

Reference: **Writ Petition (Criminal) No. 31 of 2007 B.G. Verghese
Vs. Union of India & Ors.**
With
**Writ Petition (Criminal) No. 83 of 2007 Javed Akhtar & anr.
Vs. State of Gujarat & ors.**

I have perused the orders of Hon'ble Supreme Court dated 12th December, 2018. The facts that led to the setting up of the Special Task Force and the Monitoring Authority have been dealt with in the final report submitted by me on the 26th February, 2018. However, I need to give a short background in the matter for the purpose of this reply. While the writ petitions were pending disposal in the Hon'ble Supreme Court, the State Government of Gujarat vide order dated the 2nd of April, 2011 constituted a Special Task Force of police officials to investigate the cases of alleged fake encounters and by notification dated the 16th September, 2010 constituted a Monitoring Authority to monitor and direct the investigation. The Monitoring Authority was given wide ranging powers under paragraph 3 of the Gujarat Government Notification dated 18th September, 2010 . No authority, however, was conferred on the Monitoring Authority to submit any report, interim or final, with regard to the investigation. However, in its order dated 25th January, 2012 the Hon'ble Supreme Court issued comprehensive directions pertaining exclusively to the Chairman of the Monitoring Authority and directing that :

“The Chairman of the Monitoring Authority may give hearing to the petitioners in these cases or to any aggrieved person,

including the kin or associates of the victims of the encounter deaths. For investigating the cases, the chairman of the Monitoring Authority may constitute different teams of officers from within the Special Task Force or from outside. Needless to say that while constituting investigating teams, the chairman would bear in mind the sensitivity of the matter and the possibility of interestedness of some of the officers in the State Police. It will be open to the Chairman, for the purpose of inquiry, to call for the police records/court records or the record from the National Human Rights Commission(NHRC) relating to the cases under inquiry. Any case which is under consideration by orders of this Court or by the Gujarat High Court will not come within the inquiry by the Chairman of the Monitoring Authority in terms of this order. If the Chairman of the Monitoring Authority considers it just, reasonable and proper, it will also be open to him to pass directions for grant of interim or final monetary compensation to the kin of the victims of the alleged fake encounters. Let copies of the writ petitions complete with annexures be sent to Hon'ble Mr. Justice M.B.Shah, the Chairman of the Monitoring Authority constituted for investigation of police encounters deaths in Gujarat. It is expected that a report/interim report from the Chairman of the Monitoring Authority would come to this Court within three months from today. Put up on receipt of the report."

The Supreme Court, on the 2nd March, 2012, while appointing me the Chairman of the Monitoring Authority, made the following order:-

"On January 25, 2012, this Court passed an order requesting Mr. Justice M.B.Shah, a former Judge of this Court, who was

appointed as Chairman, of the Monitoring Authority constituted by the State of Gujarat, to look into all the cases of alleged fake encounters, as enumerated in these two writ petitions and to have them thoroughly investigated so that the full and complete truth comes to light in each case.

Mr. Justice M.B.Shah, by his letter dated February 1, 2012 expressed his inability to look into all cases of alleged fake encounters and made a request to relieve him from the assignment as Chairman of the Monitoring Committee for the reasons stated in the letter.

The two writ petitions along with Mr. Shah's letter were put up before the court on February 24, 2012. On that date, Mr. Ranjit Kumar, learned senior advocate, appearing for the State of Gujarat, produced before the Court a copy of the Notification dated February 23, 2012, by which Mr. Justice K.R.Vyas a former Chief Justice of the Bombay High Court, was appointed as the Chairman of the Monitoring Authority.

On a query, why the Notification was issued on February 23, 2012, when the case was to come up before the Court on February 24, 2012, Mr. Ranjit Kumar stated that after the previous order was passed on January 25, 2012, the officers of the State Government contacted Mr. Justice M.B.Shah. To them also Mr. Justice Shah expressed his inability to accept the assignment and in those circumstances the State Government deemed it fit to issue the notification even before the case came to be taken up by this Court. So far as the appointment of Mr. Justice Vyas as Chairman of the Monitoring Authority is concerned, this Court has nothing to say in the matter. But since he was sought to replace Mr. Justice M.B.Shah, who was appointed by this Court to head the

investigation of the cases of alleged fake encounters, his appointment could only be made with the express permission of the Court and it was not proper for the State Government to issue the Notification just a day before the case was to be taken up by this Court.

On that date the case adjourned to February 27, 2012.

On February 27, 2012 on a request made by Mr. Tushar Mehta, learned Additional Advocate General, State of Gujarat, the case was adjourned for today.

Today, Mr. Mehta prayed for further time (that would adjourn the case to the next miscellaneous day on March 12, 2012), stating that he himself along with the Advocate General of the State of Gujarat had met Mr. Justice M.B.Shah and he was hopeful that he would persuade Mr. Justice Shah to recall his letter to this Court and make him agree to accept the assignment.

We do not think this to be the proper course. We would rather respect the wishes of Mr. Justice Shah and would not like to burden him with an assignment which he is unwilling to take up for very good reasons, as stated in his letter of February 1, 2012.

By the letter(sic) dated January 25, 2012, this Court had clearly held that there was a need for investigation of the cases of alleged fake encounters as enumerated in the two writ petitions and we must proceed ahead from that point. Now that Mr. Justice M.B.Shah is not available to head and supervise the investigations we need someone whose neutrality and impartiality is completely beyond question.

We accordingly, deem fit and proper to request Mr. Justice H.S.Bedi, a former Judge of this Court, to head and monitor the

investigation of the cases of alleged fake encounters, as enumerated in the two writ petitions.

It is made clear that so far as the investigation of the cases in question is concerned, Mr. Justice H.S.Bedi shall exercise all the powers and authority of the Monitoring Authority constituted by the State of Gujarat vide Notification dated September 16, 2010 published in the Gujarat Government Gazettee Extraordinary dated September, 18, 2010.

All the directions contained in the order dated January 25, 2012 including the following are reiterated and those shall form part of this order as well.

“The Chairman of the Monitoring Authority may give hearing to the petitioners in these cases or to any aggrieved person, including the kin or associates of the victims of the encounter deaths.

For investigating the cases, the chairman of the Monitoring Authority may constitute different teams of officers from within the Special Task Force or from outside. Needless to say that while constituting investigating teams, the chairman would bear in mind the sensitivity of the matter and the possibility of interestedness of some of the officers in the State Police.

It will be open to the Chairman, for the purpose of inquiry, to call for the police records/court records or the record from the National Human Rights Commission(NHRC) relating to the cases under inquiry.

Any case which is under consideration by orders of this Court or by the Gujarat High Court will not come within the inquiry by the Chairman of the Monitoring Authority in terms of this order.

If the Chairman of the Monitoring Authority considers it just, reasonable and proper, it will also be open to him to pass

directions for grant of interim or final monetary compensation to the kin of the victims of the alleged fake encounters. “


The State of Gujarat shall extend full facility and cooperation to Mr. Justice Bedi for a meaningful and effective investigation in all the cases enumerated in the two writ petitions.

It is expected that an interim report from the Chairman of the Monitoring Authority would come to this Court within three months from today.

Put up on receipt of the report.”

It will be seen that the Monitoring Authority had absolutely no authority to give any report and the power to submit a report, interim or final, was conferred on the Chairman of the Monitoring Authority. I need to emphasize that the evidence collected by the Special Task Force was discussed in the meetings of the Monitoring Authority held from time to time wherein members of the Special Task Force dealing with particular cases and the counsel for the parties were also present and while submissions were heard by the Monitoring Authority the ultimate decision was mine alone as that was the purport of the orders of the Hon'ble Supreme Court quoted above. This aspect has been dealt with by me on pages 30 and 31 of my final report. To my mind it could not be otherwise as the composition of the Monitoring Authority precluded any report as the members were almost exclusively State Government officials- viz serving District Judges, the Additional/ Principal Chief Secretary (Home) State of Gujarat, Director General of Police, Director of the F.S.L. Gujarat and the I.G. (Law and Order). It is in this background that the final report submitted on

the 26th February, 2018 was not shared with the other Members of the Monitoring Authority. I might also add that the interim reports to which reference has been made by the Hon'ble Bench are in fact status reports which do not deal with the merits of the cases discussed or the conclusions drawn but pertain to the proceedings of the Monitoring Authority held from time to time and are in fact minutes thereof. I must also submit that I would not have had the slightest hesitation in sharing the contents of the report with anyone but in the light of the background and facts given above, it was to my mind, within the exclusive domain of the Chairman of the Monitoring Authority to submit a report. Should it be opined otherwise by the Hon'ble Bench, I would unhesitatingly submit the report for consideration as directed.



(Justice H.S. Bedi)

December 26, 2018

Writ Petition (Criminal) No. 31 of 2007
B.G. Verghese Vs. Union of India and others
with

Writ Petition (Criminal) No. 83 of 2007
Javed Akhtar and anr. Vs. State of Gujarat & others

Final Report by Justice H.S.Bedi,
(former Judge, Supreme Court of India)
Chairman, Monitoring Authority, Ahmedabad
(Gujarat)

Writ Petition (Criminal) No. 31 of 2007 B.G. Verghese Vs. Union of India and Others

with

Writ Petition (Criminal) No. 83 of 2007 Javed Akhtar & anr. Vs. State of Gujarat and others

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**BEFORE HON'BLE MR. JUSTICE HARJIT SINGH BEDI (FORMER
JUDGE SUPREME COURT OF INDIA), CHAIRMAN, MONITORING
AUTHORITY, GUJARAT**

Writ Petition (Criminal) No. 31 of 2007

(B.G.Vergheese etc. Vs. Union of India and Others)

AND

Writ Petition (Criminal) No. 83 of 2007

Javed Akhtar and others Vs. State of Gujarat and others

Present: Mr. Parshant Bhushan Advocate with
Mr. A.J.Yagnik, Advocate,
Mr. Somnath Vatsa, Advocate and
Mr. I.H.Syed, Advocate for the petitioners.

Mr. A.Y.Kogje and Mr. R.C.Kodekar, Advocates,
Legal Advisors for the S.T.F.

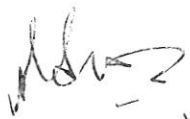
FINAL REPORT

JUSTICE (RETD.) HARJIT SINGH BEDI

Writ Petition (Criminal) No. 31 of 2007 (B.G.Vergheese etc. Vs. Union of India and Others) and Writ Petition (Criminal) No. 83 of 2007 (Javed Akhtar and others Vs. State of Gujarat and others) were filed in the Hon'ble



Supreme Court under Article 32 of the Constitution of India in public interest alleging that a large number of persons had been killed by police personnel in staged encounters including of some of those who were already in police custody. Writ Petition (Criminal) No. 83 of 2007 filed by Javed Akhtar and Shabnam Hashmi pertained specifically to the encounter killing of one Sameer Khan who was already in police custody at the relevant time and that when the matter had come to be exposed in the press an attempt had been made to scuttle all proceedings. Notice was issued by the Supreme Court to the State of Gujarat in both cases and (in addition in Sameer Khan's case) to Mr. Tirth Raj, Inspector General Prison, Sabarmati Jail, Ahmedabad and Mr. I.K.Yadav, Dy.S.P.(Retd.) as well. During the pendency of the proceedings in the Supreme Court the State of Gujarat constituted a Special Task Force (STF) to further investigate the encounters and a Monitoring Authority to oversee the investigation vide notification dated 16th September 2010 which was published in the Gujarat Government Gazette Extra Ordinary on 18th September, 2010 and consequent thereto an office order dated 2nd April, 2011 appointing police officers specified by designation as members of the Special Task Force was issued and by a resolution dated 7th April, 2011 Justice M.B.Shah, Former Judge of the Supreme Court of India, was appointed as the Chairman of the Monitoring Authority. In view of this development the Hon'ble Supreme Court expressed it's satisfaction by observing



that the matter was now under the supervision of a Former Judge of the Supreme Court with ample powers to have the matter investigated in a suitable manner. It was further directed that any matter which was under investigation under the orders of the Supreme Court or the Gujarat High Court, would not come within the purview of inquiry by the Monitoring Authority. Certain other directions were issued which would be dealt with as and when required. It transpired, however, that Justice M.B.Shah by his letter dated 1st February, 2012 expressed his inability to take up the office of Chairman of the Monitoring Authority on account of lack of time on which the State of Gujarat (vide notification dated 23rd February 2012) appointed Mr. Justice K.R.Vyas, a former Chief Justice of the Bombay High Court, as the Chairman in Justice Shah's place. These facts were brought to the notice of the Supreme Court on the 2nd March, 2012 on which date the Bench expressed its unhappiness as to the manner in which this appointment had been made. Consequent thereto I was nominated as the Chairman of the Monitoring Authority for these 17 cases. The order of the Supreme Court dated 2nd March, 2012 was received by me on the 20th March, 2012 although the Additional Chief Secretary Home, State of Gujarat, Mr. Viresh Kumar Sinha, had been in touch with me earlier. I accordingly visited Gandhi Nagar on the 24th March, 2012 to have a quick look as to what was to be done. I also held a meeting with Mr. Sinha, , DGP Gujarat, Mr. Chitranjan Singh, Mr. A.K.Sharma, IGP(Special Branch) and Mr.



Rahul Gupta, Deputy Secretary Law and Order(Home) and certain preliminary decisions were taken. Consequent to the aforesaid meeting I visited Gandhi Nagar on the 18th April, 2012 by which time a meeting of the Special Task Force (STF) had been called. As already mentioned above the personnel of the S.T.F. by designation had been constituted in accordance with the Notification dated 16th September 2010 published in the Gujarat Government Gazettee (extra ordinary) on 18th September 2010 consequent whereupon an office order dated 2nd April,2011 specifying the officers by name, was issued.

The first meeting of the S.T.F. and Monitoring Authority was held in the Circuit House, Gandhi Nagar on the 18th April, 2012. In this meeting reference was made by the Chairman, Mr. A.K.Sharma IPS, to 17 cases which were to be further investigated consequent upon the order of the Supreme Court and a small resume was given of the investigation which had taken place with respect to the various incidents. It was also pointed out by Mr. Sharma that as the investigation papers as well as orders of the court passed from time to time consequent to the encounters were substantially in the Gujarati script, they would have to be translated into English. It was also decided that cases be further investigated by three teams in lots of five or six cases each headed by a S.P.rank officer. It was also decided that wide and broad publicity be given to the proposed further investigation by the S.T.F. so that the next of the kin of the deceased who belonged



not only to the State of Gujarat but far flung States as well, by way of Newspapers not only in the English and Gujarati language but also in the vernacular of the region which was the home of the deceased. Details of the publication of the notices issued will be spelt out when individual cases are dealt with. However, general notices were issued in Gujarat in English on 18th July 2012 in The Times of India, the Indian Express and in the vernacular in Daily Sandesh, Divya Bhaskar and the Gujarat Samachar. By all theses notices it was brought to the notice of the reading public that consequent to the orders of the Supreme Court of India the State Government of Gujarat had constituted a S.T.F. vide Government Notification dated 16th September 2010 to investigate all cases of deaths which according to the claim raised by any affected party was a result of a fake encounter and that vide its order dated 2nd March, 2012 had appointed me as the Chairman of the Monitoring Authority inter-alia with the following terms of reference:-

- (a) to look into all the cases of alleged fake encounters in these two writ petitions and to have them thoroughly investigated.
- (b) to pass directions, if the Chairman of the Monitoring Authority considers it just, reasonable and proper for grant of interim or final monetary compensation to the kin of the victims of the alleged fake encounters.



The translation of the investigation papers from Gujarati to English which was to be undertaken consequent to the decision in the meeting held on the 18th April, 2012 was also started and to ensure accurate translations a request was made by the STF to the Gujarat High Court to provide its official translators for this purpose. The translation was accordingly made by the High Court translators. The translation which pertained only to the initial investigation by the Gujarat Police was itself a stupendous job and was completed by 6th November, 2013. In the meanwhile consequent to the further investigation by the STF fresh statements of those who had knowledge of the incidents were recorded and videographed. In addition to this notices were issued to the next kin or associates of the deceased to appear before me personally to record their statements. These statements were also recorded and video graphed in my presence. The details of the witnesses who appeared before me will be given when each individual case is discussed.

As already mentioned above the investigation by the Special Task Force was entrusted to three investigating teams headed by S.P.rank officers. They were Shri Sandeep Singh, S.P.Vadodra(Rural), Shri Maninder Partapsinh Pawar, S.P. Bhavnagar and Shri R.V.Asari, S.P.Kheda The details of the cases with each team are given herein below:-

Supervision officer :- **S.P Shri Sandeep Singh**



Investigation officer :- **A.C.P Shri C.N.Rajput**

No.	Police Station and District	C.R.No	Deceased Name
1	Umara, Surat City	I- 36/04	Mahesh Dipak Gadhwal
2	Pandesara, Surat City	I- 34/03	Anil Bipin Misra
3	Vasad, Dist: Anand	I-35/04	Mithu Umar Dafer
4	Karelibaug, Vadodara	I- 227/04	Kashyap Dhaka
5	Borsad, Dist: Anand	I- 76/05	Rajeswar Pandey

Supervision officer :- **S.P Shri Maninder Pratapsinh Pawar**

Investigation officer :- **ACP Shri B.C.Solanki**

6	B - Division, Rajkot City	I- 180/04	Salim Gagaji Miyana
7	Jetpur City, Rajkot Rural	I- 124/05	Rafiksha @ Bapudi Fakir
8	B - Division, Rajkot City	I- 40/04	Ranjit @ Jalla Devipujak
9	Vapi Town, Dist:Valsad	I- 221/05	Dungariyo Himla Machar
10	D.C.B, Ahmedabad City	I- 08/03	(1) Ganesh Khunte (2) Mahendra Jadav
11	Shil, Dist: Junagarh	I- 77/04	Bhima Madabhai Mer

Supervision officer :- **S.P Shri R.V.Asari**

Investigation officer :- **Dy.S.P. Shri A.M.Patel**

12	Valsad Town,Dist Valsad	I- 11/06	Jogindersingh Khatansingh Sikh
13	Shahibaug, Ahmedabad	I- 146/06	Kassim jaffer hussain



14	Umargam,Dist:Valsad	I- 244/05	Haji Haji Ismail
15	Umargam,Dist:Valsad	I- 336/04	Sanjay Rahul Sarda Prasad
16	Vyara Dist, Surat Rural	I- 94/04	Subhash Bhaskar Nair
17	DCB, Ahmedabad City	I- 25/02	Sameerkhan Pathan

Co-extensive with the further investigation an effort was also made to ensure that the members of the Monitoring Authority were all in place so that the work could be started forthwith. There was some difficulty about appointments of the two serving Sessions Judges to be members of the Monitoring Authority as the Gujarat High Court was of the opinion that their membership would not be in order. The Additional Chief Secretary (Home) accordingly in the meeting of the Monitoring Authority held on the July 12, 2013 gave the three names of retired Judicial Officers from whom two could be nominated by me. On inquiry made by me from those who were aware of the Judicial service in Gujarat, I found one of the three names to be suitable for the membership of the Monitoring Authority and requested the Chief Secretary to give two other names of retired Judicial Officers so that a second member could also be nominated. The second member was also nominated thereafter and it was noted in the minutes of the meeting held on the September 12, 2013 that the Monitoring Authority as envisaged was complete as all members thereof had been inducted. It was also observed that the next of kin

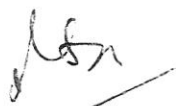


or associates of the victims who were indigent and belonged to deprived sections and were not in a position to ventilate or articulate their fears and grievances, were given liberty to engage counsel. In all fairness permission was also given to the STF to appoint a legal counsel and Mr. A.Y.Kogje Advocate was appointed as Special counsel of the STF and on his elevation as a Judge of the Gujarat High Court, Mr. R.C.Kodekar was appointed in his place. Some of those who appeared before the Monitoring Authority prayed for compensation for the families of the deceased and this issue was taken up in the meeting of the Monitoring Authority held on the September 12, 2013. It was pointed out during the course of the meeting that as per paragraph 9 of the Notification dated 16th September 2010 which dealt with the functioning of the S.T.F. the grant of compensation by the Monitoring Authority to the heirs of the deceased was visualized but only after the completion of the investigation. Admittedly on the date of the meeting the investigation was far from complete and grant of compensation under the mandate of the S.T.F. was, therefore, not permissible. It was, however, noted that the Hon'ble Supreme Court while laying down the parameters relating to the powers of the Chairman of the Monitoring Authority had directed in its order dated 25th January, 2012 that "If the Chairman of the Monitoring Authority considers it just, reasonable and proper, it will also be open to him to pass directions for grant of interim or final monetary compensation to the kin of the victim of the alleged fake



encounters.” This direction was put to the members of the meeting of the Monitoring Authority and it was agreed that the compensation may be determined by the Chairman in terms of this direction. I accordingly directed that on a consideration of the material that had come on record more particularly the statements of the relatives or next of the kin of the deceased a case for compensation at the first instance would be considered with respect to the families of the deceased Dungario Himla Machchar, Rafiqsha Bapudi and Kasim Jaffer. The Investigating Officers involved in the investigation of these three cases were in the meanwhile directed to get details of the family of the deceased, their financial condition, family commitments etc. to be produced before the Monitoring Authority on the 19th October, 2013. The details of compensation and as to how it has been computed by me will be dealt with in each case. I may reiterate that amount of compensation to be paid was my decision alone as it was conferred on me specifically by the Supreme Court by order dated 25th January 2012 and not by the terms and conditions of the STF notification dated September 16, 2010 or the terms and conditions of the Monitoring Authority vide Notification dated 9th March, 2012.

