

CHANDUBHAI MALUBHAI PARMAR AND ORS.

v.

STATE OF GUJARAT

APRIL 4, 1997

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

*Criminal Law :*

*Penal Code, 1860 : Sections 302/149/34/147/148, 325/149, 323/149 and 436/149.*

*Group rivalry—Riotous mob of 100/150 persons attacked members of a community and caused death of 4 persons and injuries to 13 eyewitness—Some members of mob ransacked houses and set them afire—Held : Presence of Injured eyewitnesses at the scene of incident could not be doubted—Their evidence reliable—Occurrence took place during day time and the accused known to witnesses—Hence, there was no question of mistaken identity—In the circumstances of the case, the accused were rightly convicted by the trial court.*

*Common intention or object—Inference of sharing of—Time factor—Riotous mob chased the deceased and other injured persons of a community from bus stand till they reached their village—When the mob reached near the village three of the accused went to the house of one of the witnesses and set his house on fire—Other members of mob continued the said chase—Thereafter, witnesses heard firing sounds coming from that direction—Held: In the circumstances of the case, the said three accused could not be said to have shared the common object of Committing murder with other accused who caused death of 4 persons by using firearms and other deadly weapons—In such circumstances time factor assumed importance—Conviction of the three accused could not be sustained with the aid of S. 149 or S. 34—Their conviction under S. 302/149 set aside—However, conviction under S. 436/34 confirmed.*

**The appellant-accused were convicted by the Designated Court for offences under Sections 302/149/34/147/148, 325/149, 323/149 and 436/149 of the Indian Penal Code, 1860. Hence this appeal.**

**According to the prosecution, a dispute arose over the allotment of the land to Vankars for which the Harijans laid a claim under the belief**

A that it was reserved and earmarked for them. Some of the Vankars had constructed the houses on this land, which was objected to by Harijans. Some of the Harijans went to the disputed land and questioned the right of Vankars to carry on the construction of house thereon. There was some altercation between the two group and a riotous mob consisting of 100/150 persons started chasing Vankars from the bus stand until they reached their village causing death of 4 persons and injuries to 13 eyewitnesses. When the mob reached near the village A-34, A-35 and A-36 went to the house of one of the witness, set his house on fire and other members of the mob continued to chase the Vankars. Thereafter, the witnesses heard firing sounds coming from that direction. Some members of the mob also ransacked the houses of the Vankars and set 3 houses on fire. The entire incident took place during the daytime. A First Information Report was lodged and a post-mortem held.

D In the appeal before this Court on behalf of the accused persons it was contended that the riotous mob consisted of 100/150 persons and if this be so, mistaken identity of the accused persons could not be ruled out; that the prosecution evidence was not reliable and that accused Nos. 34, 35 and 36 did not share the common object of the unlawful assembly and, therefore, they could not be convicted with the aid of Section 34 or Section 149 of the Penal Code.

E Allowing the appeal, this Court

F HELD : 1.1. It cannot be ignored that the occurrence in question took place during daytime and in fact the appellants were chasing the deceased and other injured persons right from the bus stand till they reached the village where two persons were shot down and two were assaulted with lethal weapons. The presence of the injured eyewitnesses at the scene of incident cannot be doubted. Their evidence is reliable. The witnesses had sufficient opportunity to identify the appellants and they also knew them. Hence there is no question of mistaken identify. The trial court therefore, rightly convicted the appellants. [643-D-H]

G 1.2. On the evidence on record, it cannot be said to be conclusively established that A-34, A-35 and A-36 also shared the common object of committing the murder with other accused who had caused the death of 4 persons by using firearms and other deadly weapons. The time factor in this behalf assumes great importance because when A-34, A-35 and A-36

were engaged in setting the houses on fire and the other appellants committed the murders of four persons. Hence, their conviction with the aid of Section 34 of Section 149 of the Indian Penal Code, 1860 cannot be sustained. However, their conviction under Sections 436/34 IPC must stand confirmed. [645-C-D; G] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 95 of 1988 Etc. B

From the Judgment and Order dated 12.6.87 of the Designated Court, Kheda, Nadiad in CrI. Case No. 1 of 1986.

