Ambaji Gandhi. By passage of time there were improvements in the health of Ambaji Gandhi while he was admitted in Civil Hospital. It is

true that it was important factor getting information about said Ambaji Gandhi in connection of investigation of the case. I have not recorded statement of any of police staff attached to Detection Branch in connection of health of Ambaji Gandhi. There are no entries made in case diary about deputing detection branch branch to civil hospital for getting information about health of Ambaji Gandhi.....”

He admits in his evidence that, he had not seized the motorcycle which was in burnt condition under panchanama because he did not feel it necessary to seize the same under panchanama. He further states that, the said motorcycle was handed over to Bhimashankar Mhetre who was related to the deceased. He has further stated that, he had not seized the broken pieces of amplifier and tape-recorder under panchanama. He admits that, in serious cases, place of incident is required to be visited immediately. He further admits that, he had not visited the place of incident on 11th October, 2002 and 12th October, 2002. He further states that, broken pieces of the idol of Goddess and Lion were lying as it is in broken condition till drawing of panchanama on 13th October, 2002. He states that, he felt it necessary to handover broken pieces of Lion and Goddess to responsible persons for emersion. He states that, broken pieces of Goddess and Lion were

handed over to Bhimashankar Mhetre. He states that, he does not remember whether such a record came to be maintained or not. He further states in his deposition that, his writer Head Constable Solankar had written statement of witnesses. He states that, on 11th October 2002, the statement of five witnesses were recorded one by one. He further states that, he cannot tell as to how those witnesses came to Police Station, whether together or separately. He states that, witness Iresh Kaki came to Police Station at 10.35 P.M. Since in his cross-examination, the witness has admitted that on 11th October, 2002 he came to know about the names of accused in this case and since he had not personally arrested any of the accused persons, the learned defence counsel requested the court to record the question put to the witness as it is, as also the answer given by the witness. On permission being granted by the Court, the witness has stated in his cross-examination thus :

“Question - Whether there was any difficulty to arrest the accused persons whose names were transpired to you?

Answer - There was no any difficulty for arrest the accused persons.”

In para 14 of his evidence, this witness (P.W. 22) has stated thus :

“14. The name of accused M.D. Shaikh transpired to me on 11.10.2002 at about 10.35 P.M. I have not arrested the accused M.D. Shaikh till 23.10.2002.”

In his evidence, various omissions and contradictions in the evidence of P.W. 6 – Sunil, P.W. 12 – Jagannath, P.W. 13 – Ramkrushna and P.W. 14 – Iresh have been proved. It will also be relevant to refer to para 18 of his cross-examination, which reads thus :

“18. I have mentioned the dates in the caption of statements of witnesses recorded by me namely Iresh Kaki, Ganesh Boma and Mahadeo Jadhav. It is true I have put the date below my signature on statements of these three witnesses. There is no any special reason for putting date below my signature on statements of these witnesses. It is not true I have deliberately put date below my signature on statements of these three witnesses just for showing the statements of witnesses were recorded on 11.10.2002. It is true on statement of witnesses namely Nagnath Pagdyakaul, Jagannath Shivshetti, Ramkrushna Sura, Bhimashankar Mhetre, Rudrappa Havin, dates have been mentioned on the top of statements. It is true I have not put date below my signature on statements of these five witnesses.”

P.W.22 further states that, from 11th October 2002 to 13th October 2002, he did not feel it necessary to make inquiry with PC Sriman. A specific suggestion has been put to him that, with the help of

Corporator Bhimashankar Mhetre, he had called all Shiv-sena Party members and got their statements recorded.

33] P.W. 23 – Gajanan Huddedar was a Senior Police Inspector attached to Vijapur Naka Police Station between 1st August, 2002 till 30th May, 2003. He states that, on 11th October 2002, All India Muslim Vikas Parishad had declared “Solapur Bandh”. Those days were Navratri festival. In his jurisdiction, he had posted police staff on duty. He himself alongwith his staff members was patrolling within his jurisdiction. He states that, on the same day, at 10.30 A.M. at various places in the jurisdiction of Vijapur Naka Police Station, incidents of pelting of stones started. He states that, at around 5.45 P.M., when he alongwith his staff members were present at Venu Gopal Nagar, one jeep came there from Vishnu Nagar side and halted near them. From the said jeep, one person by name Bhimashankar got down and approached them. He reported to them that, at Vishnu Nagar, some Muslim persons assaulted Chandrakant Mhetre and that said Chandrakant Mhetre is being carried by them to hospital. He requested them that, one police constable be deputed alongwith them to escort them. Therefore, he went near the said jeep and saw injured

person Chandrakant Mhetre. There were many injuries on the person of Chandrakant Mhetre and he was moaning. There was one more person in the injured condition, sitting in the jeep. There were also 3-4 other persons. He therefore deputed PC Sriman alongwith those persons to civil hospital, Solapur by the said jeep. He thereafter immediately intimated PSI Shinde through Thane Amaldar on wireless to take necessary legal action about injured persons who were being taken to civil hospital. Thereafter, he along with his staff members proceeded to Vishnu Nagar. He visited pandal which was erected for the purpose of celebration of Navratri festival. He saw the broken pieces of the idol of Goddess and Lion, lying here and there. He deputed two police staff on duty on that spot and gave intimation to Thane Amaldar of Control Room for providing Reserve Police Force. On 11th October 2002, at around 10.30 P.M., he contacted Thane Amaldar on phone. He learnt from Thane Amaldar about registration of C.R. No.209/2002. He therefore gave directions to Thane Amaldar to assign C.R. No.209/2002 to P.I. Joshi for the purpose of investigation. He deposes about curfew order being imposed. He states that, from 15th October 2002 till 29th October 2002, he was on leave. In his absence, investigation was carried out by P.I. Joshi and

