A MEHBUB SAMSUDDIN MALEK AND ORS.

v.

STATE OF GUJARAT

AUGUST 23, 1996

B [G.N. RAY AND G.T. NANAVATI, JJ.]

Criminal Law :

Penal Code, 1860 : Sections 120-A and 120-B.

C *Criminal conspiracy—Accused Driver stopped the bus near a mob armed with weapons—In spite of request of passengers to start the bus accused did not start the bus before the mob could approach it—Instead accused got down from the bus, went upto the mob and had some discussion with persons of that mob—Held : accused facilitated attack on passengers—In the cir-*
D *cumstances of the case, an agreement between accused and the said unlawful assembly was established—Hence, his conviction under s.120-B deserved to be upheld.*

Evidence Act, 1872 : Sections 9 and 27.

E *Identification—Failure of witness to identify all accused at identification parade—Held : his evidence regarding identification of some of those accused could not be rejected.*

Identification—Communal riot—Accused identified by witness as the person who had given gupti blow to deceased—Discrepancy as regards height
F *of accused whom he identified—Witness saw accused giving a blow to deceased with a dangerous weapon—Delay of 12 days in recording statement of witness—Held : it was quite probable that the attention of the witness was focussed on the face of the accused—In the circumstances of the case, discrepancy regarding height could not be given any importance—This being*
G *a case of communal riot witness might have been reluctant to go to police—Hence, delay of 12 days in recording his statement was immaterial.*

Discovery of gupti at instance of accused from dilapidated building concealed below heap of earth-gupti found stained with human blood of 'B' Group—Clothes of deceased also stained with blood of 'B' Group—Accused
H *denied discovery of gupti—Held : evidence regarding discovery of gupti could*

not be disbelieved. A

Criminal Trial :

Circumstantial evidence—Crime objects—Clothes of accused—Production of—By two persons in presence of panch witnesses—These two persons not examined by prosecution—Held : it was not safe to accept statement of B *panch witnesses that accused gave his clothes to these two persons.*

Circumstantial evidence-Crime objects—Muddamal razor—Recovery of—From house of accused—Panch witness did not say it was stained with blood—Origin of blood also could not be ascertained—Held : it was not safe C *to place reliance on this circumstance for convicting accused.*

Criminal Procedure Code, 1973 : Section 353.

Judgment—Application of mind—Mistake of court while naming accused who had produced knife—Held : In the circumstances of the case, the D *mistake could not be regarded as non-application of mind—Mistake committed by court either taken individually or cumulatively do not have effect of vitiating conviction.*

The first appellant was convicted under Section 120-B of the Indian Penal Code, 1860 and the second and third appellants were convicted E **under Sections 147, 148, 302 and 451 read with Section 149 I.P.C. and Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.**

According to the prosecution about 25 to 30 Muslim boys formed a mob and started shouting words like 'beat', 'kill', 'kill Hindus'. Some of F **them were armed with weapons. After attacking some persons the mob kept waiting at the entrance of a street. Appellant No. 1 was the driver of a city bus with about 50 passengers. As soon as the bus reached the entrance of the street Appellant No. 1 stopped it even though he was told by the passengers not to do so as they saw a mob of persons armed with weapons standing near the entrance of the street. Appellant No. 1 got down** G **from the bus and had some talk with the mob. Soon thereafter the said mob which included Appellants Nos. 2 and 3 attacked the bus, inflicted injuries to the passengers and Appellant No. 2 gave a 'Gupti' blow to the deceased. On seeing the police coming the appellants ran away.**

In the appeal before this Court on behalf of the appellants-accused, H

A it was contended that the trial court either misread the evidence or did not apply its mind with the result that the findings stood vitiated; that neither the evidence of the eye-witnesses nor the evidence relating to identification of Appellants 2 and 3 nor the evidence relating to the discovery of weapons by them and production of their blood stained clothes were reliable; that there was some discrepancy in the evidence of the identifying witness; that B there was a delay of 12 days in recording the statement of the identifying witness; and hence the conviction of Appellant No. 1 under Section 120-B IPC and that of Appellants Nos. 2 and 3 was neither legal nor proper.

Dismissing the appeal, this Court

C

HELD : 1. Appellant No. 1 stopped the bus near a mob of armed Muslim boys standing at the entrance of a street. In spite of the request of the passengers Appellant No. 1 did not start the bus before the mob could approach it but instead he got down from it, went upto the mob and had some discussion with the persons of that mob. Thereafter, the mob came D near the bus and assaulted the passengers. If really the bus had stopped because of the mob coming in front of it then it was not necessary for him to get down from the bus. He could have disclosed his identity even by remaining in the bus. In view of the evidence of the eye witnesses, the explanation given by him has to be regarded as false. His conduct is also E inconsistent with his innocence. The stopping of bus at a place where there was no necessity to stop it, his getting down from the bus and going across the road right upto the entrance of the street and talking to the persons in the said mob leads to an irresistible inference that he not only facilitated the attack on passengers by stopping the bus just opposite the entrance of the street but also induced the members of the said unlawful assembly to F attack the passengers. Thus an agreement between him and the said unlawful assembly is satisfactorily established by the prosecution and therefore his conviction under Section 120-B I.P.C. deserves to be upheld. [160-B-C]

2.1. Failure by a witness to identify all the accused whom he had seen at the time of the incident cannot be regarded as a good ground for G rejecting his evidence regarding identification of some of those accused. His ability to remember the faces of the accused and identify them at the identification parade would depend upon many factors. If his attention was focussed only on some of them it is quite likely that he may be able to identity them only and fail to identify the other accused even though he H had seen them. [155-E-F]

2.2. It is true that there is some discrepancy in the evidence of the identifying witness as regards the height of the accused whom he identified. Before the police he had stated that the person who had given the gupti blow was thin and short. While giving evidence in the court he admitted that though Appellant No. 2 was thin he was not short. Appellant No. 2 was seen by this witness while getting into the bus. The blow to the deceased was given at about that time. As Appellant No. 2 was seen giving a blow with a dangerous weapon it is quite probable that his attention was focussed on his face. Therefore, this discrepancy regarding the height cannot be given any importance. This being a case of communal riot the witness might have been reluctant to go to the police and give his statement. Hence, a delay of 12 days in recording his statement was immaterial. [156-B-C; 157-E]

Habal Shaikh v. *The State,* (1991) Crl. L.J. 1258; *Pramod Kumar* v. *The State,* (1990) Crl. L.J. 68; *Mahendra Singh* v. *State of U.P.,* (1991) Crl. L.J. 1381; *Bollavaram Pedda Narsi Reddy* v. *State of Andhra Pradesh,* [1991] 3 SCC 434; *Chaman* v. *State of U.P.,* [1993] Supp. 1 SCC 403 and *Tahir Mohammad* v. *State of M.P.,* [1993] Supp. 2 SCC 697, referred to.

