

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 706 of 2007****With****R/CRIMINAL APPEAL NO. 724 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE GITA GOPI**

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Approved for Reporting	Yes	No
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PATEL KANUBHAI TRIBHUVANDAS**Versus****THE STATE OF GUJARAT****Appearance in Criminal Appeal No.706 of 2007:**

MR NANDISH THACKER WITH MS. NAMRATA SONAM for THAKKAR AND PAHWA ADVOCATES(1357) for the Appellant(s) No.1

MR ROHANKUMAR RAVAL APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal No.724 of 2007:

MR B.M. MANGUKIYA for the Appellant(s) No. 1

MS BELA A.PRAJAPATI for the Appellant(s) No. 1

MR ROHANKUMAR RAVAL APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 29/08/2025****ORAL JUDGMENT**

1. By an order dated 28.07.2025, Criminal Appeal No.740 of 2007 came to be disposed of as abated on demise of the appellant-Patel Bharatkumar

Ambalal.

2. The present both appeals are filed by the appellants under Section Section 374 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.') challenging the judgment and order dated 03.04.2007 passed by the learned Sessions Judge (Main Court) Gandhinagar in Sessions Case No.86 of 2006, whereby the learned Sessions Judge convicted the present appellants-accused for the offence punishable under Section 435 of the Indian Penal Code (for short 'IPC') and sentenced them three years rigorous imprisonment with fine of ₹5,000/- each and in default stipulation further rigorous imprisonment of one month.

2.1 The Court of first instance i.e. Sessions Court tried thirteen accused in Sessions Case No.86 of 2006 for the offence under Sections 147, 148, 149, 332, 435, 337, 427 of IPC, Sections 4 and 7 of the Prevention of Damage to Public

Property Act, 1984 (for short 'PDPP Act') and Section 135 of the Bombay Police Act (for short 'B.P. Act'). In conclusion of the trial, the learned Sessions Judge acquitted ten accused i.e. accused Nos.4 to 13 from all the charges. While accused Nos.1 to 3 been convicted for the charges under Section 435 of IPC.

3. The facts of the case, as could be gathered from the impugned judgment, can be succinctly said that the accused No.10 - Ganpatbhai Bhalabhai Patel, who happens to be husband of Smt. Vidhyaben, Sarpanch of Village Khoraj, prior to this incident on 18-03-2006, was kidnapped by Gomarbhai and Bharatbhai of Rabari community. A complaint was filed by accused - Ganpatbhai A-10 at the Police Station. It was alleged that on account of that incident, persons belonging to Patel Community had gathered near the temple situated near Gram Panchayat to attack Rabari community persons.

3.1 On 07.04.2006, Rabari Karamsinhbhai Devkaranbhai at 21:20 hours asking for police force had informed police telephonically that a crowd of 300 to 400 people of Patel community had gathered in front of Khoraj Panchayat office near Mahadev temple. Complainant P.S.I. Jayesh Dashrathlal Brahmhatt was on his duty at Adalaj Police Station and, at that time pertaining to the complaint, he and Deputy Superintendent of Police, Mr.Joshi and Head Constables Mr. Jagatsinh, Vikaramsinh, Karansinh, Natvarsinh, and Police Constable Mohanbhai Taljabhai, Maheshbhai Mavjibhai etc. reached Village Khoraj. They had with them Government bike, and government vehicle.

It is the case of the police that at about 22:00 hours, under the leadership of accused No.10 – Ganpatbhai Bhalabhai persons belonging to Patel community well equipped with weapons such as iron pipes, sticks and stones had come

shouting abusive words against Rabari community were trying to go towards Rabarivas.

3.2 Hence, the complainant and Deputy Superintendent and other police staffs had tried to stop them, at that time accused persons belonging to Patel community started pelting stones on them, on account of which the complainant sustained injuries on left leg, A.H.C., Vikaramsinh sustained injuries on his face at jaw, Deputy Superintendent Mr.Joshi got injured on his chest and other police staffs too sustained injuries.

3.3 It is stated by the complainant that at that time accused - Rameshbhai Kacharabhai Patel, accused - Bharatbhai Ambalal Patel and accused - Kanubhai Tribhuvandas Patel set the Government motorcycle bearing Registration No.GJ 18: G:7081 P-42 on fire, hence, all the three persons (A-1, A-2, A-3) were caught by the police persons. It is stated that the mob of Patel community damaged

the Government Jeep by breaking its front and rear glasses. It is the police case that as the mob was uncontrollable tear gas shell were released. Prosecution case was that, as accused A-10 was kidnapped and taken away by the persons belonging to Rabari Caste thus, keeping the grudge of that incident, on 07.04.2006 people of Patel community, by constituting illegal assembly gathered near the temple at Gram panchayat of village Khoraj, with the intention to attack the people of Rabari community.

3.4 It is the police case that the persons belonging to Patel Caste have attacked them well equipped with the weapons. By stone pelting have injured them and caused damaged to the Government vehicles.

3.5 The complaint was given by complainant Mr.J.D. Brahmbhatt, P.S.I and P.S.O. (A.S.I) Mr. Motibhai Parmar registered and handed over the Investigation to P.S.I - Mukeshbhai Amrabhai

Patel (Exh.44).

3.6 Investigating Officer drew Panchnama vide Exh.26 of the place of offence. Statements of the witnesses were recorded. I.O took the spot visit with the officer of F.S.L. whose report was produced at Exh.45. I.O had arrested the accused, and carried out panchnama Exh.28 pertaining to recovery of weapons. The weapons were sent to the Forensic Science Laboratory for further investigation, I.O. had gained analysis report from the F.S.L. Finding enough evidences against the accused persons, charge-sheet before the Court of the learned Judicial Magistrate, Gandhinagar for the alleged offence came to be filed.

4. Learned advocate Mr. B.M. Mangukiya for the appellant submitted that the judgment and order of conviction is illegal, unjust, improper and therefore, requires to be set aside. Mr. Mangukiya stated that there is no evidence on

record to establish the nexus between the incident in question and the present appellants.

4.1 Learned advocate Mr. Mangukiya stated that the learned Judge has erred in not properly appreciating the fact that P.W.1 - Jayesh Dashrathlal Brahmbhatt, the complainant, serving as Police Sub-inspector of Adalaj Police Station has stated in his evidence that the FIR was written by his Writer-constable. However, he has not stated the time of reducing the complaint into writing. This witness does not disclose the name of the writer-constable in his deposition and he has clearly stated that he does not remember the name of his writer. The prosecution, for reasons best known to it has chosen not to examine the writer of the FIR. Advocate Mr. Mangukiya addressed to pertinently note that though according to the prosecution case, the offence was committed by a mob of about 400 to 500 persons; the FIR was registered against 13

persons only. The learned Sessions Judge was pleased to acquit original accused Nos.4 to 13 from the charges leveled against them. Advocate Mr. Mangukiya stated that the charge against the appellant is on the same footing, hence, there was no justification to convict the present appellants by placing reliance on the same set of evidence that has acquitted the other accused.

4.2 Mr. Mangukiya stated that it is pertinent to note that the complainant was P.S.I. of Adalaj Police Station. This witness has admitted in his evidence that he did not know any accused persons when they were arrested and he asked their names when they were brought to the Police Station. He has also admitted that he could not pin-point the time when the accused persons were brought to the Police Station. Surprisingly, this witness has stated that the FIR was given by him on the spot i.e. at the scene of offence. However, strangely in the FIR, names of 13 persons were mentioned

and there is no evidence, as to how and at whose instance the names of the accused persons were introduced in the FIR including that of the present appellants. The witness has also admitted that there was nothing to show that the FIR was given at the scene of offence.

4.3 Learned advocate Mr. Mangukiya further submitted that the learned Sessions Judge has overlooked the fact that the person who is the complainant himself has investigated the offence and submitted the charge-sheet. Looking to the facts and circumstances, the investigation ought to have been done by some Superior Officer. In the present case, the record of the case shows that Dy.S.P. Shri Joshi had visited the place but had not done any investigation.

4.4 Learned advocate Mr. Mangukiya stated that the learned Judge has erred in not appreciating the fact that there is material contradiction in

the evidence of the prosecution witnesses, as to at what place, the motorcycle, which was alleged to have been burnt was lying. P.W.2 - Mangaji Khodaji Thakor, panch witness has stated that he was called by the police at the temple of Ambaji Mata, where the burnt motorcycle was lying, but contrary to the same, P.W.5 - Vikramsinh Bihola and P.W.6 - Maheshbhai Parmar have stated in their evidence that the motorcycle was parked near Panchayat Office. Thus, Mr. Mangukiya stated that the prosecution has failed to prove as to at what place the incident had taken place.

4.5 Learned advocate Mr. Mangukiya stated that the learned Sessions Judge has failed to appreciate that it has come on record in the evidence of P.W.-1 P.S.I. Shri Jayesh Brahmhatt that before the F.I.R. was registered, information regarding the incident had already reached the Police Station. The prosecution has suppressed the information that had reached the

Police Station prior to the F.I.R. This information disclosing the cognizance of the alleged offences was first in point of time and the same should have been treated as F.I.R. Mr. Mangukiya stated that the learned Sessions Judge ought to have drawn adverse inference against the prosecution since the prosecution had suppressed and not brought on record the information received by the police station first in point of time.