P.I. Bhosale. He further states that, on 30th October 2002, he again took over charge of investigation of C.R. No.209/2002. He states that on 3rd November 2002, he had recorded statement of four witnesses. He further states that, on 3rd November 2002, wife of accused Abdul Aji Fakruddin Shaikh, produced clothes of the said accused. He further states about steps taken by him for arresting the accused persons. He states that on 9th November 2002, he seized blood-stained clothes of P.W. 6 – Sunil Yadav, P.W. 13 – Ramkrushna Sura and P.W. 14 – Iresh Kaki in the presence of two panchas under panchanama. He further states that, on the said date, he also recorded statement of witness Gurusiddh Mhetre and Vijaykumar Mhetre. He states that, on 10th November 2002, on memorandum of accused No.5, the weapons which were concealed in the roof of tin sheets were recovered. He further deposes about various relatives of other accused, producing the clothes of the accused used in the crime. He further states that, on 13th November 2002, accused No.1 – M.D. Shaikh got transferred from another C.R. and accordingly he was shown as arrested in the present C.R. at around 5.20 P.M.

34] From the bird's eye view perspective, the picture that emerges is

as under:-

35] The incident can be divided into three parts.

[A] In the first part, when P.W. 6 – Sunil Yadav, P.W. 11 – Mahadev Jadhav, P.W. 14 – Iresh Kaki, were on the dais and P.W. 12 – Jagannath Shivshetti, P.W. 13 - Ramkrushna Sura alongwith others were in pandal, waiting for deceased Chandrakant Mhetre, a group of 10-12 Muslim persons arrived at pandal, shouting slogans. They were armed with deadly weapons. They came on the dais, broke the idol of Goddess and Lion and ransacked the material and the dais. When the group was doing this, deceased Chandrakant Mhetre was coming on motorcycle. Hearing the sound of motorcycle, the group thought that, policeman had arrived and thereafter started running from the said spot.

[B] In the second part, after arrival of deceased

Chandrakant Mhetre, he started chasing the said group of 10-12 persons and P.W. 6 – Sunil Jadhav, P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki also started following him. At that time, a group of four persons, including accused No.1 – M.D. Shaikh came from opposite side. They joined the group of earlier persons. Accused No.1 – M.D. Shaikh provoked the group to assault the deceased. Accused No.3 – Imtiyaz and Rehman, who was juvenile, assaulted the deceased and the deceased fell down. In this part, P.W. 17 – Ambaji Gandhi has been assaulted by some assailants. However, there is uncertainty as to at what point this was done.

[C] In the third part, the assailants came back to pandal, set the motorcycle on fire and thereafter left the spot. When assailants were returning to pandal, P.W. 6 – Sunil Yadav, P.W. 11 – Mahadev Jadhav, P.W. 14 – Iresh Kaki also followed them.

As per the prosecution case, after the incident was over P.W. 6, P.W. 11, P.W. 12 and P.W. 14 brought the deceased near the stage from the place where he was lying. A jeep was called. Bhimashankar Mhetre, cousin of the deceased also arrived there. Chandrakant Mhetre and Ambaji Gandhi (P.W.17) were taken to hospital in the jeep. When the jeep was going to hospital, on the way, they came across the jeep of police. P.W. 23 was requested by Bhimashankar to give police assistance. P.W. 23 gave one police constable i.e. P.C. Sriman to accompany them to the hospital. They arrived in the hospital and Chandrakant Mhetre and Ambaji Gandhi (P.W. 17) were admitted in the hospital. After admitting them in the hospital, within short time, Chandrakant Mhetre was declared to be dead.

36] Now let's examine, in brief, the version given by the following prosecution witnesses:-

P.W 6 – Sunil Yadav

37] As per his version, at around 4.15 P.M., he came near the stage for the purpose of pooja. He, alongwith P.W. 11 – Mahadev

Jadhav and P.W. 14 – Iresh Kaki were sitting on the stage. At around 4.30 P.M, 10-12 persons came there and started giving slogans. They broke the idol of Goddess and Lion, ransacked the other material and took out weapons. Meanwhile, Chandrakant Mhetre came there on motorcycle. Those 10-12 persons felt that, police had come and therefore they started running towards Nai Jindagi Chowk. Chandrakant Mhetre, after parking his motorcycle, started following them. This witness, alongwith P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki also started following them. When group of 10-12 persons was going, four persons came from opposite direction and they started advancing together against the persons led by Chandrakant Mhetre. Accused No.1 – M.D. Shaikh provoked the persons from his group. Accused No. 3 – Imtiyaz and Rehman (Juvenile) assaulted the deceased Chandrakant. He fell down on the ground. Thereafter, 15-16 persons advanced towards platform. Those persons pushed away motorcycle of Chandrakant Mhetre. They poured kerosene on the motorcycle and put it on fire by a matchstick and thereafter those persons ran away. Thereafter, he telephoned cousin brother of Chandrakant viz Gurusiddh and called Trax jeep by making telephone. In the meantime, Chandrakant Mhetre was