3.1. A 'gupti' was discovered pursuant to the statement of Appellant No. 2 from a dilapidated building concealed below a heap of earth and broken bricks which on examination was found to be stained with human blood of 'B' Group. The clothes of the deceased also showed that they were stained with blood of 'B' Group. Because the house was in a dilapidated condition and could be approached by any one it cannot be urged that the gupti was found from and open place accessible to all. It was not found from a public place nor was it found inside a house which belonged to someone though the same was in a dilapidated condition and the gupti was found concealed below a heap of earth and broken bricks. The find of human blood of 'B' Group on the gupti which was discovered at the instance of Appellant No. 2 provides independent corroboration to the evidence of the eye-witnesses that Appellant No. 2 had given a gupti blow to the deceased. Appellant No. 2 denied in his statement under Section 313 of the Code of Criminal Procedure, 1973 that he had discovered the 'muddamal' gupti or that it belonged to him. This false denial is also a circumstance against Appellant No. 2. [157-F-H; 158-A-C]

3.2. The Panch witness had stated that he had gone to the house of Appellant No. 3 and on search one muddamal razor was found from a

A **hollow place below a safe. The Panch witness did not say that it was stained with blood. Moreover, origin of the blood also could not be ascertained. Therefore, it is not safe to place reliance upon this circumstance for convicting Appellant No. 3. [158-F-G]**

B **4. The trial court had stated that the evidence of the witness proved that Accused No. 10 (Appellant No. 3) took out a knife and produced it before the Panch witness and the police and, therefore, this circumstance proved the case of the prosecution against accused No. 10. But the evidence of the witness is that Accused No. 6 had produced the knife which he had hidden in a loft. The trial court has obviously committed a mistake while** C **naming the accused who had produced the knife. Appellant No. 3 has not been convicted by the trial court relying upon the evidence of this witness but on the basis of the evidence of other prosecution witnesses. This mistake cannot be regarded as misreading of evidence or non-application of mind. The mistakes either taken individually or cumulatively, do not** D **have the effect of vitiating the conviction of Appellant Nos. 2 and 3 (Accused Nos. 7 and 10.) [144-C-E; 145-E]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 276 of 1992.

E From the Judgment and Order dated 10.4.92 of the Designated Court at Vadodara in TADA Case No. 64 of 1991.

Sushil Kumar, M.V. Goswami and S.A. Syed for the Appellants.

F S.C. Patel for the Respondent.

The Judgment of the Court was delivered by

NANAVATI, J. The appellants, who are original accused Nos. 1, 7 and 10, have filed this appeal under Section 19(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 against the judgment and order passed by the Designated Judge and Additional Sessions Judge, Baroda in TADA case No. 64 of 1991.

On 23.4.1991 at about 10 P.M. there was a communal disturbance in the city of Baroda. In an incident which took place around 10.15 P.M. near H Mehta 'Pole' (Street) which is on the northern side of Mandavi Gate and

in between Champaner Gate and Mandavi Gate two Muslim boys were attacked with sharp weapons. They were taken in an injured condition by other Muslim boys to Rajpura 'Pole' which is on the eastern side of Mandavi Gate and in between Mandavi Gate and Pani Gate. It was the prosecution case that because of the attack on these two Muslim boys the residents of Rajpura 'Pole', which is inhabited by Muslims, got excited and soon a mob of 25 to 30 boys of that street collected near its entrance and started shouting words like 'beat', 'kill', 'kill Hindus'. Some of them were armed with weapons. They first attacked Rajaram (P.W. 47) who was proceeding on his moped from Pani Gate side towards Mandavi Gate. While he was little away from Rajpura 'Pole' a stone hurled by someone from the mob hit him on his head. They then attacked Shridhar at about 10.45 P.M. when he was passing by that place on a scooter alongwith his wife and son. His wife and son were able to escape without being injured but Shridhar received injuries before he could run away to the nearby Police Control Room set up under the Mandavi Gate. It was also the prosecution case that one city bus running between Baroda railway station and Sayaji Park left the railway station at about 11 P.M. with about 50 passengers including Harish (deceased), Pravinbhai (PW 3), Agamkumar (PW 20), Nand Kishore (PW 21) and Shambhubahi (PW 22). Appellant No. 1 was driving the said bus and Gulamnabi (PW 6) was the conductor. Upto Nyaymandir the appellant No. 1 had stopped the bus at regular bus stops. When the bus started from Nyaymandir there were about 25 to 30 passengers in it. The next stop was near Mandavi gate. Even though one passenger had to get down at Mandavi bus stop and even though one S.R.P. Constable posted at the Mandavi Control Room, sensing some trouble ahead, tried to stop the bus the appellant did not stop it and proceeded further. He stopped it opposite Rajpura 'Pole' even though he was told by the passengers not to do so, as they saw a mob of persons armed with weapons standing near the entrance of that street. He got down from the bus, crossed the road, went near the mob, and had some talk with it. Soon thereafter the said mob which, included accused Nos. 2 to 11 came near the bus and surrounded it. They attacked the bus and were also shouting 'kill Hindus', 'cut Hindus' and 'set fire to the bus'. Pravinbhai (PW 3) got frightened, opened the door of the bus and tried to run away. He was caught and given blows with a sharp edged weapon and because of the injuries thus received he fell down on the road. Harish (deceased) who was in the bus also tried to get down from the bus and run away but before he

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A could get down he was also attacked and given a 'Gupti' blow by Appellant No. 2 (accused No. 7). He received serious injuries and after walking few steps fell down on the road. Some members of that unlawful assembly including appellants Nos. 2 and 3 entered the bus and started attacking others. Because of the shouts raised by the passengers and also because B Police Inspector, Solanki, who was on 'Bandobast' duty near the Mandavi Gate control room himself saw that a person was being dragged towards Rajpura Pole, he along with other policemen rushed towards the bus. Seeing the police coming the assailants ran away into the Rajpura Pole. It is the prosecution case that as a result of the injuries caused by the members of the said unlawful assembly, Harish and Deepak died. It is also C the prosecution case that all these acts were committed by the members of the said unlawful assembly in prosecution of their common object to cause injuries to Hindus and kill them. Appellant No. 1 had also conspired with the said unlawful assembly and was, therefore, responsible for the acts committed thereafter by the members of the said unlawful assembly. On D these allegations the appellants along with 8 other accused were charged and tried for the offences punishable under Sections 147, 148, 307, 302, 336 and 451 all read with Section 149 and Section 201 I.P.C. They were also tried for the offence punishable under Section 135 of the Bombay Police Act, for committing breach of the notification dated 15.4.1991 issued under E Section 37 of the said Act.