31 meetings of the Monitoring Authority were held between 18th April, 2012 and (last being) on 15th October, 2017. Ten status reports pertaining to most of these meetings were submitted to the Hon’ble Supreme Court from time



to time. As would be evident from the status reports so submitted that some delay was occasioned on account of election in the country as many members of the investigating team were deputed to police duties during those days. In addition it was found that many of the Investigating Officers in the initial investigation which had culminated in the closure reports had retired and were not easily available and some of the old record which was lying in courts was difficult to trace. A great deal of time was also spent in getting the translations of the from Gujarati record to English. The report is now being rendered after completion of all proceedings.

Before I go into a discussion of the evidence that has been recorded the terms and conditions under which the S.T.F. and the Monitoring Authority had been set up, must be spelt out. As already mentioned above, two writ petitions under Article 32 of the Constitution of India, one by Mr. B.G.Vergheese, a very prominent journalist, and another by Mr. Javed Akhtar, a well known poet and lyricist, and Ms Shabnam Hashmi, a social worker, were filed in the year 2007 in which a prayer was made that an independent investigation be made by a Special Investigating Team in all the fake encounters in Gujarat and to take consequential action on the report that may be tendered. Notice was issued on these matters and after the pleadings had been completed and during the pendency of the writ petitions the State of Gujarat constituted a Monitoring Authority and S.T.F. for investigation of police encounters vide Notification dated 16th September, 2010



published in the Gujarat Government Gazettee (Extraordinary) dated September 18, 2010. The notification aforesaid dealt with the constitution of the Monitoring Authority and its powers and functions and also functions of the STF. The aforesaid provisions are reproduced verbatim:-

1. **Constitution of Special Task Force(STF)**-The constitution of Special Task Force for the purpose of conducting investigation as aforesaid shall be as under:-

- (1)The Special Task Force shall function under direct control and supervision of the Director General & Inspector General of Police of the State of Gujarat;
- (2)It shall be headed by an officer of the rank of Inspector General of Police;
- (3)One officer of the rank of Deputy Inspector General of Police
- (4)Three officers of the rank of Superintendents of Police;
- (5)Four officers of the rank of Deputy Superintendent of Police;
- (6)Five officers of the rank of Police Inspectors; and
- (7)The Range Inspector General of Police of the nearest range to the range in which such an encounter death takes place shall also be a member of the Special Task Force.

(2)**Constitution of Monitoring Authority**-There shall be constituted a Monitoring Authority to oversee and monitor of Special Task Force and its



investigation and also to receive complaints/representations/suggestions from relatives of victims of death in police encounter.

The composition of the Monitoring Authority shall be as under:-


- (1) The Chairman of the Monitoring Authority shall be appointed by the State Government who shall be a retired Hon'ble Judge of the Honourable Supreme Court of India; or a retired Honourable Judge of the High Court of Gujarat. The tenure of the Chairman shall be for the period of five years and can be extended for one more term only. Terms and conditions shall be notified by the state government in this regard separately.
- (2) A Member of Gujarat State Human Rights Commission to be selected by the Chairman of the said Commission;
- (3) The District Judge of the District in which the encounter death is reported.
- (4) The Additional Chief Secretary/Principal Secretary(Home), State of Gujarat
- (5) Director General of Police.
- (6) A member of any other Investigation agency or an IPS officer not below the rank of additional DGP, from any other state who may be co-opted by the Chairman of this Authority as and when required.
- (7) Director of Forensic Science Department, (FSL) Gujarat,
- (8) IG(Law and Order)



The IG(Law & Order) shall function as the member secretary of the Monitoring Authority and shall coordinate the respective function of the said Authority and the STF.

3. Powers & Functions of the Monitoring Authority:- The powers and functions of the Monitoring Authority shall be as under:-

- (1)The Monitoring Authority shall monitor the investigation into the encounter deaths and all other incidental and ancillary matters of the Special Task Force;
- (2)The Monitoring Authority shall have the power to guide and instruct the Special Task Force with respect to any subject, aspect, question or issue in relation to the mode, method and direction with regard to or connected with the investigation of encounter death;
- (3)The Monitoring Authority shall have the power and duty to receive complaints of any death alleged to be an encounter death from the relatives of the victim;
- (4)The Monitoring Authority shall also have the power to receive inputs and suggestions from the relatives of such victims and also the complaints, if any, of the officers of the police force facing investigation and if such inputs/information/suggestion and/or complaint is related to, whether directly or indirectly, the encounter death, the Monitoring Authority shall direct the



Special Task Force to take them into consideration during investigation and report to the Monitoring Authority;

- (5) It shall be power and responsibility of the Monitoring Authority to review the progress of the investigation on quarterly basis and it shall be the corresponding duty of the Special Task Force to apprise, inform and brief the Monitoring Authority in detail at the regular interval of three weeks regarding the progress of the investigation in question;
- (6) The non compliance with the deliberate disregard of the directions issued by the Monitoring Authority to the Special Task Force and/or any member thereof shall be construed as dereliction of duty and/or insubordination on the part of the Special Task Force and/or any of its constituents.”

In its order dated 25th January, 2012 the Supreme Court issued the following directions supplementing the directions pertaining to the Monitoring Authority directing that:

“The Chairman of the Monitoring Authority may give hearing to the petitioners in these cases or to any aggrieved person, including the kin or associate of the victims of the encounter deaths.

For investigation the cases, the Chairman of the Monitoring Authority may constitute different teams of officers from within the



Special Task Force or from outside. Needless to say that while constituting investigating teams, the Chairman would bear in mind the sensitivity of the matter and the possibility of interestedness of some of the officers in the State police.

It will be open to the Chairman, for the purpose of inquiry to call for the police records/court records or the record from the National Human Rights Commission(NHRC) relating to the cases under inquiry.

Any case which is under investigation by orders of this Court or by the Gujarat High Court will not come within the inquiry by the Chairman of the Monitoring Authority in terms of this order.

If the Chairman of the Monitoring Authority considers it just, reasonable and proper, it will also be open to him to pass directions for grant of interim or final monetary compensation to the kin of the victims of the alleged fake encounters.

The STF was also constituted by officers specifically nominated by name vide resolution dated 2nd April, 2011 as follows:-



“After active consideration the State Government has decided to appoint following police officers in the Special Task Force (STF) in pursuance of the provisions of the said notification.

- (1) Shri A.K.Sharma, I.P.S. I.G.P. Gandhinagar Range, Gandhinagar
- (2) Shri D.J.Patel, I.P.S., Deputy Inspector General of Police, Armed Unit, Vadodara.
- (3) Shri Sandeep Singh, I.P.S. Superintendent of Police, Ahmedabad(Rural)
- (4) Shri D.R.Patel, I.P.S. Superintendent of Police, Sabarkantha.
- (5) Shri R.V.Asari, Superintendent of Police, Kheda

2. These appointments are subject to the Provisions of the Home Department's notification Dated: 16/9/2010 quoted above and the following terms and conditions and shall be valid till further orders in the regard from the department.

- (1) The Chief of the Special Task Force shall be Shri A.K.Sharma, I.P.S., I.G.P. Gandhinagar Range, Gandhinagar.
- (2) The functions and responsibility of the Special Task Force shall be as per the provisions laid down in the para-4 of the notification No.CG/47/SB-1/KAV/10/2010/11996 dated 16th, September, 2010.
- (3) The Special Task Force shall have to perform work entrusted to it from time to time as per the provisions of the said notification.



(4) The appointment of Deputy Superintendent of Police and Police Inspectors in Special Task Force will be made henceforth as per the requirement.”

Under Paragraph (4) of the office orders appointments of D.S.P., Inspectors deputed to the STF were left to be made as per requirement and need.”

Functions of the STF

(1) Whenever any member/s of the police force claims to have faced an encounter, it shall be immediately reported to the Monitoring Authority, the Director General and Inspector General of Police, State of Gujarat and the local police station.

(2) In every case of Police encounter when a complaint is made by the kin of the victim against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the IPC. Such case shall also be transferred to and investigated by the STF.

(3) Whenever the local Police station is in receipt of any information and/or complaint of police encounter death, it shall register the same in a case diary. The police officer of such police station, must make an entry in the general diary and if the receiving authority is a police officer of higher rank than the Police Inspector, the relevant entry must be made in a separate diary kept and provided for the



purpose and then be transferred to STF for being proceeded with in accordance with law.

(4) Upon such information received by the local Police station and/or complaint having been received, the First Information Report in terms of Section 154 of the Code shall be filed and such report shall be sent to the concerned competent Court without any further delay, while forwarding the same to the Director General and Inspector General of Police and also to the STF for proceeding in accordance with law.

(5) The Director General and Inspector General of police must send such intimation to the Monitoring Authority and also to the State Human Rights Commission. The Director General and Inspector General of Police shall take disciplinary proceedings against the officer in-charge of the police station if he/she fails to send the report regarding the encounter death, as stated hereinabove.

(6) Where any of the Police Officers of the Police Station concerned was a part of the encounter party or a team of encounter, he shall not be included in any stage of the investigation in any capacity whatsoever.

(7) The procedure to be followed by the STF shall be devised in detail by the aforesaid Monitoring Authority which should be, as far as practicable, the procedure contemplated in the Manual of Central Bureau of Investigation and the



procedure contemplated in the Manual of Crime Investigation Department(CID) of the State of Gujarat. Till such time the Monitoring Authority decided the procedure and methodology to be followed, the STF shall follow the same procedure and conduct the investigation in accordance with the Procedure Manual prepared by the State CID(Crime).

(8) A Magisterial inquiry as per the provisions of the Code of Criminal Procedure must invariably be held in all cases of death which occur in the course of police encounter. It shall be the duty of the STF to assist the learned Magistrate during such inquiry.

(9) The question of granting compensation to the dependents of the deceased died in an encounter would be considered only after conclusion of the investigation by the STF and the entitlement and the amount shall be determined by the Monitoring Authority. The amount determined by the Monitoring Authority shall be binding upon the State Government.

(10) If the injured criminal during the operation encounter are found alive, they should not only be provided medical and immediately but also arrangements and attempts shall be made by the independent investigation team to record their statements under section 164 of the Criminal Procedure Code, either by a Magistrate, if possible and if not, by the Medical Officer concerned, duly attested



by the hospital staff mentioning the time and factum that while recording such statements the injured were in a state of position that they will be able to give statements and the connected certificate by the doctors appended thereto.

(11) After the examination of further witnesses and completing the investigation inclusive of securing the accused or accused persons, the STF shall send a final report to the Court of Competent jurisdiction as required under Section 173 of the Criminal Procedure Code for further proceeding and it shall be the STF who will assist the Public Prosecutor during the trial and further proceedings, if any.

(12) The Police Officers whose role is being investigated by the STF shall be placed under suspension after scrutiny by the Monitoring Authority, if the said Authority so recommends.

(13) No out-of-turn promotion, cash award or gallantry reward shall be bestowed on the concerned officers pursuant to their role in an encounter as this may be an incentive for officers to conduct fake encounters.

It will be seen from a perusal of the provisions quoted above with regard to the constitution and functions of the STF that it was a body set up comprising personnel of the Gujarat police only and was to function under the direct control and supervision of the Director General and the Inspector General of Police of the State of Gujarat. Vide resolution dated 2nd April, 2011 the officers by



designation envisaged above were specifically named and the designation of Chief of the STF was given to Mr. A.K.Sharma, Inspector General of Police. The procedures under which the STF was to function were also laid down in Government Notification dated 16th September, 2010 which provided inter alia that it would be the Monitoring Authority which would devise the detailed procedure for investigation keeping in mind the Manual of the CBI for investigation and procedure as also of the State of Gujarat. These provisions also visualized that after the completion of the investigation the STF would send a final report to the court of competent jurisdiction as required under section 173 of the Code of Criminal Procedure for further proceeding and that the STF would assist the Public Prosecutor during the trial and further proceedings, if any. It will be seen from a reading of the aforesaid provisions that the function of the Monitoring Authority as laid down was only a supervisory function with some authority conferred to specify a procedure for investigation keeping in mind the provisions in the Investigation Manual. Likewise the Monitoring Authority was authorized to give compensation only on completion of the investigation and not at any interim stage. The Supreme Court in its order dated 25th January, 2012 conferred wide ranging powers on the Chairman of the Monitoring Authority viz (1) to give a hearing to the aggrieved persons including kin or associates of the victim (2) to constitute different teams of officers from within the Special Task Force or from outside



bearing in mind the sensitivity of the matter and the possibility of interestedness of some officers in the State Police (3) and to submit status reports from time to time and to pass directions for grant of interim or final monetary compensation to the kin of the victim of the alleged fake encounter. I must emphasise at this stage that I did not find it necessary to induct any police officer from outside the Gujarat police or to interfere in the choice of the State Government in nominating the members of the STF. It must be borne in mind (and the details will follow hereinafter when I deal with individual cases) that public notices of the establishment of the S.T.F. and the Monitoring Authority were issued in the Times Global(The Times of India), Gujrati and Hindi publications. Copies annexed herein **Annexure A (collectively)**.

Directions were also issued that the statements of those earlier recorded under Section 161 of the Cr.P.C. be recorded yet again by the STF and also video graphed and the 'Reconstruction' of the crime scene be drawn up again. Likewise opportunity was given to the interested persons to appear and some of them did appear before me and their statements were recorded and video graphed. Notices of every meeting of the Monitoring Authority were sent to the writ petitioners and their counsel and the counsel appeared in many cases. This will be spelt out during further discussion. Consequent to the public notices only three representations were received. Ms. Shabnam Hashmi petitioner, in her representation primarily



questioned the appointment of Mr. A.K.Sharma as Chief of the S.T.F. on the following grounds:-

- i. "Most people know that Shri A.K.Sharma is very close to the top echelons of the ruling political executive of the State. He is particularly close to the Chief Minister, Shri Narendra Modi, ever since the latter became Chief Minister in the later half of 2001. Even though Shri A.K.Sharma had served in Rajkot City as Deputy Commission of Police(DCP) twice (First tenure from 14.12.1994 to 18.06.96 and the second tenure from 23.02.1997 to 04.01.2000) before, he was posted to Rajkot City again especially for supervising the electoral victory of Shri Narendra Modi in his by-election from Rajkot-2 assembly constituency in February,2002. Shri A.K.Sharma was posted as DCP Rajkot City this third time from 28.12.2001 to 26.03.2002. Clearly, he was posted just when the electoral process began and he was posted out shortly after the electoral process ended. A relevant press report is attached herewith as Annexure -A. The headline says "Arun Sharma again as DCP Rajkot: Hat trick as DCP" and that "Impression about posting because of the Chief Minister coming to contest elections."



- ii. Since then, Shri A.K.Sharma has done plum posting of his choice. Some latest examples are his postings as IGP Ahmedabad Range, IGP Gandhinagar Range(He also held additional charge of IGP CID (intelligence) which enabled him to do partisan work for the ruling establishment. He also served in the substantive charge of the post of IGP CID (intelligence) when he needed leave frequently for going to kota, Rajasthan for looking after his son/daughter's coaching classes there) and his present additional charge of the post of Joint Commissioner of Police (JCP), Crime Branch, Ahmedabad City.
- iii. As IGP CID (Intelligence), Shri A.K.Sharma was widely believed to be monitoring the call details of political opponents of the Chief Minister and the call details of such senior officers as are considered suspect in "loyalty" by Shri Narendra Modi. Moreover, there has been persistent talk among senior officers that Shri A.K.Sharma was even illegally intercepting the phone calls of some select officers and political opponents of Shri Modi."

In this representation the primary grievance made was that Mr. A.K.Sharma was very close to the political leadership in the State of Gujarat and was a convenient officer who would do its biddings. Reference was also made to some inter se disputes between members of the police force and to some remarks that had been made during court proceedings unconnected with the present writ petitions. Some vague allegations were also made with regard to the three S.Ps who were heading



the three investigating teams of the STF. This representation was rejected by me saying that it was not open to the Chairman to substitute one officer with another and I accordingly left it to Ms. Hashmi to pursue such other remedies that could be available to her. As per my information no further proceedings had taken place in the matter. It is true that under the Supreme Court order dated 2nd March, 2012 the Chairman of the Monitoring Authority could constitute different teams of officers from within the Special Task Force of outside and that while doing so the Chairman was called upon to bear in mind the sensitivity of the matter and the possibility of interestedness of some officers of the State police. This direction of the Supreme Court certainly empowered the Chairman of the Monitoring Authority to constitute teams of investigating officers from either within the State of Gujarat or outside but it did not authorize the Chairman of the Monitoring Authority to remove any officer who had been duly nominated by the State Government. In any case, no cogent reasons had been spelt out by Ms. Hashmi and vague allegations had been made with regard to the competence and sense of fair play of the officers involved. At this stage it needs to find mention that none of the members of the investigating teams were in any manner connected with the encounters and in the light of the fact that wide spread publicity was given to the proceedings of the Monitoring Authority calling upon those having knowledge of the encounters to appear before the Monitoring Authority to have their statements recorded, there




was every opportunity for those aggrieved to bring to notice their suspicions. In some cases the statements were made before me and duly recorded and video graphed. Likewise, the STF while recording the statements afresh during further investigation not only recorded the statements in writing but also video graphed the entire proceedings of those who appeared before it. At no stage was any allegation of intimidation or the faulty recording of the statements made which leads me to the inference that the statements had been accurately recorded. The decisions to be taken on the basis these statements and other evidence is a matter which is of my discretion and judgment and the investigating teams have no role to play therein.

It is also significant that at the fag end of the proceedings, Mr. A.K.Sharma had been taken on deputation as Joint Director, CBI vide order dated 28th April, 2015. An application dated 12th February, 2016 was filed by Mr. A.J.Yagnik, one of the advocates for the family of the victims, that in this eventuality it was not open to him to continue as the Chief of the STF. Vide order dated 13th February, 2016 this application was rejected by me observing that it was not proper to go into this issue at this stage, inter alia on the ground that investigation was almost complete and only four cases remained for appraisal of evidence and that in any case in the notification dated 11th August 2015 it had been clarified that Mr. A.K.Sharma would render only assistance to the Monitoring



Authority and would not exercise any police powers and that this Notification had been issued pursuant to the concurrence of the State Government.

Two representations dated 30th August, 2012 and 9th September 2013 were also filed by Mr. Shreekumar, Former D.G.P. Gujarat Police. In the representation dated 9th September, 2013 he has referred to a letter of resignation tendered by Mr. D.V.Vanzara IPS, raising several moral issues with respect to the allegations of fake encounters against him and other police officers and other political functionaries. Another communication dated 30th August, 2012 was also sent by Mr. Shreekumar in which he dwelt on the oral instructions given to carry out fake encounters with respect to Muslim extremists who were disturbing the peace and that he as, A.D.G.P. Intelligence, had been present at many of those meetings and had recorded his misgivings in a informal personal register. Mr. Shreekumar also recorded his oral statement before me on the 12th September, 2013 in which he referred to his representations and reiterated the allegations made therein with regard to the elimination of Muslim extremists and that in the background that he had refused to follow the State Government instructions he had been superseded for promotion to the rank of Director General of Police and that he had ultimately gone to court to get the benefit of promotion, which was granted to him two years after his retirement. He has also reiterated his allegations with regard to Mr. Vanzara in particular. The representations and statements made by



Mr. Shreekumar to which reference has been made above do not specifically deal with the allegations in these 17 cases and are general in nature and relate to administrative decisions taken which he did not agree with and which had led to his victimization at the hands of the government. The issues raised with regard to selective elimination of Muslims extremists are, however, not borne out from the record. Allegations of Muslim extremism were made only in one case, that of Sameerkhan. Moreover, the circumstances belie the allegations as the victims herein belonged to several parts of India, as far afield as Utrakhand, Uttar Pradesh, Madhya Pradesh, Bihar, Kerala and Maharashtra and as the names suggest, several communities as well; and the only common feature amongst most of them was the element of criminality of varying degrees and levels. The issues raised by Mr. Shreekumar are not, thus, relevant insofar as these 17 matters are concerned.

Ravindran T.S. Advocate, had also given a written statement to the earlier Monitoring Authority recorded his statement before me on 19th February, 2013 and voiced a general suspicion about the Surat police and its tendency to eliminate people in fake encounters but he gave no details specifically with regard to the present incidents.

Having thus given background of the entire proceedings and the circumstances in which the STF and the Monitoring Authority had been



established the individual cases of the encounter deaths must now be dealt with. It must be emphasized at the outset that the STF and the Monitoring Authority were set up consequent to the proceedings that were pending in the Supreme Court since 2007. All the encounter deaths which have been entrusted to the STF and the Monitoring Authority for investigation and report pertained to the years 2002 to 2006. From the analysis of the record and a look at the next kin of the deceased most of them appeared to belong to poor families and were in some cases living at great distances from Ahmedabad and were hardly in a position to defend themselves adequately. It is for this reason that as per decision taken in the meeting of the Monitoring Authority dated 19th January, 2013 it was decided that those who had made representations in response to the public and personal notices could appear before me in Ahmedabad on the 18th and 19th February, 2013 to record their statements and that they would be reimbursed 2nd class rail fare or bus fare. This procedure was indeed followed scrupulously.

