



QUALITY OF WITNESS TESTIMONY

59. Language of Deposition

a) Almost all prosecution witnesses who belonged to the group of victims, injured PWs or relatives of deceased victims are illiterate and/or only know how to sign and some know formal reading. Most of them do thumb impressions. In all, about 126 such PWs out of the total victim PWs spoke in Hindi during their testimonies. Only about 44 such PWs spoke in the Gujarati language.

b) The injured victims or the relatives of the deceased victims were mostly doing miscellaneous labour work and were daily wage earners. Some of them were doing business on a very small scale and some of them were hawkers. Those who were housewives were very poor in verbal expression; some of them were shy, some of them came to the court in purdah, they were apparently very hesitant.

60. Victims in the Trial

a) Many women were also self-employed, doing labour work in factories or at their own houses. Except for one of the victims, who worked for the Ahmedabad Municipal Transport Service, none was employed in the government or semi-government sector. One, who was a traffic controller in the ST Corporation, knew Gujarati quite well.

b) It is obvious that a mother, while deposing, would remember her child dying in front of her eyes. All the loving gestures of the child would crash into her consciousness. Such testimony is bound to be a truthful account by the eyewitness.

c) The appreciations suggested by the defence, of the testimonies of the PWs wherein ultimately the PW has been labelled a liar and not a genuine witness or labelled a tutored witness, are all opined by this court to be false and full of misperception. Acceptance of the same would be a mockery of justice which would result in proving that the trial was a travesty of justice.

d) Noting the estranged relationship between the two communities, the occurrence of burning the *kar sevaks* alive would prompt the aggressors not to leave any loose ends in doing away with the Muslims. Since the aggressors were the majority community, it can safely be inferred that the minority community was the victim of the crime.

e) The running away of helpless Muslims and their assembling, to save themselves from assault, at a U-shaped place below a water tank scored a point in favour of the aggressors, as they got more Muslims in one place.

f) The hyper-technical approach, as is suggested by the defence, of treating as liars all those PWs who did not implicate the accused in 2002, would defeat the ends of justice and would have disastrous effects. This court is aware that the previous investigation was not up to the mark and was rather not reliable.

g) Poor economic conditions, disturbed emotions and lack of knowledge of the Gujarati language must be put

together to appreciate the evidence of the victims in a just, fair and equitable manner.

h) In the humble opinion of this court, the submissions of the defence that the killing of *kar sevaks* in the Sabarmati Express on 27.02.2002 is a strong mitigating circumstance is not worthy to be accepted, as the commission of a crime cannot be justification for doing another crime, as nobody can take the law into one's own hands. We live in a society where the rule of law very much survives. The accused should have waited for the law to take its own course and they ought not to have become judges for the cause of *kar sevaks*.

i) A man, like the accused in this case, who possesses or uses deadly weapons must know that a blow would be so imminently dangerous that it must in all probability cause death and the injury intended to be inflicted would be sufficient in the ordinary course of nature to cause death.

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70. Credibility of PWs

As has emerged from the depositions, the situation during the riots on that day, if put in short, was: There was slogan shouting of "Kill the Miyas", "Not a single Muslim should survive", "Jai Shri Ram", "*Maaro (Kill)*", "*Kaapo – Slaughter Miyas*", "*Burn Miyas, rob Miyas*", etc all around. There were miscreants all around with deadly weapons, there was killing, slaughtering, and burning persons alive was ongoing. The frequency of the incidents and the speed of happenings must have been so high that before the victims had grasped the detail of one incident, another slaughter might have taken place; a victim takes time to accept the series of incidents by rioters which the victim had never ever imagined. This must all have frightened the PWs. Because of fear, concentration increased. Whatever one saw or whatever one noticed must have been recorded in one's mind but what was happening nearby may have gone unnoticed. In a nutshell, the situation was that of war where the attack was by the majority and the victims were poor persons of the minority community. A reply for every detail may not have been provided by a PW and still his description of the occurrence and identification of the accused are most credible.

It is difficult for eyewitnesses to put everything into words therefore the policy was adopted that the spirit of the version of the witness should also be seen and whatever a victim had voluntarily stated during cross-examination has all been written in his deposition.

71. PWs while Deposing

This court has observed that during their depositions many of the witnesses were finding it very difficult to control their tears. They were eager to show their burnt limbs, their injured limbs, and explain their losses to the court. Many of

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the parent witnesses were unable to describe the death of their children in the riot; they became so emotional that they often needed to be consoled and offered a glass of water to complete their depositions. Their pains, agonies, anxiety, effects of shock and trauma, were very visible and noticeable. Even on the date of the deposition they were noted to have been very afraid. They were frequently assured of their security but when they had to identify the accused, it was noticed that many of the witnesses avoided identifying the accused who they knew very well. At least two to three PWs were so disturbed that their physical health was affected and an ambulance had to be called to take them to hospital.