The prosecution led the evidence of eye witnesses, evidence relating to identification of the accused and evidence regarding recovery of incriminating articles and also other supporting evidence.

F The trial court accepted the prosecution evidence against the appellants. It held that the mob which had gathered near the entrance of the Rajpura Pole was an unlawful assembly, the object of which was to attack and kill Hindus. It also held that Rajaram and Sridhar were injured and Deepak and Harish were killed by that unlawful assembly in prosecution of their common object. It further held that appellant No. 1 deliberately G did not stop the bus at the Mandavi bus stop and stopped it opposite Rajpura pole, seeing a crowd of armed Muslim boys standing near the entrance of that Pole. The trial court held Appellant No. 1 guilty for the offence of criminal conspiracy as he after getting down from the bus had gone near that unlawful assembly, had a talk with it and thereafter the H members of that unlawful assembly had attacked the bus and passengers

sitting therein and all this was done by him with a view to facilitate an attack on the passengers. With respect to Appellant Nos. 2 and 3 the trial court held that the prosecution evidence was reliable and sufficient to establish their identity as members of the said unlawful assembly and also as the persons who had attacked the passengers, including deceased Harish. Therefore, the trial court convicted them for the offences punishable under Sections 147, 148, 302 and 451 read with Section 149 I.P.C. and also under Section 3 of the TADA Act. Appellant Nos. 2 and 3 have been acquitted of the other charges for which they were tried. The trial court did not find the prosecution evidence sufficient and reliable as regards the remaining accused and, therefore, acquitted them by giving benefit of doubt.

Aggrieved by their conviction, the appellants have filed this appeal. The learned counsel for the appellants first drew our attention to certain mistakes in the judgment and submitted that the learned trial judge either misread the evidence or did not properly apply his mind to the evidence on record with the result that the findings recorded by him stand vitiated. In view of this submission we have carefully gone through the entire record even though certain facts are not in dispute.

He first drew our attention to paragraph 18 of the judgment where after appreciating the evidence of P.W. 13 Prahladsinh Badansing Shekhavat, the learned trial judge has observed that "so he proved that the persons caused injuries to the passengers and caused death of two passengers. Culprits were the persons of Rajpura Pole and it was standing in front of Rajpura Pole." It is true as submitted by the learned counsel that this witness has not stated that he had seen the assailants causing death of two passengers and injuries to others. What he has stated in his evidence is that the bus stopped near Rajpura Pole and soon thereafter shrieks of the passengers were heard. Therefore, he and P.I. Solanki rushed towards the bus. By the time he and P.I. Solanki reached that place the assailants ran away by jumping out of the bus. They ran away towards Rajpura Pole. They had weapons with them. The learned trial judge after considering this evidence has observed :

> "So he proved that the persons caused injuries to the passengers and caused death of two passengers. Culprits were the persons of Rajpura Pole and it was standing in front of Rajpura Pole. So he

A established the facts that mob came from the Rajpura Pole and assaulted passengers and caused them injuries."

The last two sentences set out the conclusion reached after appreciating the evidence of this witness. In the previous sentence the learned judge has stated what can be said to have been proved on the basis of the B evidence of this witness and other evidence on record. It is, therefore, not possible to agree with the learned counsel that the said observation discloses non-application of mind or misreading of the evidence having the effect of vitiating his ultimate conclusion regarding guilt of the appellants.

C In paragraph 35 of the judgment after considering the evidence of P.W. 27 Rameshbhai the learned trial Judge has stated that his evidence proves that Accused No. 10 took out a knife and produced it before the Panch witness and the police and, therefore, this circumstance proves the case of the prosecution against accused No. 10. Evidence of P.W. 27 Rameshbhai is that Mohammed Rafiq, Accused No. 6 had produced the D knife which he had hidden in a loft. The learned Judge has obviously committed a mistake while naming the accused who had produced the Muddamal knife under Panchnama, Exh. 79. The evidence is that Accused No. 10 had caused injuries with a razor and the razor was recovered from his residence in presence of P.W. 31 Mukhesh, who had acted as a Panch witness. Accused No. 10 has not been convicted by the learned Judge E relying upon the evidence of P.W. 27 Rameshbhai but on the basis of the evidence of P.W. 31 Mukheshbhai and other prosecution evidence. This mistake cannot be regarded as misreading of evidence or non-application of mind.

F In paragraph 42 of the judgment the learned trial judge has described P.W. 34 Rajubhai as a Panch witness. That is a mis-description of the witness and that becomes clear from the fact that his evidence has been correctly stated in that paragraph. Moreover, no reliance has been placed on the evidence of this witness as he had turned hostile. Therefore, this mistake also does not support the appellant's contention.

G The learned counsel lastly drew our attention to Paragraph 66 of the judgment. After referring to the evidence regarding identification of the accused, the learned Judge has further stated that the evidence of the eye-witnesses who identified them "are supported by the other circumstances and evidence that accused voluntoritly produced the Muddamal H weapons which were used by them in the said crime and particularly

accused No.7 at the time of incident was possession Gupti and stabbed the said Gupti to Harish and Deepak ....." The learned Judge has further stated that "this accused produced Muddamal clothes having blood stains which were put on by them". It is true that none of the eye-witnesses has stated that he had seen Accused No. 7 giving Gupti blows to Deepak. Their evidence is that they had seen Accused No. 7 giving a Gupti blow to Harish. When the learned trial Judge stated that Accused No. 7 had stabbed Harish and Deepak he was really stating the cumulative effect of all the evidence against him and not that of the eye-witnesses alone. As regards the production of Muddamal clothes we find that the statement made by the learned trial Judge is not wholly correct qua accused No. 7. He had not produced the clothes alleged to be his and stained with blood. It appears from the evidence that Accused No. 7 had given his blood stained bushirt to Mohammed Salim and his blood stained pant to Sajid Hussain and they had produced those clothes before Panch witnesses P.W. 40 Parasram and P.W. 41 Govind and they were taken into custody by the police under Panchnamas, Exhs. 18 and 120. Their evidence has been dealt with by the learned trial Judge in paragraphs 48 and 49 of the judgment. What is the worth of that evidence will have to be considered independently but it cannot be said that the learned Judge has recorded the finding with respect to Accused No. 7 without application of mind.

In our opinion, the mistakes pointed out by the learned counsel, either taken individually or cumulatively, do not have the effect of vitiating the conviction of Appellant Nos. 2 and 3 (Accused Nos. 7 and 10).