brought near the stage. While they were lifting and keeping Chandrakant Mhetre in jeep, one person by name Ambaji Gandhi (P.W. 17) arrived there. He told that, he was also assaulted by the same assailants. As such, he was also kept in the jeep. In the said jeep, alongwith other persons, P.W. 12 – Jagannath Shivshetti, P.W. 13 – Ramkrushna Sura were also there. There were also blood stains on his banian. Hence, police also seized the same. After the incident was over, P.W. 6 – Sunil Yadav went home. At around 8.00 P.M., he came to know that Chandrakant Mhetre had died. At around 8.00 P.M., he went to Police Station and lodged an oral report. He had put his signature on FIR between 11.00 P.M. to 11.30 P.M. According to him, though he had given many details while lodging FIR, police did not scribe them as they were in hurry and there was lot of interruption. Though he left the Police Station at around 11.00 P.M and 11.30 P.M., he was not in a position to tell whether P.I. Joshi was present in the Police Station when he had gone to the Police Station. Though, according to this witness, he ought to have intimated police immediately about occurrence of the incident, he had not done so.

P.W. 11- Mahadev Jadhav

38] The version given by this witness is almost identical with the version given by P.W. 6 – Sunil Yadav till the time Chandrakant Mhetre fell down. However, according to this witness, at the time of assault on Chandrakant Mhetre, P.W. 17 – Ambaji Gandhi was also present and after seeing that Chandrakant Mhetre was assaulted, he started running towards his house. He was also accosted by aforesaid persons i.e. accused No.1 – M.D. Shaikh and others. He was assaulted by accused No.5. - Mashak Pathan and accused No. 3 – Imtiyaz. According to him, after leaving Ambaji Gandhi on that spot, all the aforesaid persons advanced towards the stage. Thereafter, similar version has been given by him that, the group started going towards pandal, they set the motorcycle on fire and thereafter they ran away. After those persons ran away, jeep of Chandrakant Mhetre arrived. Chandrakant Mhetre and Ambaji Gandhi were kept in the jeep and they were removed to civil hospital. This witness states that, though he had lifted Chandrakant Mhetre and brought him near pandal, there were no blood-stains on his clothes, though there was blood on his hands. According to this witness, though he had seen those persons with swords, there was no fear in his mind. He further states that,

nobody rushed at him to assault, so also those 10-12 persons did not rush at other persons who were present surrounding pandal. According to him, though there were about 30 persons from Vishnu Nagar, no one was assaulted. According to him, though the incident lasted for 15 to 20 minutes, he did not inform the police. According to him, though he felt necessary to intimate the police about the incident, he did not inform the police. He states that, he did not apprehend danger to his life and therefore did not run away from the spot to save himself. This witness also went home, after Chandrakant Mhetre and Ambaji Gandhi were taken to hospital in jeep. He remained at home till 10.30 P.M. During night time, he learnt that Chandrakant Mhetre was no more. Even after learning about death of Chandrakant Mhetre, he did not go to civil hospital nor did he go to residence of Chandrakant Mhetre. According to him, he met P.W. 6 – Sunil Yadav only after he received summons from the Court. According to him, he had gone to police chowky at around 10.45 P.M. and narrated incident to the police. According to this witness, Sunil Yadav had put on pant and shirt on his person. According to this witness, when Chandrakant Mhetre was lying near Murtuz Fabrication, he was alive and that, though he felt it necessary to rescue Chandrakant Mhetre, he had

chosen to follow the assailants who were proceeding towards pandal. He further admits that, though the assailants were armed with deadly weapons, he did not advise Chandrakant Mhetre not to follow the assailants.

P.W.14 – Iresh Kaki

39] P.W. 14 – Iresh Kaki has also stated in his evidence that on 11th October 2002, pooja of Goddess was arranged at 5.30 P.M. The version given by this witness is almost identical with that of P.W. 11 – Mahadev Jadhav. He also states that, at around 10.00 P.M., he learnt that Chandrakant Mhetre was not more. He went to Vijapur Naka Police Station. His statement was recorded by police. He states that, after lapse of one month, as per directions of police, he himself, Sunil Yadav and Ramkrushna Sura handed over their shirts to police. He states that, when he went to Police Station, neither he saw P.W. 6 – Sunil Yadav nor P.W. 13 – Ramkrushna Sura.

P.W. 12 – Jagannath Shivshetti

40] The version given by this witness with regard to first part, is almost similar to that of P.W. 6 – Sunil Yadav. This witness also

deposed regarding Chandrakant Mhetre following the group of 10-12 persons alongwith P.W. 6 – Sunil Yadav, P.W. 11 – Mahadev Jadhav and others. However, according to him, he remained on the same spot where he was standing, as he was in a frightened position. Insofar as the third part is concerned, he states that, after sometime, Muslim persons came towards pandal from southern side. According to this witness, the persons who arrived at the place of incident, removed petrol pipe of motorcycle of Chandrakant Mhetre and set the motorcycle on fire. At that time, M.D. Shaikh was saying others “*Todo Fodo Kato Sale Ko Mat Chhodo*”. After setting the motorcycle on fire, those persons ran away. According to him, after lapse of some time, P.W. 6 – Sunil Yadav arrived there and told him that, Chandrakant Mhetre has been assaulted near Murtuz Steel Fabrication. Hence, he alongwith P.W. 6 - Sunil Yadav, P.W. 11 – Mahadev Jadhav, P.W. 13 – Ramkrushna Sura and P.W. 14 – Iresh Kaki and other proceeded towards the place where Chandrakant Mhetre was lying. Thereafter, they brought Chandrakant Mhetre near pandal. Immediately thereafter Bhimashankar Mhetre arrived on motorcycle. Chandrakant Mhetre and Ambaji Gandhi were kept in a jeep. This witness, alongwith others, took Chandrakant Mhetre and Ambaji Gandhi to civil hospital.