T.U. Mehta, Jatin Jhaveri, Narayan Singh Gohil, Harish J. Jhaveri, Vimal Dave, Ms. Neetu Singh, Ms. Hemantika Wahi, R.K. Shah and S.K. Sabharwal for the appearing parties. C

The Judgment of the Court was delivered by D

S.P. KURDUKAR, J. People belonging to Vankar community residing in village Golana in District Khera (Gujarat) had an awful day when they saw some of their fellow Vankars being chased, four of them killed and many others injured by a riotous mob comprising Rajputs, Harijans and other persons residing in the same village. The incident in question took place on 25.1.1986. E

(2) The genesis of this incident was a dispute over a plot of land, which according to the Vankar community was allotted to it by the Government of Gujarat under a scheme called allotment of plots to landless persons for construction of houses. The Harijans, however carried the belief that part of the said plot was given to and reserved for them by the Government for constructing their houses. It was this misunderstanding between the two communities viz., the Harijans and Vankars which led to the incident in question. According to the prosecution, on 25.1.1986 at about 8 a.m. the accused Nos. 1, 2, 3, 5, 39 and Lakhabhai (deceased) had gone to this land with some construction materials for the purposes of erecting poles and construction of huts thereon. These accused persons initially requested the Vankars to desist from making unauthorised construction but realising that Vankars were not agreeable, accused No. 1 tried to attack Itchabhai with a *Dharia* and while warding off the said attack he H

A sustained and injury between his thumb and finger. The above accused persons thereafter left the place.

B (3) Pochabhai, the complainant then decided to go to Khambat Police Station to lodge a complaint and, therefore, they came to the bus stand along with injured Itchabhai. They hired a truck to go to Khambat Police Station. In the meantime many persons belonging to Harijan and Rajput communities came to the bus stand, armed with deadly weapons and started raising shouts "beat Vankars". It is alleged by the prosecution that accused Nos. 19, 20, 21 were armed with guns. Accused No. 22 was carrying *dharia* and other accused persons were armed with *sticks*, *dantas*,  
C *kodali* etc. These accused persons thereafter pulled down the Vankars who were sitting in the cabin of the lorry and started abusing them. They encircled the truck. The other Vankars who were sitting in the rear portion of the truck, sensing a serious trouble, got down and started running towards their locality called Vankarvas. The riotous mob then started chasing them. This incident took place at about 9.30 a.m.  
D

E (4) It was alleged by the prosecution that in the meantime many residents of village Golana belonging to the accused party armed with deadly weapons came in the direction of Vankarvas where these Vankars were running to their respective houses. The riotous mob consisting of  
E 100/150 persons started chasing Vankars, of them some entered into the houses of Vankars. Accused Nos. 19, 20 and 21 who were members of the riotous mob fired at Vankars as a result of which Prabhudas and Pochabhai sustained gun shot injuries and died on the spot. Other members of the unlawful assembly assaulted Mohanbhai and Khodabhai with sharp edged  
F weapons and sticks as a result of which they also died on the spot. In addition to these four deaths 13 persons belonging to Vankar community also sustained injuries during the said assault.

G (5) The other members of the unlawful assembly who had forcibly entered into the houses of Vankars had damaged, their houses by throwing stones and committed theft of their belongings and thereafter set the houses on fire in which the inmates of these houses sustained injuries.;

H (6) The prosecution then alleged that the three incidents at three different places, namely, at Khalwat, at bus stand and at Vankarvas formed one transaction.

(7) it appears that a report of disturbance reached the Senior PSI of Khambat Police Station within a short time and, therefore, Shri Dhani, CPI arrived at village Golana in the afternoon and went to Vankarvas where he recorded the complaint of Pochabhai Kalabhai (Ex. 203). CPI then returned to Khambat Police Station, registered the offence and left for the place of occurrence at about 5.00 p.m. and commenced the investigation. He recorded the statement of eye witnesses and also arrested the accused. The accused Nos. 1 to 4 and 39 belong to Harijan community. The accused No. 5 died during the pendency of trial, A-10 is Kumbhar, A-11 to 17 are Vaghris, A-18 is Vala and remaining 27 accused persons are Rajputs. This is how all 41 accused persons came to be arrested in the present crime. CPI Dhani submitted the charge-sheet against 41 accused persons in the Court of Judicial Magistrate First Class. After about three months he submitted a report to the Court and sought permission to add charge under Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (for short the 'TADA') and the said prayer was granted. This was how 41 accused persons came to be charge sheeted for offences punishable under Sections 147, 148, 452, 302, 307, 325, 324, 323, 396, 398, 436 and 427/149 IPC, under Section 3 of TADA and also under Section 25(1)(c) of the Arms Act. The criminal case was then committed to the Designated Court of Kheda at Nadiad for trial.