We will now refer briefly to the evidence which establishes certain facts regarding which there is really no dispute. Evidence of P.W. 5 Police Inspector Govindsingh Solanki and P.W. 51 Police Inspector Shantilal clearly establishes that on 23.4.1991 at about 10.45 P.M. because of riots in different areas falling within the limits of the City Police Station, they had returned to Mandavi sub-control room for Bandobast duty. Evidence of P.W. 4 Imammiya establishes that by about 10.15 P.M. a mob of about 25 to 30 Muslim boys had collected near the entrance of the Rajpura Pole and that some time before that two Muslim boys, Liyakat and Akbar, were brought to that Pole in an injured condition. Evidence of P.W. 34 Rajubhai (Exh. 92) further discloses that at about 10.00 P.M. on 23.4.1991 he had gone to the 'lari' (a four wheel hand cart) of one 'Chacha' near Mandavi Gate for eating and after some time while he was eating accused No. 2 who resides in Rajpura Pole had come there and told him to go away as riots

A were likely to take place there.

Evidence of P.W. 47 Rajaram has also remained almost unchallenged. His evidence is that at about 10.30 P.M. while he was returning from his relative's house and had passed by Pani Gate and was proceeding towards Mandavi Gate on his Luna, he was hit by a stone thrown by one
B of the persons out of the mob standing near the entrance of Rajpura Pole. An attempt was made in his cross-examination to show that he was hit by a stone not when he was in front of Rajpura Pole but when he was near the entrance of Ladvada. This witness has denied that he had stated like that to the police and no such contradiction has been proved. Moreover,
C the map (Exh. 38) shows that a man coming from Pani Gate side has to first pass by the entrance of Ladvada and then cross the entrance of Rajpura Pole in order to reach Mandavi Gate. Moreover, the distance between the entrance of Rajpura Pole and Ladvada is about 30 feet only. Therefore, the learned Judge was right in not attaching any importance to this discrepancy and accepting his evidence.

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The next man to be assaulted was P.W. 2 Shridhar. His evidence is that some time after 10.30 P.M. while he was returning to his house on a scooter along with his wife and son, and after crossing Pani Gate when he came near Rajpura Pole, he was assaulted by a mob and as a result thereof he received two injuries on his hand and left leg, before he could escape.
E His evidence has remained unshaken. Only thing that could be elicited by the defence in his cross-examination was that because of darkness he could not identify whether the said mob was of Hindus or Muslims. In his cross-examination, an attempt was made by the defence to prove that city bus stand is opposite Rajpura Pole and that city police station is also
F nearby. But his evidence on this point is not of much significance because he has given rough estimates and as against that there is definite evidence of P.W. 10 Rameshbhai, (Exh. 36) a revenue Circle Inspector, who had taken exact measurements and prepared a map of scene of offence (Exh. 38). That evidence, apart from other evidence on record, clearly shows that
G the Bus stand is not opposite Rajpura Pole, but is towards Mandavi Gate and at a distance of more than 110 ft. from Rajpura Pole. This witness, may be because he was afraid, did not tell in his evidence who were in the mob and the reason why they were attacked. However, his wife P.W. 46 Arunaben has stated that the said mob of Muslim boys and that they were attacked by it after seeing a 'Chandla' on her forehead and at that time
H they were shouting 'beat', 'kill'. When questioned as to how she could say

that the mob was of Muslim boys, she stated that she believed so as Rajpura Pole is a Muslim locality. The learned counsel for the appellant could not point out any major infirmity in the evidence of these two witnesses and in the appreciation of their evidence by the learned trial Judge.

The evidence of all these witnesses clearly supports the finding recorded by the learned trial Judge that a mob of excited Muslim boys had collected near the entrance of Rajpura Pole after two Muslim boys were brought there in an injured condition and that the persons in that mob were armed with weapons and were uttering words like 'beat', 'kill' and thus it had constituted an unlawful assembly. It also supports the finding that the members of the said unlawful assembly had attacked Rajaram and Shridhar in prosecution of their common object to beat and kill Hindus.

The learned counsel for the appellant has, however, seriously questioned the findings recorded by the learned trial Judge regarding the involvement of the appellants in the attack on the passengers of the bus. He submitted that neither the evidence of the eye-witnesses nor the evidence relating to identification of Appellants Nos. 2 and 3 nor the evidence relating to discovery of Muddamal weapons by them and production of their blood stained clothes can be said to be reliable and sufficient to sustain their conviction. He also submitted that the conviction of Appellant No. 1 for the offence punishable under Section 120-B is neither legal nor proper.

That a city passenger bus left Baroda Railway Station at about 11.00 P.M. for going to Sayaji Park and that the said bus had to pass through the localities known as Kothi, Raopura, Nyaymandir, Mandavi, Pani Gate and Vaghodia Road is not in dispute. Though Appellant No. 1 has not admitted in his statement recorded under Section 313 of the Criminal Procedure Code that he was the driver of that bus, that fact is established beyond doubt by the evidence of the conductor of that bus P.W. 6 Gulamnabi. He has in clear terms stated that the driver of that bus was Mehbub Khan, that is, Appellant No. 1.

In cross-examination of this witness by Appellant No. 1 a question was put to him as to whether Appellant No. 1 was on that day on permanent duty or temporary duty and this witness stated that he was on temporary duty. No other question was put to him to suggest that Appellant No. 1 was not the driver of the said bus or that he had any reason to falsely

depose against Appellant No. 1. It was contended by the learned counsel for the appellant that the prosecution should have in all fairness put up this witness as an accused along with Appellant No. 1 as the statement made by P.W. 21 Nand Kishore before the police had disclosed that he had also got down from the bus and started talking with the mob. Nand Kishore has not admitted that he had made such a statement before the police. What he had stated before the police was that the driver and conductor had got down from the bus and had stood near Rajpura Street. Though a suggestion was made to P.W. 20 Agam Kumar that he had also stated like that before the police that was denied by the witness and it has not been proved that he had made such a statement. It was not put to the investigating officer that the investigation made by him disclosed that P.W. 6 Gulamnabi was also involved in the offence. For this reason it is not possible to say that the prosecution has acted in an unfair manner in not arraining Gulamnabi as an accused and examining him as a witness. As pointed out above the only attempt that was made by the defence in the cross-examination of this witness was to show that Appellant No. 1 was not the permanent driver of that bus but was on temporary duty on that day. P.W. 54 P.I. Parmar who was the investigating officer has stated in his evidence that he had obtained T.K. charge from the S.T. Controller which disclosed as to who was incharge of the bus on that day and had produced the said charge statement on the record of the case. Having carefully scrutinised the evidence of witness Gulamnabi we are of the opinion that his evidence has been rightly relied upon by the learned trial judge and the finding recorded on the basis of his evidence that Appellant No. 1 was the driver of the bus is also correct.