On the way, they saw police vehicle at Venu Gopal Nagar. Bhimashankar requested police that one police constable be deputed alongwith them to hospital. Accordingly, one police constable accompanied them to civil hospital. According to this witness, Chandrakant Mhetre was moaning and giving names of accused persons who had assaulted him. Thereafter, jeep was taken to civil hospital. After some time, he learnt that Chandrakant Mhetre was no more. On the same day, he went to Vijapur Naka Police Station at around 11.15 P.M. His statement was recorded by police. He was accompanied by P.W. 13 – Ramkrushna and others. He admits that, though they were in hospital for 3-4 hours and though there were police chowky at civil hospital, neither he nor any other persons including Bhimashankar Mhetre - cousin of the deceased, lodged any complaint with police chowky. He further admits that, though there was public telephone installed in the Casualty Department and though there was telephone available in police chowky, they did not phone Vijapur Naka Police Station, informing them about the incident. He categorically admits that, on 11th October, 2002 he did not meet Sunil Yadav, after departure from civil hospital. His statement was first recorded by police constable. He has also emphatically stated that, his

statement was not recorded by police on 13th October, 2002. He admits that, police also did not record his statement on 13th October, 2002 by visiting his house. He further states that, on 13th October, 2002 he was out of station. He further states that, kerosene was not poured on the motorcycle prior to it being set on fire.

P.W. 13 – Ramkrushna Sura

41] The version given by this witness is similar to that of P.W. 12 – Jagannath Shivshetti. This witness states about oral dying declaration given by deceased Chandrakant Mhetre to his cousin Bhimashankar Mhetre. According to him, immediately within 10-12 minutes, after Chandrakant Mhetre was brought to the hospital, they came to know that he was no more. They remained in hospital for 2-3 hours. Thereafter, at around 10.00 or 11.00 P.M, he alongwith others went to Vijapur Naka Police Station. He states that, his statement was recorded by police. He further states that, on the date of incident he had worn pant and shirt and while lifting Chandrakant Mhetre, there were blood stains on his pant. He states that, he was asked to leave his pant at the Police Station in the next day morning. He states that, it was produced before the police, which was seized under panchanama. He further states that, on the said date, he was told by

police that, there were blood stains on the banian of Sunil Yadav and that banian was lying on the table when he went to Police Station. He further states that, police had also seized clothes of Ambaji Gandhi in the Police Station on the same day. He further admits that, though they were in hospital for 2-3 hours, Bhimashankar did not inform anything to any one regarding the incident. He further admits that, Bhimashankar did not tell doctors about whatever facts narrated by Chandrakant Mhetre on the way to civil hospital. This witness has also given admissions similar to one given by P.W. 12 – Jagannath Shivshetti with regard to there being a police chowky in the hospital and this witness not going there and not lodging the police complaint. This witness categorically states that, on 13th October, 2002, neither he had gone to Police Station, nor police had come to his place and his statement was not recorded on 13th October, 2002.

P.W. 20 – Namdeo Ganpat Shinde

42] Perusal of evidence of P.W.20, would reveal that, at the relevant time i.e. on 11th October, 2002, he was on duty at Vijapur Naka Police Station. On the said date, riot took place in Solapur City between Muslim and Hindu communities. Police were on high alert

and busy entire day. On the said date, P.W. 6 – Sunil Yadav had come to Vijapur Naka Police Station. His complaint was scribed by him through the writer Rathod. The complaint was signed by P.W. 6 – Sunil Yadav as well as this witness. In his cross-examination, this witness states that, after interval of two hours, he used to go to Vijapur Naka Police Station on 11th October, 2002. He states that, he sat in the room of Thane Amaldar while recording complaint of Sunil Yadav. He further states that, on the said date, besides him, no other Police Officer was present at the Police Station. He further states that, on 11th October, 2002, he left Vijapur Naka Police Station at 10.30 P.M. On the same day again, at 12.00 midnight, he had visited Vijapur Naka Police Station along with PC Rathod. He further submits that, at that time, no Police Officer was present at Vijapur Naka Police Station. However, he was told by PSO that, after his departure, some Police Officers visited the Police Station and they had also left the Police Station. He states that, he was told by PSO that, P.I. Huddedar and P.I. Joshi had visited the Police Station after his departure at 10.30 P.M. He further states that, he learnt that P.I. Joshi and P.I. Huddedar were patrolling in the jurisdiction of Police Station between 10.30 P.M. to 00.15 A.M. in midnight. He has specifically denied that

since he was in hurry, some portion narrated by the complainant remained to be recorded in the complaint.