As would be evident the Monitoring Authority consisted of several persons who had held or were holding very senior positions in the judiciary, in scientific investigation as also in the police. The Monitoring Authority, therefore, had the expertise for a comprehensive assessment of the evidence which came before it. Free and friendly discussion took place in my presence with regard to the evidence that had been collected and to ensure that opportunity was given to the



representatives of the deceased, they were permitted to engage counsel as well. Several counsel appeared during the course of the hearings and details with regard to the arguments raised will be dealt with in each individual case. It must be reiterated that the Monitoring Authority as envisaged was not to submit a report- this directive has been issued to me as Chairman. I must, therefore, emphasise that as the report has been rendered by me in my capacity as the Chairman of the Monitoring Authority, the ultimate conclusions drawn and the responsibility for this report vests exclusively with me and the other members of the Monitoring Authority have no role to play. It must be emphasized yet again that in some cases the incidents had happened more than a decade earlier and in all cases after police investigation, closure reports had been filed which had been accepted by the courts as well. In a few cases which will be referred to as they come along, proceedings had gone upto the High Court and Supreme Court and led to specific orders. In the background of these facts, the broad principles that I have applied while evaluating the evidence in these matters is that action against police officers should be suggested by me only in such cases (1) where the police version seemed to be deeply suspicious and difficult to believe and (2) the evidence was of a quality that in case a trial was held there was a reasonable chance of conviction and both these requirements had to be cumulatively satisfied. The standard of appreciation and quality of evidence that would require consideration in the present



proceedings would not be as rigid as that in a court of law as the purpose herein is not to determine the innocence or guilt of the police officers as that would be a matter for the courts after the recording of the evidence of witnesses and cross-examination etc. The standard at this stage would be as to whether the circumstances justify a trial or not. This is in consonance with Section 228 of the Code of Criminal Procedure. In the light of the fact that much time has elapsed since the incidents happened it will be completely unjust to rope in police officers on mere suspicion and on sketchy evidence. The police parties also involved a large number of personnel of lower ranks as well. It cannot be said with certainty, that they too had been privy to all that happened. I have, therefore, taken a conscious decision that initially action will be suggested against only those police officers whose participation was admitted or prima facie proved leaving it open for others who are subsequently found to have been involved in conspiracy or in any other manner in regular court proceedings, to be arraigned later as per law. These directions must be read into the three matters in which I have found prima facie evidence of custodial killings.

I propose to discuss the cases in the chronological order that they were taken up for final discussion before the Monitoring Authority. The case wise discussion follows:-



**C.R.No. 1-35/2004, Police Station Vasad under
Section 397,395,332,333 of I.P.C. and Section 135
of B.P.Act**

The final discussion in this matter took place on 26th August, 2015.
The facts of the case are as under:-

During the night intervening 13th and 14th March, 2004 a police party led by Sub Inspector J.B.Kadel of Police Station Vasad was on patrol duty near Sudan Patia on the Vasad-Borsad road, when they noticed a large number of trucks lined up on the Highway and on reaching the top of the line the police officer saw that the trucks were being looted by several persons. On seeing the police party the criminals ran away and on inquiry the police were told that a truck driver had been robbed of Rs.2200/-. The police party immediately chased the dacoits into the nearby fields and during the chase one of the criminals, Mithu Umar Dafer (hereinafter called the deceased) was cornered and was caught by Constable Manzoor Hussain. In order to escape, Dafer attacked the Police Constable with a knife causing an injury between the chest and the hip and he was about to attack him again when Sub Inspector Kadel reached there and fired a shot at him who then turned towards the Sub Inspector and attacked him causing an injury on his finger. In the meanwhile Constable Partap Singh also arrived at the spot and hit the deceased with a lathi on the backside of his head and Constable Manzoor Hussain again tried to overpower him but he again struck the constable with a knife hitting



him on his neck. SI Kadel again fired towards the deceased injuring him and with the help of other police officials he was ultimately subdued. The deceased was taken to the hospital for treatment but was declared dead on arrival. The injured police men, Constable Manzoor Hussain and SI Kadel as also the truck driver who had been robbed were treated for their injuries in the Government Hospital, and whereas S.I. J.B.Kadel was discharged after first aid constable Manzoor Hussain was admitted for treatment. A complaint was filed by S.I. Kadel and C.R. 1-35/2004 P.S.Varsad under Sections 397,395,332,333 I.P.C. and 135 of B.P.Act was registered against the deceased who was identified as Mithu Umar Dafer. The S.I. also informed his senior officers about the crime and carried out investigation relevant to it. The blood stained clothes of the deceased as also cash and other items were taken into possession by the police officer. He also took into possession the .38 bore service revolver that had been used in the shooting. The site was also inspected by an officer from the Forensic Science Laboratory, one Shri M. Patil, and certain other items were taken into possession. The Investigating Officer also recorded the statements of the members of the police party and also the statements of the injured truck driver and his cleaner who had been robbed as also certain persons who were residents of the area around the site. The Investigating Officer also made an application to the Executive Magistrate, Anand for conducting the inquest proceedings with respect to the death of the deceased. The Executive

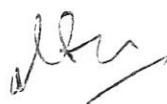


Magistrate, Anand (Rural) came to the Post Mortem Room to carry out the proceedings and this procedure was carried out from 11.15 hours to 12.05 hours on 14.3.2004. On completion of the inquest proceedings the body was subjected to the Post Mortem examination by a panel of two doctors who opined that the cause of death was "haemorrhage shock due to injury to right lung and liver as a result of fire arm injury." As the identity of the deceased could not be ascertained at the initial stage information with regard to his death and a photograph of the dead body were published in the newspapers and three persons ultimately came forward who identified the deceased as Mithu Umar Dafer resident of Padana, District Ahmedabad. The persons who identified his dead body were the younger sister of the deceased Faluben Umarbhai Dafer, Liliben Sumirbhai Dafer, his first cousin and Karimaben widow of one Ganibhai who too was a relative. The dead body was handed over to them after post mortem for performing the last rites. After completion of the investigation which included the recording of the statements of relevant witnesses under Section 161 Cr.P.C., taking into account post mortem report and report of the Forensic Science Laboratory, the Investigating Officer filed an abatement application on the 11th April, 2005 which was allowed by the Judicial Magistrate Ist Class, Anand on the 6th February, 2012.

On entrustment of this matter, for further investigation by the STF under the Supervision of the Monitoring Authority, public notices were issued in

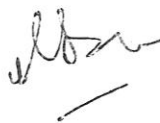


the Times of India, Ahmedabad (English) and three papers published in Gujarati Gujarat Samachar, Divyabhaskar and Sandesh Bhavan. These notices were issued on the 18th July, 2012. Copy of the Notices published are appended herewith as **Annexure A**. Notice on Faluben Umarbhai Dafer was served by registered post on the 18th July, 2012 and on Bhanbai Umarbhai Dafer on the 7th March, 2013. Bhanbai Umarbhai Dafer, a sister of the deceased, appeared before me on 2nd April, 2013 and her statement was recorded and videographed before me. In this statement she stated inter alia that her brother had been taken away by the police and had been subsequently killed. She further stated that her deceased brother had one daughter and two sons from his first wife Hoorbhai and one son from his second wife Bibibhai. She also went on to say that she had given a statement with regard to the custodial killing of her brother in order to get compensation from the Tribunal. The statement of Hoorbhai Dafer wife of the deceased was recorded by the STF on 23rd October, 2013 and she stated that she had come to know about the incident much later and that she had got remarried to another person. She further submitted that her children from the deceased were living with her sister-in-law Bhanbai who was looking after them and her mother-in-law Fatima Bhai as well. The statement of Fatima Bai was also recorded. She stated that she had come to know about the incident after some time . She also admitted that she did not know



the whereabouts of her daughters Bibiben and Faluben who had been handed over the dead body of the deceased on the day of the Post Mortem.

As would be clear the aforesaid witnesses who are family members of the deceased were unaware of the circumstances that led to his death. In this background the statements of the other witnesses who were present at the time of the incident and who were largely police officers become significant in order to determine prima facie as to what had happened. The material witnesses of the incident were the complainant Sub Inspector J.B.Kadel and other members of the police party accompanying him. Of them Head Constable Babubhai Ratilal and Constable Manzoor Hussain had suffered injuries as well caused by deceased. The other members of the police party were Head Constable Partap Singh who had a hand in apprehending the deceased, Constable Manzoor Hussain already referred to above, ASI Qumar Ali, Police Constable Jayantibhai Maganbhai driver of the police vehicle, and Natubhai Babubhai Parmar and certain other witnesses had completed the formalities leading to the investigation. In addition the S.T.F. recorded the statement of Kadar Badshah the driver of the truck which had been looted by the deceased and his companions on the day of the incident and had been caused injury by him. His statement was recorded on the 23rd November, 2013 and he supported the incident in its entirety. In spite of its efforts, the S.T.F. could not get a clue to the whereabouts of the cleaner of the truck, Obaiyappa. In the



meeting held on the 12th July, 2013 a direction was issued to arrange for reconstruction of the scene of the crime and this indeed was done on the 4th September, 2013. The statements of the some of the persons who lived near the place of the incident and had witnessed a part thereof were also recorded. Out of these persons, Mukeshbhai Patel, Ashokbhai Parmar and Zebanben all stated that on hearing the shouting and sound of firing they saw a line of trucks parked on the road side alongwith a police jeep and they did not move to the place of incident out of fear but later on came to know the details of the incident.

In the background of the fact that all the material witnesses to the incident happened to be police officers a careful analysis must be done to see if the story they had projected fits in with the medical and forensic evidence. As per the police version two shots had been fired by S.I. Kadel in self defence when the deceased had attacked the police personnel who were at the spot with a knife causing injuries to three of them. As per the facts recorded in the Post Mortem Report the incident happened at 2 am on 14th March, 2004 and dead body was brought to the hospital at about 4 am. The two doctors who performed the Post Mortem found the following injuries:-

Description of injuries with their duration :



- (1) Lacerated wound on the scalp, over Right parietal prominence with crushed hair bulbs in it, of size 2.8 cms. X 0.6 cms. total scalp thickness deep, area surrounding the wound has been shaved off of all scalp hair. The surrounding are shows contusion.
- (2) Lacerated wound (graze injury) on the dorsum of the right hand, corresponding to the middle of 1st metal tarsal obliquely placed, shaped with the pointed and outwards, of size 2.5 cms. X 0.8 cms. X muscle deep with surround area of contusion.

Bullet Injury :

- (3) Entry Wound : Situated in the right mid axillary line, 8th right inter costal space, 0.6 cms. diameter, oblique, with lower portion showing contusion, abrasion color, blackening present 128 cms. from the heel.

Track : Fracture of 8th right rib at corresponding site, puncture of diaphragm, penetrating the liver on the upper surface and coming out through the lower surface in the gall bladder, piercing the muscles in the midline and finally lodging in the left flank, in the muscle plate, 6 cms. above the left thai out.

- (4) Entry Wound : obliquely placed, directed upward and outward situated 78 cms above the head, in the inner upper left thigh with abrasion colour, blackening present, of size 0.7 cms. with surrounding area of contusion.



Track : upwards and outwards through the muscle plane over the hip joint with surround contusion and coming out on the outer side.

Exit Wound : Small puncture wounds of size 0.6 cms diameter, situated 92 cms. from the heel, on the little side of left thigh, 4 cms. below the iliac crest, some dried track of blood dot seen on the wound.

All the injuries are ante mortem and more than 24 hours old.

A reading of the description of the injuries would reveal that both the shots had been fired from a very close range i.e. within 2feet or so as they had blackening around them. Likewise the track of the bullet in injury No.4 shows that it had travelled through the body from bottom upwards. It is the police version that the firing was preceded by a fairly long scuffle between the deceased and members of the police party and this finds support from the fact that the track of the bullet was rather unusual and not a straight forward execution style killing. The wound of injury and exit and the track of the bullet as it went through the body supports the view that the incident happened during the course of a scuffle. The story of a scuffle finds further support from injury Nos.1 and 2 on the dead body which were two lacerated wounds, one on the scalp and the other on the hand of the deceased. In addition to the medical and forensic evidence concerning the deceased we have the injury certificate of S.I. Kadel, the truck driver Badshah and Constable



Manzoor Hussain. The injury certificate of the S.I. reveals that two injuries both fresh and bleeding had been found at 5 am on 14th March, 2004. Likewise Manzoor Hussain was also found to have two simple injuries on his person, one on the neck and the other on the chest whereas Badshah had one simple injury on the forearm. I have also gone through the report of the Forensic Science Laboratory dated 13th July, 2004. The Forensic Science Laboratory also found that the two spent cartridge cases that were sent to the laboratory had been fired from a .38 caliber revolver. Likewise the bullet recovered from the dead body was found to have been fired from a .38 revolver. Admittedly the weapon used was not sent alongwith cartridges but it has been pointed out that as it was the admitted police case that the weapon had indeed been fired by S.I. Kadel so it was thought that it was not necessary to do so. This self assessment of the matter may not be entirely correct but in the light of the fact that there is no absolutely no evidence to suggest anything amiss against the police, this factor itself is of no significance. No case of a custodial death is thus made out. No further action is called for.

**I-C.R.No.34/2003 Police Station Pandesara, Surat
City U/S 307 IPC and 25(1) of the Arms Act.**

The final discussion in this matter took place on 26th August, 2015.

The facts of the case are as under:-



Anil Bipin Misra aged 22 years (the deceased) and originally a native of Village Harpur, Raghunathpur, District Shivan, Bihar was residing in Kantibhai's house in Punitnagar, Pandesara (Surat) Gujarat. On the 11th March, 2003 at about 6.30 p.m. the deceased and his companions entered the business premises of complainant Manilal Prabhudas Patel in Meghna Complex, Surat. They were armed with pistols and knives. Their entry was resisted by Prabhudas Patel and his son Tejas whereupon the deceased fired a shot at Tejas from his revolver killing him instantaneously. One of the other robbers also fired a shot whereas another, Sanjay Paswan, attacked Manilal Prabhudas Patel with a knife injuring him seriously. As they tried to escape from the scene of the crime Assistant Sub Inspector Madhukar Raja of Umra Police Station reached the spot and tried to catch hold of the deceased on which he fired several shots at him killing him. The crowd that had collected, however, managed to apprehend the deceased and he was taken to Umra Police Station and a First Information Report No. 118/2003 Police Station, Umra was registered against him at 3.15 p.m. on 11th March, 2003 under various Sections of the Indian Penal Code and also under the Arms Act. During interrogation the deceased volunteered to show the place where several weapons had been hidden by him on which Inspector D.D.Damor, Head Constable Pitamber, Constable Amrut Melabhai, Constable Vijaysinh Bahadursing, Constable Kirti Vinayak and two panch witnesses Kanaiyalal Pravinchandra



Sorathia and Sagrampura Kshetrapal were deputed to accompany him for the recovery. At the first instance the residence of the deceased was searched but nothing incriminating was found. Thereafter the police officers, now accompanied by Inspector B.V.Ramani as well, were led by the deceased to a place at Shree Someshwar Row House and on reaching there asked them to stop at that place. The deceased then walked ahead followed by Inspector Ramani, the two witnesses and the other members of the police force following closely. As they reached near the wall abutting an unmettled road, the deceased sat down and started to dig into a mound of earth under the watchful eye of Inspector Ramani and the others. The deceased, however, created an impression that no incriminating article was hidden in the mound but as the police party prepared to leave the place he suddenly took out a revolver from the mound and fired a shot at Inspector Ramani. The shot, however, missed its intended target and the police party also took evasive action. The accused thereupon fired a second shot which again did not hit anybody and before a third shot could be fired, Inspector Ramani took out his service revolver and fired a shot at the deceased which missed its target but before the deceased could fire again, a second shot, fired by Inspector Ramani hit the deceased and he fell down on the ground. The deceased who appeared to be seriously injured was rushed to the New Civil Hospital, Surat but was declared dead on arrival. 1-C.R.No.34/2003 under Section 307 of the Indian Penal Code and 25(1) of the



Arms Act was registered against the deceased arising out of the incident in Police Station Pandesara.

The details of the incident were conveyed to Senior Police Officers by Inspector B.S.Rana of the Pandesara Police Station. Inspector Ramani also tendered his .38 bore service revolver and fired cartridges which were duly seized in the presence of witnesses. The site of the incident was also inspected by A.C.P. H.L.Rathod in the presence of witnesses as well as Shri M.J. Rathod from the Forensic Science Laboratory. The Post Mortem examination on the dead body was conducted by a Board of Dr. B.V.Subrahmanyam, Dr. S.S.Aggarwal, Dr. Arpita Ahuja and Dr. Latika Shah whereas the post mortem proceedings were videographed by Shri Kaushal K. Shah. The Post Mortem Board found one fire arm injury on the front of the chest with an abraded collar around it but no blackening or tattooing of the skin, and three contusions on the other parts of the body. The injuries were found to be ante mortem in nature. The bullet which had caused the injury was also recovered from the dead body embedded in the muscles on the backside of the chest. It was sealed and kept for Ballistic examination. A revolver, a spent cartridge case, one misfired cartridge and one live cartridge were also recovered from the spot whereas the hand wash of the deceased was also taken. The Investigating Officer also recorded the statements of the witnesses as also the members of the Police party under Section 161 of the Cr.P.C. In the



investigation it was found that Inspector Ramani had fired in self defence. As the accused in this case was the deceased himself the police moved an application for abatement of proceedings. The application was accepted by the Court and the matter was closed as having abated. Consequent to the order of Hon'ble Supreme Court this matter was referred for investigation to the S.T.F. under the supervision of the Monitoring Authority. An application under Section 173(8) was accordingly moved by the S.T.F. for further investigation which was duly allowed on 5th February, 2013. At the very initial stage an inquiry was made by the Investigating Officer as to the fate of the trial of the co-accused of the deceased, Bhim Kumar and Ganesh Kumar, who had been apprehended at the time of murder of Tejas Patil and Inspector Madhukar Rajaram on which F.I.R. No. 118 of 2003 had been registered. It was revealed that they had been acquitted after trial by the Additional Sessions Judge, Fast Track Court on 29th December, 2004.

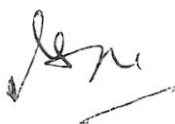
As a preliminary measure directions were issued by the Monitoring Authority for public notices to be issued with regard to this and other referred incidents. These were published in the Times of India dated 18th July, 2012 and several newspapers in Gujarati collectively appended as Annexure A. A personal notice was also sent by the S.T.F. to Bipin Kumar Bihari, the father of the deceased, who was living in village Harpur, Police Station Raghunathpur, District Shivam, Bihar but as he was not available at that time the notice was delivered to



the brother of the deceased on the 16th February, 2013. As no one turned up to have his statement recorded, Inspector N.S.Malik was deputed to the village of the deceased to record the statements of his relatives. Inspector Malik and his team then went to village Harpur and recorded the statement of Bipin Kumar Bihari aforesaid. He deposed that the deceased was his eldest son aged about 30 years and had done his Matriculation in 2004 and had migrated to the State of Gujarat in search of a job. He further stated that he was unaware of the associations that the deceased had developed while staying in Gujarat. He further stated that after a gap of three/four months he received information from the Raghunathpur Police Station that his son had been shot in an encounter near Surat City but he could not visit Surat to perform the last rites because of lack of funds and that he was not interested in any compensation on account of the incident and he had no complaint to make against anyone. The entire statement of Bipin Kumar Bihari as also the statements of the other witnesses who appeared before the S.T.F. were duly videographed. The S.T.F. also found that in the absence of any relative of the deceased, Mohammad Mushtaq Shaikh a member of Ekta Trust, Chowk Bazar, Surat had performed the last rites of the deceased. Mohammad Mushtaq Shaikh was given a notice by the S.T.F. calling upon him to give any representation if desired with regard to the death of the deceased. This notice was duly served and also published in several newspapers but Mohammad Mushtaq Shaikh nor any



member of the trust replied thereto. A Police Party accordingly visited the residence of Mohammad Mushtaq Shaikh on the 19th June, 2014 and his statement was recorded wherein he confirmed that he, with the help of the Narayan Trust, had performed the last rites of the deceased. In answer to the notice in the News Papers Shri Ravindra T.S., an Advocate from Surat, filed a representation on the 13th August, 2012 on which he was given written notice dated 16th February, 2013 to appear before the Chairman of the Monitoring Authority and the S.T.F. on 19th February, 2013. His statement was duly recorded and videographed in my presence. In his representation and the statement which he recorded on the 19th February, 2013 Shri Ravindran pointed out that he was not representing any particular party or client but was appearing pro-bono public on the question of fake encounters in Surat. He pointed out that he had submitted a representation way back on 27th July, 2011 to the earlier Chairman of the Monitoring Authority formed by the Government of Gujarat in 2011 but no action had been taken thereon despite important information having been provided. In the representation dated 13th August, 2012 Mr. Ravindran also stated that there had been systematic violation of the rule of law as the police officers were indulging in cold blooded murder and deserved to severely punished. He also suggested that in addition to the police officers action should also be taken against the prosecuting agency and even Judicial Officers who were privy to what was going on and tended to overlook the



illegalities committed by the police. Alongwith the representation Shri Ravindran also tendered several news items published contemporaneously.

During the course of the initial investigation made by the Gujarat Police statements of the following eye witnesses were recorded:-

1. Inspector B.V.Ramani,
2. Inspector D.D.Damor,
3. Head Constable Pitamber,
4. Constable Amrut Melabhai
5. Constable Vijaysinh Bahadursing,
6. Constable Kirti Vinayak
7. Kanaiyalal Pravinchandra Sorathia Panch witness
8. Sagrampura Kshetrapal Panch witness

The S.T.F. recorded the statements of the above witnesses in addition to the following :-

1. Inquest Panch No.1 Shri Gandadal Chaturdas Patel
2. Shri Bipin Bihari Sardanand Mishra (deceased father)
3. S.D.M. Shri H.K.Koya, Choryasi Prant, Surat
4. Dr. Latika Shah, Micro Biology Department, New Civil Hospital, Surat
5. Dr. Arpita Asst. Prof. Pathology, New Civil Hospital, Surat



6. Dr. S.S.Agrawal, Pramukh Swami Medical College, Karamsad, Anand

7. Shri H.L.Rathod, ACP, F. DIV. Surat(Retd.)

In the meeting of the Monitoring Authority dated 12th July, 2013 it had been decided that in all such cases a proper reconstruction of the site of incident should be carried out by the Forensic Science Laboratory, Gandhi Nagar. Accordingly on 25th August, 2013 a team from the Forensic Science Laboratory was deputed to the site and in the presence of two independent witnesses, the site was inspected. The whole process was videographed and photographed. Statements of members of the team were also recorded. The Forensic Science Laboratory inter alia opined that the bullet recovered from the dead body had been fired from the service revolver of Inspector Ramani whereas the two misfired cartridges and one spent cartridge matched the .32 bore country made revolver which had been recovered from the site of the incident and which had been fired by the deceased. However, the hand wash of the deceased taken by the police did not show the presence of any powder traces so as to reveal as to whether a fire arm had indeed been fired by him. The Post Mortem Board found the following injuries on the person of the deceased:-

“External Injuries :

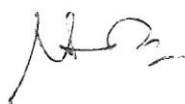


1. Firearm entry wound present over front of left side of chest, 5 c.m.s above left nipple, 11 c.m.s left of midline, 1 X 0.7 c.m.s X chest cavity deep, with abrasion collar all around, mole on left upper side, no blackening, singeing of hairs or burning of skin, tattooing seen.
2. Contusion present over left side of face, 2 c.m.s. front of left ear, 6X5 c.m.s.size bluish-red in colour.
3. Contusion present over outer aspect of left upper arm , in lower 1/3rd area, 10 cm above left elbow, 9x3 cms size oblique, bluish-red in colour.
4. Contusion present over front & outer aspect of middle 1/3rd of right upper area, oblique, 8 X 0.7 c.m.s size, bluish – red in colour.