(8) The accused denied the accusations made against them and in their statements recorded under Section 313 Cr.P.C. they stated that they have been falsely implicated in the present crime because of rivalry between the two groups viz., Vankars on one hand and the Rajputs, Harijans etc., etc., on the other hand. They claimed that they were innocent and accordingly prayed that they be acquitted.

(9) The prosecution in support of its case examined a number of witnesses including 31 eye witnesses of whom 13 were injured. In addition to this evidence prosecution also examined medical officers who performed the post mortem examination on the dead bodies. Injury certificates of injured witnesses and various panchnamas were also produced on record. The Learned Designated Court on appraisal of oral and documentary evidence on record concluded that 18 arraigned accused along with many other unidentified persons belonging to the rival group formed an unlawful assembly with a common object to assault Vankars and in prosecution thereof two were shot dead and two sustained several incised injuries and

A died on the spot; caused injuries to 13 eye witnesses; committed theft of belongings of Vankars and set three houses on fire. The Learned trial judge convicted and sentenced 14 accused persons/appellants before us on various counts and sentenced them to undergo various terms of sentences and fines including life imprisonment under Section 302/149 IPC. Four accused persons were convicted for minor offences who did not choose to file an appeal and, therefore, details thereof are not set out. The trial court however; found the evidence adduced by the prosecution was not sufficient to convict the remaining 23 accused persons and accordingly recorded the order of acquittal in their favour. All accused persons were also acquitted of charge under Section 3 of TADA. The impugned order is dated 12.6.1987. It is this judgment and order of conviction which is the subject matter of challenge in Criminal Appeal No. 95 of 1988 filed by the appellants-accused. The State of Gujarat has filed Criminal Appeal No. 354 of 1987 against 18 accused persons challenging the order of acquittal. Since these appeals arise out of a common judgment, they are being disposed of by this Judgement.

(10) At the outset it may be stated that prosecution witnesses can be divided into three groups, (1) witnesses to the incident at Khalwat, (2) witnesses relating to the assault on Vankars at bus stand and (3) witnesses who testified to the chasing of Vankers and causing assault on them with deadly weapons, committing theft and setting the houses on fire.

(11) Mr. T.U. Mehta, the Learned Senior Counsel appearing in support of the criminal appeal filed by the convicts urged that the prosecution story is not all trustworthy. The prosecution evidence as to what happened at the bus stand was totally untrustworthy inasmuch as the ocular evidence thereof was propped up by the missionaries to gain favour from Vankars. He urged that in fact the missionaries had played a very vital role to support the prosecution case by falsely implicating the appellant. He then urged that the identification of the accused persons sought to be established in the Court was totally unreliable because it was impossible for any of the prosecution witnesses to identify any of the accused and pin point his role when the riotous mob consisted of 100-150 persons. He then urged that assuming that the evidence of eye witnesses could be accepted then at best each of the accused would be held liable for his individual act. He urged that there was no unlawful assembly and even if there was one, it did not share any common object to commit the murders of or assault

any of the Vankars. He further submitted that the prosecution witnesses were partisan witnesses and it was not safe to accept their evidence as credible. He then submitted that it was not clear from the evidence of prosecution witnesses as to who were the accused who chased the Vankars and caused the death of four persons and injured many. He therefore, urged that the conviction of original accused Nos. 34, 35, and 36 under Sections 302/149 was unsustainable. The conviction of the appellants under Sections 302/149 of the Indian Penal Code was bad and at the most if identity of the assailants could be established vis-a-vis their alleged acts they could be convicted for their own individual acts and not with the aid of Section 149 of IPC.