72. Fear, Psychological Trauma and its Impact

a) The overall evidence gives the impression to this court that somehow the witnesses, at the stage of investigations other than the investigation by the SIT, have not felt assured of their safety and security. Having no trust in society and the system of administration of justice, they probably thought that their interest lay in avoiding confrontation. The silence, withdrawal or the attitude of these witnesses is a matter which may be of interest to psychologists and sociologists. However, the opinion of some psychologists about victims of such crimes has been reproduced which might reflect the state of mind of the victims. It is opined that if the victims were extremely frightened then that is also one more cause why the truth did not come out in the previous investigation, which is over and above the lack of desire of the previous investigators to allow the whole truth to surface.

b) It is well known that psychological trauma impairs the ability or willingness of crime victims to cooperate with the criminal justice system. Victims must be treated better by the criminal justice system. Crime-related fear makes the victim reluctant to report crimes to the police, or those who are so terrified are even afraid to testify effectively. Before recording their statements for investigation of the crimes, the crime-related mental health problems of the victims should have been dealt with by grief counselling. There have to be victim assistance personnel and professionally sound persons who can be useful in dealing with avoidance behaviour. This was never addressed by the previous investigators.

c) The victims of such terrorising crimes are normally shocked, surprised and terrified about what has happened to them. "Fight or flight" responses are common in dangerous situations for anyone.

d) Criminal victimisation also leads to many physical disorders coupled with mental traumas. At times the victims experience problems in their relationships with family and friends. Mental health counselling can only bring normalcy to crime victims. It is an admitted position that the mental health issues of the victims were not addressed at all.

e) The criminal justice system, in such situations, has to be more victim-friendly and should treat the victims as human beings and not as evidence for this side or that side. Victims of such crimes have difficulty in describing what happened to them. The re-experiencing of the ghastly crime, avoidance and hyper-arousal are seen as common features in victims of such crimes. Hence at times the sordid tales they tell lack chronological cohesion. The victims of such crimes usually feel very unsafe while persistent investigation, media attention and visits of different persons overshadow the necessary grieving process.

f) The victim faces fears of many kinds. Fear of violence, fear of perpetrators, fear of memories, etc are chief among them. A victim always finds it difficult to organise his thoughts, his memories, during the mourning period hence the statements recorded during that period are to be considered keeping this in mind. There have to be healing or rehabilitation programmes systematically arranged by professional persons for the victims to bring them back to normalcy.

This court is of the opinion that the psychological aspect, the result of such crimes which traumatise victims, is a very important factor. It is clear that none of the previous investigators have shown any concern for the victims of the crimes, which was necessary for effective investigation of the crimes to unearth the modus, the preparation, the conspiracy, the perpetrators, etc.

g) It can safely be inferred that the mourning period, for most of the victims, must have been over when the SIT took over the investigation about six years after the crimes. Therefore also the statements before the SIT only should be considered except for the part which does not inspire the confidence of the court.

h) There cannot be any universal rule that every victim would be influenced by fear; it all depends upon one's psychological and surrounding circumstances. Some may be afraid of one situation while another may not be.

i) The above discussion is mainly aimed to highlight the possibility that many prosecution witnesses who had not named the accused in the year 2002 had done so on account of fear and some of the PWs have even advanced this reason in their voluntary versions before the court. Be that as it may, the fact remains that the psychological and sociological impact of fear can be and may be one of the reasons for not reporting to the police the names of the accused in the case of many of the witnesses. Some such PWs have fairly accepted that in 2002 they had not stated the names of the accused, certain facts, etc.

j) It also cannot be put out of mind that numerous PWs have stated that even though they had so stated, the police had not written as was stated by them.

In the opinion of this court, this is also equally possible. The reason may be either but the record of the previous investigation is doubtful, is the common finding.

k) It was submitted that for the PWs, fear is a factor which would not allow a person to notice everything and one would only think to save oneself. The paragraphs mentioned below are self-explaining.

l) In the view of psychologists: "On the contrary, fear generally has a large emotional factor and as a result, the attention is sharpened, the mental faculties are concentrated and better memory on material points should result. Intense feeling of any kind is apt to key up the powers of the brain and sharpen perception. When we feel a thing strongly, we are sure to retain the recollection of it. It is more firmly impressed upon us than the humdrum affairs of our ordinary life" (*Psychology and the Law* by Dwight G. McCarty, 1960, p. 198).

m) GF Arnold, in his book titled *Psychology of Legal Evidence*, has considered the question of the effect of fear on memory: "There is a mistaken impression that fear prevents attention to what is going on and therefore hinders memory. It is argued that the narrative or an identification is not reliable because the witness was frightened at the time and the witness could not have noticed or recollected what was seen. It is well therefore to state that usually a person under

the influence of fear observes better and remembers clearly."

n) "‘Fear,’ says Darwin, ‘is often preceded by astonishment and is so far akin to it that both lead to the sense of sight and hearing being instantly aroused. It lends us to attend minutely to everything around us because we are then specially interested in them, as they are likely to intimately concern us’" (Quoted from Wigmore’s *The Principles of Judicial Proof*, Boston, Little, Brown & Co, 1913).

o) The above abstracts guide that just because the PWs were frightened, it would not be proper to disbelieve them on the ground that because of fear, they cannot remember anything and all that they deposed is imaginary. It is different that at times they would keep information on the crime close to their chest and would not trust anyone to share it with, which is due to fear...

(The occurrence witnesses in the Naroda Patiya case were many critical eyewitnesses. It is impossible to reproduce here the large sections of the judgement evaluating their testimonies.

This can be read at: www.cjponline.org.)