No palpable fracture.

Above injuries are ante-mortem in nature.”

In the inquest proceedings the officer did not refer to the three contused wounds but after an explanation was sought from him he explained that this could have happened as the dead body was covered with mud and blood and as such he had probably missed noticing them. To my mind the absence to notice some minor injuries would not make the police version suspect in as much as that the incident showed that there had been some kind of scuffle or some physical activity both on the part of the police party as well as the deceased which could



have led to injuries such as the contusions. It was in fact a providential escape for the police party as there were many police officials and panchayat members bunched together who could have been injured.

As already mentioned above the family of the deceased which was resident in Bihar had nothing to say in the matter and they did not even pray for any compensation or voice their suspicion that anything untoward had happened. Likewise Mohammad Mushtaq Shaikh member of the NGO who with the assistance of the Narayan Trust, had cremated the dead body had nothing to comment insofar as the incident was concerned. A cumulative assessment of all that which has been discussed above and in the absence of any material to the contrary it must be found that the allegations of so a called fake encounter in this matter are without substance. No further action is called for.

**I-C.R.No. 36/2004 Police Station Umara Surat City
under Sections 307/224/353 I.P.C. and 25(1-B) A, 27
and 28 of the Arms Act.**

On the 19th January, 2004 Mahesh @ Deepak Gadhvali (hereinafter called the deceased) resident of Pauri Garhwal, Police Station Tehri Garhwal, Uttaranchal, who was at the relevant time residing in Room No.7, Mokashi Chawl,



Adarsh Nagar, Santacruz, Mumbai alongwith four other persons entered bunglow No. 21-B in Amarkunj Society, Surat posing as employees of a gas company and during the course of a robbery killed the owner Dilipbhai Desai and his son Gunjan Desai by stabbing them with knives and also caused injuries to Dilipbhai's wife Shobhanaben and a second son Swapnil Desai and also robbed them of a gold chain and a wrist watch. C.R. No. 33 of 2004 Police Station, Umara under Sections 302/394 etc. of the Indian Penal Code was registered against the deceased and several others. The deceased was arrested by Inspector Shri N.N.Patel on the 20th January, 2004 at about 8.30 P.M. whereas Prahlad Bhoire accused was arrested on the same day at 10.45 P.M. and Mahesh Bhosle a few hours later. The three accused were produced before a Magistrate who remanded them to police custody till 28th January, 2004. The remaining accused Jayesh Patel and Vikram Patel absconded. The police received information that both these persons would come to the residence of Jayesh Patel on which a police party comprising of Inspector N.N.Patel, PSI A.V. Gakhar, PSI K.K.Patel, ASI Shantaram Baburao, Head Constable Madhav Pitambar, HC Bhaskar Ramchandra, HC Vijaysinh Bahadursinh and Constable Satpalsinh accompanied by the deceased went to the residence of Jayesh Patel and mounted a surveillance on the premises. The deceased had been taken along to identify his companions Jayesh Patel and Vikram Patel. Taking advantage of a lax moment the deceased snatched the .32 bore



revolver of Head Constable Madhav Pitambar and fired into the air, and attempted to run away. The Police party chased him and warned him to stop but he fired at the police on which Inspector N.N.Patel fired one shot from his service revolver towards the deceased whereas two shots were fired by PSI Gakhar and one round by Inspector K.K.Patel. Seriously injured the deceased fell down. Inspector Patel and Constable Vijaysinh Bahadursinh rushed the injured to the New Civil Hospital, Surat but he was declared dead on arrival. On the statement of Inspector N.N.Patel of Umara Police Station C.R. No. 36 of 2004 was registered at Police Station Umara under Sections 307 I.P.C. and Section 25(1)A of the Arms Act against the deceased on the 22nd January, 2004 at about 3.00 A.M. The investigation of the case was entrusted to ACP H.L.Rathod and on his request inquest proceedings pertaining to the death of the deceased were conducted at about 11.15 A.M. on the 22nd January, 2004. A Board of five Doctors comprising of Dr. M.H.Kureshi, Dr. Lavlesh Kin, Dr.D.J.Patel, Dr. Nipin Bagla and Dr. Kiran Patel was constituted and the entire proceeding was videographed by Kishore Borse, the police videographer. The Post Mortem Board attributed the death of the deceased due to "bullet injuries on heart, lungs and liver." The Investigating Officer and officers of the Forensic Science Laboratory, Gandhi Nagar also went to the hospital and inspected the dead body and also conducted a Nitrogen test on the hands of the deceased to find out if any fire arm had been discharged by him. The



Investigating Officer also took into possession three government owned weapons that had been used by the aforementioned police officers in their attempt to stop the deceased from escaping. The police also made an effort to trace the relatives of the deceased so that the dead body could be handed over to them for performance of the last rites. It transpired that the deceased at the time of his arrest had given a wrong address to the police but the investigation revealed the correct details and address of the deceased and his sister Pushpaben who was living in Room No.7, Mokashi Chawl, Adarsh Nagar Santacruz, Mumbai. The dead body was handed over to her on the 26th November, 2004 and she performed the last rites in Surat. The statements of Pushpaben aforesaid and Sabalsinh Rana of Joshi Chawl, Santacruz Mumbai who had accompanied her to Surat were also recorded. As the accused in this case had died an application for abatement of proceedings was filed and the same was accepted on the 6th October, 2008. On the constitution of the S.T.F. and the Monitoring Authority, the officers empowered to do so moved an application under Section 173(8) of the Cr.P.C. for further investigation and this application was allowed and further investigation has been conducted by the STF under the supervision of the Monitoring Authority.

It is to be noticed that accused Parhlad Gynaneshever Bhoire and Mahesh Babu Rao Bhosle had been arrested at the spot soon after the murder and Jayesh Ambalal Patel had been arrested later on. The Trial Court awarded a death



sentence to Parhlad Gynaneshever Bhoire and life imprisonment to Mahesh Babu Rao Bhosle. Jayesh Patel was apparently acquitted.

In accordance with the decision taken by the Monitoring Authority (and as the deceased belonged to Uttranchal) in addition to the public notice issued in the Times of India Ahmedabad (English) and three papers in Gujarati, Gujarat Samachar, Divaybhaskar and Sandesh Bhavan dated 18th July, 2012 collectively appended as Annexure A to this report, specific public notices were issued in Amar Ujala a Hindi Newspaper published from Nainital in its issue dated 4th August, 2012 and Hindi Lokmat Media dated 5th August, 2012 published from Nagpur, Akola, Jalgaon, Nasik, Aurangabad, Ahemadnagar, Solapur, Mumbai, Kohlapur and Pune because the deceased and his sister of the deceased were presently residents of Mumbai. In addition ,personal notice was served by the Investigating Officer on Pushpaben on the 12th January, 2013. It is significant that on the 28th January, 2004 the Sub Divisional Magistrate, Surat who had conducted inquest proceedings, after recording the statements of all those involved in the incident, had given a press note in two prominent newspapers requesting the public to provide information, if any, about the incident. As per the report submitted by the Sub Divisional Magistrate, no one had come forward to make any statement. A report of the encounter had, however, been sent to the National Human Rights Commission, New Delhi on 17th May, 2005. On the basis of this report the



National Human Rights Commission in April 2007 directed the District Magistrate, Surat to conduct a further inquiry with regard to the 17 non-firearm injuries found on the dead body. The Sub Divisional Magistrate, Choryasi conducted a further inquiry and submitted a report dated 3rd July, 2008 to the effect that these 17 injuries had been caused to the deceased when he had been beaten by the public at the time of his apprehension as per the statement of the deceased to the doctor and he had been treated as case No. 14788 dated 20.1.2004 for his injuries. A statement to this effect was also given by the Doctor. A full report was submitted to the National Human Rights Commission pointing out the manner in which incident had happened and that the police had resorted to firing at the deceased in self defence.

In the first set of investigation held by the Gujarat police the statements of the following witnesses had been recorded:-

LIST OF EARLIER STATEMENTS RECORDED	
EYE WITNESS	
Shri A.V.Gakkjar, Dy.S.P. Valsad	
Shri K.K.Patel, Police Inspector, Ahmedabad	
Shri Shantaram Baburav, A.S.I. Surat City	
Shri Madhav Pitambar ,HC Surat City	
Shri Bhaskar Ramchandra H.C.Surat City	
Shri Vijaysinh Bahadursinh H.C.Surat City	

[Handwritten signature]

Shri Satypalsinh Mohbatsinh Surat City
Shri Tarik Mohmad Saiyad Constable Surat City
OTHER WITNESSES
Shri Ganesh Prasad ram Abhilash Dube, ASI, Surat City (Driver of the Police Jeep)
Shri Arvind Val jibhai Surat city (Wireless operator of the Police Jeep)
Shri Narendrasinh Jasvantsinh Surat City (Driver of the DCB Police Jeep)
INDEPENDENT WITNESSES
Shri Avadh Bihari Yadav
Shri Anilkumar Shriprasad ram
Shatishbhai Charandas Khatri
Shri Kamalsingh Panesingh Rajput
Shri Gurudalal Singh Anandi Prasad Singh,
Shri Jagadish bhai Rameshbhai Bajaj
Shri Lalaji Badri Varma,
Shri Mansing Tulsiram kushvah,
Shri Sabalsingh Fatehsingh Rana,
Smt.Puspaben

The statements of these witnesses were re-recorded by the S.T.F. In addition the STF also recorded the statements of Parhlad Gynaneshever Bhoir, the co-accused of the deceased who had been lodged in jail pursuant to his conviction for murder.

It would be clear from a reading of the evidence that has been produced before the S.T.F. that in addition to the police officers there are several

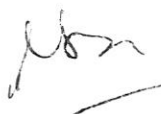
independent witnesses as well who were witness to a part if not the entire incident. The statements of D.S.P. Gakhar, Inspector K.K.Patel, ASI Shantaram Baburao, Head Constable Madhav Pitambar, Head Constable Bhaskar Ramchandra, Head Constable Vijaysinh Bahadursinh and Constable Satpalsinh reveal the detail of the incident and the manner in which the firing had taken place which had led to the death of the deceased. In addition, the statement of Sub Divisional Magistrate, M.S.Gohil, as well as Hitesh Kishorebhai Kohya, S.D.M. who had conducted the inquest proceedings and of the two independent witnesses, Mukesh Bababhai Desai and Kamlesh Thaorbhai Patel,- were also recorded. These were the witnesses to the recovery of the revolver that had been used by the deceased while firing at the police party. Notice was issued to Pushpaben for coming to Gandhi Nagar to record her statement but she made a note in Hindi to the effect that " I have received the notice, I do not want to say anything to you" and signed the same. The police party accordingly visited her house in Santacruz, Mumbai on the 17th February, 2013 to record her statement in which she confirmed that she had on the asking of the Gujarat police accompanied by Sabalsinh Fatehsinh Rana visited Surat and had performed the last rites of her brother and that she had no complaint against the police and that her brother deserved the punishment which he had received. This statement was signed by her and videographed in the presence of her sister Lakshmiben. Shri Ravindran T.S.Advocate of Surat also filed a written



representation and recorded his statement as already mentioned above. He made no specific allegations with regard to this matter but submitted that Surat police were unlawfully eliminating persons.

The police version is supported by three independent witnesses who resided or worked near the place of the occurrence. Avadh Bihari Jagarnath Yadav, a watchman stated that he had come to know about the incident when he had come for duty at about 8.00 a.m. the next morning whereas Satisbhai Charandas Khatri stated he heard the sound of gun fire in the night but had come to know about the incident the next morning. Jagdishbhai Rameshbhai Bajaj also stated that he was awake in his flat close by when he had heard the shouts of "catch, catch" and had heard the sound of gun fire though he was not an eye witness thereof. The evidence of Satisbhai and Jagdishbhai clearly fixes the time of the incident and supports the police version.

In cases of allegations of custodial killing by way of a fake encounter there would be invariably lack of independent eye witnesses of the actual incident. To ascertain the truth, scientific evidence which has come on record is of the utmost importance. The Board of five Doctors who conducted the post mortem examination on 22nd January, 2004 at 4.15 p.m. found the following injuries on the dead body:-



On front

- (1) Circular hole present on right side of the T-shirt of size 0.4x0.4 cm size situated 50 cm above the lower border, 25.5 cm medial to stitch line on right side.
- (2) Circular hole present on front of right side of T-shirt of size 0.4x0.4 cm size situated 28.5 cm above long border and 21 cm medial to stitch line on right side.
- (3) Circular hole present on frontal aspect of size 0.4x0.4 cm situated 24 cm above the lower border and 5cm medial to right side stitch line.
- (4) Circular hole present on front of T-shirt of size 0.4x0.4cm, at 18.5 cm above the lower border and 26.5 cm medial to right stitch line.

On back

- (1) Hole present on back of T-shirt on left side of size 0.1x0.5 cm, situated 44.5 cm above the lower border and 29 cm medial to left stitch line.
- (2) Hole present on back of T-shirt on right side of neck 0.5x0.5 cm, situated 22.5 cm from long border and 16 cm medial to right line.

External Injuries

- (1) Rail road pattern bruise present on back of chest oblique, on either side of midline, of size 19x3 cm with 1cm area intervening normal, situated 10 cm below.
- (2) Rail road pattern bruise present over back of chest, oblique, on either side of midline of size 10X3 cm, with 1cm area intervening normal situated 4cm below injury No.1

the

- (3) Rail road bruise present over lower, left hit of size, 5x3cm, oblique, with 1cm area intervening normal, situated 72 cm above left heel.
- (4) Rail road pattern bruise present over outer aspect of left arm of size 7x3cm with 1 cm area in-between normal, situated 7 cm above elbow.
- (5) Contusion present in back of chest in a area of 10x5 cm, situated 12 cm below lower angle of left scapular and 4cm left to midline.
- (6) Rail road pattern contusion present over back of chest of size 4x3cm with 1 cm area in between healthy oblique, situated 22cm below axilla in posterior axillary line.
- (7) Multiple contusion present on back of left shoulder in an area of 7x4cm situated 3 cm below top of shoulder of size varying from 1x0.5 cm to 0.5x0.4 cm.
- (8) Multiple abrasions present over back of abdomen in midline in an area of 7x5 cm, situated 35 cm below root of neck, of size varying from 1.5x1cm to 0.5x0.3 cm.
- (9) Multiple abrasions present on back of left elbow of size varying from 2x1cm to 1.05 cm in an area of 6x2cm.
- (10) Multiple abrasions present over back of left wrist of size varying from 1x1 cm to 0.5x0.3 cm in an area of 3x1 cm.
- (11) Abrasion present over back of right thumb of size 3x0.5 cm.
- (12) Contusion present over back of right shoulder and back and outer aspect of right arm in a area of 35x16 cm.

Note: Above mentioned all contusions and abrasions are red in colour.

- (13) Contusion present over left forehead in an area of 6x5 cm, situated 3cm above left eyebrow red in colour.
- (14) Abrasion present over root of nose of size 0.5x0.2 cm, red in colour.



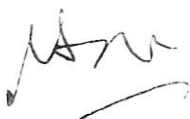
- (15) Abrasion present over left shin(front) of tibia of size 3x0.5 cm, situated 20 cm below left knee joint, red in colour.
- (16) Multiple abrasions present over left ankle of size varying from 0.2x0.1 cm to 0.3x0.1 cm, red in colour.
- (17) Abrasion present over dorsum of right foot of size 0.5x0.5 cm size situated 10 cm above 3rd toe red in colour.
- (18) Firearm bullet entry wound present on right side front of chest size 0.5x0.5cm with surrounding abrasion, more over upper border of size 0.3x0.2 cm, situated 127 cm above right heel, 4 cm right to midline, circular in shape, margins inverted x chest cavity deep.
- (19) Firearm bullet entry wound present on left front of chest of size 0.5x0.5 cm with surrounding abrasion of size 0.2x0.2 cm, situated 124 cm above left heel, 9 cm left to midline, circular, margins inverted x chest cavity deep.
- (20) Firearm bullet entry wound present on right side front of chest size 0.5x0.5 cm with surrounding abrasion in an area of 0.2cmx0.1cm, situated 122 cm above right heel and 3cm right to midline, circular shape margins inverted x chest cavity deep.
- (21) Firearm bullet entry wound present on right side abdomen of size 0.5x0.5 cm with surrounding abrasion in an area of 0.1cmx0.1cm, situated 111 cm, above right heel and 1cm right to midline.

Note: In injury No.18,19,20,21, singeing, blackening and tattooing not present, abrasions reddish brown colour.

Above mentioned all injuries are ante mortem in nature."



As per the police version after the deceased had been apprehended after having committed the murders, he had been given a severe beating by the public on which he had been taken to the hospital for treatment and had been treated as case No. 14766 dated 20th January, 2004 in the Civil Hospital. This had been revealed during the inquest proceedings subsequently and this information had been conveyed on an inquiry made to the National Human Rights Commission, New Delhi as well. The first set of injuries on the person of the deceased were the non-fire arm injuries 17 in number which clearly reveal that the deceased had been soundly thrashed by the public before his apprehension by the police. Of these 17 injuries 12 are bruises and 6 are contusions and the fact that they are all over the body clearly shows that the deceased had been beaten by a large number of persons. In the second incident involving the shooting the story projected by the police shows that as the deceased was being taken along by the police party headed by Inspector N.N.Patel, he had snatched the .32 bore revolver from the waist of Head Constable Madhav Pitambar and had attempted to run away after firing one shot in the air and two at the police party on which Inspector Patel, S.I. Gakhar and S.I. K.K.Patil had between themselves fired four shots which had hit the deceased. It has come from in statements of the Doctors that the injuries had been caused to the deceased from a distance of between 2 feet to 20 feet. The varied distances from which the shots had been fired clearly supports the police



version that the deceased was attempting to run away and had in fact fired three shots at the police, before he had been neutralized

The medical evidence finds supports from the report dated 5th August, 2004 submitted by the Forensic Science Laboratory. The Forensic Science Laboratory found that Nitrate test on the hands of the deceased was positive meaning thereby that a weapon had indeed been discharged by him. Likewise the Laboratory found that the three fired arms allegedly used in the incident matched with the empty cartridge cases that had been supplied by the police to the Laboratory and a .38 caliber bullet recovered from the dead body at the time of the post mortem had matched the revolver that was being carried by Inspector A.V.Gakhar.

In order to have further confirmation about the police version the reconstruction of the incident was again done by the Forensic Science Laboratory and a examination was made of the site on the 5th September, 2013 and a further report was submitted. It confirmed that the bullet recovered from the dead body had been fired from the revolver of Inspector Gakhar and that the three spent cartridge cases of .32 bore revolver matched the revolver snatched from Head Constable Madhav Pitambar. Likewise the report found that the three .38 bore revolvers that had been used by other police officers and four spent cartridge cases had been seized, one cartridge each being fired from two revolvers and two

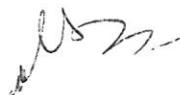
cartridge from the third. Furthermore, the Forensic Science Laboratory noted that as per the post mortem note there were no marks of blackening or tattooing of the injuries on the body or clothes of the deceased which showed that the injuries had been caused from a distance of more than 2 feet. The Forensic Science Report accordingly concluded that the police version was clearly supported by the facts that had been found in the post mortem examination as well in the analysis made by the Forensic Science Laboratory.

The conclusion is irresistible that no evidence of custodial killing or fake encounter is made out in this case. No further action is called for.

I-C.R.No. 76/2005 Police Station Borsad District Anand, under Sections 307/224/332 I.P.C. and 27(2) the Arms Act.