4.6 Learned advocate Mr. Mangukiya further submitted that the learned Sessions Judge has erred in not appreciating and considering the fact that one of the accused, who tried was with the present appellants was also injured and had lodged a complaint for causing injuries to him by the opposite party i.e. persons of Rabari community. Mr. Mangukiya submitted that the Police Inspector P.W.13 - Mukesh Patel has also admitted that one of the accused, namely,

Bharatbhai Patel had received injuries and his F.I.R. was registered and thus, the prosecution has suppressed the origin and genesis of the incident in question. The prosecution has failed to explain the injuries of accused - Bharatbhai Patel.

4.7 It is stated by learned advocate Mr. Mangukiya that the learned Sessions Judge has failed to appreciate that P.W.8 - Saiyad Nazarali, an eye-witness, has not disclosed names of the accused, who are alleged to have set the motorcycle on fire. He has not deposed that three persons igniting the motorcycle, were caught from the scene of offence.

4.8 Learned advocate Mr. Mangukiya further submitted that P.W.10 - Punambhai Patani, Police Constable has deposed that the names of the persons, who set the motorcycle on fire were disclosed to him by one Jamadar accompanying him.

However, the name of that Jamadar is not coming on record nor is he examined as witness by the prosecution. Mr. Mangukiya stated that this witness also does not depose that he had disclosed the names given by the Jamadar to the complainant, neither had the complainant deposed that the names were given to him by the present witness. Mr. Mangukiya stated that this highlights the most important question leading to the root of the matter, as to how the name of the present appellants found its way in the FIR. Mr. Mangukiya submitted that the learned Sessions Judge ought to have taken into account this very vital factor for coming to his conclusions regarding the guilt of the accused. There is general and vague evidence given by this witness that the persons from the mob had set the motorcycle on fire and similar is the evidence of another police personnel P.W.7 - Vaghela Rajendrasinh.

4.9 Learned advocate Mr. Mangukiya stated that the learned Sessions Judge has failed to appreciate that according to the evidence of P.W.5 - Vikramsinh Bihola, he had given the names of three persons including that of the appellants as persons, who were alleged to have set the motorcycle on fire. However, this witness has not deposed in his evidence that he had given names of three persons to the complainant - P.W.1 Jayesh Brahmbhatt. Mr. Mangukiya stated that according to P.W.1 - Jayesh Brahmbhatt, the F.I.R. was given on the spot and the names of thirteen accused were mentioned and there is no evidence on record as to how and who disclosed the names of thirteen accused at the scene of offence. On the contrary the evidence of complainant P.W.1 - Jayesh Brahmbhatt, is to the effect that he came to know about the names of the accused persons only when they were brought to the Police Station. Moreover, P.W.5 -

Vikramsinh Bihola has admitted in his evidence that he was knowing the leaders of Khoraj village and the case of the accused persons was that since they were leaders of the village and reputed persons of their community they were falsely implicated by the police.

4.10 Learned advocate Mr. Mangukiya further submitted that the learned Sessions Judge has committed error of law in convicting the appellant, despite the fact that the offence was allegedly committed by a mob of 400 to 500 persons, the police had arrested thirteen persons. Admittedly, no Test Identification Parade was carried out in this case and it is impossible for the police to identify and to implicate the present appellants with the crime in question in absence of the Test Identification Parade.

4.11 Learned advocate Mr. Mangukiya stated that the prosecution has not examined any independent person as prosecution witness and out of the thirteen witnesses examined by the prosecution, twelve witnesses are police personnel. Mr. Mangukiya submitted that the only independent person, who was examined, does not give the name of any of the accused. It is stated by Mr. Mangukiya that the accused were falsely implicated in the case, the evidence shows no active participation of the appellants as regards the entire incident.

4.12 Mr. Mangukiya, learned advocate stated that the learned Sessions Judge has failed to appreciate that the incident in question had happened after 9.30 p.m. and there is no evidence on record to show that there was sufficient light to identify the accused at the scene of offence, thus, the identity of the appellants in the crime in question are not established beyond reasonable

doubt.

4.13 Learned advocate Mr. Mangukiya further submitted that the learned Sessions Judge has overlooked the fact that although, as per the record, as many as six witnesses were injured due to stone pelting, none of injured police witnesses have taken treatment in any hospital for their so called injuries and only one witness had gone to Civil Hospital, Gandhinagar. As per the deposition of P.W.12 - Dr. Mukesh Patel, one Vikramsinh Bihola (P.W.5) had come for his treatment. He states in his deposition that the police had been informed about the case only after admitting the injured person in the hospital. He also deposed that the injured witness had not bothered to register the case as a medico-legal case and not thought it fit to inform the police attached to the hospital.

4.14 Learned advocate Mr. Mangukiya stated that no accused persons were seen or found causing damage to the public property. Thus, the case of the prosecution cannot be said to have been proved beyond reasonable doubt under Section 435 of the I.P.C. It is stated that none of the police witnesses, who were examined, had any occasion to see the present appellants prior to the incident. Thus, stated that in absence of any Test Identification Parade, it is hazardous to convict the appellants on the basis of the oral testimony of the police witnesses. It was impossible for any unknown witness to identify the present appellants from the mob of 400 to 500 persons during late hours of night, particularly when the witnesses had no occasion to see the appellants prior to the incident.

4.15 Learned advocate Mr. Mangukiya further stated that the learned Sessions Judge has failed to appreciate the fact that none of the

prosecution witnesses has stated, as to who was the accused, who caused damage to the property. No witness has seen the appellant taking active participation in the offence, thus, no nexus is established between the appellants and the incident in question.

4.16 That the learned Sessions Judge has erred in convicting the appellant under Section 435 of the Indian Penal Code, despite the fact that the panchnama at Exh.28 does not indicate recovery of any ignitable substance such as kerosene, diesel, petrol, match-sticks or lighter. Moreover, it is not established as to how the motorcycle caught fire. Thus, in absence of such evidence, the case of the prosecution cannot be said to have been proved beyond reasonable doubt.

4.17 Learned advocate Mr. Mangukiya stated that the learned Sessions Judge has committed serious error in convicting the appellants though the

evidence of P.W.8 - Saiyed Kalumiya is totally silent as to which weapon was with the accused persons. Mr. Mangukiya stated that this witness though claims to be an eye-witness, has not stated anything, as to what role was played by the accused persons and had not identified the appellants in the Test Identification Parade or in the Court room. Thus, no reliance can be placed upon the evidence of this witness at all.

4.18 Learned advocate Mr. Mangukiya further submitted that the evidence shows that panch witnesses have not supported the case of the prosecution and, therefore, panchnama cannot be said to have been proved and under the circumstances, the impugned judgment and order of conviction is illegal, erroneous and against the provisions of law and, therefore, the same deserves to be set aside.

4.19 Mr. Mangukiya stated that the prosecution has failed to establish the motive of the alleged incident. According to the prosecution, mob of about 400 to 500 persons had gathered with a view to attack on the houses and persons belonging to the Rabari community, however, the entire incident shows that no such person of the Rabari community was attacked, nor any property of such a person was damaged. Therefore, the prosecution has miserably failed to establish its case against the appellants beyond reasonable doubt.

5. Learned advocate Mr. Nandish Thacker with Ms. Namrata Sonam for the appellant in Criminal Appeal No.706 of 2007 has adopted the arguments made by learned advocate Mr. Mangukiya.

6. Learned APP Mr. Rohankumar Raval for the State referring to the charge framed against the accused and supporting the conviction under Section 435 IPC, submitted that the accused

Nos.1, 2 and 3 were arrested on the spot, where they had set the vehicle on fire. The complaint was by P.W.1 – P.S.I., but investigation was conducted by P.S.I. – M.A. Patel P.W.13, who had arrested the accused. Mr. Raval, learned APP submitted that the investigation was also made to the complaint dated 18.03.2006. The panchnama of the place of incident and more specifically of the vehicle, which was set on fire, was drawn. P.W.5 – A.S.I. injured witness had deposed about the burning of the vehicle and that has been supported by P.W.6 and P.W.7. Mr. Raval submitted that the person, who had given the telephonic 'Wardhi' was examined as P.W.9. The evidence of P.W.10, who was in possession of the Pulsar vehicle shows the mode of setting the vehicle on fire. The injury sustained by police witness has been corroborated by the treating Doctor – P.W.12. The IO – P.W.13 has brought all the scientific evidence on record by way of F.S.L.

report. Mr. Raval, learned APP, submitted that the undisputed fact of the vehicle put on fire was corroborated by the evidence of the police witnesses by proving the presence of the three convicted accused. Mr. Raval submitted that police was engaged in controlling the crowd, the convicted accused had set the vehicle on fire. Mr. APP submitted that it was an independent investigation by P.W.13 and contended to uphold the conviction stating that the impugned judgment is reasoned order.

7. Heard learned advocates for the respective parties, perused the material placed on record. The present matter has to be analysed, with the background that accused No.10 - Ganpatbhai Bhalabhai Patel being the husband of Smt. Vidhyaben - Sarpanch of Village Khoraj was kidnapped on 18.03.2006 by Rabari Gemarbhai and Bharatbhai. Accused No.10 had thus, given a police complaint.