(12) Before we deal with the aforesaid submissions raised before us on behalf of the appellants and determine the involvement and complicity of each of the appellants in the present crime we may broadly indicate the substratum of the prosecution case. Village Golana where the incident took place is mainly consisted of Rajputs, Harijans and Vankars. In the present episode Rajputs and Harijans were on one side and Vankars on the other. Initially a dispute arose over the allotment of the land to Vankars for which the harijans laid a claim under the belief that it was reserved and earmarked for them. Some of the Vankars had constructed the houses on this land which was objected to by Harijans. On 25.1.1986 some of the Harijans went to the disputed land and questioned the right to Vankars to carry on the construction of house thereon. It was alleged by the prosecution that there was some altercation between the two groups resulting into causing an injury to Itchabhai Lalbhai by means of a dharia. Vankars came to the bus stand hired a truck to go to the police station and lodge a complaints. They boarded the truck. In the meantime Harijans had gone to the *abadi* and returned to the bus stand along with a few Rajputs and other fellowmen. Some altercation took place between Pochabhai Kalabhai, Khorabhai, Mittanbhai, Itchabhai Lalbhai, Kalabhai, Nathabhai, Premjibhai Shyambhai and the Rajputs. Vankars who were sitting in the truck got down and sensing a danger to their lives at the hands of the Rajputs who had gathered there, started running towards Vankarvas where they were residing. In the meantime more than 100 persons belonging to Rajput community and their supporters came at the bus stands and chased the person belonging to Vankar community. The members of the riotous mob were armed with deadly weapons like fire arms, dharia, lathis etc. Of them A-19, A-20 and A-21 were carrying the fire arms. The common object of the riotous mob

- A was to cause fatal injuries to persons belonging to Vankar community, destroy the houses by fire and to commit robberies and create terror. In pursuits of the said common object and while chasing these Vankars, they assaulted Prabhudas, Pochabhai, Khorabhai and Mohanbhai with deadly weapons. Prabhubhai and Pochabhai sustained gun shot injuries and other injuries causing their instantaneous deaths. Khodabhai and Mohanbhai were assaulted with deadly weapons causing incised and lacerated wounds to them as a result of which both these brothers died on the spot. A-34, A-35 and A-36 entered and ransacked the houses of Vinodbhai s/o Vallabhbhai, Balabhai s/o Phulabhai and Vallabhbhai s/o Phulabhai and thereafter burnt down their houses. Many prosecution witnesses were injured in the incident. It may also be stated that as far as A-34, A-35 and A-36 are concerned the role attributed to them in the present incident was mainly confined to ransacking and setting the three houses of Vankars on fire although they were also tried for various offences including four murders with the aid of Section 149 IPC being members of an unlawful assembly.
- D There are 31 eye witnesses of them 13 were injured to which reference will be made a little later. It is on these allegations, the trial proceeded before the learned trial Judge against 41 accused persons and on appraisal of oral and documentary evidence on record the trial court convicted 18 accused persons for various offences of whom four were for minor offences who did not prefer any appeal against their convictions and sentences. 14 appellants before us, stood convicted by the impugned order for offences punishable under Sections 302/149/34/147/148, 325/149, 323/149 and 436/149 of the Indian Penal Code for various terms of sentences. All sentences were ordered to run concurrently. 41 accused persons were also put up for trial under Section 3 of TADA but all were acquitted by the trial court. The State of Gujarat has filed the appeal challenging the order of acquittal against original accused Nos. 15 to 18, 19 to 22, 24 to 28, 32, 33 to 36 and 41. The Judgment of the Designated Court is dated 12.6.1987.

13. There is no serious challenge before us that Pochabhai, Prabhubhai, Khodabhai and Mohanbhai met with homicidal deaths in an incident which took place on 25th January, 1986 at Vankarvas. All the four dead bodies were found on the road. Dr. Sachdev (P.W. 8) performed the autopsy on the dead body of Pochabhai and the post-mortem report is at Ex. 162. He noticed as many as 27 external injuries on his person including five incised wounds. There were also gun shot injuries and in all 99 pellets were removed from the dead body. All these injuries were ante mortem

and were sufficient in the ordinary course of nature to cause death. Dr. Sachdev testified that Pochabhai died because of shock and profused bleeding. A