The final hearing in this matter also took place on 26.8.2015. The facts are as under:-

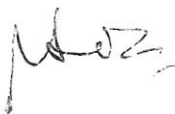
At about 10.15 am on the 10th March, 2005 four persons entered a jewellery shop named Sainath Jewellers situated in Kishor Plaza, Station Road, Anand. One of the persons was carrying a pistol and using it to intimidate the attendants in the shop, they looted all the ornaments and also the jewellery worn by



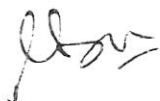
Nayankumar Rameshbhai Soni and two other persons working in the shop, in all of the value of Rs.11,78,000/-. The robbers then got on to a Splendor motorcycle kept outside the jewellery shop and drove towards Gamdi Vad. Nayanbhai and some persons from the surrounding shops chased the robbers and on the way they came across a jeep of the Muncipal Corporation and the jeep too joined in the chase. On reaching Samarkha Chokdi, they came across a jeep of the traffic police. They informed the police of what had happened and then returned to their shops. The police however, continued to chase the culprits and on inquiry from some person they were told that three persons had come on a motorcycle and after threatening him with a fire arm had taken away his Maruti Van. Sub Inspector J.B.Kadel of the District Police took the owner of the Maruti Van with him and after a short distance found both the motorcycle and van lying abandoned. They also received information that the three persons who had come in a Maruti Van had looted the Armoured car of the Urban Bank by showing a revolver and had run away and but after a short distance had left the Armoured car and shifted to a Tata Sumo and gone on towards Surat from Vadodara. On the complaint of Nayanbhai an offence under Section 397 of the Indian Penal Code and 25(1) of the Arms Act was registered as C.R.No. 63 of 2005 in Police Station, Anand. Kaushikbhai Ishwarbhai Patel owner of the Armoured car also lodged a complaint at Anand Town Police Station which was numbered as C.R. 64 of 2005 under Sections 397



I.P.C. and Section 27(1) of the Arms Act. On receipt of information about the two incidents, wireless messages were flashed by the Control Room of Anand Police Station and cautioned by the wireless message a police party of Bharuch Police Station spotted the robbers driving towards them but on seeing the Police Party they lost control of the vehicle which overturned. The three persons in the vehicle (1) Raj Kumar son of Prem Kumar Pandey, resident of P.C.Colony, Patna (Bihar) (2) Ashishkumar Ramakant Prasad Yadav and (3) Hiteshsingh Rampukarsingh Rajput both residents of Bans Ghat, Patna, (Bihar) were arrested and C.R. No. 11 of 2005 under Sections 279/337 of the Indian Penal Code, 177/184 of the Motor Vehicles Act and 25(1-B) Arms Act was registered in Bharuch Police Station at 4.10 p.m. on the 10th March, 2005. The accused were produced before the Magistrate on the next day and remand was obtained till the 14th March, 2005 in C.R. No. 63 of 2005 Police Station, Anand, and transfer warrants of the accused were obtained by Inspector R.B.Patel of Anand Police Station. The custody of the accused was also taken by the aforesaid officer and they were arrested in C.R. No.63 and remanded to police custody upto 28th March, 2005. During interrogation Raj Kumar accused whose real name was revealed to be Rajeshwar (hereinafter called the deceased) resident of Budha Colony admitted that on 9th March, 2005 he and his accomplice had looted a gold chain and a Hero Honda Motorcycle from Hiteshkumar Ambalal Patel at Anand and C.R.No. 54 of 2005 for offences under



the Indian Penal Code and the Arms Act had been registered at his instance in Borsad Police Station. On completion of the police remand, the deceased was produced before the Magistrate on the 28th March, 2005 and on the basis of a transfer warrant by that court his custody was handed over to S.I. Vaniya of Police Station Borsad as an accused in C.R. No.54 of 2005, and he was arrested in that case and produced before a Magistrate who remanded him to Police custody till the 4th August 2005. The investigation was then taken over by Inspector D.S.Patel of Borsad Police Station who again produced the deceased before the Magistrate on the 4th April, 2005 and obtained a further remand upto 16th April, 2005. On 5th April, 2005 Inspector D.S.Patel was in the Nadiad Court in connection with a Borsad Police Station matter, when he received a message from the Local Crime Branch Office, Anand, that a Bihar police party had come to interrogate the deceased. Thereafter the deceased, in the custody of a Police Party headed by Inspector D.S.Patel, S.I. G.N.Parmar, H.C. Yashwantsinh Bhimsinh, P.C. Manibhai Jivabhai and P.C. Jaydipsinh Nathusinh was brought to the Local Crime Branch office where Shri K.D.Singh of the Bihar police and his staff and Inspector B.C.Bhandari of the Local Crime Branch were present. The Bihar police personnel were allowed to interrogate the deceased whereas Inspector Patel alongwith his staff returned to the Nadiad court and on completion of their work returned to the Local Crime Branch Office and found that the deceased's interrogation was still

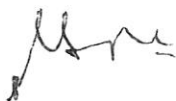


continuing and it had been revealed during the interrogation that he was a notorious criminal and had committed many serious crimes in the State of Bihar as well. Inspector Patel and the Bihar policemen jointly interrogated the deceased who revealed that the weapon used by him while committing the offence registered as C.R. No. 54 of 2005 had been thrown by him while running away and that he could show the place where he had done so. Accordingly at about 0.45 hours Inspector Patel and his staff took him in a Government Jeep whereas a second vehicle followed with members of the Local Crime Branch and Inspector Bhandari and S.I. H.A.Rathod. As the two vehicles reached near Dedarda village the deceased lay down on the back seat of the jeep frothing from the mouth and writhing in apparent pain. Inspector Patel immediately ordered the vehicle to be parked on the road side and asked the police personnel to remove the handcuffs of the deceased and he was lifted and brought down from the vehicle and laid flat on the road. They also sprinkled water on his face to revive him. The deceased, however, suddenly jumped up and seeing that Inspector Patel had bent down he lunged at the Police Officer and hit him on his face. He also tried to snatch away the revolver of the Police Officer from the holster but as the revolver was attached to a lanyard he could not take complete possession of the weapon. In the scuffle and hand to hand fight that ensued the revolver remained firmly in the hand of the deceased and aimed towards the Police Officer and despite the Police Officers'



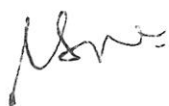
efforts managed to fire one shot from the revolver and the bullet passed near the shoulder of Inspector Patel piercing his uniform shirt. At the same time the other persons in the police party who were with Inspector Patel caught hold of the deceased from all sides and attempted to snatch revolver from his hand during which two shots were fired both hitting the deceased, one on the chest and the other in his mouth causing serious injuries. Inspector Patel and the Police Party put the deceased in a jeep and took him to the Nagar Palika Hospital, Borsad and consequent to the facts above C.R.No.76 of 2005 under Section 307 I.P.C. and 27(2) of the Arms Act was registered against the deceased and the investigation was entrusted to Inspector B.J.Pathan of the Economic Cell, Anand under the supervision of the Superintendent of Police.

Inspector Pathan informed the senior officers through a wireless message giving details of the incident and also requested the Sub Divisional Magistrate, Shri Petlad to hold the inquest proceedings and these were completed between 7.30 to 9.00 hours on the 6th April, 2005. The site was also inspected in the presence of panches and officers from the F.S.L. who photographed and video graphed the scene on the 6th April, 2005. The .38 bore revolver which had been snatched from Inspector Patel by the deceased alongwith three spent cases of .38 bore, a leather holster, a lanyard and the shirt with a bullet hole worn by Inspector Patel were also seized on the 6th April, 2005 in the presence of witnesses.



The dead body was sent for the Post Mortem examination and a board of two doctors, A.D.Mehta and B.M.Mehida, opined that death had been caused "due to cardio respiratory failure due to shock due to bleeding, due to grievous fatal head injuries and lung injuries due to the bullet firing injuries". The clothes worn by the deceased and the bullet found embedded in the body and taken out by the Doctors during post mortem, were also seized. As the police had identified the deceased his address as a resident of Bihar, arrangements were made to inform his parents and family in Bihar and his father Laxman Hiranand Pandey, was intimated through the Bihar police that his son was dead. He sent his relatives Arvind Kumar and Shashikant to Gujarat. They were taken to the S.S.G. Hospital, Vadodara where the dead body had been kept in the mortuary and they identified the dead body as of Rajeshwar @ Mintu. Their statements were duly recorded. The dead body was accordingly handed over to them for the last rites. On completion of the investigation Inspector B.J.Pathan of the Economic Cell, Anand found that the police had killed the deceased in self defence accepting the police version, filed an abatement application on the 1st October, 2005 before the Magistrate. This application was allowed and the proceedings were disposed off as having abated on the 29th September, 2006.

On reference of the matter to the S.T.F. and the Monitoring Authority and as the deceased was a resident of Bihar and his family members also resided in



stated that she had one son(the deceased) and four daughters and that as per information received by her, the deceased had died in police custody in Gujarat and it was on her direction that her relatives Shashikant Dubey and Dharamraj Mishra had gone to Borsad to perform his last rites. She also stated that she could not visit Gandhinagar due to old age but suspected that her son had been killed by the police although she had no evidence to that effect. She also stated that she had received Rs.5 lakhs as compensation from the Gujarat Government. The statement of Shanti Devi was also video graphed by the police party.

In the initial investigation the statements of the following witnesses were recorded:-

(A) EYE WITNESSES

1. Shri D.S.Patel, Police Inspector, Borsad Police Station
2. Shri G.N.Parmar, PSI, Borsad Police Station
3. Shri Yashwantsinh Bhimsinh, H.C.B. No. 1171, Borsad Police Station
4. Shri Manilal Jivabhai, P.C. B.No. 13, Borsad Police Station
5. Shri Jaydipsinh Nathusinh, P.C.B.No.50, Borsad Police Station
6. Shri Mohasinmiya Rasulmiya DRA, P.C.B.No. 316, Borsad P.S.

OTHER WITNESSES

1. Shri B.C.Bhandari, Police Inspector, L.C.B. Anand

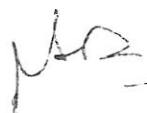


2. Shri H.A.Rathod, PSI, L.C.B. Anand
 3. Shri Badjibhai, Kamjibhai, H.C.B.No. 1079, L.C.B.Anand
 4. Shri Liyakat Ali Khan Kamu Khan, H.C.B. No. 1202, L.C.B. Anand
 5. Shri Ilyas Miya Yusuf Miya, H.C.B.No. 1075, L.C.B. Anand
 6. Smt. Lilaben Harmanbhai Solanki, resident of near Rumala Talavadi,
Dedarada, Taluka Borsad
 7. Shri Manubhai Babubhai Solanki, resident of near Rumala, Talavadi,
Dedarada, Taluka Borsad
 8. Smt. Gitaben Vinubhai Solanki, resident of near Rumala, Talavadi,
Dedarada, Taluka Borsad.
 9. Arvind Kumar @ Dharamraj, resident of Bandha Kol, District Bhojpur
(Bihar)
 10. Shashikant Shrishivji, resident of Salempur, District Aara (Bihar)
- (Witness No. 9 and 10 are from Bihar who identified the dead body)

As would be clear all the eye witnesses are police officers and no independent witness has been involved. This is understandable that in the light of the fact that the incident happened after mid night when persons are expected to be at home and not moving about outside. The S.T.F. recorded the statements of these witnesses and a few additional witnesses including the mother of the deceased.



As already mentioned above and in the absence of any independent witness when the allegations are of a fake encounter, the scientific evidence would require careful scrutiny. The incident is said to have happened at about 45 minutes after mid night on the night intervening 4/5th April, 2005. As per the Post Mortem Report the dead body had been received in the hospital at 9.00 a.m. on 6th April, 2005. On the face of it, there seems to be some delay between the time of the incident and the receipt of the dead body in the hospital considering that the distance was only 5 km. I have, however, read the statement of Inspector Patel wherein he has pointed out that after the incident the deceased had been taken to the Nagar Palika hospital, Borsad for treatment but the Doctor on duty was not present but he had nevertheless given a report in the hospital and also sent a letter to the Executive Magistrate, Borsad to record the dying declaration of the deceased on which the Magistrate had come to the hospital and recorded a note at 1.40 a.m. that the deceased was lying on a stretcher in the Dressing Room at the Government Hospital, Borsad and on looking at him he believed that he was dead and his dying declaration thus could not be recorded. I am, therefore, of the opinion that there is absolutely no delay between the incident which happened shortly before 1 o'clock and the arrival of the injured in the hospital. Significantly a special note had also been recorded in the Post Mortem Report that the deceased had been brought to the hospital in an injured condition with bullet injuries at about 1.00 a.m. and was in



severe shock and an effort made to resuscitate him in order to send him to some other hospital but he had died before he could be removed. The report of the Executive Magistrate and the special note in the Post Mortem Report clearly fixes the time of the incident which is in accordance with the police version.

The Post Mortem examination revealed the presence of two gunshot wounds. The first was a lacerated wound in the middle of the skull in the centre a little towards the right side penetrating the brain. There was a fracture in the parietal bone and the brain injured area was blackened and distorted. The X-ray of the skull did not show any evidence of any bullet in the skull or in the brain. The second gunshot wound was a circular one on the left side of the chest of size 1cm x 1cm about 10 cm away from the root of the neck on the left side in the line of the nipple and below the wound the injured area was blackened and distorted. A spent bullet was recovered from the left shoulder of the dead body. In his supplementary statement the Doctor opined that keeping in view the blackened edges of the wounds the firing had taken place between 1 to 10 ft. This fits in with the police version that three shots had been fired during the scuffle between Inspector Patel and the deceased while the Inspector was trying to snatch the revolver away from the deceased and that the first shot had missed the police officer but had gone through a loose part of his police uniform shirt whereas the other two had hit the deceased killing him. As per the report dated 24th June, 2012 the Forensic Science



Laboratory found a hole 0.7 cm in size surrounded by black coloured spots and when the said hole was examined under Microscopic equipment the presence of nitrate and lead residues indicated that the hole had been caused by a bullet which could be a part of the recovered empties of the .38 bore revolver. Likewise the hand-wash of the hands of the deceased indicated the presence of the residue of fire explosive (Nitrate) as per the FSL supplementary report dated 20th February 2014. The police version is that the deceased had snatched the revolver from the holster of Inspector Patel after delivering a fist blow on his face which had caught the police officer unawares and he had momentarily fallen backwards but as the revolver was attached to a lanyard the deceased had not been able to take it away. which had led to a scuffle for the possession of the revolver. The F.S.L. in its report dated 24th June, 2012 found that the stitches on the belt portion of the holster had been broken by stretching/scuffle. This too fits in with the police version. Significantly also Inspector Patel was examined in the hospital at 8.00 p.m. on 6th April, 2005 and a certificate issued by the Doctor showed an injury on the upper portion of the left hand and it was recorded that the officer was complaining of severe pain in the left hand (though no mark of any injury could be seen) and a congestion of the left eye which could be due to a blow by an object.



I am, therefore, of the opinion that the allegations of a stage managed encounter are not made out on the facts that have come on record. No further action is called for.

I-C.R.No. 227/2004 Police Station Karelibagh District Vadodara, under Sections 307 I.P.C. and 25(1) the Arms Act.

This matter was finally discussed on the 26th August, 2015. The brief facts are as under:-

At about 10.45 a.m. on the 22nd February, 2004 two persons were loitering around the Branch of the H.D.F.C.Bank in the Alkapuri society area within the jurisdiction of Karelibagh Police Station, District Vadodara. The security guard of the bank however, got suspicious on seeing their behavior and he immediately informed the police. A police party reached the place and attempted to apprehend the two. One of the two, subsequently identified as Rakesh @ Viki Jagdishbhai Gavli, was caught while the other Kashyap Harpalsingh Dhaka (hereinafter called the 'deceased') took out a country made weapon and threatened the police party in order to rescue his accomplice. He also fired a shot at a passers by, Tejas Bipinchandra Jain, hitting him on his shoulder and after snatching his



Hero Honda Activa scooter, rode ran away from the spot. Case C.R. No. 1-181 of 2004 under Sections 307, 394, 506(2) and 114 of the Indian Penal Code and 25(A)(1), 27 of the Arms Act was accordingly registered against him and his co-accused at Police Station Karelighat. On 26th July, 2004 information was received by the Gujarat police that the deceased had been detained by the Sardarpura Police Station in District Jodhpur in the State of Rajasthan and a fire arm which appeared to have been used in the Karelighat incident had been seized from him. Sub Inspector D.D.Damor of the Crime Branch obtained a transfer warrant from the concerned court under which the deceased was brought to Vadodara and the Investigating Officer Inspector G.V.Desai obtained his police custody till the 16th August, 2004, During interrogation the deceased revealed that he was a native of Dhinkoli, Tehsil Khekda, District Baghat, Uttar Pradesh and was presently residing at 50/A, Middle Class Society, Fatehganj, District Vadodra. He also revealed that in the year 2001 he had been arrested in a case of murder by the Nandnagari police and had been lodged in the Tihar jail, Delhi but had escaped from police custody in the year 2003 and had moved to Jodhpur where he had met up with Ashish Pandey and Kanaram Prajapati and committed robberies in Jodhpur. He further revealed that in February, 2004 he had come to Fatehganj, Vadodara and his accomplice Ritesh @ Viki Jagdishbhai Gavli and Jitendra @ Jittu Satishchandra Jain and Vishal @ Nanu Surendrabhai Gupta had made plans to

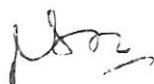
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commit robberies and dacoities in Vadodara and in pursuance of that plan he had stolen a motorcycle from Ahmedabad for which a case of theft had been registered against him in the Karanj Police Station. He further stated that he had thereafter returned to his native place and then again returned to Gujarat with a country made weapon and cartridges and committed several serious offences with the help of his associates and after the incident of the 22nd February, 2004 he had run away to Jodhpur and had re-joined his associates, Ashish Pandey and Kanaram Prajapati, and had resumed his criminal activities and it was during this period that he had been arrested by the police of Sardarpur Police Station, Jodhpur on 26th July, 2004 and information sent to the Vadodara police.

On 14th August, 2004 Inspector G.V.Desai and Sub Inspector D.D.Damor interrogated the deceased at Lal Baug chowki and he showed his willingness to reveal where some weapons had been hidden by him. Two panches were called and were briefed about the facts of the case as revealed by the deceased and thereafter the two police officers, the panches and a police party which included (1) Head Constable Manoj Kumar Chimanlal (2) Head Constable Tulsiram Ramlakhan (3) Head Constable Imambax Umar Khan, (4) Constable Mukeshkumar Bhailalbai and (5) Constable Rameshchandra Chimanlal accompanied by the deceased left the chowki on a route shown by him. When the police party reached near the canal on the Bhotnath-Mahadev road the deceased

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asked the police officers to stop and on coming down from the vehicle started walking on the left side of the canal going towards Chhani. After covering a distance of about 150 metres he started searching for a weapon near a babul tree while being closely followed by Inspector Desai, HC Turliram and HC Manoj Kumar while the rest of the police party made a cordon at some distance. The deceased then bent down and took out a plastic bag containing a revolver and fired at the two Head Constables but they managed to save themselves. Inspector Desai, and S.I. Damor immediately returned the fire in self defence. The Inspector fired three rounds from his service revolver and the S.I. two. The deceased was hit by the bullets and he fell down. The police officers then lifted him and put him in a jeep and he was taken to the Government Hospital whereas information was conveyed to the Police Control Room as well The weapon used by the deceased which happened to be a country made revolver was also recovered from the site. In the meanwhile the Inspector Desai came to know that the deceased had died in the hospital. C.R. No. 227 of 2004 under Sections 307/224 of the Indian Penal Code and Sections 25(1)B, A and 27(1) of the Arms Act was registered at Kareligha Police Station against the deceased on the complaint filed by him. Investigation of the matter was, however, handed over to Inspector D.M.Vaghela, of the District Crime Branch, Vadodara. The place of incident was examined during night time on the 14th August, 2004 in the presence of two witnesses Harishbhai and Arunbhai



and a team from the F.S.L. comprising Shri D.M.Patel and Shri A.R.Vaghela. One country made revolver, with two empty and four live cartridges, and a country made revolver of 7.65(.32 bore) were recovered from the spot. Three and two fired cartridge cases of the two weapons respectively were also handed over to Inspector Desai and Sub Inspector Damor. An inquest was held by the Executive Magistrate on the 15th August, 2004 between 10.15 and 11.00 am and a postmortem was also held starting at mid day on the 15th August, 2004 and three bullets were recovered from the dead body. The death was attributed to ante mortem fire arm injuries. The empty cartridges were sent to the F.S.L. for comparison with the weapons used and it was found that three bullets had been fired from the same .38 calibre revolver. The F.S.L. also found that two fired cartridge cases recovered alongwith the country made .32 bore revolver had been fired from that weapon. As the interrogation of the deceased had revealed his correct address and antecedents, information was conveyed to his family in Uttar Pradesh on which his parents Harpal Singh Dhaka and Rajbala and other relatives came to Vadodara. The father recorded his statement before the police and stated that his son was short tempered by nature and had committed many offences in Gujarat and Rajasthan and that he had been informed by the police on the 14th August, 2004 about the present incident and had come to Vadodara on that account. They also unanimously stated that they had no complaint or suspicion with regard to the death of the deceased.



The dead body was handed over to Harpal Singh and it was cremated by him. As the accused in C.R. No. 227 of 2004 was the dead the proceedings were deemed to have abated and an order to that effect was passed by the Court on the 21st January 2005. The proceedings were reopened pursuant to the setting up of the Monitoring Authority and further investigation was done on sanction by the competent court.

A public notice Annexure A was issued in Times of India dated 18th July, 2012. Notices were also issued in the Hindustan Media Venture Limited a Hindi publication issued from many places in Uttar Pradesh and personal notices were also served on the mother of deceased Raj Bala, his father having died in the meanwhile. Raja Bala recorded her statement yet again that she had nothing to say in the matter. In further investigation the statements of the witnesses which had been recorded at the time of the initial investigation were re-recorded and also videographed. Nothing new has come forth in these statements.

The incident herein took place during the night hours some distance away from an urban area. It has come on record that the deceased was a notorious criminal involved in many serious offences in Uttar Pradesh, Rajasthan and Gujarat and his parents had also come forward to say that he was a man of short temper and aggressive in nature. The circumstances which have been set out above clearly indicate the aggressive and desperate nature of the deceased.



The entire case here hinges on the statements of official witnesses. They have unanimously deposed to the facts which have been set out above and do not require repetition. The recovery of .32 bore country made revolver with which the deceased had fired at the police party and the presence of the two fired cartridges and four live cartridges in the chamber clearly indicate that the weapon had indeed been fired. The hand wash of the deceased could not be taken because of heavy rain which had fallen on that day. As per the police version three shots had been fired by Inspector Desai and two by S.I. Damor from .38 bore revolvers. Three bullets recovered from the dead body matched with one of the revolvers that had been used by the Police Officers.

I am, therefore, of the opinion that nothing amiss can be found in the investigation in the present matter. No further action is called for.