7.1 Thus, it is the prosecution case that keeping that out of that grudge and enmity the members of Patel community had gathered on 07.04.2006 at a temple situated near Gram Panchayat. It was the prosecution case alleging that they had gathered to attack Rabari community. So, P.W.9 – Rabari Karamsinhbhai Devkaranbhai on 07.04.2006 phoned at 21.20 hours to police station asking for police force..

7.2 P.W.1 – complainant Adalaj Police Station second PSI got the 'Wardhi' that 400 people had gathered. He went with police staffs in Government Jeep and motor cycle with registration No.GJ-18-G-7081 and Joshi Saheb had come in Gypsy Vehicle No.GJ-18G-1378 P-32, when they reached Khoraj village a crowd of 400 people of Patel community had gathered near Ambaji Mata Temple. The complainant stated that there was earlier quarrel between Patel and Rabari community.

7.3 The trial was against thirteen accused, though the evidence had been given that 400 people of Patel community had gathered. As per the complainant they were placed at points by their officer Shri Joshi. At 22 hours, the crowd in the leadership thirteen people consisting of Ganpatbhai (A-10), Rameshbhai Vakil (A-12), Patel Advanibhai whose name complainant does not recall, Bharatbhai Ambalal Patel (A-2), Kanubhai Tribhuvanbhai Patel (A-3), Rameshbhai Kachrabhai Patel (A-1), Bharatbhai Karshanbhai Patel shouting abusively at the Rabari community were heading towards Rabarivas with stones, sticks, pipes etc. in their hands. The complainant and Deputy Police Superintendent Shri Joshi and police staff were trying to stop them, therefore, the crowd got incited and started pelting stones on the police.

7.4 The noticeable fact is that the convicted accused Nos.1, 2 and 3 had been specifically named by the complainant, with accused No.10, who was earlier kidnapped, and one Advocate and Baratbhai Karshanbhai Patel is named, who is not an accused in the matter. Accused No.13 – Patel Bharatbhai Tribhuvanbhai is the person, who had filed a complaint of an incident of that very day. The suggestion was denied by the complainant that the persons from the crowd had informed that Rabaris were beating Bharatbhai.

7.5 The complainant had identified accused Nos.1, 2 and 3 alleging to be in the crowd taking the leadership, since the crowd was pelting stones on police. Complainant was injured on left leg, police constable Vikramsinh Bihola on the jaw and Joshi Saheb on the left hand, Maherbhai Manjibhai on the chest and other as named in the deposition sustained injury by the stone.

7.6 No evidence has been given by the complainant, of crowd holding any material in their hand to create mischief by fire, nor any evidence of intention to commit arson by the crowd or by the leaders of the crowd.

7.7 Complainant further states that during that period, the crowd became uncontrollable and Rameshbhai Kachrabhai (A-1) Bharatbhai Ambalal Patel (A-2), Kanubhai Tribhuvanbhai Patel (A-3) put the Government bike on fire. So the complainant and police constable Poonambhai Chappanbhai, Police Constable Natubhai, caught them from near the bike. The complainant identified muddamal article-5 as stone, article-7 to 13 as sticks, article-14 as pipe and article-15 as brick pieces, which he said were used during the incident. Complainant was knowing the accused. The muddamal does not show any inflammable material.

8. F.S.L. report shows presence of Petroleum Hydrocarbons on sample 'A', B/1, B/2, B/3 and C. Sample 'A' was rusted half burnt motorcycle, where front tyre was half burned, rear tyre was not found. Fuel Tank was empty. Wiring insulation was burned, therefore the metal wires were found opened. Motorcycle was not having seat and was in deformed condition, while sample B/1 to B/3 were metal pieces, coiled wire, wiring pieces etc. as described, and spare parts of Pulsar motor cycle, sample-C was Iron Box with lid with writing on it as 'Babul Jafrani Jarda' and other writing, the box contained burnt black and ash colour material in newspaper wrap. Sample 'D' was control soil in newspaper wrap in an iron box with 'Babul Jafrani Jarda' and 'Bagban Jafrani Jarda' written on the box and the lid.

9. The information was of 400 people of Patel community gathered at Khoraj village. The complainant in his cross-examination stated that

during the patrolling, he had received no secrete information of any other potential offence. Exh.21 – Complainant was given against the crowd.

9.1 The complainant denied the suggestion that on 07.04.2006, he received a secret 'Wardhi' in connection with the incident. The 'Wardhi' was given by Karamsinhbhai Desai to P.S.O., who in turn gave the 'Wardhi' to this witness. Before, he received the 'Wardhi' he had the knowledge of the incident dated 18.03.2006, where complaint was given by Ganpat Patel (A-10) against people of Rabari community, of kidnapping and causing injury. PW1 – complainant affirmed that because of the incident dated 18.03.2006, there was tension in the village and such fact was on the record of the police. The suggestion was that police had taken the side of Rabaris and therefore had not aided Bharatbhai.

9.2 According to complainant their vehicles were parked at five minutes distance from the place, where the meeting was in progress.

9.3 Witness-complainant stated that he had seen the government vehicle put on fire. There was no panchnama at the time of arrest of the persons from the place. Complainant clarifies that the person, who caused damaged to the government vehicle were immediately made to sit in the vehicle and since the struggle of the police with the crowd was still going on, so had no time to draw panchnama. Witness affirmed that when these persons were caught, he was not knowing them.

9.4 The deliberate fire-setting has been used as a means of community violence. The malicious injury to property can be punished provided the crime is committed when a person with the wilful intention of injuring others has set fire, whereby such property has caught fire and damage

has been caused.

9.5 The evidence of the complainant clarified that he had no such prior information of any such offence was proposed to be committed. The telephonic information, which was received from P.W.9 and the telephonic Wardhi, which was recorded at Exh.38, was P.W.9 – Karamsinh Devekaran Rabari informing telephonically that a crowd of 300 to 400 people of Patel community had gathered at Mahadev Temple near Panchayat office of Khoraj village. P.W.9 had asked to send police and to do the needful. The Wardhi No.98/06 was recorded at 21.20 hours of 07.04.2006 i.e. 9.20 of night hours. This telephonic information of Karamsinhbhai Devkaranbhai does not inform the police of any inflammable articles or things in the hands of the crowd, nor did it inform of any other instruments or weapons in the hands of the crowd. Probably it could have been a peaceful gathering. The exaggerated figure of 300 to 400

people could hardly be believed, as the village Khoraj may not have the population of Patel community to that extent. Nothing has been investigated to verify the content of telephonic 'Wardhi'. The complainant police Jayesh Brahmbhatt records that at 22:00 hours i.e. 10:00 p.m. the crowd under the leadership, as referred hereinabove, were marching towards Rabarivas abusing the Rabaris and shouting to kill them. The crowd was having stones, sticks and pipes. The witness has not stated that it was iron pipes. Though, the intention of the crowd, as per the complainant was to assault the Rabaris, but, nothing has come on record of any injury to any of the people from Rabari community nor any injury to their house or property. P.W.9 has also not given any such information of the intention of the crowd to march towards the Rabari community with an intention to assault. There is no such information of any such preparation made

by the people of Patel community.

9.6 P.W.9 in his evidence has stated that he was not knowing the person in the crowd, but stated that Ganpat Bhala (A-10) and Jatinbhai Gorwardan (A-6) were shouting. The witness P.W.9 could only identify A-6 and A-10 in the Court. He further stated that police has not shown him Wardhi. In the cross-examination, it has come in the evidence that prior to the incident and thereafter too he was residing in the village. He further stated that he has not knowledge as to who had given the complaint in relation to the incident. The police has recorded his statement after a week and he had been called to the police station. He further stated that he knows accused No.10 – Ganpatbhai as he is the Sarpanch of his village. The witness does not know whether Rabaris of the village prior to the present incident had taken away Ganpatbhai (A-10), but he affirmed that Ganpatbhai had filed one case

against Rabaris and also stated that those persons of Rabari community were his relatives. In the cross-examination, the witness stated that he knows Bharatbhai Tribhuvanbhai of their village but had not heard of any injury to Bharatbhai prior to his giving the Wardhi. He affirmed that Bharatbhai had given complaint against Rabaris. P.W.9 denied the suggestion that to defend the Rabaris, he had given a false 'Wardhi'.

9.7 The evidence on record, as has come by way of P.W.9 and the complainant police (P.W.1), that there was animosity between two communities. The enmity could become evident when accused No.10 Ganpatbhai was kidnapped by the people of Rabari community and accused No.10 - Ganpatbhai had given a complaint against Rabaris and the cross-examination of P.W.9 also brings on record that Bharatbhai Tribhuvan Patel (A-13) had received some injury prior to the Wardhi given by P.W.9 to

the police.

9.8 The defence has been raised that to support the people of Rabari community the police had filed the case against the people of Patel community. The evidence of complainant clarifies that the police was knowing about the tension between the two communities. The incident with (A-10) had occurred on 18.03.2006. Since then, there was tension in the village. It has not come on record as to what steps were taken by the police till 07.04.2006 to reduce the tension between the communities or what steps were taken by the police by way of protection of the villagers which includes members of both the communities during the 'Bandobast'. Nothing has come on record and even by the evidence of the complainant that during the course of 'Bandobast' or patrolling he had received of any secret information of any probability of any such offence. Complainant has stated that accused

No.13 — Bharatbhai had given police complaint 108/2006 at Adalaj Police Station and as per the complaint he had sustained injury on that very same day.