P.W. 22 – P.I. Mahesh Joshi

43] Perusal of evidence of this witness would reveal that, on 11th October 2002, C.R. No.209 of 2002 was assigned to him for investigation. He states that, first he perused the complaint. On 11th October, 2002, he had recorded the statement of five witnesses, including that of P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki. He had drawn inquest panchanama of dead body of the deceased on 12th October, 2002 between 8.30 A.M. to 10.15 A.M. On the same day, he had also drawn seizure panchanama of clothes of the deceased between 10.30 A.M. to 11.00 A.M. On 13th October, 2002, he had drawn spot panchanama. On the said date, he had also recorded statement of four witnesses, including P.W. 12 – Jagannath Shivshetti, P.W. 13 – Ramkrushna Sura and Bhimashankar, the cousin of the deceased, who had not been examined as witness. On 15th October 2002, he had also recorded the statement of police constable Rajkumar Sriman, who was deputed by P.W. 23 - P. I. Huddedar to accompany deceased Chandrakant and other injured person in the

jeep to civil hospital. On 23rd October, 2002, he had recorded statement of injured Ambaji Gandhi.

44] According to him, on 11th October, 2002, the investigation of crime No.209 of 2002 was assigned to him. On the said date, he recorded statements of five witnesses, including that of P.W. 11 - Mahadev Jadhav and P.W. 14 - Iresh Kaki. He drew inquest panchanama of dead body on 12th October, 2002 between 8.30 P.M to 10.15 P.M and also drew seizure panchanama of clothes of the deceased. On 13th October 2002, he drew spot panchanama. On the said date, he also recorded statements of four witnesses, including P.W. 12 - Jagannath Shivshetti and P.W. 13 - Ramkrushna Sura and Bhimashankar Mhetre, the cousin of the deceased. On 15th October, 2002, he recorded statement of police constable Rajaram Sriman and on 23rd October 2002, he recorded statement of injured witness Ambaji Gandhi (P.W.17).

P.W. 23 – P.I. Gajanan Huddedar

45] This witness was, at the relevant time, in-charge of Vijapur Naka Police Station as Senior Police Inspector. On 11th October 2002,

there was “Solapur Bandh”, declared by All India Muslim Vikas Parishad. His evidence would reveal that, on that day, there were instances of pelting of stones at various places in the area under his jurisdiction. He states that, on that day, at around 10.30 A.M., riot started in his area. Therefore, this witness and his staff members had visited those spots. At around 5.45 P.M., this witness P.W.23 and his staff members were preset at Venu Gopal Nagar. One jeep came from Vishnu Nagar side and halted near them. A person by name Bhimashankar Mhetre got down and reported to them that, in Vishnu Nagar, some Muslim persons had assaulted Chandrakant Mhetre and the said Chandrakant Mhetre was being carried by them to the hospital. He requested that, one police constable be deputed alongwith them to escort them. Therefore, he went near the said jeep, saw the injured person Chandrakant Mhetre alongwith 3-4 other persons. He deputed PC Sriman to go alongwith those persons to civil hospital. He also immediately intimated PSI Shinde through Thane Amaldar on wireless to take necessary legal action about the injured persons who had been taken to civil hospital. Thereafter, he alongwith his staff proceeded to Vishnu Nagar. He visited pandal, saw the broken pieces of idol of Goddess. He deputed two of his police

staff on duty at that spot and gave intimation to Thane Amaldar of control room for providing Reserve Police Force. On 11th October, 2002, at around 10.30 P.M., he had contacted Thane Amaldar on phone. He learnt about registration of C.R. No.209 of 2002. He therefore gave direction to Thane Amaldar to assign C.R. No.209 of 2002 to P.I. Joshi for the purpose of investigation. He was on leave from 15th October, 2002 till 29th October, 2002. He took over the investigation on 30th October, 2002.

46] As discussed hereinabove, various accused were arrested by P.W. 23 during investigation. Relatives of various accused produced before him clothes used by the accused while committing crime. On 9th November, 2002, he had seized clothes of P.W. 6 – Sunil Yadav, P.W. 14 – Iresh Kaki and P.W. 13 – Ramkrushna Sura. It could be seen from his evidence that, on 13th November, 2002, accused No.1 – M.D. Shaikh got transferred from another crime and was shown to be arrested in the present crime at 5.20 P.M. He admits in his cross-examination that, on 11th October 2002, he intimated Police Station about Chandrakant Mhetre at around 5.45 P.M. However, there is no entry made in station diary about this intimation given. He further

admits that, he had visited the spot at around 6.15 P.M.

P.W.19 – Dilip Ingale

47] This witness states that, he was Thane Amaldar at Vijapur Naka Police Station between 8.00 A.M on 11th October, 2002 till 8.00 A.M. On 12th October, 2002. He states that, PSI Shinde had recorded complaint of P.W. 6 – Sunil Yadav and the said complaint was forwarded to him alongiwth report for registering the crime. Accordingly C.R. No.209/2002 came to be registered by him. After registering the crime, the case was taken over by P.I. Joshi for the purpose of investigation. He states that, on the basis of FIR, the report which was to be sent to the Court was prepared. However, it was not tallied and read by him since he was in hurry, as there was riot. He admits in his cross-examination that, he does not know as to when FIR of C.R. No.209 of 2002 was written and when it was completed.