The fact that the bus stopped opposite Rajpura Pole and that the passengers travelling in that bus were attacked at that place is not in dispute as there is sufficient evidence on record to prove those facts. Therefore, we need not refer to the said evidence. The prosecution in order to prove how and under what circumstances the passengers were attacked by the members of the said unlawful assembly examined four eye-witnesses, P.W. 3 Pravinbhai, P.W. 20 Agam Kumar, P.W. 21 Nand Kishore and P.W. 22 Shambhubhai.

P.W. 3 Pravinbhai is an injured eye-witness. He does not involve any of the appellants as he was not able to identify any of his assailants or other persons who were in the mob which had attacked the bus and the pas-

sengers sitting therein. He had returned as usual from Surat to Vadodara and had boarded the bus for going to his house situated in Sheth Sheri near Mandvi Gate. He has stated in his evidence that the driver of the bus did not stop the bus at the Mandvi bus stop, went ahead and stopped it at a place which was opposite Rajpura Pole. He has also stated that as soon as he got down from the bus a mob of about 25 to 30 persons which was standing on the other side of the road near the entrance of Rajpura Pole came running towards the bus. As soon as he got down from the bus he was caught by one person who tried to forcibly take him towards Rajpura Pole. At that time he was given a blow with a sharp-edged weapon on his left thigh and so he had fallen down on the road. The learned counsel for the appellants submitted that no reliance should have been placed upon the evidence of this witness as he had changed his version on two material points. It was submitted that this witness in his police statement had stated that "on coming near Mandvi, there was one mob of people at the Naka of Rajpura Street near Najarbaug and so the passengers who were sitting into the bus had asked the conductor not to stop the bus and had shouted". The witness denied this suggestion and we find from the evidence of the investigating officer that no such statement was made before him. It was also submitted that the witness had stated before the police that "at this time a mob of about 25 to 30 persons was standing and it came in front of the bus and so the bus had stopped just ahead of Rajpura Pole". This suggestion was also denied by the witness. According to the investigating officer the statement which was made by the witness was that "a mob of about 25 to 30 persons was standing which came just in front of the bus and the bus had stopped just ahead from Rajpura street". The English version is not accurate. If the original statement in Gujarati is read carefully it does not indicate that the bus had stopped opposite Rajpura Pole because a mob of 25 to 30 persons had come in front of it. What the witness really meant was that the bus had stopped just ahead of Rajpura street and that a mob of 25 to 30 persons which was standing near that street then came in front of the bus. The learned counsel was not able to point out any other infirmity in his evidence. The witness was at the relevant time working as an Office Superintendent in a Medical College at Surat and he had no reason to falsely state something which had not happened. The evidence of this independent witness supports the version of P.W. 20 Agam Kumar and P.W. 22 Shambhubhai as regards the circumstances under which the bus stopped on the opposite side of Rajpura street and how the mob which was standing near the entrance of Rajpura Pole came to the other side of the road, surrounded the bus and attacked the passengers.

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A P.W. 21 Nand Kishore did not fully support the prosecution. Therefore we will deal with his evidence first before dealing with the evidence of the remaining two eye-witnesses. He is the brother of Harish who was killed by the mob. He has stated how on return from Surat to Vadodara as usual he and his brother had boarded the bus. He did say in his examination-in-chief that the driver of the bus stopped it in front of B Rajpura Pole, then the mob which was standing near the entrance of Rajpura Pole came near the bus and surrounded it and when his brother was trying to get down from it he was attacked with a 'gupti' and injured. He has also stated that as soon as the police came the assailants ran away. When he got down from the bus he found his brother lying at a short C distance from the bus. As he felt giddiness on seeing his brother in such a condition P.W. 20 Agam Kumar volunteered to take him to hospital and told him to go home. He had seen some of the assailants and had identified them also. On 4.5.91 in the identification parade he had identified Accused No. 2 Iqbal and Accused No. 3 Mustaf as the members of the said unlawful assembly. On 8.5.91 he had identified Appellant No. 2 (Accused No. 7). D Not only he refused to identify them in the court but went to the extent of denying that he had identified any of them in the identification parade. He was, therefore, declared hostile and was permitted to be cross-examined by the Public Prosecutor. In his cross-examination by the Public Prosecutor he did say that the driver of the bus had not stopped it at the Mandvi bus stop and that he had identified Accused Nos. 2 and 3 on 4.5.91 and E Appellant No. 2 on 8.5.91. Again, in his cross-examination by the learned advocate for the accused he turned round and stated that the driver had stopped the bus as the mob had come in front of it. He also obliged the defence by stating that as soon as the bus stopped its light went off suggesting thereby that it was not possible thereafter to identify the assailants. His readily agreeing to whatever was put to him by the defence F clearly indicates that he was still afraid of the accused and was, therefore, not prepared to tell the truth. The learned judge was, therefore, right in not placing any reliance upon this witness. The learned counsel for the appellants, however, tried to derive support from the evidence of this witness for the defence of Appellant No. 1 that he did not voluntarily stop G the bus opposite Rajpura Pole but was forced to stop it because a mob came in front of it. As the witness was not prepared to tell the truth his evidence cannot be relied upon even for that purpose also.

P.W. 20 Agam Kumar was a Salesman in Krishnavir Marketing at H Surat. Like Nand Kishore and Harish he was also going to Surat everyday