9.9 Complainant states that he had seen the Government vehicle being burnt. In spite of this evidence complainant does not state of having collected any material used for setting the vehicle on fire, nor any explosive substance to bring the case under the scope of Section 435 of the IPC.

10. Both Section 435 and Section 436 contemplate *inter alia*, explosive substance. Explosive substance has been defined in Section 2(a) of the Explosive Substances Act 1908. The definition is as follows:

"S. 2. Definitions — In this Act—

(a) the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material

used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;"

"Explosive substance' has a broader and more comprehensive meaning than the term 'Explosive'. Explosive substance' includes 'Explosive'. The term 'Explosive' has not been defined in the Explosive Substance Act, 1908. The dictionary meaning of the word 'Explosive' is, tending to expand suddenly with loud noise: 'tending to cause explosion' (The Concise Oxford Dictionary). In the Explosives Act, 1884 the terms 'explosive' has been defined as follows:

d) "explosive" means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or

pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;"

11. Section 435 IPC denotes mischief by fire or explosive substance. Mischief is defined under Section 425 IPC. 'Mischief' involves intention or knowledge of likelihood to cause wrongful loss or damage. Destruction with object of creating wrongful loss or damage is obligatory to be established. 'Mischief' involves a mental act with a destructive animus. The mischief under section 435 IPC must be by fire or explosive substance.

11.1 Essential Ingredients under Section 435 constitutes:

- (i) That the accused committed mischief;
- (ii) That he did so by fire or any explosive substance;

(iii) That the accused intended to cause (or knew it to be likely cause) that he would cause damage to any property;

(iv) That such damage amounted to one hundred rupees or upwards; And in case of agricultural produce, a damage of ten rupees or upwards;

12. The learned Trial Court Judge for consideration of the case and appreciation of the evidence had formulated the following questions for decision:

(1) Whether the complainant side has succeed in proving that, the accused persons of this case had formed unlawful assembly and being member of that assembly had gathered opposite to the gram panchayat near the temple, and in order to carry out their common intention had in order to attack the Rabari people gathered by being equipped with weapons, stones etc.?

(2) Whether the complainant side has succeed in proving the fact that, on Police reaching the spot of incident, the accused persons and persons of Patel community had started pelting stones upon the Government Police Officer-complainant, Deputy Police Commissioner, and other police persons and witness

and had injured them, have raised obstructions against them in performing their public services and had damaged their government vehicles – motorcycle and gypsy car and set them on fire and thus, the accused persons have with the help of each other have committed offence under Sections 147, 148, 149, 332, 435, 337 and 427 of the Indian Penal Code and under Sections 4 and 7 of the Damaged to Public Property Act and have by being equipped with the weapons have violated the declaration of Prohibition of Weapons of the Additional District Magistrate and have committed offence under Section 135 of the Bombay Police Act?

(3) What order?

13. The learned Trial Court Judge found that the complainant failed to prove unlawful assembly of the accused person of the matter and also did not find that the members of the assembly gathered to carry out their common intention to attack Rabari community being equipped with the weapons like stones, sticks etc. The learned Trial Court Judge found that only accused Nos.1 to 3 had damaged the Government motorcycle by setting it on fire and damaged the Gypsy car, but

had not found the persons of Patel community pelting stones upon the police officers – complainant, Deputy Police Commissioner and other police personnel and witness, or had injured them, or raise obstruction in performing their public services. The Trial Court Judge has also not found the crowd equipped with the weapons in violation of the proclamation of prohibition of the weapons by the Additional District Magistrate to have committed the offence under Section 135 of the B.P. Act.

14. P.W.5 – Vikramsinh Bihola is the person, who was serving at Adalaj police station on 07.04.2006. He has corroborated the fact of receiving Wardhi at 11:20 hours at Adalaj Police Station. As per the witness the telephonic information to police station officer Motibhai Maujibhai was that at Khoraj village, the crowd had gathered of Patel community and are quarreling with Rabaris. On the basis of the

Wardhi, he had gone along with P.S.I. of Adalaj Police Station J.D. Brahbmhatt (P.W.1), Head Constable – Jagatsinh Manusinh, Head Constable – Karansinh Natvarsinh and police constable Maheshbhai Maujibhai and other police persons of Adalaj Police Station in Government Jeep at village Khoraj. At that time, the witness stated that a crowd of about 400 persons of Patel community had gathered in the front-yard of the Ambaji Mata Temple.

14.1 The witness P.W.5 further stated that at that time, police constable Poonambhai and police constable Natubhai, who were serving at Adalaj Police Station came with the Government motorcycle of the police station being Pulsar GJ-18-G 7081, for 'Bandobast' and further stated that the Police Officer Joshi Saheb from Kalol Division with his commandos and staffs had come in government Gypsy for 'Bandobast'.

15. The damages to the property, as per the complainant was assessed for the motorcycle No.GJ-18-G 7081 of putting it on fire, and of damaging by breaking the front and rear mirror of the Government Gypsy Vehicle No.GJ-18-G 1378 P-32 as ₹40,000/- and ₹3000/- respectively. As per the complainant the motorcycle was set on fire by accused Nos.1 to 3, while damage to the Government Gypsy vehicle was by the crowd.

16. The witness P.W.10 was Poonambhai Chhapanbhai Patni, the police constable, who along with police constable Nattubhai had gone to the place of incident on motorcycle No.GJ-18-G 7081. From the witness deposition, it can be recorded that the Wardhi they received stated of quarrel between Patels and Rabaris and they were asked to reach there. It is required to be noted that the telephonic Wardhi does not reflect the quarrel actually taking place between the Rabaris and Patels at the place of incident.

16.1 P.W.10 had gone there alongwith constable Nattubhai on the order of P.S.I. - J.D. Brahmbhatt (P.W.1). P.W.10 states that they had seen a crowd of 200-300 people at Ambaji Mata's Temple, at that time, J.D. Brahmbhatt and staff members and Dy.S.P. Joshi Saheb were present there. He stated that the crowd was incited and was going towards the Rabari Street, therefore, they had tried to stop the crowd. Thereafter, the crowd had come towards them and furiously started abusing and pelting stones, at that time, they had tried to stop the crowd and because of the stone-pelting, two to three of them were injured. Therefore, their Saheb had given an order to the Commandos for release of tear gas.

16.2 The evidence of P.W.10 alongwith evidence of P.W.1 and P.W.5, if read together, then it shows that accused No.1 to 3 were in the crowd alongwith other acquitted accused Nos.4 to 13.

The crowd was heading towards Rabarivas, while the bike was parked near Ambaji Temple. The evidence of P.W.1 also notes that they were made to stand at various points by the police officer Shri Joshi. P.W.1 explicitly states that accused Nos.1 to 3 were in the leadership of the crowd heading to Rabarivas. They were armed with sticks, stones and pipes. The evidence of P.W.1 and P.W.5 clarifies that accused Nos.1 to 3 were in the leadership of the crowd alongwith others, while no inflammatory material to cause fire or any explosive substance in the hands of accused Nos.1 to 3 were identified by P.W.1, P.W.5 or P.W.10.

16.3 P.W.10 stated that he had parked the Pulsar motorcycle near Ambaji Temple and the knob was pulled of the Pulsar Bike for burning it. The witness - P.W.10 stated that after reaching there, they had stopped the crowd and three persons, who were setting the bike on fire were

arrested. They were Rameshbhai, Bharatbhai and Kanubhai Tribhuvandas.

16.4 The evidence of P.W.10, thus shows two places of incident (i) the crowd heading towards Rabarivas and (ii) the place at Ambaji temple where the Bike was parked. The crowd at the time of their gathering at the Temple, was peaceful. P.W.1 specifically states that the crowd in the leadership of thirteen persons were in the process of assaulting Rabarivas with stones, sticks and pipes. If that is the evidence, then accused Nos.1 to 3 were the leaders of the crowd engaged in assault on the Rabarivas with stones, sticks and pipes. P.W.1 does not state that out of thirteen, three of the accused had again gone to Ambaji Mata's Temple to put the motorcycle on fire. The evidence of P.W.1 states that during the course of stone pelting, the crowd suddenly became uncontrollable and out of thirteen, Rameshbhai Kachrabhai - accused No.1, Bharatbhai

Ambalal Patel-accused No.2 and Kanubhai Tribhuvandas Patel-accused No.3 had put the Government Bike on fire and therefore, P.W.1-complainant himself and P.W.10-Punambhai Chappanbhai and Police Constable Natubhai had apprehended them near the Bike. While P.W.10-Punambhai Chappanbhai states that three persons from the crowd had put the Pulsar Bike on fire near Ambaji Temple, and while they were stopping them they apprehended three persons who had put the Bike on fire and he named accused Nos.1 to 3. The evidence would contradict each other, since crowd with the leadership of thirteen accused were heading towards Rabarivas, then how again it turned towards Ambaji Mata Temple, has remained unexplainable by the witnesses. P.W.10 stated that they arrested three and made them sit in the vehicle. The evidence does not further clarify from P.W.10, as to what was the further act of the crowd.