48] The principles of appreciation of evidence in a riot case have been enunciated by the Hon'ble Apex Court in the case of

*Masalti vs. State of Uttar Pradesh*¹ and in para 14 Their Lordships of the Apex Court observed thus :-

“(14) Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead

¹ AIR 1965 SC 202

to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

49] In the light of the aforesaid observations and upon in-depth analysis of the evidence of the witnesses, the following position would emerge :-

50] As per evidence of P.W. 6 – Sunil Yadav, Chandrakant Mhetre arrived and started following the persons who had ransacked idol etc and who was followed by P.W. 6 – Sunil Jadhav, P.W. 11 – Mahadev and P.W. 14 – Iresh Kaki. After they went ahead, another group of four persons joined them and assaulted Chandrakant Mhetre, who fell down on the spot. According to him, after third phase was over and when they were about to keep the body of deceased Chandrakant Mhetre in the Trax, at that time, P.W. 7 – Ambaji Gandhi came there in injured condition and informed them that, he was assaulted by the same persons. However, according to P.W.11 –

Mahadev Jadhav and P.W. 14 – Iresh Kaki, at the time of assault on Chandrakant Mhetre, Ambaji Gandhi was also present and after seeing that Chandrakant Mhetre was being assaulted, he ran towards his house and at that time he was assaulted by Accused No. 5 – Mashak Pathan and accused No. 3 – Imityaz. Thus, as per the version of P.W. 6 – Sunil Yadav – the first informant, the assault on Chandrakant Mhetre and Ambaji Gandhi has not taken place at the same time. According to P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki, immediately after Chandrakant Mhetre was assaulted, P.W. 17 – Ambaji Gandhi was also assaulted. As such, if evidence of these three witness is read together, it would reveal that P.W. 6 – Sunil Yadav has only witnessed the assault on deceased Chandrakant Mehtre and P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki has witnessed the assault on Chandrakant Mhetre as well as on Ambaji Gandhi, though according to all of them, they were together.

51] As per evidence of P.W. 6 – Sunil Jadhav, in the third phase when the assaulting party came on the spot, they poured kerosene on the motorcycle of the deceased Chandrakant Mhetre and set it on fire by a matchstick and thereafter they ran away. However,

according to P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura, they removed petrol pipe of motorcycle of Chandrakant Mhetre and set the motorcycle on fire. As a matter of fact, P.W. 12 - Jagannath Shivshetti categorically states in his cross-examination that kerosene was not poured on the motorcycle prior to it being set on fire.

52] As per the version of P.W. 6 – Sunil Yadav, P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki slogans “*Todo Fodo Kato Sale Ko Mat Chhodo*” were given by accused No. 1 – M.D. Shaikh in the second phase of the incident when the assaulters in the first phase, who were running were joined by four persons led by accused No.1 – M.D. Shaikh. It is the version of these witnesses that, by using the said words, accused No.1 – M.D. Shaikh provoked the assailants to assault the deceased. However, according to P.W. 12 - Jagannath Shivshetti, accused No. 1 – M.D. Shaikh was using these words “*Todo Fodo Kato Sale Ko Mat Chhodo*” after the second phase was over and the said accused were setting the motorcycle on fire is the third phase. According to P.W. 6 – Sunil Yadav, P.W. 11 - Mahadev Jadhav and P.W. 14 – Iresh Kaki, after Chandrakant Mhetre fell down and

assaulters were returning to pandal, they followed them and were on the spot and they had witnessed the incident regarding setting the motorcycle on fire. However, according to P.W. 12 – Jagannath Shivshetti, P.W. 6 – Sunil Yadav arrived there, after lapse of sometime and told them that, Chandrakant Mhetre had been assaulted.

53] According to P.W. 6 – Sunil Yadav, he had gone to Police Station at around 8.00 P.M. to lodge oral report and he has put his signature on the FIR between 11.00 P.M. to 11.30 P.M and as such, was in Police Station till that time. However, according to P.W. 11 – Mahadev Jadhav, when he went to Police Station at around 10.45 P.M., P.W. 6 – Sunil Yadav was not there. Even according to P.W.12 – Jagannath Shivshetti, he went to Police Station at around 11.15 P.M. and in the Police Station, he did not find P.W. 6 – Sunil Yadav or P.W.13 – Ramkrushna Sura. However, according to P.W. 13 – Ramkrushna Sura, he was very much there in the Police Station at around 10.00 or 11.00 P.M. It is to be noted that according to P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura, both of them were in the hospital at around 10.00 P.M. to 11.00 P.M. If that be so, then the assertion of P.W. 12 – Jagannath that, he did not even see

P.W. 13 – Ramkrushna Sura in the Police Station, again creates a great doubt with regard to veracity of the prosecution case. Rather, the present case is shrouded with mysterious circumstances, which prosecution has not been in a position to explain.

54] Insofar as, various omissions in the evidence of P.W. 6 – Sunil Jadhav are concerned, he has stated that, though he had given all details to the police, while recording his complaint police did not enter details since they were in hurry because of the riot situation. However, according to P.W. 20 – Namdeo Shinde, the complaint of P.W. 6 -Sunil Yadav was recorded, as was narrated by P.W. 6 – Sunil Yadav and he had specifically denied that since he was in hurry, some portion narrated by the complainant remained to be recorded in the complaint.

55] According to P.W. 22 - P.I. Mahesh Joshi, he had recorded the statement of P.W. 12 - Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura on 13th October, 2002 whereas P.W. 12 – Jagannath Shivshetti and P.W.13 – Ramkrushna Sura have stated that their statements were recorded on 11th October, 2002. Both these

witnesses have categorically denied that their statements were recorded on 13th October, 2002. They have stated that, neither they had been to the Police Station on the said day nor police had come to them for recording their statement. On the contrary, P.W. 12 – Jagannath Shivshetti emphatically states that on 13th October 2002, he was out of station.