**I-C.R.No.180/2004 Police Station B Division,
Rajkot City U/S 307,332,186 and 506 IPC and
135(1) of the B.P.Act**




This matter was taken up on the 12th October, 2015. Detailed reference to the facts and discussion on the evidence is not necessary in the light of what follows hereinafer:-

Salim Gagji Miyana hereinafter called the 'deceased' was admittedly shot and killed by Head Constable Yantidevsinh Lalubha Jhala of Police Station Rajkot City on the 4th May, 2004 at about 12.30 p.m. A police party including the Head Constable had gone to the residence of the deceased situated in Mafatiyapara near the Gujarat Housing Board on that day in order to arrest him as he was an active bootlegger. The deceased was present in his house when the police party reached there. He came out running armed with a knife and shouted at the police party to leave his residence. He also attacked Head Constable Yantidevsinh and in the scuffle that followed the Head Constable received an injury on his hand. As the police party apprehended serious injury at the hands of the deceased, Head Constable Yantidevsinh fired one shot at the deceased killing him. On the facts set out a case under Section 307/332/186/304/188 of the Indian Penal Code was registered against the deceased. After investigation the police filed an abatement application before the competent court as the accused was dead. This application was accepted and the proceedings were disposed off as having abated by the competent Magistrate. The mother of the deceased namely Rahematben, however, filed a complaint under Section 202 of the Criminal Procedure Code 1973 alleging



that her son had been killed in cold blood and the police officers were liable to be prosecuted for offences under Section 302 etc. of the Indian Penal Code. An inquiry was thereafter conducted by the Magistrate and on its conclusion an order was passed that the police officers be tried under Section 302, 34, 120-B, 447, 448 and 506(2) of the Indian Penal Code and as the offences were triable by the court of Sessions, the proceedings were forwarded to the Sessions Court, Rajkot. The Additional Sessions Judge in his judgment dated 11th March, 2010 held that the deceased had undoubtedly been shot dead by the police party as alleged but the killing was justified as being in the right of private defence of the police officials as the deceased had attacked Head Constable Yantidevsinh with a knife causing an injury on his hand and had also tried to snatch away his revolver on which the Head Constable had fired one shot. The Additional Sessions Judge also relied on the medical evidence as also the statements of the eye witnesses who were very close relatives of the deceased. The Court found that the allegations made against the Police Officers with regard to the killing of the deceased were not sustainable on evidence. The court accordingly acquitted the Police Officers. Concededly no appeal against the judgment aforesaid has been taken thereafter.

In this case, as in all other cases, public notices were published in Time Global (English) and other Newspapers Divyabhaskar, Sandesh Bhavan and Lokprashan (Gujarati) , on the 18th July, 2012 Annexure 'A'. A notice was also



issued to the brother of the deceased, Kadarbhai Gagjibhai, and was served on him personally on the 6th October, 2012. Kadarbhai appeared before me on the 18th February, 2013. He stated that Rahematben the complainant in the case against the police officers had died of cancer two years earlier and he further went to say that when he had arrived in the Trial Court an advocate had asked him to put his signatures on some document though he did not know the contents thereof. He further stated that the said advocate had been engaged by his mother. On being asked by me whether he wanted to say anything, Kadarbhai had answered in the negative.

It will be seen, therefore, that a judicial appraisal has already happened with regard to the allegations made against the police officers and a positive finding has been recorded by the Additional Sessions Judge that the version of the police that the deceased had been shot in the right of private defence when he had attacked the police party, was the correct one. As already indicated above, the judgment of the Additional Sessions Judge has not been challenged by anybody and in response to the public and personal notices issued by the Monitoring Authority nothing has come forth to indicate that a contrary view was possible. In this view of the matter, no further action is called for in this case.

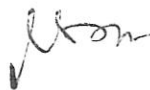


I-C.R.No. 40/2004 B Division Police Station Rajkot
City, under Sections 307/332/188 I.P.C.

This matter arises out of an investigation which was initiated against Jala Popat Devipujak, hereinafter called 'the deceased', initially in C.R. No. 15 of 2004 Rajkot City, B Division Police Station for offences punishable under Sections 457 and 380 of the Indian Penal Code. The Investigating Officer in that case Sub Inspector D.V.Dave, gave a direction to Sub Inspector V.M.Gohil to apprehend the deceased in that matter. Sub Inspector Gohil further instructed Head Constable Yantidevsinh and Constable Yogendrabhai of 'B' Division Police Station to make further inquiries and consequent to this direction they were on the look out for the deceased near the field of Karsan Harji close to the Parsi graveyard. At about 5.30 p.m. on the 17th January, 2004 the aforesaid police officials saw the deceased sitting near a small temple in the field of Karsan Harji on which Constable Yogendrabhai entered the temple premises. On seeing the Police officials the deceased attempted to run away but Constable Yogendrabhai ran after him and caught him with the assistance of Head Constable Yantidevsinh and a scuffle followed between the three. The deceased also threw stones at the police officials and Constable Yogendrabhai sustained an injury on his hand. The scuffle between them continued for sometime during which the deceased took a knife from his



pocket and attacked Constable Yogendrabhai. Head Constable Yantidevsinh then took out his service revolver and warned the deceased to throw down the knife but instead of following the direction, the deceased inflicted a knife blow on the face of Constable Yogendrabhai causing an injury on the upper part of the left eye. On receiving the injury the Constable fell down and as the deceased raised his hand to give him a second blow Head Constable Yantidevsinh fired one shot at the deceased hitting him on the left thigh. The police officials immediately summoned a vehicle by calling on the mobile phone and the deceased was removed to the Government Hospital, Rajkot where the Doctor declared him as having been brought dead on arrival. Case C.R.No. 40 of 2004 for offences punishable under Sections 307/332/188 of the Indian Penal Code was accordingly registered against the deceased. The inquest proceedings were carried out by the Executive Magistrate at about 8.45 p.m. on the 17th January, 2004 and death was attributed to shock and haemorrhage due to gunshot injury. The place of incident was examined by the Investigating Officer, Sub Inspector D.V.Dave in the presence of panches on the 18th January, 2004 at about 7.25 a.m. and blood stained earth, a knife and several other items were picked up from the spot. Head Constable Yantidevsinh also handed over an empty cartridge to the Investigating Officer. The dead body was subjected to a post mortem examination on the morning of 18th January, 2004, whereafter the dead body was handed over to Nituben Vikrambhai wife of



Parshotambhai Solanki, the sister-in-law of the deceased, and he was cremated by her. The spent bullet was also seized from the dead body during the course of the post mortem. On completion of the investigation the police moved an application for abatement of proceedings in C.R. No. 40 of 2004 as the accused in the meanwhile was dead. The application was allowed and the proceedings were disposed off as having abated by orders of the Judicial Magistrate dated 25th October, 2004.

On reference of this matter to the Monitoring Authority under the orders of the Hon'ble Supreme Court further investigation was allowed by the Judicial Magistrate Ist Class, Rajkot city on 18th January, 2013 under the provisions of Section 173(8) of the Cr.P.C. Notice of the further investigation was issued in the Newspapers Times Global etc. Annexure A and also the Divyabhaskar, Sandesh Bhavan and Gujarat Samachar dated 18th July, 2012 all published from Ahmedabad. Personal notice was also served on Nituben aforesaid and Popatbhai personally by a police team on the 26th September, 2012. The S.T.F. in further investigation re-recorded the statements of those witnesses who had done so in the initial investigation before the police and some additional witnesses as well and ultimately concluded that the police version was the correct one and there was no substance in the allegations of a custodial death.



In this case Shri Somnath Vatsa Advocate appeared before the Monitoring Authority on the 12th October, 2015. Copies of the record had been handed over to him earlier. Mr. Vatsa has argued that in the light of the fact that only police officers had been privy to what had happened on the 17th January, 2004 it was incumbent on the Investigating Officer to get the details of the mobile phone and call records of each police official as also the movement register of the senior police officials who had been involved in the incident. He has pointed out that the Investigating Officer had himself expressed his frustration with the fact that he had not been able to get the details aforementioned as the record was not available.

It is true that this record if available would have been able to show the presence of the two police officials at the place of incident but the fact remains that the incident is of the year 2004 and further investigation had been ordered almost eight years later. Significantly also no objection had been raised to the abatement proceedings which had become final.

Mr. Vatsa's argument that there was no independent witness of the incident also appears to be incorrect. The statements of two witnesses namely Savitaben and Arvindbhai had been recorded at the initial stage of the investigation and also by the S.T.F. Savitaben stated before the S.T.F. that as she had been working as a agricultural labourer in a field adjoining the Parsi graveyard, when



she had heard the sound of gun fire and on going to that place she had seen the deceased lying on the ground and two police men standing close by and she had heard from the persons assembled there that the deceased had attacked the policemen with a knife when they had come to arrest him. Arvinbhai, a Retired Commando, stated that he had his ancestral land close to the place of incident and had actually seen the incident as it unfolded. He gave full details supporting the police version. The police as also the S.T.F. had recorded the statement of Nituben. She too supported the police version and stated that though the deceased was a close relative, he was not staying at home and was hiding near the Parsi graveyard. She further stated that on the day of the incident the police party had come to arrest him at the Parsi graveyard and he had attacked the police party and that the police had fired in self defence and that he had been carried in a jeep to the hospital but had died on the way due to excessive bleeding.

The statements of the police witnesses read with the medical and scientific evidence in the present case appears to be conclusive. As per the version of the police the actual shot had been preceded by a lengthy scuffle involving the police officers and the deceased. It is clear from the statements that Constable Yogendrabhai was the first one who had attempted to apprehend the deceased on which the deceased had fought back and caused an injury with a knife on his person. Constable Yogendrabhai was examined by the Medical Officer in



Government Hospital, Rajkot at about 7.40 p.m. on 17th January, 2004 and the doctor found one injury which could have been caused by a sharp cutting weapon on the forehead of the injured. In addition the post mortem examination revealed one punctured wound of a fire arm on the left thigh with contused and abraded margins and that in the course of its travel through the body the bullet had lacerated the femoral vein. The bullet had also been recovered from the wound. Likewise there was another punctured wound close to the gun shot wound and in addition to very large number of linear abrasions and multiple scattered linear abrasions virtually on all parts of the body. The post mortem report is conclusive of what happened. It is the case set up that the deceased had died on account of excessive bleeding as the gun shot was not apparently on a vital part of the body. The fact of excessive bleeding is borne out as the femoral vein had been severely damaged and ecchymosis was present in the adjoining tissues. The doctors' opinion was death due to haemorrhage. The presence of a very large number of abrasions all over the body also reveals and proves that a long scuffle had taken place between the police officials and the deceased as a prelude to the actual shot being fired. It is also significant that if it was a case of a custodial killing the shot or shots would invariably have been fired on a vital part of the body, as had the bullet travelled an inch or two either way it would not have damaged the femoral vein and the deceased would not have died on account of haemorrhage.

The police version is further borne out by the Forensic evidence. As already mentioned above one shot had been fired at the deceased and the spent bullet had been recovered from the dead body. The bullet matched with the .38 calibre weapon used by Head Constable Yantdevsinh. This would be clear from the report of the Forensic Science Laboratory dated 17th January, 2004 and 23rd June, 2014. In this view of the matter, no further action is required to be taken.

**I-C.R.No. 124/2005 Jetpur City Police Station,
District Rajkot, under Sections 307, 397, 333, 353, 188,
186 I.P.C. and 25(1)A, 27(2) the Arms Act and 3,7 of
Damage to the Public Property Act, 1984**

This matter was finally discussed in the meeting of the Monitoring Authority held on 12th October, 2015. The facts are as under:-

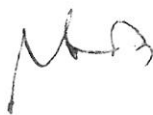
Rafiksha @ Bapudi Mamdsha Fakir, hereinafter called the 'deceased' had been arrested for an offence under Section 302 of the Indian Penal Code by the Vankaner Police, in C.R. No. 1 of 2005 and had been sent to judicial custody. He was also wanted in C.R.No. 189 of 2004 of Jetpur Police Station for offences punishable under Sections 399,402,120B of the Indian Penal Code and 25(1) BA and 27 of the Arms Act. As Inspector B.G.Limbasia of the Jetpur City Police Station was the Investigating Officer in C.R. No. 189 of 2004, he arrested the



deceased and on the basis of a transfer warrant the deceased was brought to Jetpur Police Station. The deceased was thereafter interrogated whereupon he disclosed that he had concealed a revolver which he had used in committing the murder and could get the same recovered. A police party headed by Sub Inspector V.K.Gadhvi and comprising of Head Constable Sukhdevsinh Gohil, Constable Shaktisinh Jadeja, Constable Ranveersinh Jhala, Constable Manojbhai and the driver of the government jeep No. GJ-3G-449 Constable Maheshbhai and two panches, Sureshbhai and Samatbhai, were deputed to make the recovery. The police party then accompanied the deceased to a place pointed out by him near the wall of the Marketing Yard on the left side of the road passing through Jetpur city Police Station and Teenbatti chowk Junagarh and thereafter alighted from the vehicle. The deceased moved forward followed by the panch Sureshbhai and Sub Inspector Gadhvi but quickly turned towards Inspector Lambasia and snatched the revolver from his belt and fired a shot at him, though the bullet missed the target. Constable Maheshbhai moved forward to apprehend the deceased who fired a second shot hitting the police constable and he continued to threaten the police party. Sub Inspector Gadhvi fired two rounds from his service revolver and being hit the deceased fell down. While doing so, the deceased fired another shot at Sub Inspector Gadhvi on which the Police Officer fired a third shot at him. The deceased, seriously injured, was removed to Jetpur, Government Hospital in the



police jeep and was declared brought dead on arrival whereas Constable Maheshbhai was admitted to the hospital. As a consequence of this incident C.R. No. 124 of 2005 for offences under Sections 307, 397,333,345,188,186 of the Indian Penal Code and 25(1) A and 27(2) of the Arms Act and 3 and 7 of the Damage to the Public Property Act, 1984 was registered at Police Station Jetpur City. A criminal complaint alleging murder was, in addition, filed by the mother of the deceased against Sub Inspector Gadhvi, Inspector Lambasia and Constable Maheshbhai on the 18th August, 2005 and an investigation under Section 156(3) of the Cr.P.C. was ordered by the Judicial Magistrate Ist Class, Jetpur. As a consequence of the investigation in both matters, one in C.R. No. 124 of 2005 and the other in the complaint filed by Jetunben a report was submitted by D.S.P. R.H.Rathod on 2nd May, 2006 in which he opined that no evidence supporting the allegations made in the complaint had come on record and he accordingly recommended that proceedings in C.R. No. 124 of 2005 be disposed off as having abated and a prosecution be ordered against Jetunben for making a false complaint. Notice of the application filed by the D.S.P. was sent to the complainant, Jetunben for the 17th July, 2006. She filed a protest application against the report before the Magistrate's court on the 6th November, 2006. After hearing arguments of both sides through counsel the Magistrate, on 28th May, 2007, pronounced his order accepting the application filed by D.S.P. Rathod meaning thereby that the



proceedings against the deceased were deemed to have abated on his death. Jetunben's complaint was dismissed. The order dated 28th May, 2007 was challenged in appeal by Jetunben and was taken up on the 17th October, 2007. The appeal was dismissed as it appeared that despite a very large number of dates for hearing fixed in the appeal, neither the appellant's counsel nor the appellant herself had pursued the appeal.

In this case, as in all other cases, public notices were published in Time Global (English) and other Newspapers Divyabhaskar, Sandesh Bhavan and Lokprashan (Gujarati) . on the 18th July, 2012 Annexure 'A'. Notices were served personally on Jetunben, aforementioned , Shora Rahimbhai and Shakkariya Sharifbhai on 23rd October, 2012. Jetunben appeared before me on 18th February, 2013. She stated that she had moved an application asking for financial assistance as she was a beggar woman looking after the two young children of the deceased namely Ramiz(son) now aged 15 years and Rehana(daughter) aged 16 years after their mother (the wife of the deceased) had abandoned them soon after he had been killed. She also pointed out that her husband had died 17 years earlier. When questioned she stated that she had nothing more to say and only prayed for monetary assistance. Vide order dated 21st November, 2013 a sum of Rs.6 lakhs to be apportioned between the two siblings was ordered by me and has since been paid to them. Rahimbhai and Sharifbhai also appeared before me on the 12th July,



2013. They claimed to be representatives and leaders of the minority community and they stated that one or two days before the incident Jetunben, accompanied by the father-in-law of the deceased, Akbarsha Bapu, had come to the office of the Jumma Trust and had met them and told them that S.I.Gadhvi had threatened during proceeding in the Vankaner court that the deceased would be killed as he was a criminal. They stated that the complaint case could not be pursued by Jetunben as had been threatened by the police with dire consequences in case she continued to do so. They expressed their clear suspicion that the incident as depicted by the police could not have happened and was farfetched and this was a case of a custodial killing.

Notice of the hearing of the matters by the Monitoring Authority in (this case as also in all cases) had been issued to the writ petitioners in the Supreme Court as also their counsel. In response to the notice to Ms. Nitya Ramakrishnan Advocate, Mr. Somnath Vatsa Advocate appeared before the Monitoring Authority on the 12th October, 2015. Learned counsel has pointed out that there had been no judicial appraisal in this matter inasmuch as no decision on merits had been taken by any court and that by order of the Supreme Court dated 25th January, 2012, the Monitoring Authority had been precluded to stay its hand only with respect to those matters in which the investigation had been ordered by the



Supreme Court or by the Gujarat High Court and as this situation did not arise in the present matter, further investigation ought to have been carried out in this case.

It is true that no comprehensive trial has been held in this case but it is clear from the record that the investigation in C.R. No. 124 of 2005 and the complaint filed by Jetunben, an investigation had indeed been made. In the report submitted by D.S.P. Rathod on the 2nd May, 2006 he had pointed out that there was no evidence with regard to the allegations made by Jetunben and he had accordingly recommended abatement of proceedings in C.R. No. 124 of 2005. The recommendation of the D.S.P. was accepted by the Magistrate on 28th May, 2007 after hearing both sides with a positive finding that the allegations made by Jetunben implicating the police officers, were without basis. The order dated 28th May, 2007 was challenged by Jetunben before the Sessions Court and was rejected. To argue, therefore, that there had been no judicial appraisal of the matter is not correct as judicial scrutiny has indeed been made under order dated 28th May, 2007.

I have, even otherwise, gone through the scientific evidence in the matter in the light of the fact that both parties have suffered injuries. As per the police case, it was the deceased who had snatched the revolver from S.I. Limbasia and fired several shots at some members of the police party and that the police had fired three shots in self defence. The post mortem report dated 19th July, 2005



supports this statement. The absence of any blackening or tattooing around the wounds of entry and the presence of a abrasion collar around all three wounds indicate that the three shots had been fired from more than two feet. This fits in with the police version that the deceased had snatched the revolver from the police officer and fired several shots leading to retaliatory fire in which the deceased had been killed. Even more significant perhaps in the present case are the gun shots injuries suffered by Mashribhai Head Constable. He had reached the hospital at 9.30 p.m. on 18th July, 2005 i.e. soon after the incident and had been examined. Injury No.1 is a wound of entry in the middle of the lower arm with inverted edges with blackish discoloration. This means that the shot had indeed been fired from a close range. The second wound is a wound of exit though there is no bony injury. As per the injury certificate dated 21st July, 2005 Mashribhai had been admitted to hospital for his injuries. The shirt worn by Constable Mashribhai was found to have holes in it as well. The F.S.L. found that the holes had been caused by bullets as residual traces were present thereon. It is, therefore, evident that the members of the Police Party had a providential escape though three shots had been fired at them. The desperate nature of the deceased is also evident from the fact that about 40 cases, some for very serious offences, had been registered against him from the year 1999 to 2005.



I am, therefore, of the opinion that no further action is called for in this matter.

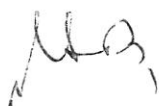
I-C.R.No. 221/2005 Police Station Vapi District Valsad, under Sections 307 I.P.C. and 135(1) of the B.P. Act.

A case under Sections 396/397 etc. of the Indian Penal Code was registered vide C.R. No. 145 of 2005 at Police Station Paradi District Valsad on 24th August, 2005. In this incident A.S.I. Rameshbhai Bharatbhai who was chasing the accused on a Motorcycle had been killed and in addition injuries had been caused to other police officers. On the next day Inspector J.M.Patel with a police party was on nakabandi in connection with the search for the accused in the aforesaid matter when the Inspector received information that the accused were hiding in the forest behind the Welspun Mill. The Inspector and his associates went in that direction and on seeing the police party the accused attempted to run away. One of the accused ran towards the Morai crossing whereas the second ran towards the bushes behind the mill on which Constable Raghunath Baburav apprehended him. The accused pulled out a knife from his pocket and caused an injury on the hand of the police constable. Inspector Patel told the accused to surrender but he attacked Constable Raghunath yet again on which the Inspector fired one shot from



his service revolver. Another police officer Narendra Laljibhai also came to the rescue of Constable Raghunath but the accused attacked him as well and caused an injury on his hand. Inspector Patel seeing that the accused was in a very aggressive mood fired two more shots at him but the accused became even more aggressive and rushed towards the police officer who fired one more shot felling him. The accused seriously injured, and the two police constables, were sent to the Hariya Hospital where he was declared dead on arrival whereas the policemen were admitted as indoor patients. C.R.No. 221 of 2005 was registered against the accused at Vapi Town Police Station under Sections 307 etc. I.P.C. on the complaint of Inspector Patel. In the meanwhile the second person who had attempted to run away had also been apprehended and he disclosed his name as Pansinh Babu resident of Ghaatiya village (Madhya Pradesh). He was taken to the site of the incident by the police officers and on seeing the person injured he identified him as Dungariyo Himla Machhaar, resident of Naagankhedi, District Jhambua, Madhya Pradesh. Inquest proceedings were held on the dead body by the Executive Magistrate late in the evening of the 25th August, 2005 and the place of incident was also inspected at about the same time. One Rampuri knife and some blood stained earth was taken into possession in the presence of panches. The dead body was also subjected to a post mortem and four gun shots wounds of entry were found on the dead body. One of the bullets appears to have gone through the body

of the deceased and three were found lodged therein. They were extracted and handed over to the Police Officer. Information about the death was sent to the relatives of the deceased on which several persons (a) Shamjibhai Machhar (2) Humabhai Machhar (3) Dharmendrasinh Machhar and (4) Chandansinh Machhar all residents of Naagankhedi District Jambua (Madhya Pradesh) appeared and their statements were recorded by the Investigating Officer on the 27th August, 2005. In their statements they expressed no suspicion regarding the death of the deceased. On completion of the investigation an application for abatement of the proceedings was filed and the same was accepted by the Judicial Magistrate Ist Class, Pardi on 27th August, 2006. Consequent to the setting up of the S.T.F. and the Monitoring Authority permission was obtained by the Investigating Officer for further investigation as envisaged under Section 173(8) of the Code of Criminal Procedure from the Magistrate's court on 20th July, 2012. The notices of the further investigation was served on three relatives of the deceased Dungariya Machhar, Humabhai Machhar and Chandansinh Machhar on 17th September, 2012 and 18th October, 2012. Shamjibhai Machhar had in the meanwhile died. None of them expressed any apprehension with regard to the death of the deceased. On the contrary the co-accused of the deceased namely Pansinh Babu who had been apprehended by the police on the 25th August, 2005 at the time when the deceased had met his death, recorded his statement supporting the police version. He stated



that he had been acquitted on the 27th May, 2013 after trial in case registered vide C.R. No. 145 of 2005 of Police Station Pardi for offences punishable under Section 396 and 397 of the Indian Penal Code. The Forensic Science Laboratory in its report opined that the three bullets taken out of the dead body matched with the .38 bore service revolver used by Inspector Patel. The Biology Department of the F.S.L. Surat also opined that blood stains found on the shirts of police constables Raghunath and Narendra matched their blood groups.