16.5 As per P.W.10, the fact which was brought in the cross-examination reflects that the complaint was dictated by PSI - J.D. Brahmbhatt near Ambaji Mata Temple to his writer. It was night time and P.W.10 was standing there. He affirmed that while P.W.1 was dictating the complaint he was listening it, but denied the suggestion that the facts which were in the complaint, were within his knowledge. It is further stated that on the day of incident, his duty was not on a specific point. PW10 affirmed that whatever he heard, he has given his statement on another day. After recording his statement, the Investigating Officer had not taken him to the place of incident, but thereafter, the Investigating Officer had taken him and showed him the place of incident. Two days after recording his statement, he was shown the place of incident. At that time, P.W.1- Brahmbhatt was with him and no panchas were

present.

16.6 The evidence thus, of P.W.10, who was the Police had come with Government Motorcycle No.GJ-18-G-7081 is the person, who was knowing the place where the alleged Bike was put on fire. The Investigating Officer had taken no pain or shown any efforts to immediately enquire from P.W.10 about the place of offence, which he had the knowledge and he was the right person to have informed the Investigating Officer the place where the vehicle which he had brought, was set to fire. Rather it is the Investigating Officer, who is showing the place of incident to witness P.W.10 and that too, after two days of his recording of the statement. As per P.W.10, complainant was also there to show him the place and no panchas were present at that time. The witness also does not know after showing the place, whether any panchnama was drawn.

16.7 P.W.10 affirms that Motorcycle No.GJ-18-G-7081 was in his custody and it was in his custody on oral order. P.W.10 does not even know under whose name the motorcycle was registered in the RTO office. He further clarifies that the Investigating Officer had not asked for any documents in connection with the Bike prior to recording his statement. The witness volunteered that his license was asked. The witness stated that after the arrest of the accused, no identification panchnama was drawn in his presence. He stated that the Jamadar, who was there alongwith him, was knowing the accused and thus, as stated by him, he had named the accused. Witness could not identify the accused by name or by their face in the court during trial.

16.8 The evidence of P.W.10 therefore, becomes very relevant. P.W.10 could not identify the accused, who had set the vehicle which was in his custody on fire. He was not knowing them by their

name. In spite of that, he has named specifically accused Nos.1 to 3 and thereafter, too could not identify them in the Court by their name or by their face. The place of offence of setting the vehicle on fire becomes doubtful. It is not the prosecution case that the crowd had come with an intention to restrain or obstruct the police from their public duty. The incident of accused No.13-Bharatbhai Tribhuvan Patel is alleged to have occurred prior to police coming at the Village. However, the complainant as the police has not referred to the complaint filed by accused No.3. The suggestion, was also placed from the accused to P.W.1-complainant that the crowd had come to the police for making the representation against Rabaris having beaten Bharatbhai, but P.W.1-complainant denied the suggestion, while had stated that it had not happened that they had searched for Bharatbhai till the evening on that day and after taking his complaint had sent him

to Dispensary, but stated that it had not occurred that Bharatbhai was arrested on that day. And further stated that it had not occurred of taking notice of Bharatbhai's complaint on that day. He denied the suggestion that because of the injury to Bharatbhai, the whole village had got infuriated.

17. P.W.1 affirmed that in connection with the incident, there were many other incidents. He denied the suggestion that the place near Ambaji Mata's Temple was not sufficient enough to bear the crowd of 200-500 people.

18. The complainant was working under the instructions of Deputy Police Superintendent Shri Joshi who had come in Gypsy No.GJ-18-G-1378-P-32. The Deputy Police Superintendent has not been examined in the present matter who could have deposed about the actual state of incident. P.W.1 as Police had given the complaint, who

affirms that in his complaint - Exh.21 has not given any description of the injury by the accused with the specific weapon.

19. P.W.5 refers that Pulsar GJ-18-G-7081 was brought by the police constable Poonmbhai (P.W.10) and police constable Natubhai. The prosecution has not examined police constable Natubhai. Police constable Poonmbhai (P.W.10) and police constable Natubhai had come for 'Bandobast' on the motorcycle. P.W.5 had stated that Patel Ganpatbhai Bhalabhai (A-10) was shouting that Rabaris had kidnapped him and today they are not going to leave them and will burn them. According, to P.W.5 this was incitement from the side of Ganpat Bhala. The evidence of P.W.5 states that the accused No.10 was inciting others to burn the Rabaris. If that had been so, certainly the crowd and more specifically, the leaders of the crowd would have in their hands inflammable materials, while nothing of that sort

is coming on record. There is contrary version of P.W.1 and P.W.5, where P.W.1 had given the deposition that the leaders of the crowd were shouting, addressing the Rabaris that they have become over wise, and the leaders were provoking others to kill them. The attack was expected to occur by the police with stones, sticks and pipes. In accordance to P.W.5, while Accused No.10 was inciting the crowd, at that time Accused Nos.12, 5, 8 and 11 were present there in the crowd.

19.1 The witness-P.W.5 during the course of deposition in the trial stated that Bharatbhai Sakrabhai (Deceased A-5) was not present in the Court further stating that all the persons were provoking the crowd which was trying to proceed towards Rabari street and police was making an attempt to stop them. According to P.W.5, at that time, three persons out of the crowd had set the Government Pulsar motorcycle on fire and burned

it. At that time, the police apprehended three persons. The witness named accused No.1, 2 and 3. P.W.5 further stated that on the three being arrested by the police, the crowd became further excited and persons in the crowd with sticks, iron pipes and other weapons were heading towards Rabarivas. Police had tried to stop them, at that time, Bharatbhai Sakrabhai Patel (Deceased A.5) had thrown stones towards him, therefore, he sustained injury on the right jaw of his face and another stone injured him on the right leg and since there was too much excitement in the crowd, commando Rajendrasinh had released four tear gas cells and divisional officer Shri Joshi had called for police force from Gandhinagar Control and therefore, the crowd got dispersed.

19.2 P.W.5 stated that as he got injured by the stone blow on the right jaw he went for treatment with head constable Jayantibhai Balakdas at Gandhinagar Civil Hospital. According to P.W.5,

the cause was, the incident of Patel Ganpatbhai Bhalabhai (A10) earlier kidnapped by the Rabaris. Keeping the grudge in regard to the complaint, by provoking the crowd, they were heading towards the Rabarivas, the police had tried to stop them, so the incident had occurred.

19.3 The evidence, as has come on record suggests that Patel Ganpat Bhala (A-10) was kidnapped by the Rabaris on 18.03.2006 and it was A-10 who had given the complaint. If that had been so, there was no reason for the Patels to gather on 07.04.2006 at 22.00 hours at night. This witness (P.W.5) was not referring to the complaint of A-13 — Patel Bharatbhai Tribhuvandas. While in his cross-examination, P.W.5 stated that he was not knowing Patel Bharatbhai Tribhuvandas (A-13) of Khoraj village and he does not know if during the time of his duty A-13 was injured. He does not even know that since Bharatbhai was injured, therefore the

village people got infuriated. He affirmed that Bharatbhai Patel was arrested by the police but does not know when was the arrest. He knows that Bharatbhai is accused No.13 of the matter, but he does not know that Bharatbhai has filed a case against Rabaris.

19.4 P.W.5 stated that J.D. Brahmbhatt (complainant) and another two to three police personnel also were injured in the incident, but he does not know, whether J.D. Brahmbhatt got injured prior to him. The witness affirms that he was serving since long at Adalaj Police Station.

19.5 P.W.5 was examined by Dr. Mukesh Becharbhai Patel, who examined as P.W.12 at Exh.42. According to the Doctor, when he was present at 10.30 at civil hospital, Gandhinagar on 07.06.2006, he had examined the patient Vikramsinh Bihola. Doctor recorded his injuries as (i) CLW over right face just below right eye

of 3 cm x 1 cm x bonydeep (ii) 2 cm x 1 cm x bonydeep (iii) abrasion over right leg size 2 cm x 1 cm. The patient was admitted in the surgical ward under the care of full time surgeon and discharged on 08.04.2006.

20. As per the Doctor (P.W.12) the patient had given the history that on 07.04.2006, because of stone pelting at 10.30, he was injured. The doctor opined that such injury could occur because of hurt by stone. The witness identified the pieces of brick Article-5 with which the patient could sustain injury.

20.1 As per the cross-examination, the patient, which he examined was a police employee and had come without any police yadi. The doctor had not communicated with him, other than the history. The patient had not insisted for registration of the complaint or for calling the police. The injuries were simple in nature. The doctor also

affirms that such injuries could occur if a person while running falls on stones.

21. P.W.5 was a police officer. He was knowing the fact that for the examination of the injuries he was required to call for the police yadi. The time of examination noted by doctor is 11.30, as reflected in the certificate Exh.43. P.W. 5 was discharged on 08.04.2006. In spite of that, there was no police yadi for medical examination of the police.

22. The case of the prosecution is that even complainant was injured and two to three police persons got injured in the incident. However, nothing in the form of medical examination has been proved to substantiate the witness version.

23. In the cases of Arson, Court would always insists about the need of proper investigation and the collection of evidence. The intent and motive behind the Arson attack would be the

element of consideration for the Court, so thorough investigation and collection of evidence are crucial in the Arson cases to establish the guilt of the accused. Witness testimony can play a significant role in Arson cases, but it must be corroborated with other evidence to ensure reliability.