(14) Dr. Sachdev held the autopsy on the dead body of Prabhubhai @ Prabhudas and P.M. examination report is at Ex.161. Dr. Sachdev noted 12 external marks of injuries including three incised wounds, three gun shot entry wounds and two gun shot exit wounds. One gun shot wound was over right anterior lateral aspect in the lower part of the neck. The size of the hole was 3 cms. x 2 cms. The middle and lower lobes of right lungs were badly lacerated. This injury Dr. Sachdev testified that must have been caused by fire arm from a very close range and that this injury together with the resultant internal injury was sufficient in the ordinary course of nature to cause the death. All these injuries were ante mortem and the injured died because of shock and extensive bleeding. B C

(15) Dr. Deven Desai (P.W. 15) who performed the post mortem examination on the dead body of Khodabhai found as many as 17 external marks of injuries on his person. There was a stab injury on the back of forearm and an incised wound on upper lip. There was fracture of lower part of the third right femur. He sustained fracture of left scapula and fracture of left 4th and 5th ribs resulting in laceration of pleura. Dr. Desai testified that injuries mentioned in Column No. 17 of his report Ex. 185 were correct. He further testified that Khodabhai died because of injuries caused to the vital parts of the body which were sufficient in the ordinary course of nature to cause death. All these injuries were ante mortem. D E

(16) Dr. Sachdev held the autopsy (Ex. 153) on the dead body of Mohanbhai and noted four external injuries on his person. There was a contusion in the size of 15 cms. x 5 cms. extending over posterior angles of 6th to 19th ribs by right side. The deceased had also sustained a lacerated wound over lateral aspect, middle part of right thigh. There were fractures of posterior angles of 6th, 7th, 8th and 9th ribs on the right side. Dr. Desai stated that fractures of the ribs resulting in big contusion over the right lung, middle and lower lobes and this fatal injury was sufficient in the ordinary course of nature to cause death. All these injuries were ante mortem. F G

(17) After going through the medical evidence of both the doctors we are satisfied that these four persons died unnatural deaths because of H

A number of injuries sustained by them during the incident in question. We, therefore, see no hesitation in concluding that Pochabhai, Prabhubhai, Khodabhai and Mohanbhai met with homicidal deaths.

(18) The prosecution in order to prove the complicity of the appellants in the present crime examined as many as 31 witnesses of them 13 had sustained injuries during the incident in question. We may first deal with the prosecution evidence relating to the complicity of the three accused, namely, Chandubhai (A-19), Jamubhai (A-20) and Nathubhai (A-21). These three accused persons were said to have been carrying the fire arms (guns) with them. Pochabhai Kalabhai (P.W. 17) in his evidence stated that when Pochabhai and Prabhubhai (since deceased) were running towards Vankarvas, A-19, A-20, A-21 along with the appellants and other members of the unlawful assembly were chasing them and shouting that these Vankars should not be allowed to escape. These three accused persons while chasing both the deceased fired at them causing bleeding injuries and as a result thereof both of them fell down. In the meantime the appellants and other members of the unlawful assembly assaulted the deceased with spears and other lethal weapons and thereby caused their instantaneous deaths. Pochabhai further deposed that Pratap Amarsen (A-22), Amarsen Takhatsingh (A-24), Dhiru Mvubhai (A-25) Keharsingh (A-26), Amarsingh Dipsingh (A-27), Ranchor Singh (A-28), Nathu (A-32), Kalu (A-34) were having sticks and the other accused were having sharp edged weapons. They all assaulted Prabhubhai and Pochabhai with sticks and sharp edged weapons like Dharia and swords. The witness has given minute details as to how both the deceased were mercilessly assaulted by the appellants. This witness was searchingly cross-examined on behalf of the defence but we do not find any material to discredit his evidence. The evidence of Pochabhai is corroborated by host of other eye witnesses, namely, Icchalala (P.W. 18), Kala Latcha (P.W. 19), Prema Punji (P.W. 20), Chika Raghav (P.W. 21), Ghelaganesh (P.W. 22), Nathasewa (P.W. 23), Ratna Punja (P.W. 24), Leela Rowa (P.W. 25) and Bhika Ganga (P.W. 26). Their evidence in substance is that A-19, A-20 and A-21 were chasing both the deceased and fired through their guns and as a result of fire arm injuries they fell down. All these witnesses again pointedly referred to the presence of more than 100 persons from Golana village belonging to Rajput, Harijan and other communities. All these appellants hailed from the same village were personally known to them and, therefore, there was no difficulty in identifying them. All these witnesses have given the neces-

sary particulars about the assault on the deceased persons with the sticks and other deadly weapons. A