This matter came for final discussion on 19th December, 2015 when Mr. Somnath Vatsa, learned counsel, appeared on behalf of the petitioners. He has argued that Inspector Patel had in his complaint mentioned that he had received secret information that the accused in C.R. No. 145 of 2005 were hiding near the Wellspun Mill but in his statement recorded in other proceedings he had stated that he had received a telephonic message to that effect from the Police Control Room and in the light of this conflicting fact, his statement could not be believed. He has also pointed out that reliance of the Investigating Agency on the statement of Pansinh aforementioned was not called for as his statement had been recorded after his acquittal in the dacoity case although he had been available to the police much earlier. He has further submitted that the statement of Pansinh read as a whole clearly indicated that the story that the deceased had continued to attack the police officers despite having been warned to desist, was an after thought. He has



finally submitted that the four bullet wounds of entry were all round in shape but considering that the shot had been fired during the course of scuffle the shots would not have been uniform in nature.

The points argued by Mr. Vatsa have been controverted by Mr. A.Y. Kogje learned counsel for the S.T.F. I am of the opinion that in the light of the fact that family of the deceased had expressed no suspicion with regard to the death virtually dislodges the allegations of a fake encounter. It is significant that the allegations with regard to the dacoity were common insofar as the deceased and Pansinh were concerned. Had there been any malice on the part of the police, Pansinh who was present at the time, could also have been eliminated. On the contrary he appeared before the S.T.F. and recorded his statement supporting the police version and merely because he did so after his acquittal in the dacoity case would not detract from the value of his statement. It is also significant that fake encounters are indulged in generally when a person is a hard core criminal and involved in many nasty incidents. In the present case it is on record that but for the dacoity case mentioned above, the deceased had no criminal record. The three arguments addressed by Mr. Vatsa's to my mind are insignificant and such discrepancies are bound to appear after the passage of so many years. Mr. Vatsa's plea that the case fell within the third exception to Section 300 of the I.P.C. and the police officers were atleast liable to be prosecuted for culpable homicide not



amounting to murder is also unsustainable in the light of the facts pointed out. The deceased continued to attack the police officers and caused injuries to them with a knife despite having been cautioned.

During the course of hearing it was pointed out that the deceased had left behind a young daughter Shamila who had in the meanwhile been abandoned by her mother. A sum of Rs.4 lakhs was granted by me to her as compensation to be put in Fixed Deposit till she attained the age of 18 years under the guardianship of her grandfather i.e. father of the deceased. Directions were also issued to ensure that the child received the maximum interest possible and a statement of account was furnished every year to the Inspector General of Police, Crime Branch, Ahmedabad.

No further action is called for in this case.

I-C.R.No. 77/2004 Police Station Sheel District Junagadh, under Sections 307,506(2)I.P.C. and Sections 25 (1) (B) (A), 27(1) the Arms Act

This matter was finally taken up on 13th February, 2016 in the meeting of the Monitoring Authority held on that day. The facts are as under:-



On 24th December, 2004 Bheema Maanda Mer (hereinafter called the deceased) was arrested in C.R. No. 1-25 of 2004 registered at Batwa Police Station under Section 302 etc. of the Indian Penal Code and a police remand had been obtained from 25th December, 2004 to 1st January, 2005. During interrogation he disclosed that he had hidden a weapon which he could get recovered. Two panches namely, Bahadursinh Kirtisinh and Girirajsinh, were thereafter called by the Investigating Officer, S.I. N.B.Chudasma and they alongwith police officers ASI Valimohamad, Head Constable Aalm Khan, Head Constable Pethabhai, Head Constable Kalabhai Dhanabhai Sagaarka, Constable Punjabbhai, Constable Gajendersinh and D.S.P. T.V.Pargi were led by the deceased to the place where he had hidden the weapon. The Sub Inspector instructed Constable Gajendersinh to dig the earth and to recover the weapon from the place indicated by the deceased. The constable did as instructed and soon recovered a plastic bag containing a weapon and at the same time the deceased who was standing close by turned to the left and took out another weapon from the grass nearby and fired at Constable Gajendersinh and further threatened that if anybody tried to catch him he would be killed. Sub Inspector Chudasma, thereafter, fired one round at the deceased but this further infuriated him on which he fired two rounds at the police officers but before he could repeat the firing the Sub Inspector fired three shots at him and the D.S.P. fired one whereas Head Constable Aalmsinh hit him with a stick on the



right hand on which the pistol as well as the deceased fell down. The deceased as also Police Constable Gajendersinh were brought to the hospital where the former was declared dead and the latter was admitted for treatment. Inquest proceedings were recorded by the Executive Magistrate, Junagadh on 29th December, 2004 and the site was also inspected by the Sub Inspector in the presence of panches between 4.50 p.m. and 6.20 p.m. on 29th December, 2004 and three spent cartridge cases, blood stained leaves of grass, blood stained earth, pieces of a crushed empty cartridge and a part of a bullet were picked up. The service revolvers used by S.I. Chudasma and D.S.P. T.V.Pargi alongwith the spent cartridge cases were handed over to the Investigating Officer Inspector B.H.Gameti. A case under Section 307 etc. I.P.C. was registered against the deceased vide C.R. No. 77 of 2004, Sheel Police Station, District Junagadh. On investigation it was found that the police officials had fired in self defence. Accordingly an application for abatement of proceedings was filed on 27th May, 2005 and allowed on 11th January 2007. On reference of the matter to the S.T.F. and the Monitoring Authority, an application under Section 173(8) was moved which was duly allowed and the matter has been further investigated by ACP Shri B.C. Solanki. Public notices were issued in the Times of India and in Divyabhaskar, Sandesh Bhavan and Gujarat Samachar all published from Ahmedabad on the 18th July, 2012. Personal notice was also served by post on Jetabhai Mandabhai the brother of the deceased on the 12th July,



2012 and personally re-served on the 6th February, 2013. He appeared before me on the 18th February, 2013 and recorded his statement wherein he expressed his suspicion that his brother had been killed by the police at the instance of his enemies. He also stated that he would submit proof but he did not have any proof with him at that moment but the same would be available from the mobile number that he had given and its call details. He further stated that the story projected by the police as to the manner in which the incident happened was improbable and difficult to believe as the deceased who had been handcuffed could not have been able to fire at the police party. He further stated that the place of the incident was about 3 kms away from his village and that the police had not taken the statements of the landowners whose land was around the site of the incident and that on account of fear he and his family members had not made any attempt to contact those neighbours. He concluded that if the investigation was made fairly the truth would come out. No other statement or evidence has been given by any other person. Curiously the statement of Jetabhai had also been recorded on the 1st January, 2005 i.e. soon after the incident wherein he had given a clean chit to the police and had stated that he had no complaint about the death of his brother and that the body had been handed over to him and that he had performed the last rites and he had also stated that he too was an accused in some case and that his son Meru was in jail in connection with the murder of Rana Parbat. It is, therefore,



clear that the antecedents of the family were not encouraging. In the first series of investigation the statements of the members of the police party as also the panches namely Bahadursinh and Girirajsinh had been recorded. They all supported the police version and also deposed to the fact that two pistols one of .9 mm bore and the other of .32 bore including live cartridges had been recovered from the place of incident. On further investigation the statement of Vejiben, the widow of the deceased has been recorded and she admitted that her husband and other relatives including her brother and nephew had been involved in serious crimes including murder and that she had no complaint whatsoever with regard to the death of her husband. She further stated that she had seen the police vehicles standing in the field of Bheema Maanda on 29th December, 2004 but had not heard the sound of any gunfire. Malde Karabhai, who had his field near the field of the deceased, also gave a statement similar to the one given by the widow of the deceased. The statements of other relatives and neighbours were also recorded and they expressed the opinion that there was nothing untoward in the death of Bheema Maanda.

In this case, as in all cases, where allegations of a fake encounter have been leveled against the police, the police version read alongwith the post mortem report of the deceased and the scientific evidence can often give an indication of what had transpired. As per the police version the deceased had extracted a revolver from where it lay hidden underground and had fired at the police party at

the initial stage before he had been shot down by the police officers. The post mortem examination revealed the following three gunshots wounds on his body:-

(A) Gun shot wound No.1- 5 mm x 5 mm size surrounded by abrasion collar circumferentially with blood coming from wound located in epigastria 4 cm from medium size to light. Abrasion colour wound No.1. x-ray location of bullet No.1 -Right paravertebral gutter over above renal vessels 3.5 cm lateral to margins of vertebral bodies at level of L3.vertebrae. Tracing invivo route of bullet No.1 - After penetrating epigastrium near right coastal margin 4 cm right to medium in bullet have not downward movement damaging following viscera inferior of Hepatic Margin-Lesser SAC with contents-Pancreas- Part of small intestine- paravertebral vessels and nerves-right renal vessels posterior wall of left paravertebral gutter.

(B) Gun shot wound No2. 4mm x 5 mm size surrounded bet. Antero superior abrasion collar located on left flank bone dorsal to left inferior auxiliary line. X-ray location of the bullet -located at the vertebral structure at level of L2 vertebral body with point of bullet upwards. Tracing invivo route of bullet No.2 After

penetrative over left Flank at above specified part bullet have Net upward movement.

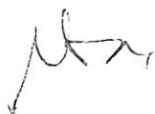
(C) Gun shot wound No.3 6mm x 2.8. mm located 1 ½" below left shoulder joint 2cm dorsal to left interior auxiliary line without abrasion color. X ray shows no bullet in chest cage. No exit wound noted over body. No subcutaneous pales noted. Gun shot wound No.3 is highly suggestive of a ricochet bullet injury. Natural depth of wound 3cm traced depth of wound untraced.

As per the reconstruction report dated 23rd December, 2013 the two police officers, S.I. N.B.Chudasma and D.S.P. Pargi were standing about 10 feet away from the deceased when the firing had taken place. The nature of the injuries found on the dead body suggests that to be so. Mr. Prashant Bhushan, the learned counsel, has argued that gunshot wound No.B which was located on the left flank bone dorsal to the left arterial auxiliary line and the bullet lodged in the body itself with the track of the bullet being from downward to upwards clearly showed that the deceased had not been sitting on the ground as alleged by the police at the time when he had been hit because if he had indeed been sitting the track would have been from upward to downward. This would be the case in normal circumstances but it is clear from the facts narrated above that the police party was caught completely unawares when the deceased had taken out the weapon hidden there



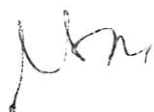
and brandished it and also fired three shots. It is, therefore, obvious that the police party would have taken evasive action in any manner possible to them more particularly as they were several officers bunched close together. It has come in the statements of the police officers that when the deceased had taken out the revolver and threatened them they had scattered here and there. In this situation it cannot be conclusively expected that the two parties, the deceased and the police, were facing each other when the firing had taken place.

It is also significant that the weapon that the deceased had used was incorrectly marked as being made in the U.S.A. but it was in fact a 7.65 mm bore country made one as broken pieces of a cartridge shell had been picked up from the spot when the ammunition had burst as is often the case in sub-standard country made weapons. It was noted in the reports of the F.S.L. dated 13th April, 2005 and 25th April, 2005 that three empty spent cartridges cases had been recovered along with the pistol aforesaid had black gun powder stains and did not bear percussion caps which indicated that the bullets had burst when the deceased had fired the shots. It is significant that in the report dated 25th April, 2005 rendered by F.S.L. there is an indication that the percussion caps of the cartridge fired in the laboratory for testing purpose had also burst. Dr. B.R.Sharma in Forensic Science in Criminal Investigation and Trials (4th Edition) Page 475 observed that on account of sub standard quality country made weapons often burst



on being fired and metallic pieces may fly over and this can also happen when the percussion cap is punctured. When the F.S.L. report is read with the recoveries made from the spot it can be reasonably concluded that the police version was the correct one as the story could not have been created in the light of what has been given out as a result of the tests in the laboratory.


Some arguments have been made with regard to the nature of the injuries on the person of Constable Gajendersinh who is said to have been injured by the first shot fired by the deceased. The hand wash of the deceased was taken soon after the incident and as per the report of the Laboratory residue of fire arm discharge had been found on the hand. The gunshot injury on the person of Constable Gajendersinh is another significant factor in going to the truthfulness to the police version. The report of the F.S.L. dated 13th April, 2005 reveals that the holes found on the trouser of the police constable had been caused by a bullet and that the firing had been made from a distance of 2 ft as determined in a microscopic examination. These factors conclusively prove that the deceased had first fired at the police party with a country made weapon and even caused an injury on the person of Gajendersinh and despite being warned to throw down the weapon he had continued to fire at the police officials which had led to retaliatory fire. In this view of the matter, no further proceedings are called for in this case.



**I-C.R.No. 146/2006 Police Station Shahibaugh
Ahmedabad, under Sections 279,304(A) I.P.C.and
under Sections 177,184,134(B) of the Motor Vehicles
Act.**

This matter was finally taken up on 13th February, 2016 in the meeting of the Monitoring Authority held on that day. The facts are as under:-

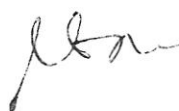
On 13th April, 2006 information was received by Sub Inspector J.M. Bharwad and other police officials that some persons who were members of the Irani Gang, were roaming about in Ahmedabad intending to commit fraud on banks and cheat people and were putting up in the Royal Hotel, Sarkhej and amongst them there were some persons who were to be served warrants from Surat and others who were to be arrested for offences registered at the Karanj Police Station. On receiving this intelligence Sub Inspector J.M. Bharwad and a police force consisting of Head Constable Abheysinh, Constable Ghanshambhai and two SRP persons, Head Constable Prabhudas and Police Constable Sandipsinh, and driver Prakash Omkar and Gangman Manubhai Shankerbhi got into an official vehicle (Tata-407) and left for the Royal Hotel. The police party reached the hotel at about 11.00 p.m. and found in all 18 persons present in the hotel. The police thereupon brought the 18 persons to the Sector 2, Police Station in their private vehicles and told them to sit in their vehicles which were directed to be parked in



the compound. At about mid night Police Constable Ghanshyambhai was taking Kasam Jafar a (hereinafter called the deceased) resident of Ambevali Kalyan, Indira Nagar Railway Station Mumbai to the office of Sub Inspector Bharwad for interrogation when the deceased told him that he was thirsty and wanted to drink water. The Constable took him to the water tap and left him alone while he went to the urinal to attend to nature's call. On returning the Constable found that the deceased had disappeared. A search was made for him but to no effect. Information of his disappearance was conveyed to Sub Inspector Bharwad and to the other members of the police party where after a search was made for him outside the Police Commissioner's office compound near the temple of Hanuman Ji and Jogni Mata but he could not be traced. The 17 other persons who had been brought to the Police Station were interrogated separately by Sub Inspector Bharwad on the 14th April, 2006 and after their statements had been videographed they were allowed to go the next day at about 5.30 p.m. and their vehicles were also released. In the meanwhile Sub Inspector N.M.Modiya of Shahibaugh Police Station who was on duty and on night patrol in the Police Station limits, received a message from the control room at about 1.00 a.m. on the 14th April, 2006 that information had been received from one Rajinderbhai Mistri that a person was lying unconscious near the Panchal Milan Mandir. Sub Inspector Modiya then reached the underbridge near Municipal Central Zone, Shahibaugh and found a dead body lying there

N.M.

bleeding from the mouth. He also called the first informant Rajinderbhai Mistri to the site who told him that he had been walking from Shahibaugh police outpost to Shahibaugh underbridge when he had seen a person lying on the road where after he had called the police and it appeared to him that the deceased had been killed by an unknown vehicle. The Sub Inspector examined the dead body and on seeing the injuries he concluded that the deceased had died in a motor vehicle accident and had been run over by a speeding vehicle driven negligently. C.R.No. 146 of 2006 under Sections 279/304-A I.P.C and under various sections of the Motor Vehicles Act was accordingly registered by Sub Inspector Modiya at Police Station, Shahibaugh at 4.00 a.m. on 14th April, 2006. The investigation was thereafter started by S.I. Modiya and the spot was inspected in the presence of witness Yusuf Khan. At the initial stage the identity of the deceased could not be ascertained but during investigation it was found that he was Kasim Jafer of Mumbai. His family members who were in Mumbai were located and they reached Ahmedabad on 18th April, 2006 and his wife Mariam Jafer and her mother Fatima Bibi identified the dead body. In the meanwhile Inspector H.B.Rajput of the Shahibaugh Police Station also recorded the statements of the aforesaid women. The Post Mortem on the dead body was performed on 14th April, 2006 in Civil Hospital, Ahmedabad and on getting a clarification from the Medical Officers it was intimated that the death had been caused due to internal and external injuries which were ante



replied in the negative, some people had come to her residence on the next day and narrated the facts relating to the incident. As the bill of the Royal Hotel was available with Musa he handed over the same to her and she had called the Hotel by giving her identity as the wife of Kasim Jafer but the hotel people informed her that they were unaware of the identity of the police personnel but after insistence she was told that the Police Officer was J.M.Bharwad who had been accompanied by 20-24 police personnel. She had then got the telephone number of Sub Inspector J.M.Bharwad from the persons in the hotel and contacted him who told her that her husband had run away. She, her mother and aunt thereafter met Munirsha Advocate and told him the facts of the case and also requested that the dead body be handed over to her. Thereafter they had gone to the office of the Commissioner of Police and met Sub Inspector Bharwad who again said that her husband had run away. She, thereafter, handed over an application to Sub Inspector Bharwad who had sent the same to Mr. Ashish Bhatia who told her that fax messages would be sent throughout the State to get information relating to her missing husband. All this happened on the morning of 17th but on the 18th the information came that an accident had taken place on the night of 13th and 14th and they were advised to visit Kalupur chowki to see the body. She alongwith her relatives then went to the chowki and they were asked to identify some clothes, finger ring etc and the same were identified by her and her mother. They were



shown a photograph of the post mortem which indicated signs of beating and thereafter they were taken to the Civil Hospital where they identified the dead body. The dead body showed signs of beating and torture. The dead body was handed over to them on 19th April, 2006 in the presence of family members where after she went to the High Court to file an application. At a later stage the Government indicated that the case had been handed over to the C.B.I. but after nothing had been done she had ultimately met Teesta Madam who filed an application in the Supreme Court to become a party in the writ petition filed by Javed Akhtar.

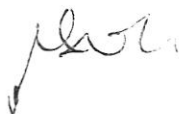
The further investigation was carried out by the S.T.F. through its Investigating Officer D.S.P. A.M.Patel. He recorded the statement of Mariam Jafer aforesaid and also went to Ambewali, Maharashtra and recorded the statements of three other persons who had been present alongwith the deceased. They were Hajamali, Pyareali Syed and Kashmiri wife of Hajamali. The statements of the others who were present with the deceased could not be recorded on account of a law and order problem. D.S.P. Patel also recorded the statement of Sub Inspector N.M.Modya who repeated the story given above. D.S.P. Patel again went to Ambevali on 21st May, 2013 and recorded the statements of Faizalhassan, Kajimhussan, Mehmud Nadarali Sheikh, Gulab Chandra Yadav and Hajamali Jafarali. Statements of the owner of the Royal Hotel Iqbalhussain and the



managers Yasinmiya and Mohmad Abass and waiter in the hotel Sureshbhai were recorded on 21st June, 2013 and statement of Fatima Bibi mother of Mariam was recorded on 27th June, 2013. The D.S.P. also recorded the statement of the Dr. Gautam Vrajlal who had performed the Post Mortem and also of one Dr. Yogita Mandar of Padmini Hospital, Kalyan on 5th August, 2013 who stated that the deceased had been brought to her in the year 2004 for treatment as he was suffering from some psychological problem. The D.S.P. also recorded the statements of the Police Officers who were present when the deceased and his companions had been brought to the police office and they included Abheysinh Prithisinh Joint Commissioner of Police, ASI Dhanrajsinh, HC Ghanshambhai and HC Samantbhai. A letter dated 15th September, 2013 was also written to the Head of Forensic Science of Civil Hospital, Shahibaugh who opined vide report dated 7th November, 2013 that injury No.3 could have been caused by using a hard blunt substance or pushing against such substance or due to fall on hard blunt substance and injury No.2 could be caused due to internal and external injury caused to the deceased. It was opined that such injuries were possible on colliding with a hard substance such as in a motor accident and the dragging and abrasion marks could be caused due to dragging by the motor vehicle. The statement of S.I. J.M.Bharwad who had been incharge of the raiding party was recorded on 1st April, 2014 who repeated the story already mentioned at the initial stage. He

clarified that 18 persons had been found in the Royal Hotel and had been brought to the Police Station for interrogation on suspicion that they were using stolen vehicles. A Quallis car belonging to the 18 detenus and other private vehicles were also brought to the Shahbaugh Police Station compound. He further stated that as he had to take dinner he told the police staff that he would interrogate 18 detained persons separately later. He confirmed that Constable Ghanshambhai had told him about the circumstances under which the deceased had run away. He further stated that after the deceased had run away an effort had been made to trace him out though without success and that he had the next morning i.e. 14th April, 2016 interrogated the 17 persons who confirmed that they had been committing crimes at different places though they could not identify any of them and their statements had been duly videographed. He stated that all 17 were allowed to go at 5.30 p.m. and their vehicles were also released. He categorically stated that there had been no altercation with any of the persons who had been detained and nobody had been beaten by him. D.S.P. Patel concluded that the deceased had died an accidental death due to hitting or colliding with a hard surface such as in a motor accident.