and returning to Vadodara at night by Sayaji Nagri train. On the day of the incident he had boarded the bus leaving for Sayaji Park at 11.00 P.M. He has fully supported the prosecution version as regards what happened thereafter. He had identified Appellant No. 2 Lalu (Accused No. 7) on 8.5.91 and Appellant No. 3 Faruk, (Accused No. 10) on 14.5.91 in the identification parade. The contention of the learned counsel for the appellant was that his evidence should not have been believed as his presence in the bus was doubtful and also because his version suffers from grave infirmities. It was submitted that his statement was recorded at 3.00 P.M. on the next day and that indicates that he was a got up witness. It was submitted that this witness had made material improvements in his evidence when he stated that : (1) when the bus came near the Mandvi bus stop one old man who wanted to go to Ladwada started shouting that he should be allowed to get down, (2) that the mob had come in front of the bus after the bus had stopped and (3) one S.R.P. Constable had asked the bus driver to stop the bus, but the driver had not stopped it and had driven it away. It was also submitted that in any case no reliance should have been placed upon the identification of the accused by this witness as the description of the accused given by him in his police statement was quite different and in all probability, he was shown the accused before he had identified them. The presence of this witness in the bus was doubted because he had not produced the bus ticket before the police when his statement was recorded. There was no reason for this witness to retain the ticket till 3.00 P.M. on the next day. It was not even suggested to him that he was not serving at Surat and that he was not going to Surat everyday in the morning and returning to Vadodara at night. Therefore, we see no reason to doubt his presence in the bus on that day. The incident had happened at about 11.30 P.M. The witness after taking injured Harish to the hospital had gone home. Evidence of P.W. 51 Police Inspector Veragi discloses that on coming to know that many injured persons had been taken to Sayaji Hospital he had gone to the hospital and so far as this case is concerned he could record the complaint of Shridhar at 6.00 A.M. It was then sent to the police station for registration. At 8.00 A.M. P.I. Parmar took over the investigation. It appears from his evidence that between 8.00 A.M. and 3.00 P.M. he had recorded many panchnamas and statements and it was under these circumstances that the statement of this witness could be recorded at 3.00 P.M. It is, therefore, not correct to say his statement was recorded late because in all probability he was really not an eye-witness.

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A On close scrutiny of his evidence we do not find that this his witness had made material improvements as contended by the learned counsel for the appellants. He had stated before the police that when the bus came near the Mandvi bus stop one old man who wanted to get down shouted at the driver to stop it. Only thing that he had not stated before the police was that the old man had not uttered the words that he wanted to go to B Ladwada. It is quite likely that later on he came to know that the said old man had to go to Ladwada and, therefore, while giving evidence in the court he stated like that. On the main part of his version that when the bus came near the Mandvi bus stop one old man shouted at the driver to stop it we do not find any inconsistency at all between his evidence in the court C and his statement before the police. As regards the point of time when the mob came in front of the bus also there is no inconsistency. It is true that while replying to one of the questions put to him in his cross-examination he stated that as the mob had come in front the bus had stopped. But this answer has to be read in the context of what he had replied to the previous D question. He had stated that as soon as the mob came in front of the bus he had shouted along with other passengers "Run the bus, run the bus". Thus, his evidence read as a whole is quite clear and consistent on the point that the bus was stopped by the driver first and then the mob had come in front of the bus and on seeing the mob coming the passengers had started shouting "Run the bus, run the bus". Even as regards his version E that one S.R.P. Constable had tried to stop the bus we do not find any inconsistency between his evidence and the police statement. What he had stated before the police was that "the S.R.P. personnel had tried to stop the bus with the signal of a stick, but he has not stated that the S.R.P. personnel had informed the S.T. driver to stop the bus with the help of a F stick". This clearly indicates that the small discrepancy in his evidence is as regards the manner in which the S.R.P. Constable gave the signal. We, therefore, cannot agree with the contention of the learned counsel for the appellants that this witness had made material improvements in his evidence and for that reason his evidence should not be believed.

G Identification of Appellant Nos. 2 and 3 by this witness and that of Appellant No. 2 by P.W. 22 also, has been challenged by the learned counsel for the appellants on various grounds. It was submitted that the prosecution has not proved that all the necessary precautions were taken by the police and the Executive Magistrate to ensure that the accused to H be identified were not seen by the witnesses who had to identify them. To

support his contention the learned counsel relied upon the decision of the Calcutta High Court in *Habal Shaikh* v. *The State,* (1991) Crl. L.J. 1258 wherein it is observed as under :

> "The evidence of identification in order to carry conviction should ordinarily clarify as to how and under what circumstances the identifying witness came to pick out the particular accused person and the details of the part which accused played in the crime in question with reasonable particularity.
>
> The vital factor in determining the value of such identification parades is the effectiveness of the precautions taken by those responsible for holding them against the identifying witnesses having an opportunity of seeing the persons to be identified by them before they are paraded with other persons and also against the identifying witnesses being provided by the investigating authority with other unfair aid or assistance so as to faciliate the identification of the accused concerned."

He also drew our attention to the decision of Delhi High Court in *Pramod Kumar* v. *The State,* (1990) Crl. L.J. 68 wherein it is held that the prosecution should affirmatively prove that there was no possibility of the accused being shown to anybody and as the accused would not know if he was seen by the eye-witnesses, he has only to show a mere possibility of his being shown to the witnesses.

He also drew our attention to the decision of the Allahabad High Court in *Mahendra Singh* v. *State of U.P.,* (1991) Crl. L.J. 1381 wherein the High Court did not think it fit to rely upon the identification evidence as the prosecution had not given any link evidence to prove that the accused was brought 'Baparda' from the jail on the date on which the identification parade was held and was kept 'Baparda' till he was again lodged in jail the same day and he was not shown to any prosecution witnesses on that day.

The learned counsel also relied upon that the decisions of this Court in *Bollavaram Pedda Narsi Reddy* v. *State of Andhra Pradesh,* [1991] 3 SCC 434; *Chaman* v. *State of U.P.,* [1993] Supp. 1 SCC 403 and *Tahir Mohammad* v. *State of M.P.,* [1993] Supp. 2 SCC 697 in support of the contention that the value of identification parade depends on the effectiveness and the precautions taken against the persons to be identified before they are

A paraded with others and it is for the prosecution to eliminate the possibility of the accused being shown to the witnesses. In this case, right from the morning of 24.4.91 investigation was done by P.I. Parmar of Detection of Crime Branch. He has stated that as there is no lock-up in the Crime Branch Police Station, the accused after their arrest, were sent to lock-ups of Raopura and other police stations. He had recorded the statements of P.W. 20 Agam Kumar and P.W. 22 Shambhubhai on 24.4.91 and 4.5.91 respectively at D.C.B. Police Station. Appellant No. 2 was arrested on 7.5.91 and Appellant No. 3 on 12.5.91. The identification parade for identification of Appellant No. 2 was held on 8.5.91 and for Appellant No. 3 on 14.5.91. There is no material on record to show that either of these two eye-witnesses were called at any of the police stations where Appellant Nos. 2 and 3 were kept or had any reason to go there while they were in police custody. The investigating officer was cross-examined regarding the police lock-ups in which other accused were kept, but no question was put to him to elicite in which police lock-ups Appellant Nos. 2 and 3 were kept. On the days on which the identification parades were held both the eye-witnesses were directly called to the office of the Executive Magistrate in Narmada Bhavan. Only suggestion put to them was that they had an opportunity to see Appellant Nos. 2 and 3 at Narmada Bhavan before the test identification was held. It was denied. The Executive Mgistrate, P.W. 23 Navin Chandra, who held the identification parade, has stated that on 8.5.91 he had called the accused before the witnesses and they were made to sit in the Record Room of his office whereas the witnesses were made to sit in the chamber of the Mamlatdar's office. He has denied that from that place the witnesses could have seen the accused before they were paraded for identification. He has stated that on 14.5.91 also the accused were called before the witnesses. The accused were made to sit in the Record Room of his office whereas the witnesses were made to sit in the Main Room of the Mamlatdar's office. He has denied that the witnesses could have seen the accused before the identification parade was held on that day. Thus, the prosecution has satisfactorily established that neither P.W. 20 nor P.W. 22 had the opportunity to see Appellant Nos. 2 and 3 before they were identified in the said two identification parades.