23.1 Investigating Arson cases requires a meticulous and scientific approach to gather evidence and identify the perpetrators. The police has to ensure the safety of property and prevent contamination of evidence. The police has to identify the potential sources of ignition. Collect and preserve physical evidence such as debris, accelerants and ignition sources, record the statement from witnesses including those who reported the incident and those who had seen suspicious individuals or activities or conduct other then relevant forensic analysis, such as explosives or ignitable liquid residue analysis.

24. Here, in this case it is also alleged that the vehicle of Deputy Superintendent of Police Shri Joshi was also damaged. The driver Syed Nazarali Kalumiya was examined as P.W.8 at Exh.33. He affirms that he was as driver with Kalol Deputy Police Superintendent Joshi Sahab on 07.04.2006 on Government vehicle No.GJ-18-G-1378 P-32. They had come to Adalaj Police Station at 8 O' clock, at that time they received information about the crowd gathering at Khoraj village, so he, Joshi Sahab and Rajendrasinh started in the vehicle from Adalaj Police Station. As per P.W.8 after reaching Khoraj village, he had parked the vehicle beside Ambaji Temple. The witness referred about the crowd of 400 people heading towards the house of Rabaris. The police was trying to stop them. The witness states that the person from the crowd had pelted stones on the vehicle and therefore, the glasses on the front side were broken and there were dent on the

vehicle. The damage was approximately of ₹3000/-.

He stated that Rabaris remained at home and they were asked to remain silent. The witness stated that the crowd had also set the motorcycle Pulsar on fire. Joshi Sahab was injured. Witness also sustained simple injury. PSI Brahmbhatt was also injured at the right leg. Thereafter the crowd was dispersed.

24.1 So the evidence of P.W.8 shows that it was the crowd which damaged the four wheeler and motorcycle Pulsar. This witness is not naming accused Nos.1 to 3.

25. P.W.6 is Maheshbhai Maujibhai Parmar. He also refers to the presence of complainant Brahmbhatt and Deputy Police Superintendent, Kalol who had come to the police station on visitation. The fact of telephonic information from Khoraj village and 400 to 500 people of Patel community in the crowd and about the

presence of police as well as commando was deposed by the witness. P.W.6 stated that a crowd of 400 to 500 people gathered behind the temple of Ambaji and persons of Patel community in the crowd were having sticks, pipes and stones in their hands. Though, the superior officer were trying to pacify them, in spite of that the crowd got further infuriated and were heading towards Rabaris street and therefore, they were cordoned. They all were present at Panchayat office for Bandobast along with other persons. At that time, the stone pelting had begun and the glass of government gypsy in that process, got damaged. The witness also stated that the government motorcycle was parked on the front side of the Panchayat office and crowd had tried to burn the motorcycle, at that time, the superior officer had ordered Lathi charge and therefore, the crowd became uncontrollable and they set the motorcycle on fire.

25.1 This witness also states that the crowd had put the motorcycle on fire and thereafter the superior officer had ordered for release of tear gas cell. The uncontrollable crowd continued with the stone pelting, therefore, the superior officer gave a wireless message asking for police force, at that time, the witness sustained simple injury on his chest. P.W.6 further stated that three persons out of the dispersed crowd were arrested by the police and were taken to the police station. The witness could not identify the person who had pelted stones on him, he could remember only two accused Rameshbhai and Kanubhai.

25.2 The witness P.W.6 in the cross-examination had affirmed of the tension between the Patels and Rabaris communities in the village and the incident had occurred in the night. The witness had reached at 9.30 hours at the village but

denied the suggestion that at that time people were sitting there in Gram-Sabha and denied the suggestion that seeing the police they had come for representation. The tear gas was released after the bike was set to fire. The witness stated that he was not knowing that the people of the village were infuriated because of the injury to Bharatbhai.

26. P.W.7 is the commando - Vaghela Rajendrasinh Shankarsinh, who had released four tear gas cell under the instruction of his superior officer Shri Joshi Sahab. As per his deposition the crowd was heading towards Rabarivas and Sahab had ordered for light Lathi charge therefore, the crowd had become uncontrollable and because of the stone pelting, front and side glasses of the vehicle got damaged. Thereafter, the crowd had set the Pulsar bike on fire. In spite of that, the crowd had not dispersed therefore, his superior had instructed him for release of tear

gas. The witness stated that he too was injured below the knee of the right leg. He could identify accused Ganpat Bhala (A-10). He had not taken any treatment for the injury. He had seen Ganpatbhai in the crowd, who was the Sarpanch of the village and therefore he could identify. So this witness too, had stated that it was the crowd who had put the Pulsar bike on fire.

26.1 P.S.O. - Motilal Maujibhai Parmar (P.W.11) was on his duty at Adalaj Police Station from 20.00 hours on 07.04.06 and 8.00 hours of 08.04.06. He received a telephone call from Rabari - Karamsinh Devkaran informing that 300 to 400 people of Patel community had gathered in the front-yard of Panchayat at the Ambaji Mata Temple. That Wardhi he recorded at 21.20 hours. The Wardhi no.98/06, he placed in evidence at Exh.38. The P.S.O. further stated that in the station diary by entry no.36/06 at 13.45 hours of 07.04.06, I-C.R. No.106/06 was registered and the

further investigation was handed over to P.S.I. M.A. Patel. The witness P.S.O. in the cross-examination stated that during the course of his duty he had not received the complaint of Bharat Tribhuvandas and it had not occurred that Bharatbhai Patel was sent with police Yadi to the police station. He affirmed that in the telephone Wardhi there were no names of the accused. According to the P.S.O. the writer of Brahmbhatt Sahab, Dilipsinh had brought the complaint to the police station at about 23.45 hours.

27. It requires to be noted from the evidence of P.W.1, that the complaint of Bharatbhai Tribhuvanbhai (A-13), was registered at Adalaj Police Station as 108/06, while the present matter was registered as 106/06. This itself brings the fact to the surface that some incident had occurred with Bharatbhai Tribhuvandas Patel, while the police and more specifically the complainant had tried to hide

the said fact. It is the defence that because of injury of Bharatbhai Tribhuvandas Patel on that day, the people of Patel community gathered at the Panchayat office. There was no telephone Wardhi of any overt act of any of the person from Patel community. It is not the case of the police that after receiving the telephone Wardhi, while reaching village Khoraj, they had seen the crowd of Patel community injuring the people of Rabari community or hurling stones on the house of people of Rabari community. It is the defence that on seeing the police, the people of Patel community had tried to make their representation, however, it was not heard. The telephone Wardhi Exh.38 does not reflect that the alleged 300 to 400 people in the crowd were armed with sticks, stones or iron pipes. There is no injury to any of the local people of Rabari community. None have come forward to allege the case of Arson.

27.1 As per the referred witnesses, the stone pelting had started when the police had stopped them from heading towards Rabarivas. But the said witness, who had given the telephone Wardhi (P.W.9) does not state in his deposition that the crowd was heading towards their Rabarivas. The only witness P.W.9 – Karamsinhbhai Devkaran Rabari, though examined by the prosecution is not at all referring to the incident, which had occurred as alleged by the police. He only states that the crowd was of Patel community, though he is resident of Khoraj village since last 10 years he was not knowing the persons in the crowd, while stated that Ganpatbhai Bhalabhai (A-10) and Jatinbhai Gorwanbhai (A-6), both were shouting, but what were their utterance has not been deposed by P.W.9 – Karamsinh Rabari. The witness was in the village at the time of the incident. The police has recorded his statement on 22.06.06. In spite of that, he has not stated

about any act of the accused, while his evidence refers that Ganpatbhai, the Sarpanch, had filed a case against the people of Rabaris and he also affirms that Bharatbhai had filed a case against people of Rabaris.

27.2 P.W.9 has affirmed of the case filed by Ganpatbhai as well as Bharatbhai. P.W.9 has not supported the prosecution case nor has deposed of any such incident. P.W.9 has not stated of any act of the appellants, who were accused Nos.1 to 3 during the trial.

27.3 P.W.13 – Mukesh Amrabhai Patel was the investigating officer. As per his deposition on 07.04.2006, he was P.S.I. Adalaj Police Station. During the Bandobast at Khoraj village P.S.O. Motibhai had registered the offence and had entrusted the investigation to him. The complaint at Exh.21 of J.D. Bhrahmbhatt was registered by P.S.O. According to the Investigating Officer

witness – H.C. Karansinh had shown him the place of incident and Exh.26 panchnama was drawn as narrated by the panchas. Thereafter, he recorded the statements of witnesses. F.S.L. officer K.A. Sharma had visited the place and given the report Exh.45. According to the Investigating officer, three persons were arrested from the place, while thereafter other accused presented themselves in the police station, thus, their arrest was made who had produced the weapons used by them, which was recorded by way of panchnama Exh.28. The witness stated that on 11.04.2006, Rameshbhai produced stick of Babul (Baval) tree. Bharatbhai produced an iron pipe, while rest of the accused Ganpatbhai, Harshadbhai, Swapnilbhai, Prahaladbhai and Jatinbhai produced bamboo sticks.

28. The I.O. P.W.13 further stated that the muddamal was sent for examination. He produced the relevant document of communication to F.S.L.

in evidence. The F.S.L. report of the Assistant Director was produced in evidence at Exh.49 and the report of scientific officer at Exh.51.