(19) Kalaitcha (P.W. 19), Bhikaganga (P.W. 26), Leelarewa (P.W. 25), Itchalala (P.W. 18), Chika Raghav (P.W. 21) and Nathasewa (P.W. 23) were the injured eye witnesses. Their injury certificates are on record. The presence of these witnesses at the time of incident, therefore, could not be doubted. Mr. T.U. Mehta, Learned Senior Counsel seriously challenged the evidence of these witnesses, firstly, on the ground that they are partisan witnesses and have tried to rope in as many persons as possible as accused from the Rajput, Harijan and other communities. He further urged that all these witnesses deposed that the mob of more than 100 persons was chasing the deceased and other injured Vankars and if this be so mistaken identity of the accused persons could not be ruled out. To support this submission he urged that the trial court had acquitted a large number of accused persons and, therefore, the appellants are also entitled for acquittal and at any rate they are entitled for the benefit of doubt for want of proper identification. We have very carefully gone through the evidence of these eye witnesses and we find no substance in any of these contentions. It cannot be ignored that the occurrence in question took place during day time and in fact the appellants were chasing the deceased and other injured persons right from the Golana bus stand till they reached Vankarvas where two persons were shot down and two were assaulted with sharp edged and other with lethal weapons. The witnesses in our opinion had sufficient opportunity to identify the appellants and they were also known to them. After careful perusal of oral and documentary evidence on record we are of the considered view that the prosecution had successfully established the guilt of the appellants for which they were tried and convicted by the trial court. There is enough material on record to show that the appellants came together with lethal weapons, started giving slogans and abusing Vankars and also chased them until 4 Vankars fell down on the ground dead and many others were injured. Since the evidence of these eye witnesses is identical in all material particulars we do not think it necessary to reproduce the same. Mr. Mehta, learned counsel for the appellants in spite of his strenuous efforts was unable to persuade us to reject the evidence of any of the witnesses for any sustainable reason. We, therefore, do not see any error in the judgment and order of conviction passed by the trial court in respect of A-19, A-20, A-21, A-22, A-24, A-25, A-26, A-27, A-28, A-32 and A-41. We accordingly uphold the order of convictions and H

A sentences of these appellants/accused passed by the trial court.

(20) Coming to the appeal of Kalabhai (A-34), Kalabhai (A-34), Kesharbhair (A-35) and Karsanbhair (A-36) who were also convicted along with the appellants for the offences punishable under Sections 147, 148, 302/149 of the IPC we are of the opinion that their case in view of the evidence of the eye-witnesses, stands on a different footing.

(21) These three accused persons were alleged to have ransacked and set on fire the houses of Vinodbhai, Vallabhbhai and Balabhai. The prosecution in this behalf led the evidence of Nathabhai (P.W. 23), Vithalbhai (P.W. 41), Narsinghbhai (P.W. 43), Balubhai (P.W. 44) and Manibhai (P.W. 47). Vithalbhai (P.W. 41) in his evidence has stated that he was sitting at his house at the time of incident which took place in the Vankarvas. He saw some persons belonging to his community were coming towards Vankarvas from the side of bus stand. A mob consisting of 100-150 persons of Rajput, Harijan and other communities was chasing Vankars. He further stated that he identified A-34, A-35 and A-36 as they belonged to the same village. When he saw them coming to his house he closed the shutters of his door and stayed inside the house. These accused persons and other members of the riotous mob went towards the house of Vinodbhai. They were raising slogans "burn *dhedwada*". When he came out of his house he saw A-34, A-35 and A-36 were setting the house of Vinodbhai on fire. At that time no other member of the riotous mob was present at that place. He, however admitted that he did not see A-34, A-35 and A-36 had set on fire the houses of Vallabhbhai and Balabhai. The houses of Vallabhbhai and Vinodbhai were adjacent to the house of Vinodbhai and it appears that they also caught fire. This witness was again searchingly cross examined by the defence but no material could be brought out on record to discredit his evidence. The evidence of this witness finds corroboration from the evidence of Nothibhai (P.W. 23), Narsinghbhai (P.W. 43), Balubhai (P.W. 44) and Naniben (P.W. 47). All these witnesses have consistently stated that A-34, A-35 and A-36 had set on fire the house of Vinodbhai. All these witnesses further stated that when these three accused were setting the house of Vinodbhai on fire they heard the sound of gunshot coming from the nearby place. It was not the claim of any of these witnesses that either of these three accused persons had used the fire arm and/or caused assault on the deceased persons.