P.W. 20 had described Appellant No. 2 in his police statement as a thin and tall person having a gupti with him and who had given a blow with it to Harish. According to him four persons from the mob had entered into the bus. He has further stated that when the police came someone from

the mob had shouted "Lalu run away, Faruk run away, police has come". It was submitted by the learned counsel for the appellants that this witness already knew Appellant No. 2 as he was occasionally going to his shop for purchasing eggs. Though the witness denied that he used to go to the shop of Lalu Indawala for purchasing eggs it is proved that before the police he had stated so. Merely because the shop was for Appellant No. 2 it cannot be inferred that Lalu used to sit in the shop and this witness had seen him earlier. If he had really seen him earlier he would have certainly stated before the police that it was Appellant No. 2 who had a gupti with him and had given a blow with it to Harish. In the identification parade he identified Appellant No. 2 as the person who had given a gupti blow to Harish. There is nothing on record to show that the description of Appellant No. 2 which he had given was incorrect. We, therefore, see no reason to doubt the identification of Appellant No. 2 by this witness. Nothing specifically was urged with respect to identification of Appellant No. 3 by this witness. There was no reason for this witness to falsely involve either Appellant No. 2 or Appellant No. 3. It was, however urged that as this witness could not identify the other two accused who had entered into the bus and who were paraded for identification along with Appellant No. 2 no reliance should be placed upon his evidence as regards his identification of Appellant Nos. 2 and 3 also. Failure by a witness to identify all the accused whom he had seen at the time of the incident cannot be regarded as a good ground for rejecting his evidence regarding identification of some of those accused. His ability to remember the faces of the accused and identify them at the identification parade would depend upon many factors. If his attention was focussed only on some of them it is quite likely that he may be able to identify them only and fail to identify the other accused even though he had seen them. Therefore, this contention has to be rejected.

The last eye-witness to be considered is P.W. 22 Shambhubhai. He was also a passenger in the bus and he had seen the assault on deceased Harish. He had identified Appellant No. 2 as the person who had given a gupti blow to Harish. For the reason that his statement was recorded after 12 days and because he had stated before the police that the person who had given the gupti blow was thin and short it was urged by the learned counsel for the appellants that no reliance should be placed upon his evidence on that point. As already stated earlier identification by this witness is also challenged on the ground that the prosecution has failed to establish that the identifying witnesses had no opportunity to see the

A accused before they were paraded fot identification. We have already rejected that contention earlier while dealing with the evidence of P.W. 20. It is true that there is some discrepancy in his evidence as regards the height of the accused whom he identified. Before the police he had stated that the person who had given the gupti blow was thin and short. While giving evidence in the court he admitted that though Appellant No. 2 was B thin he was not short. Appellant No. 2 was seen by this witness while getting into the bus. The blow to Harish was given at about that time. As Appellant No. 2 was seen giving a blow with a dangerous weapon it is quite probable, and the witness has also so stated, that his attention was focussed on his face. Therefore, this discrepancy regarding the height cannot be given any C importance and for that reason alone the identification of Appellant No. 2 by this witness cannot be discarded. The learned counsel also submitted that this witness was known to Nand Kishore, brother of deceased Harish, and, therefore, he had come forward to pose as an eye-witness as it was realised that in absence of more eye-witnesses it would not be possible for the prosecution to prove its case. If really Nand Kishore knew this witness D then he would not have missed to state that fact to the police when his statement was recorded and in that case his statement would have been recorded by the police much earlier. It was not even put to P.W. 21 Nand Kishore that he knew Shambhubhai. Therefore, we cannot accept the submission that because he knew the brother of the deceased he had E agreed to give his statement to the police as an eye-witness. The explanation of this witness that after reading the advertisement given by the police in the newspaper he had thought it fit to go to the police and give his statement, cannot be regarded as improbable or false.

F This witness admitted that he knew P.W. 20 Agam Kumar as he was staying in the same society and that he had accompanied him in a Rikshaw upto the hospital while Harish was being taken there in an injured condition. But there is nothing on record to show that he was friendly with Agam Kumar. He helped a resident of his Society in taking injured Harish to the hospital. He denied that he was in the hospital till Harish died. It was G submitted by the learned counsel that the attempt of this witness to hide that fact suggests that he was friendly with Nandkishore and Harish. Before the police this witness had stated that "during the treatment the injured had died". This statement by itself cannot lead to an inference of close connection between him and Agam Kumar, or Nandkishore or Harish. H Therefore, the submission of the learned counsel for the appellants that

because of his friendship with Agam Kumar or the brother of the deceased he had come forward to pose as any eye-witness has to be rejected. This witness had no enmity with any of the accused. He had no reason to falsely involve them. If he was really a got up witness and if the accused had been shown to him before they were paraded for identification then he would not have failed to identify some more accused and particularly Accused No. 10 whom P.W. 20 Agam Kumar had identified on the same day.

The leaned counsel for the appellants also submitted that though this witness did not admit that he had stated before the police that "mobs of people were seen standing from Mandvi Gate to Pani Gate" in fact he had stated so and that contradiction is proved by the investigating officer. What he had stated before the police was that "mobs of people appeared standing from Mandvi Gate to Pani Gate". He had not stated that riotous mobs were standing between Mandvi Gate and Pani Gate. It is quite probable that in view of the disturbances which had taken place small crowds were noticed on the road between Mandvi Gate and Pani Gate. He had, however, categorically denied that any other mob had tried to stop the bus. He has specifically stated that the mob which came near the bus was the one which was standing at the entrance of the Rajpura Pole. The evidence on record shows that the entrance of Rajpura Pole was on the opposite side of the road and about 50 feet away from the place where the bus was stopped by Appellant No. 1. We do not find any other infirmity in the evidence of this witness except that his statement was recorded on 4.5.91, that is, after 12 days. This being a case of communal riot reluctance of this witness to go to the police and give his statement can well be appreciated.