28.1 As per the deposition of the I.O. after the completion of the investigation, J.D. Brahmbhatt Sahab arrested one accused named Bharatbhai Tribhuvanbhai Patel and filed the charge-sheet. Muddamal articles 7 to 14 were seized by the witness. In the cross-examination, he affirmed that in the matter, complainant, the injured and the witnesses were all police staffs. He had started the investigation from complaint Exh.21. He affirmed that in the Janvajog entry, 13 accused were not named. It came to his knowledge that the complaint was registered at the police station. No such fact was disclosed that prior to the complaint message was given to the dispensary. He affirmed that injured Vikramsinh had gone to the dispensary without police Yadi and during the course of his treatment, the complaint was

registered. The IO has affirmed about the grudge between the Patels and Rabaries in the village . He has also affirmed about the complaint of Ganpatbhai against the Rabaris. The witness also stated that he has not seized any clothes of witness Vikramsinh, while denied the suggestion that apart from the police, he had not recorded the statement of any third person. He denied recording the statement of Rabaris.

28.2 The witness – Investigating Officer affirms that he has not collected the documentary evidence with regard to the bike and Government Gypsy . Witness as Investigating Officer has also affirmed that during his investigation such fact was disclosed that Bharatbhai Tribhuvandas Patel had sustained injury and he had given complaint to that effect. The witness stated that he had not recorded the statement of Bharatbhai Tribhuvandas and affirmed that he was accused in the matter. Investigating Officer even affirmed

that no identification parade was conducted and denied the suggestion that complaint Exh.21 was arranged by the police and the accused were falsely involved.

29. In the case of ***Balkisan And Others Vs. State of M.P.***, 1982 MPLJ 30, the M.P. High Court by referring to the case of ***Dhanka V. State***, 1964 JabLJ 183, quoted the observation of the said case, which are as under:

"Having given my anxious consideration to the direct evidence led against the present appellant by the prosecution I am of opinion that it is inherently improper and discrepant in nature. It is not possible to place implicit reliance on it.

Great care has to be exercised in deciding cases of arson, wherein it is not unlikely that after a fire is detected a concerted move is made by the complainant and his witnesses to fasten the responsibility for it on any one who has been on terms of enmity with the aggrieved party. Witnesses who happened to appear at an odd hour of night at the crucial moment

and reached the scene of occurrence just in time to be able to see culprit in action are more often than got up witnesses. Their evidence can be relied only if it is corroborated by some other evidence connecting the accused with the crime..."

30. The evidence of the witness as an Investigating Officer clarifies that the complaint given was by P.W.1 and P.W.1 had arrested accused No.13 – Bharatbhai Tribhuvan Patel and P.W.1 had even filed the charge-sheet.

31. The complainant's conduct as a police does not appear to be independent, as he had filed the complaint, arrested accused No.13 who had made complaint of injury suffered by him prior to the incident, and complainant had even filed the charge-sheet. The statement of the recorded witness, except P.W.9 are all police witnesses. P.W.9 was examined since telephone Wardhi was recorded in his name. However, P.W.9 being the resident of the village Khoraj and though was

present on that day at village Khoraj, his statement was recorded on 22.06.2006, which does not state of any destructive act of any of the accused. P.W.9 has not stated of accused Nos.1 to 3 setting the police motorcycle Pulsar on fire, nor does he state of any stone pelting. P.W.9 also does not give any account of the crowd armed with sticks, stones and iron pipes.

32. P.W.2 - Mangaji Khodaji Thakor is the panch of Exh.26, while second panch Ravjibhai Amajibhai had not been examined during the trial. P.W.2 Mangaji Thakor was called at about 12.15 night as panch near Ambaji Mata Temple of Khoraj village by police, which he state was of 08.04.2006 i.e. immediately past midnight . The police had asked him to be a panch of motorcycle which was in a burned condition at the place of incident. He had gone along with Ravji Amaji Thakor. The police had shown him the motorcycle, which was totally burned. The witness stated that only figure '8'

could be read. The police showed him the separate parts and spare parts, the twisted bundled wire, part of aluminum, which were seized. The panch witness stated that even ash were taken. He identified the muddamal Article-2 as burnt motorcycle spair parts, head light ring, melted number plate, coiled iron, pieces of wiring and identified Articles 5 and 6 as pieces of bricks and small and big pieces of glasses. The police had shown him the government vehicle gypsy which was on the northern side of the motorcycle. The witness does not recollect the registration number of both the vehicles. According to his memory the hood of the jeep and side light were broken. He identified his signature in Exh.26. He stated that policeman known as Jagatsinh stopped him, who knows him. The witness stated that he was standing there and police had dictated the panchnama and he had signed the same. He also stated that another panch had not narrated the

panchnama to the police.

33. The panchnama, if is not dictated by the panchas, then it will loose it evidentiary value, then in that situation exclusive reliance on such panchnama cannot be made. Here, in this present case, Exh.26 panchnama notes that the place of offence was shown by head constable Karansinh Natvarsinh of Adalaj Police Station. The place of offence is on the eastern side of Ambaji Mata temple at the outskirts of village Khoraj. Ambaji Mata temple is east facing and on the eastern side of the temple after about 15 feet there is a highway in north-south direction to enter the village road. On the north side of the temple, there was a 'Dhobhi Ghat' and from the 'Dhobhi Ghat', on eastern side after five feet, within the circumference of 8 feet there were recently burned ashes and debris, and as noted, where the government motorcycle Pulsar No.GJ-18-G-7081-P-42 was burned by the accused. The panchnama notes

that the motorcycle was facing the west, the front tyre, meter, ring, fans, the part of the petrol tank, engine area, the rear seat, tyre rings were completely burned. The aluminum parts were burned and were reduced to liquid knots, which were found stick to the surface. Within 8 feet radius of the motorcycle, they found ash scattered, and the burned chassis of the motorcycle was observed, and found the spare parts as head light, rings, wiring pieces and aluminum parts in melted form, and number plate when examined, found to be burned and only 'G' and below that from the series only '8' in English could be read, whereupon black ash was stuck. The damages was accounted of ₹40,000/-. On the northern side of that place, there was Neem tree and stems and leaves at the height of 10 to 15 feet were found half burned. The panchnama also notes of the damage to the Jeep to the value of ₹5,000/-. The open place, noted, scattered

stones and pieces of bricks, and at a distance of 200 feet towards east, panchayat office is shown, from where, the eastern side road was going towards Indranagar Hudko, and on the southern side of the panchayat office was pakka road towards Rabarivas, and at approximately 35 feet from the panchayat office, southern side on the road, were scattered brick pieces and glass pieces.

34. The panchas of panchnama Exh.28, P.W.3 and P.W.4 - Kanubhai Pursotam Patel and Kamlesh Kantibhai Patel, both have not supported the panchnama, which was for the production of Baval stick and bamboo sticks. P.W.3 and 4 denied of any production of baval stick and bamboo sticks and P.W.4 had also denied of production of rusted iron pipe by accused - Bharatbhai Sakrabhai Patel, which was shown to be 42 inch.

35. The High Court of Madhya Pradesh in the case of ***Varsingh v. State of M.P.***, 1989 SCC

OnLine MP 251 : 1990 Cri LJ 174, has referred to the case of ***Badri v. State of Rajasthan***, ((1976) 1 SCC 442 : AIR 1976 SC 560) and quoted the observation of the Hon'ble Supreme Court, which are as under:

"If a witness, who is the only witness against the accused to prove a serious charge of murder can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered as a reliable person and no conviction can be based on his sole testimony."

35.1 The Hon'ble Supreme Court in the case of ***Javed Shaukat Ali Qureshi v. State of Gujarat***, (2023) 9 SCC 164, by referring to the decision of three Judges' Bench of the same Court in the case of ***Vadivelu Thevar v. State of Madras***, AIR 1957 SC 614, quoted paras 10, 11 and 12, which are as under:

"10. ... On a consideration of the relevant

authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon the facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the

Evidence Act, has categorically laid it down that 'no particular number of witnesses shall, in any case, be required for the proof of any fact'. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence – 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognised in Section 134 quoted above. The section enshrines the well recognised maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single

witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way – it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the

prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

35.2 In ***Javed Shaukat Ali Qureshi*** (supra), the Hon'ble Supreme Court further held in paragraph No.11, as under:

"11. The conviction of Accused 1, 5 and 13 was based only on the testimony of PW 25 and PW 26. The test identification parade as regards Accused 1 and 5 was not held, but as regards Accused 13, the test identification parade was conducted. While dealing with appeals preferred by Accused 1, 5 and 13, in para 5, this Court held thus:

"On a careful consideration of the evidence adduced by PWs 25 and 26, we are

left with serious doubt as to whether the evidence of the said two witnesses should inspire the confidence of the Court. Identification of a total of 13 accused, who were sent out for trial including present appellants-accused, in a mob of 1000-1500 people is by no means an easy task. Over and above that no test identification parade was held so far as Accused 1 and 5 are concerned. The prosecution has not offered any explanation as to why no test identification parade was held in respect of A-1 and A-5 whereas a test identification parade was held in respect of A-13."