(22) It is no doubt true that these eye witnesses had deposed that A-34, A-35 and A-36 were the members of the unlawful assembly/riotous mob which was chasing the deceased and the other injured persons of the Vankar community from the bus stand until they reached Vankarvas but when the mob came near the house of Vinodbhai these three accused persons went to the house of Vinodbhai and thereafter set his house on fire and other members of the riotous mob continued to chase Vankars and thereafter they heard the firing sounds coming from that direction. The question that needs to be answered on these proved facts is as to whether A-34, A-35 and A-36 could be said to have shared the common object of committing murders with A-19, A-20 and A-21 who fired from their fire arms killing Prabhudas and Pochabhai as other appellants who caused an assault on Khodabhai and Mohanbhai with the deadly weapons as a result of which they also died on the spot. On the evidence on record, we find, it cannot be said to be conclusively established that A-34, A-35 and A-36 also shared the common object to commit the above murders of four persons. The time factor in this behalf assumes great importance because when A-34, A-35 and A-36 were engaged in setting the house of Vinodbhai on fire the other appellants committed the murders of four persons by using fire arms and other deadly weapons. The trial court convicted A-34, A-35 and A-36 for committing the murders of Prabhubhai, Pochabhai, Khodabhai and Mohanbhai with the aid of both Sections 149/34 IPC. On the proved facts we are, however, unable to affirm the conviction of A-34, A-35 and A-36 for the above murders either with the aid of Section 149 or Section 34 IPC but their conviction and sentence under Section 436/34 IPC must stand confirmed. It is no doubt true that these three accused persons while chasing Vankars caused injuries to various persons of the Vankar community for which they have been rightly convicted and sentenced by the trial court under Sections 324/149 and 325/149 IPC. The appellants being the members of an unlawful assembly committed the offence of rioting and have been rightly convicted under Sections 147 and 148 of the IPC. In view of our final analysis of the material on record we are of the considered view that the conviction and sentence of A-34, A-35 and A-36 cannot be sustained under Section 302/149 of the IPC and consequently it is set aside, however their conviction and sentence for the other offences are confirmed.

(23) As regards Criminal Appeal No. 354 of 1987 filed by the State challenging the order of acquittal passed by the trial court in respect of 18

A accused persons, we are of the considered opinion that the view taken by the trial court in acquitting them does not suffer from any infirmity and they have been rightly acquitted by the trial court.

(24) For the aforesaid conclusions the convictions and sentences of Chandubhai Malubhai Parmar (A-19), Jamubhai Gordhanbhai Dodiya (A-20), Nathubhai Pratapsingh alias Prabhatbhai Parmar (A-21), Pratapsang Amarsang Parmar (A-22), Amarsang Takhubhai alias Takhsingh Parmar (A-24), Dhirubhai Mavubhai Parmar (A-25), Bahadurbhai alias Keharsingh Nathubhai Parmar (A-26), Amarsang Dipsang alias Dipubhai Parmar (A-27) and Ranchodbhai Rambhai Parmar (A-28), Nathubhai Rambhai Parmar (A-32) and Ganubhai alias Abhesing Mavubhai Parmar (A-41) awarded by the trial court on various counts are sustained and their appeal to stand dismissed. The conviction and sentence of A-34, A-35 and A-36 under Sections 302/149 or 34 of the IPC is quashed and set aside and they are acquitted of this charge, however their conviction and sentence under Section 436/34 IPC is upheld. The convictions and sentences passed by the trial court against A-34, A-35 and A-36 on other counts are confirmed.

(25) The appellants who are on bail shall surrender to their bail bonds to serve out the remaining part of their respective sentences. Criminal Appeal No. 95/88 is partly allowed as indicated above. Criminal Appeal No. 354/87 to stand dismissed.

V.S.S.

Crl.A. No 95/88 partly allowed  
Crl.A. No. 354/87 dismissed.