The trial court has also believed the evidence regarding discovery of gupti by Appellant No. 2. As deposed by P.W. 28 Krishna Rao who had acted as a panch witness Appellant No. 2 had on 11.5.91 stated before him and the other panch witness that he would take them to the place where he had concealed the gupti. After stating so he took them and the police to one dilapidated building in Rajpura Pole and from below a heap of earth and broken bricks took out one gupti which on examination was found to be stained with blood. The evidence further discloses that it was stained with human blood of 'B' Group. The clothes of deceased Harish which were sent for chemical examination also showed that they were stained with blood of 'B' Group. We see no reason to disbelieve this evidence. Because the house was in a dilapidated condition and could be approached by any

A one it cannot be urged that the gupti was found from an open place accessible to all. It was not found from a public place nor was it found from an open place. It was found from inside a house which belonged to someone though the same was in a dilapidated condition and the gupti was found concealed below a heap of earth and broken bricks. The find of human blood of 'B' Group on the gupti which was discovered at the instance of Appellant No. 2 provides independent corroboration to the evidence of the eye-witnesses that Appellant No. 2 had given a gupti blow to the deceased. Appellant No. 2 denied in his statement u/s. 313 that he had discovered the 'muddamal' gupti or that it belonged to him. This false denial is also a circumstances against Appellant No. 2.

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The learned judge has also relied upon the evidence of production of clothes of Appellant No. 2. As stated earlier, they were not produced by Appellant No. 2 himself but they were produced by Mohd. Salim and Sajid Hussain in presence of Panch witnesses P.W. 40 Paras Ram and P.W. 41 Govind on 10.5.91. Mohd. Salim and Sajid Hussain were not examined as witnesses. Though the evidence of P.W. 40 Paras Ram that Mohd. Salim had told him and the other panch witness that Appellant No. 2 had given his full sleeve shirt to him and that he was producing the said shirt and that of P.W. 41 Govind that Sajid Hussain had told him and the other panch witness while producing one pant that it was of Appellant No. 2 and that Appellant No. 2 had given it to him can not be said to be inadmissible, we do not think it safe to accept correctness of the said statements made by Mohd. Salim and Sajid as they were not examined by the prosecution.

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The learned trial judge has also relied upon recovery of the muddamal razor from the house of Appellant No. 3 on 14.5.91. Panch Witness 31 Mukeshbhai has deposed that along with the other panch witness and the police he had gone to the house of Appellant No. 3 and on search one razor was found from a hollow place below a safe. The panch witness did not say that it was stained with blood. Moreover origin of the blood also could not be ascertained. We, therefore, do not think it safe to place reliance upon this circumstance. The learned trial judge ought not to have relied upon the said circumstance for convicting Appellant No. 3.

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The learned trial Judge has also held that Deepak was given a gupti blow by Appellant No. 2 and was thus killed by the members of the aforesaid unlawful assembly in prosecution of their common object. There-

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fore, he has convicted appellant Nos. 2 and 3 for his death also. The learned counsel submitted and in our opinion rightly, that the prosecution has failed to prove that Deepak was killed by any of the members of the said unlawful assembly. The prosecution did not lead any evidence to prove that he was in the bus, who caused injuries to him and when he was assaulted. The eye-witnesses have only generally stated that other passengers were also attacked by the four accused who had entered the bus. But their evidence is not sufficient to connect the death of Deepak with the incident of assault on the bus passengers. In absence of any evidence in this behalf, the finding recorded by the learned trial Judge that Deepak was killed in prosecution of the common object of the aforesaid unlawful assembly is set aside and the appellants are held not guilty for the death of Deepak.

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After careful scrutiny of the evidence we are of the opinion that the prosecution has proved beyond doubt that about 25 to 30 Muslim boys had formed as unlawful assembly and the said unlawful assembly had caused injuries to Rajaram, Sridhar, Praveen and death of Harish in prosecution of their common object of beating and killing Hindus. The prosecution has also established beyond doubt that appellant Nos. 2 and 3 were the members of the said unlawful assembly and that both of them had taken active part in assaulting and causing injuries to the passengers of the bus. It is also proved that Appellant No. 2 had given blows with 'gupti' to deceased Harish.

D E

It was, however, contended by the learned counsel for the appellants that even if the prosecution evidence against the appellant No. 1 is believed his conviction under Section 120-B cannot be sustained. It was contended that when the bus started from the station appellant No. 1 did not know that a communal disturbance had taken place near Mandavi and that a mob of Muslim boys would be standing at the entrance of Rajpura pole. Thus there was no scope whatsoever for him to hatch a conspiracy with the mob near the entrance of Rajpura pole. It was also submitted that Appellant No. 2's getting down from the bus and going near the mob was consistent with his innocence and in all probability he had gone near the mob to say that he was a Muslim and therefore he should not be beaten. He submitted that before an accused can be convicted under Section 120-B the prosecution has to establish an agreement and an agreement requires at least two persons. In this case there is nothing on record to show that

F G H

A there was an agreement between appellant No. 1 and any person from that mob. In our opinion there is no substance in this contention. The prosecution case was that sensing some trouble and seeing a mob of armed Muslim boys standing at the entrance of Rajpura Pole appellant No. 1 stopped the bus just opposite Rajpura Pole with a view to facilitate an attack on the
B passengers by the said mob. In spite of the request of the passengers he did not start the bus before the mob could approach it but instead he got down from it went up to the mob and had some discussion with the persons of that mob. Thereafter the mob came near the bus and assaulted the passengers. That was the conspiracy alleged by the prosecution. If really the bus had stopped because of the mob coming in front of it then it was
C not necessary for him to get down from the bus. He could have disclosed his identity even by remaining in the bus. In view of the evidence of the eye witnesses, the explanation given by him has to be regarded as false. His conduct is also inconsistent with his innocence. The stopping of bus at a place where there was no necessity to stop it, his getting down from the
D bus and going across the road right up to the entrance of the Rajpura Pole and talking to the persons in the said mob leads to an irresistible inference that he not only facilitated the attack on passengers by stopping the bus just opposite the entrance of Rajpura Pole but also induced the members of the said unlawful assembly to attack the passengers. Thus an agreement between him and the said unlawful assembly is satisfactorily established by
E the prosecution and therefore his conviction under Section 120-B I.P.C. also deserves to be upheld.

We, therefore, uphold the conviction of appellant No. 1 under Section 120-B I.P.C. and that of appellant Nos. 2 and 3 under Sections 147, 148, 302 and 451 read with Section 149 and Section 3 of the TADA Act
F except for the death of Deepak. This appeal is accordingly dismissed.

V.S.S. Appeal dismissed.