36. Here in the present case, the charge by the police was under section 435 IPC along with other sections, and under prevention of damage to public property act, and Bombay Police Act. Section 435 came to be invoked on the ground of damage to the Government vehicle, ownership of which was with the police. No documentary evidence was produced on record to prove the vehicle as public property. Document of ownership was also not produced, whether motorbike was of the Police Department, could not be found by the documentary

evidence. The Panchnama only showed alpha letter 'G' and numerical figure eight '8'. Though, the Panchnama noted the registration number of the vehicle, no registration book was produced. Police failed to produce Movement Register to prove that motorbike and Gypsy vehicle were taken to village Khoraj. The police, as a complainant has to prove the actual fact of the incident and has to describe the alleged act of the accused. Mere statement that 'I had seen', would not suffice, the police witness is not an ordinary witness, even an ordinary person, standing in the court of law has to describe the whole act, which they allege to have seen.

36.1 While Police Officer as an eye witness to the incident has greater responsibility to explain in detail, the occurrence. It would be more, if that police witness is a complainant himself, who would be interested to see the success of his complaint. Deposition of such

police personnel has to be weighed with much greater care. The corroboration of such evidence requires to be insisted.

36.2 Generally, Police Officer, who gives oral testimony in Court explain their actions or what they observed during an arrest, search or the seizure of evidence. Such testimony of the police, just like any other witness is subject to assessment by the Court for trustworthiness, who are subjected to cross-examination. Police Officer testifying as a witness provides key evidence to help the Court, understand the facts and circumstances of the case. However, like any other witness, the Police Officers testimony, even as Investigating Officer will be evaluated by the Court to determine the credibility.

36.3 Police as eye witness-complainant has greater role to play. Police as complainant and eye witness cannot make limited statement, as

assisting the Court. His evidence has to be evaluated as eye witness with knowledge of law and procedure.

36.4 P.W.1 - Shri J.D. Brahmbhatt, as an eye witness had noted in the complaint, Exh.21, that they saw approximately 400 people of Patel community gathered behind Ambaji Temple of Khoraj village. The place of offence noted in the panchnama, hardly had the capacity to hold 400 people, as alleged. It has been narrated in the complaint that the named thirteen accused and others had taken the leadership of the crowd and were provoking the crowd of Patel's, who were heading towards Rabarivas with sticks, pipes, and stones, uttering "Sala Fokao Fati Gayal Che Salaone Salgavi Do", the English rough translation would be 'you wicked, you have become overwise, set them on fire'.

36.5 The utterance was of setting the Rabaris on fire, while no firing material or explosive

substance or inflammable articles were in the hands of the crowd.

36.6 P.W.1, as an eye witness has to explain as to how the motorbike was set to fire without any such fire material.

36.7 Police culture embraces testimonial lying because the ends justify the means. Lying is acceptable to the police, when it helps to ensure conviction of people, police officer believes are guilty. Systematic fabrication of evidence is another aspect, which requires consideration of the Court. Lying to evade judicial scrutiny about the ways they gathered evidence is an acceptable strategy to help convict people, they believe are guilty. In this Police culture of testilying, fairness, importance of truth and procedural protection becomes crucial for the system of justice. Police is not above the law.

36.8 In the case of **Budhwa alias Ramcharan**

and Ors. v. State of M.P., 1991 Supp (1) SCC 9, it was observed by the Hon'ble Supreme Court as under:

"In the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault by merely naming them. The court, therefore, has in all such cases to sift the evidence with care.

36.9 In the case of **Budhwa alias Ramcharan** (supra), the Hon'ble Supreme Court has observed, as under:

"4....This Court has in several decisions pointed out that "where there is enmity between the two factions then there is a tendency on the part of the aggrieved victim to give an exaggerated version and to rope in even innocent members of the opposite faction in a criminal case and that therefore the court has in all such cases to sift the evidence with care and convict only those persons against whom the prosecution witnesses can be safely relied upon without raising any element of doubt", vide Raghbir Singh v. State of U.P. [(1972) 3 SCC 79 : 1972 SCC (Cri) 399 : AIR 1971 SC 2156].

6. *"Where an occurrence takes place involving rival factions it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is interested is to shut one's eyes to the realities of the rural life in our country. It has to be borne in mind that in such situation easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and has to be eschewed and, therefore, the evidence has to be examined with utmost care and caution and the court has to adopt a workable test for being assured about the role attributed to every accused" vide Muthu Naicker v. State of Tamil Nadu [(1978) 4 SCC 385 : 1979 SCC (Cri) 14]."*

37. In the present matter, the superior officer, Deputy Superintendent of Police, Mr. Joshi has not preferred to enter in the witness box. The Investigating Officer does not state of recording statement of Dy.S.P. Shri Joshi. In the crowd of 400 people, the damage to Dy.S.P. Gypsy vehicle was assessed as of ₹3000/-. Evidence has been

brought on record by the defence that the people of Patel community on seeing the police at Khoraj village had gone to the police for making a representation, since accused No.13 – Bharatbhai, sustained injury on that day. But, it appears that no heed was paid to it. The defence had no opportunity to cross-examine Dy.S.P. Shri Joshi. The injured witness P.W.5 was serving at Adalaj Police Station. He states of receiving injury in the stone pelting by the Patel's. Though, being a police and had the knowledge of going to Doctor for treatment with police Yaadi, he failed to do so. The complainant also alleges of being hurt during the incident. The prosecution case is that Dy.S.P. Shri Joshi was also hurt, but no medical evidence has been produced to prove injury.

37.1 P.W.6 does not support the complainant, naming accused Nos.1 to 3 as perpetrators of mischief by Fire. P.W.6, blames the crowd of setting the motorbike on fire, even P.W.7 blames

the crowd, who had put the motorbike on fire, P.W.8 is the driver of the Gypsy vehicle, who also alleges that the damage to the vehicle was done by the crowd and the crowd had burned motorcycle Pulsar. P.W.9 is the person, who had given the telephonic 'Wardhi', a person, Rabari by caste, he has not uttered a word about the incident.

37.2 P.W.10 - Poonambhai Patni is the police witness, who had gone along with constable Natubhai under the order of P.W.1 - J.D. Brahmhatt on the motorcycle. P.W.10 has not given evidence, as to where he had parked the motorbike. He was not taken to the place when his statement was recorded by the police. P.W.10 has not shown the place where the bike was parked. According to his deposition, from the crowd, three persons had pulled the knob of the Pulsar motorbike and burned the bike. P.W.10 does not testify as to when, how and where he had seen

this incident of the vehicle, which was in his custody, put on fire. He named the persons, who were arrested stating that they had set the bike on fire. Though, P.W.10 was present there he had not shown the place of incident while drawing the Panchnama Exh.26, which was drawn between 00.15 Hours to 1.15 Hours night on 08.04.2006. The referred witnesses P.W.6, P.W.7, P.W.8 nor P.W.9 have supported P.W.10. The prosecution has failed to prove the case beyond reasonable doubt. The other police witnesses are not supporting the complainant as well as witness P.W.10. P.W.9 is the independent person of Rabari community, he has not uttered anything about the incident, not even of such incident being taken place. The analysis of the evidence referred hereinabove would prove that the police had gone with some bias motive, where the suggestion was that the telephonic 'Wardhi' was recorded on the instruction of Shri Rabari Karamsinhbhai

Devkaranbhai and with that instruction the police force had headed towards Khoraj village. If all the police witnesses in furtherance to the common interest works uniformly, against the member of one targeted community, then there are all probabilities that the most interested person may, taking two or three together can go for deception of evidence. Such deception can be caused even by withholding crucial information or misrepresenting facts to create a false belief in another party. Evidence can be deceived through active measures, like making false statements or passive measures such as ommitting relevant details. The evidence of P.W.1 and P.W.10 are not reliable. The enmity of two communities were already to the notice of the police. The bias of the police favouring one community has been brought on record by the defence.

38. The police here, as complainant has acted in a partisan way towards the Patel community.

The attempt has been made by the police to draw the case in a direction to secure conviction of the accused being the member of Patel community. Crucial facts have not been brought on record, which was evident by way of the complaint by accused No.13. The attempt of the police, as a prosecution, manoeuvring by not examining persons from Rabari community, and the fact that P.W.9 being from Rabari community has not deposed of any such incident on 07.04.2006, though was a person who states to have given the telephonic 'Wardhi' makes the police case doubtful. The police witnesses are all interested witnesses and therefore, those cannot be relied upon for conviction. The conclusion by the Trial Court Judge of convicting the present appellants would thus, become erroneous, and no justification can be attributed to the conclusion reached by the Trial Court on the evidence of the police, which does not disclose the direct involvement of the

present appellants in the offence of mischief by fire. The prosecution has failed to prove their case.

39. In view of the above discussions and observations, this Court is of the view that the present appellants are entitled for benefit of doubt and accordingly benefit of doubt is given to the appellant.

40. Consequently, Criminal Appeal Nos.706 of 2007 and 724 of 2007 are allowed. The conviction and sentence of the appellants-accused dated 03.04.2007 passed by the learned Sessions Judge (Main Court) Gandhinagar in Sessions Case No.86 of 2006 is set aside. The appellants are acquitted from all the charges. Bail bond stands discharged. Registry is directed to send the Record and Proceedings back to the concerned Trial Court forthwith.

(GITA GOPI,J)

Pankaj/1