56] Though according to P.W. 6 – Sunil Yadav, P.W. 14 – Iresh Kaki and, even according to P.W. 23 - P.I. Gajanan Huddedar, I.O., the clothes of the witnesses were seized after a period of one month from the date of registration of FIR, according to P.W. 13 – Ramkrushna Sura, he was told by police that, there were blood stains on the banian of Sunil Yadav. He further goes on to say that, banian of Sunil Yadav was lying on the table when he went to Police Station. Not only that, he further states that, police had also seized clothes of Ambaji Gandhi in the police station on the same day. Whereas, from the evidence of P.W. 22 – P.I. Mahesh Joshi, statement of Ambaji Gandhi was recorded on 23rd October 2002 and clothes were seized on the same day.

57] According to P.W. 20 – Namdeo Shinde, he was in Police

Station till 10.30 P.M. At 12.00 midnight, he had visited the Police Station alongwith PC Rathod and, at that time, no Police Officer was present at Vijapur Naka Police Station. However, he was told by PSO that P.I. Huddedar and P.I. Joshi had visited Police Station after his departure at 10.30 P.M. According to him, he learnt that, both of them were patrolling in the jurisdiction of Police Station between 10.30 P.M. to 00.15 A.M. However, according to P.W. 22, - P.I. Mahesh Joshi, he has recorded statement of five witnesses on 11th October, 2002. No doubt, that P.W. 11 – Mahadev Jadhav and P.W. 14 – Iresh Kaki have also stated that, their statement came to be recorded on 11th October, 2002 at around 11.00 P.M. If P.W. 20 – Namdeo Shinde was not in Police Station when the said witnesses went to Police Station then the question would be where and how statements of these witnesses came to be recorded.

58] It could thus be seen that there are N-number of inconsistencies and contradictions in the prosecution case. If the evidence of one witness on one aspect is to be believed then evidence of other witness on the same aspect will have to be disbelieved. The very presence of witnesses in the Police Station between 10.00 P.M. to 12.00 midnight

itself is doubtful on many aspects.

59] It is further to be noted that, very conduct of the witnesses itself creates a great doubt as to whether they were really present on the spot or not. P.W. 6 – Sunil Yadav, P.W. 11 – Mahadev Jadhav and P.W. 13 – Ramkrushna Sura, all accompanied the deceased Chandrakant but none of them made any attempt to save him. Not only that, though according to them, when after assaulting him, he was alive and assaulting party started running towards pandal, they chose to follow the assaulting party rather than making an attempt to immediately save Chandrakant Mhetre. P.W. 11 – Mahadev Jadhav has gone to the extent of saying that, though he had seen those persons with swords, there was no fear in his mind. He further goes on to state that nobody rushed at him to assault, so also those persons did not rush at other persons who were present alongwith him. If the assaulting party of 15-20 persons was armed with deadly weapons and according to the prosecution, the only motive was communal riot then it is surprising that, they chose to assault only one person and not others who were accompanying him and in the near vicinity. It is further to be noted that, the prosecution has not brought anything on

record that common intention of the assaulting party was only to attack the deceased Chandrakant Mhetre for any special reason and not any other person belonging to Hindu community. P.W. 11 – Mahadev Jadhav has stated that, he did not apprehend danger to his life and he did not run away from the spot to save himself. The conduct of witnesses also needs to be taken into consideration. No doubt, it is a settled principle of law that, how a person would respond to a situation may differ from person to person. However, in the present case, there are five witnesses whose conduct, in our considered opinion, is consistently unnatural. According to version of P.W. 6 – Sunil Yadav, P.W. 11 - Mahadev Jadhav, P.W. 14 – Iresh Kaki, P.W. 12 - Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura, who are members of the Mandal who organized Navratri festival, it appears that deceased Chandrakant was some prominent member of the said Mandal or respectable figure, who was to come to perform pooja. However, after the deceased Chandrakant was kept in vehicle at around 5.00 P.M and after the vehicle went to hospital, neither P.W. 6 – Sunil Yadav nor P.W. 11 – Mahadev Jadhav nor P.W. 14 – Iresh Kaki found it necessary either to go to hospital or make inquiries about condition of deceased Chandrakant Mhetre. Not only that,

from 5 O'clock till these witnesses came to know about death of the deceased, none of them found it necessary to inform police about such brutal attack. P.W. 6 – Sunil Yadav finds it appropriate to go to Police Station only at 8.00 P.M. However, FIR is registered at 10.30 P.M. The other two witnesses viz. P.W. 11 - Mahadev Jadhav and P.W. 13 Ramkrushna Sura also find it appropriate to go to Police Station between 10.00 P.M. and 11.00 P.M.

60] Though P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura were in the hospital and they came to know about deceased being dead within 10-12 minutes of he being admitted still they did not find it necessary to do anything about it till 11.00 P.M. Though there was police chowky available in the hospital, they did not find it necessary to inform about the incident to the person in the police chowky. Not only that, they admit that on account of riot situation, the police personnel were frequently visiting the hospital. However, neither both of them nor Bhimashankar Mhetre who was also present at the hospital found it necessary to inform the police. Not only this, though there was public telephone available in the hospital so also the telephone was available in the police chowky, none

of them found it necessary to inform the police about the incident.

61] P.W. 23 – P.I. Gajanan Huddedar comes to know about the incident at 5.45 P.M. He gives police escort in the nature of police constable Sriman to accompany them to the hospital. According to him, he immediately intimated PSI Shinde through Thane Amaldar to take necessary legal action. However, there is no entry in the station diary in that regard. He, thereafter, goes on the spot, visits pandal. However, there is no entry even with regard to that. He states that, at around 10.30 P.M., when he had contacted Thane Amaldar, he came to know about registration of C.R. No. 209 of 2002. He therefore gave directions to Thane Amaldar to assign C.R. 209 of 2002 to PI Joshi. Even with regard to that, there is no entry in the station diary. If he has intimated to the Police Station about the incident at around 5.45 P.M. then a million dollar question is, what is that intimation which was given by him to the Police Station.

62] As discussed hereinabove, there are various discrepancies in the evidence of P.W. 22 – P.I. Mahesh Joshi with regard to recording of statements of the witnesses. No doubt that, merely because there are

lacunae in the prosecution case, that itself cannot be a ground to totally turn down the prosecution case, if it otherwise appears to be truthful. However, in the present case from the very conduct of the investigation itself, there is a serious doubt with regard to fairness in the investigation process. Though in the First Information Report, there is no mention with regard to the role attributed to accused No.1., he is implicated in the supplementary statement of P.W. 6 – Sunil Yadav on 12th October, 2002. It is further to be noted that, it is admitted by IO himself that accused No.1 was also in the lock-up on 11th October, 2002 itself with regard to crime registered in some other C.R. A reference in this respect can be made to entry in the Station Diary at Exhibit-130. However, he is shown to be arrested in the present crime only on 13th November, 2002. If his name was disclosed by other eye witnesses in the night, he should have been immediately arrested. His presence in the lock up is admitted by the I.O. Then the only inference can be drawn is that the statements of eye witnesses were recorded on 11th October, 2002 and they were subsequently manipulated / fabricated.

63] In the light of aforesaid, there appears to be a great

substance in the submissions of learned Senior Counsel appearing on behalf of accused No.1 that accused No.1 has been falsely implicated since he has published many public articles, bringing out various malpractices of the Police Officers. Perusal of evidence of P.W. 6 and specifically his cross-examination, would reveal that he has admitted that accused No.1 was a prominent figure and he could notice him even in a mob of 1000 persons. According to P.I. Joshi, he recorded statement of eye witnesses on 11th October, 2002 itself. It is an admitted position admitted by this IO himself that M.B. Shaikh was in police lock up on the said date, as per Exhibit-130. If that be so, there was no reason as to why M.B. Shaikh was not arrested on 11th October, 2002 in the present crime. As such, there is a great doubt as to whether statements were, in fact, recorded immediately or not or as to whether a record has been subsequently manipulated so as to implicate the accused persons. If that be so, then the omission to name him in the FIR, creates a great doubt as to whether he was really present or not. Apart from that, as already discussed hereinabove, even as per admission given by the IO, he was very much in the Police Station on 11th October, 2002.

64] Insofar as oral dying declarations given to P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura are concerned, we do not find that conviction could be based on such oral dying declarations.

65] The perusal of medical evidence of P.W. 4 – Dr. Shashikant Pakale, would reveal that when deceased was brought to the hospital, his condition was poor. He was in shock. His pulse was 50 per minute, low volume. His B.P. was 50 MM Hg that is systolic. Perusal of para 9 of his evidence would reveal that, in view of the injuries sustained by the deceased, the patient can become unconscious immediately. Apart from that, the evidence of two witnesses viz P.W. 12 – Jagannath Shivshetti and P.W. 13 – Ramkrushna Sura would reveal that, oral dying declarations were not made to them but to cousin of the deceased viz. Bhimashankar Mhetre. The statement of Bhimashankar Mhetre has been recorded. However, for the best reasons known to the prosecution, he has not been examined. Not only that, statement of police constable Sriman has also been recorded. However, for the reasons best known to the prosecution, he also has not been examined.

66] The nature of investigation carried out by the Investigating Agency would be clear from the manner in which the statement of the injured witness P.W. 17 – Ambaji Gandhi has been recorded. Though he was hospitalized on 11th October 2002, and though he was an important injured eye witness, Investigating Officer did not find it necessary to record his statement till 23rd October, 2002 when he came to Police Station after his discharge. It is a different matter that P.W. 17 – Ambaji Gandhi has not supported the prosecution case and was required to be declared hostile.

67] In view of these various discrepancies in the prosecution case, we are of the view that, evidence put-forth by the prosecution is not of a nature which would inspire confidence. Defence taken by the appellants that, the accused persons have been falsely implicated by the IO with the assistance of Bhimashankar Mhetre by getting the statements of witnesses belonging to a particular political party, cannot be said to be impossible. The non-examination of prime witness Bhimashankar Mhetre, acts as corroboration to their defence.

A great doubt with regard to the truthfulness of the prosecution case exists and as such, we are of the considered view that the

Appellants/Accused are entitled to the benefit of doubt and will have to be acquitted.

68] In the result we pass the following order :-

O R D E R

(i) Appeals are allowed.

(ii) The Judgment and Order of conviction and sentence imposed by the learned Trial Judge is quashed and set aside.

(iii) Appellants are acquitted of the charges charged with.

(iv) Appellants/original Accused Nos.1, 2, 5 and 6 are on bail. Their bail bonds stand cancelled.

(v) In view of disposal of appeals, all Criminal Applications taken out in Criminal Appeal No.908 of 2004 do not survive and they are disposed of.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)