This matter was finally considered by the Monitoring Authority in its meeting held on the 13th February, 2016 and several significant arguments have been raised by the learned counsel. It has been first and foremost been argued by Mr. Prashant Bhushan that the police version was on the face unacceptable and to



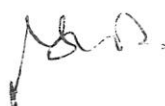
believe that a member of the dreaded Irani gang which had a reputation of being cheats and thugs had been able to so easily abscond from the Police Commissioner's office which was guarded like a fortress particularly as Gujarat had often been the victim of extreme violence. It has also been pointed out that the medical evidence and the examination of the site where the so called accident had taken place clearly revealed that the death had not occurred at that place but in fact the deceased had been done to death elsewhere and then his dead body thrown at the under bridge. He has also submitted that it was the admitted case that of the 18 persons had been to the Police Station the deceased was the first one to be interrogated and after he had been removed from the vehicles in which they had been detained, had been taken for interrogation and not been seen by his companions and though the remaining 17 had been in detention till 5 p.m. the next day police officers did not reveal much to them but had told them to quickly get out of Gujarat failing which they would face dire consequences. It has also been pointed out that in the initial investigation the police did not record the statement of any of the 17 members though directions that this should be done had been made vide letter of the Commissioner of the Police dated 10th October, 2006 and the statements of six of them had been recorded by the S.T.F. and their explanation completely belied the story given by the police as they stated that when the deceased had made an inquiry from the police officers they had got infuriated and



he had been manhandled and taken to Sub Inspector Bharwad for interrogation and soon a rod, ropes and pieces of a sarees had been taken from the police vehicle inside the Police Head Quarters. It has been submitted that the story that the deceased was suffering from a psychological problem which had made him to run away in fear from police custody was unbelievable and an after thought. Mr. Kogje, the learned counsel for the S.T.F. has pointed out that statements of the 17 detenus had been recorded by Sub Inspector Bharwad before they left the Police Head Quarter, Shahibaug at 5.00 p.m. and none of them had expressed any apprehension with regard to the whereabouts of their missing companion. He has further stated that there was no evidence to indicate that the deceased had been beaten, and that the Post Mortem examination was in consonance with the version given by the police as the nature of injuries and the blood lying around the dead body indicated that the deceased had been run over by a speeding vehicle.

I have considered the arguments addressed by the learned counsel.

It will be seen that as per the police version the deceased and his companions had been brought to the Police Head Quarters after 11 p.m. on 13th April, 2006. Sub Inspector Bharwad who was incharge of the Police Party was accompanied by a large number of police personnel and they were told to sit in their vehicles. The deceased who had been first called for interrogation followed by Jaffer Ali. As per the statement of Constable Ganeshbhai the deceased had



asked for drinking water on which he took him to the tap while he himself went to the washroom and on his return found that the deceased had disappeared. This story is impossible to accept as it is completely unnatural and against normal behaviour of a policemen who was left to guard a member of the notorious Irani gang. The negligence of Constable Ganshambhai does not appear to have harmed him in any manner as it is the admitted position that no action was taken against him for allowing a person under investigation to escape. During the course of arguments it has been pointed out that the Police Head Quarters is surrounded by a high security wall and it would have been impossible to scale over it. An attempt was made to argue that there was a small opening in the wall at a place where a tea-vendor used to sit and supply tea to the police personnel and that would have made it possible for the deceased to escape through that opening. This is a far fetched story as it assumes that the deceased was aware of the place where a part of the wall had been broken so as to facilitate his escape. This is no body's case. It is of yet greater significance that the deceased is said to have disappeared shortly before mid night of 13th April, 2006 and the dead body had been located by Inspector Modiya a couple of hours later. C.R.No. 146 of 2006 for offences punishable under Sections 279, 304-A of the Indian Penal Code and several provisions of the Motor Vehicles Act had been lodged at Police Station, Shahibaug at about 1 a.m. on the 14th April, 2006 by Inspector N.M.Modiya. At the time of



the lodging of the F.I.R. 17 companions of the deceased were in the Police Headquarters 2 kms in Shahibaug itself away but they were not informed about the death even till 5 p.m. on 14th April, 2006 when they were told to leave along with their vehicles and threatened not to come to Gujarat otherwise they would face dire consequences. In normal circumstances if the police had nothing to hide in they would have given the information about his death to his companions but so even more surprisingly, the dead body was identified by Inspector Modiya at the time of the Post Mortem at 9 a.m. on 14th April, 2006. The very conduct of the Police Officers is so unnatural that it raises very great suspicions about what had transpired in the matter.

The dead body was subjected to a Post Mortem on the morning of 14th April, 2006 and the following injuries were found thereon:-

1. CLW seen 4cm x 1.5 cm in size on left side of the cheek oblique.
2. Abrasion with contusion seen 10cm x 5 cm in size on left arm laterally irregular shaped red in colour.
3. Abrasion with contusion seen 10cm x 4 cm in size left medial fold axilla vertical reddish in colour.
4. Contusion seen size 4cm x 3cm right elbow joint laterally red coloured.
5. CLW seen 3cm x 2cm in size on left elbow joint posteriorly.

6. Abrasion with contusion seen 5cm x 4cm in size right -----region irregular shape read in colour.
7. Abrasion seen 8cm x 3cm in size on left fore arm laterally red in colour.

The internal examination revealed the following injuries:-

1. Hemorrhagic contusion seen on right temple, parietal region size 10cm x5 cm.
2. Meninges: linear fracture seen on right temporal parietal region 8cm in size.
3. Sub-dural haemorrhage seen on right temporo parietal regions.
4. CAH CRC seen on both hemisphere in the brain. Brain is congested.

The doctors opined that the cause of death was shock and haemorrhage due to injuries sustained on the dead body which were ante mortem in nature. It has been submitted by Mr. Prashant Bhushan that the injuries clearly revealed that the deceased had been beaten in the Police Head Quarters with stick or rods that had been taken from the police vehicle. Mr. Kogje has, however, submitted that the injuries were in fact the result of a motor vehicle accident and were consistent therewith. I am, however, of the opinion that in the background of the facts given above and the reluctance of the police to inform the relatives and family members of the deceased that he had met an accidental death, clearly betrays a guilty mind. Subsequent events confirm this view as the police was desperate to get a categoric



opinion from the doctors that it was an accident alone that had led to the death of the deceased but despite repeated efforts in this regard the doctors did not give a categorical opinion favouring the police. As already mentioned above the doctors had in the post mortem report given the cause of death as haemorrhage due to injuries over the body and no detail as to how they could have been caused was provided. When a specific query was made from the two post mortem doctors the following reply was given by them vide letter dated 7th November, 2013. The relevant portion is quoted herein below:-

“Reply No.1: The injuries shown in the column No.17 in the PM note of the deceased, injury on the under arm is caused using hard and blunt substance. This injury can be caused using hard and blunt substance, or colliding with it, falling on it or dealing hard and blunt substance it can be caused. In the case of accident such injury can be caused.

Reply No.2: As per the injuries shown in the PM note of the deceased due to the injuries caused on the body and internal injuries through which there can be profuse bleeding. The injuries caused to the deceased are caused due to hard and blunt substance.

Reply No.3: on the pant of the deceased on the back side there is tear mark, and on the stomach on the front (right illiac region) injury caused (PM note

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column No.17 injury No.6) does not appear to be consistent. On the back of the pant of the deceased tear is tear mark. It is consistent with the injuries show in the inquest panchnama in the left waist and left thigh due to dragging apparently.

Reply No.4: The injuries caused to the deceased are caused due to hard and blunt substance. These injuries can be caused due to hard and blunt substance. These injuries can be caused due to hitting on hard and blunt substance. Colliding with it. Falling on it or due to dealing any hard and blunt substance. In the case of motor vehicle accident such nature of injuries are possible. If the injuries are caused due to vehicle accident then the motor accident is caused on the left side of the body, such are possibilities.

Reply No.5: The injuries caused to the deceased are caused due to heavy or light vehicle, such opinion cannot be given.

Reply No.6: The external injuries caused on the body of the deceased which are shown in the PM Note Column No.17 these are dragging contusions and dragging nature of injuries. These injuries can be caused due to hitting on hard and blunt substance. Colliding with it. Falling on it or due to dealing any hard and blunt substance. In the case of motor accident due to dragging on the road such injuries are possible.”

Dissatisfied with the report dated 7th November, 2013, D.S.P. Patel again made a query from the Forensic Medicine Department of B.J. Medical College, Ahmedabad and a reply dated 6th August, 2014 was received therefrom.

Paragraph 2 and 3 reads as under:-

“(2) With regard to the clarification on the issue No.2 in your letter this is to state that the injuries caused to the deceased are caused due to hard and blunt substance. Such nature of injuries can be caused using one or more hard and blunt substance. The death of the deceased was caused due to the external and internal injuries shock and hemorrhage. These injuries were caused in motor accident or due to assaulting. In this regard clear medical opinion cannot be given. In this regard the circumstantial evidence be taken into consideration and take decision.

(3) With regard to the issue No.(3) mentioned in your letter for clarification it is stated that he external and internal injuries caused on the body of the deceased are caused by the hard and blunt substance. These are ante morte, this is evident from the Post Mortem report.”

In other words, despite great persistence, the police was unable to get an opinion to suit their needs and the effort appears to have been to manage a cover up rather than to get at the truth.



In order to support the version that the deceased had in fact run away as he had a psychological problem, the S.T.F. recorded the statement of Dr. Yogita Mandar Hardas on the 5th August 2013, a psychiatrist working in the Padmani Hospital, Mumbai. The Doctor was shown a statement which she is alleged to have made on the 27th April, 2006 alongwith a certificate in which she stated that the deceased had come to her for treatment in the year 2004 and that he was suffering from mental ailments and hallucinations and was continuously scared and that such a person was always under an apprehension that he would be killed. It appears to me however, that there is clear doubt as to the authenticity of this certificate and it has been produced for the first time on 5th August, 2013 at the time when the statement of Dr. Yogita Mandar had been recorded by D.S.P. Patel. There is no evidence that the deceased had visited the doctor time and again so that she could identify him but on the contrary she had clearly stated that he had not taken regular treatment from her. To remember one solitary patient after one visit after seven years stretches credibility beyond measure. It is not clear from the record as to whether the certificate aforementioned had even been produced earlier to 5th August 2013.

Another startling aspect of this matter is that the statements of the 17 members who had been apprehended alongwith the deceased on the 13th April, 2006 were never recorded by the Gujarat police at the time when the initial




investigation had been made by Inspector Modiya. The statements of six of them were recorded by the S.T.F. for the first time after the matter had been referred to the Monitoring Authority. These six were Yavar Abbas Hussain, Khadim Hussain, Gulab Chandra, Javed Ali, Hazam Ali and Majmood Shaikh who all stated to the narrative given in the beginning and reiterated fully as to what had transpired on the 13th April, 2006. They unanimously said that they had come on pilgrimage from Mumbai to Husseini Tekari and after performing the pilgrimage they had come to the Royal Hotel, Sarkhej when a large number of policemen in plain clothes had descended on the hotel and taken all 18 persons to the Police Commissioner's office in Shahibaug, Ahmedabad and that the deceased had a bit of an unpleasant exchange with the police officials when the deceased questioned them as to why they were being detained and that a short while later the deceased was told that he was wanted by the police officers for questioning and he had been caught by his hair and taken away where after some policemen had come to a police vehicle and taken a rope, a rod, pieces of a saree and several other articles with them. They further stated that after about 15 minutes police arrived in their vehicles and asked them as to whether the deceased had returned and when they replied in the negative they were told that he had been involved in stealing and had run away. They stated that when further questioned the policemen became angry and kept them in the Police Station till 6 p.m. on the 14th April, 2006



whereafter they were told to leave Gujarat and to return home immediately, after their finger prints had been taken and statements videographed. They also stated that after their release they had informed the wife of the deceased, Mariam, that her husband had disappeared whereupon she had come to Ahmedabad and made further inquiries.

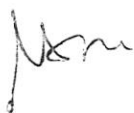
Mr. Kogje has, however, stated that as the statements of the 17 companions of the deceased had been taken by Inspector Bharwad and videographed on the 14th April, 2006 and none of them had voiced any suspicion with regard to the disappearance of the deceased, the story had now been cooked up and was false and unbelievable.

To my mind this argument cannot be accepted. It has been repeatedly pointed out by the six the persons whose statements have been recorded by the S.T.F., that they had been told to return to Mumbai forthwith and not to stay around in the State of Gujarat failing which they would be in trouble. Moreover, the fact that the story projected now was not a new one is clearly evident from the statement of Mariam and the applications she had filed through her lawyers and Teesta Madam immediately after the incident doubting the story put forth by the police and giving the counter version. Significantly also, the Investigating Officer in C.R. No. 146 of 2006 under Sections 279, 304(A) I.P.C. which refers to the accidental death of the deceased was S.I. N.M.Modiya and not S.I. Bharwad.



Admittedly the former did not record any statement of the 17 companions of the deceased. No credibility, therefore, can be attached to the so called statements recorded by Inspector Bharwad as in fact the allegations of misconduct had been leveled against him.

It will also be seen that the S.T.F. had recorded the statements of only six out of the seventeen who had been part of the group that had gone on pilgrimage. D.S.P. Patel made several inquiries regarding the whereabouts of the others from (amongst others) the widow of the deceased. It transpired that their present whereabouts were unknown and some were dead. This explains the inability of the S.T.F. to record all the statements but the statements of the six which had been recorded clearly indicate that police version that the deceased had run away from the police Head Quarters, is not believable. It is significant that in his statement S.I. J.M.Bharwad recorded by the S.T.F. on 1st April, 2014 produced the C.D. which he had made while interrogating the seventeen persons on 14th April, 2006. These statements had been recorded when these persons were not aware of the death of the deceased. The statements of the various policemen who were part of the raiding party were recorded and they are all to the same effect. The effort of the police officers to dub the deceased and his companions as criminals has also not been successful as no evidence whatsoever has been produced to show that they had been involved in any crime. Their very detention on the 13th April,



2006 from Royal Hotel was thus not justified. I am, therefore, of the opinion that S.I. J.M.Bharwad and Constable Ganeshbhai are prima facie involved in the killing of the deceased. These two police officials need to be prosecuted for murder. If during the course of the trial the evidence reveals that some others were also involved in any manner whatsoever, they too would be indicted and tried as per law.

By order dated 21st November,2013, I had awarded a sum of Rs.14 lakhs as compensation to the widow and children of the deceased. What impelled me to direct this payment was that the deceased had left behind a widow and five children, a daughter Zeenat, 17 years, son Kasim, 14 years, daughter Batul, 12 years and a set of twin girls Rabab and Shakina, 8 years. Though some guess work would inevitably be present, the broad parameter applied was that the compensation should be reasonable enough to give the family hope and a chance in life with some basic education so as to prepare them for the future and as the cost of living in Mumbai was truly astronomical, some allowance had to be made for that reason as well. Mariam Jaffer had subsequently filed two applications calling for more compensation. These had been rejected by me.



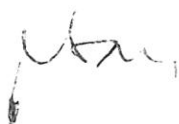
I-C.R.No. 11/2006 Police Station Valsad District Valsad, under Sections 307 I.P.C. and Sections 25(1)B)(A), 27(1) the Arms Act and Section 135 of B.P.Act

This matter was finally taken up on 13th February, 2016 in the meeting of the Monitoring Authority held on that day. The facts are as under:-

Jogindrasinh Khatansing, a Labana Sikh, hereinafter called 'the deceased' resident of Bilimora Devsar Sikh Camp, Sardar market, Tehsil Gandevi, District Navsari was wanted by the police in several serious criminal cases. On 17th January, 2006 Inspector K.G.Erda of the Crime Branch, Valsad, received information that the deceased was to visit his associate Kishore Chhiba at his residence in Nanakvada, Tehsil and District Valsad. On receiving this information the Inspector accompanied by A.S.I. Manoharrao Baburao, Head Constable Bhaskarrao, Head Constable Kantilal Maganlal, Constable Maheshbhai, Constable Satishbhai, Constable Jatendra Sudambhai, Constable Rupsinh, Constable Dipakbhai, Constable Rupabhai, Driver Police Constable Anil Baburao and Driver Police Constable Nimba Kashinath held a nakabandi near the Nanak Vada School compound by dividing themselves into three teams. At about 8.45 p.m. the deceased was observed coming towards them on a motorcycle and after he had



been identified by ASI Manoharbai, the police officer gave a signal to the members of the police party with a torch. The deceased, however, on seeing the police jeep tried to turn his motorcycle but it skidded and he fell on the road. He immediately got up and again attempted to escape but the members of the raiding party surrounded him on which he pulled out a Rambo knife and caused injuries to ASI Manoharbai, Head Constable Bhaskarrao, Head Constable Kantibhai, Constable Maheshbai, Constable Satishbai and Constable Jitendra. ASI Manoharbai hit the deceased on his hand with the torch held by him on which the knife fell from his hand. The deceased thereupon pulled out a revolver from his person and made an attempt to fire at the police party and as he had a history of indulging in firing on the police in the past, Inspector Erda fired one round, ASI Manoharbai fired five rounds, Head Constable Kantibhai three rounds, and Constable Bhaskarrao 5 rounds from their service revolvers. A total of 14 rounds were thus fired of which nine shots hit the deceased on various parts of his body. He was immediately referred to the Civil Hospital Valsad but he expired during the course of treatment. On the above facts C.R. No. 11 of 2006 for offences punishable under Sections 307 etc. I.P.C. and various Sections 25 of the Arms Act was registered against the deceased and the investigation was entrusted to Inspector J.G.Mehta of the Valsad Police Station. Inspector Mehta visited the place of occurrence late in the night and inspected the site in the presence of panches

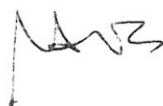


Mustaq Hussain and Bankibhai. Motor cycle bearing No. GJ-15-635 with a broken light was found lying at the spot. Further examination revealed the presence of skid marks which appeared to have been made when the motorcycle had slipped and fallen on the road. In addition a country made .32 revolver bore loaded with two cartridges, a wrist watch and three mobile phones with identifiable particulars and a Rambo knife were picked up. In the meanwhile the police personnel who had used their service weapons in the incident handed over the same to the Investigating Officer along with the empty shells, 14 in number. The Sub Divisional Magistrate, Valsad prepared an inquest report and the dead body was thereafter referred for the post mortem examination. The Post Mortem Board of Dr. Mittal B. Tandel and Dr. L.M.Labhani found the following injuries on the person of the deceased:-

1. Entrance wound circular in shape, 0.5 cms. in size, diameter margin, inverted greasy and smoke, smaller than diameter of bullet on Rt.(Right) hypochondria regions 6 cm to midline.
2. Entrance wound seen circular in shape, 0.5 cms in diameter, inverted margin, greasy and smoke, smaller than diameter of bullet on Lt.(left) hypochondria region, 4 cms. to midline.
3. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin greasy and smoke, on epigastrine region, 6 cms. to umbilicus.



4. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin greasy and smoke, on Rt.(right) side medial aspect of thigh, particles seen lateral side of Rt.(Right) leg above 3 cms. to Rt.(right) knee joint.
5. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin greasy and smoke, on Lt.(left) side, 12 cms. below the Lt.(left) knee joint.
6. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin greasy and smoke, smaller than bullet on Rt. (right) side of chest, 4 cms. below nipple and exit wound seen, bigger in size than bullet. External edge and on Rt.(right) side back side, 6 cms. to midline.
7. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin greasy and smoke, smaller diameter on Lt.(left) side chest, 2 cms. above nipple and exit wound seen, bigger in size than bullet. Averted edge and on Lt.(left) side of chest, 4 cms. to midline.
8. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin, greasy and smoke, smaller than diameter of bullet on Rt.(right) side, mid auxiliary line, 6 cms. to Umbrines and exit wound bigger in size than bullet, averted in edge, bleeding present on Rt.(right) side back, 8 cms. to midline.



9. Entrance wound seen circular in shape, 0.5 cms. in diameter, inverted margin greasy and smoke, smaller than diameter of bullet, on Lt.(left) side, Rt. (right) iliwe rossa, 4 cms. to Umbhicans and exit wound bigger than in size than bullet, averted in edge, bleeding present on Lt.(left) side, back side 5 cms. to midline

From the above details it is clear that there were nine wounds of entry almost of the same dimensions with greasy and smoky margins and four of exit meaning thereby that nine of the fourteen shots fired by the police had struck the deceased. In addition to the above the Post Mortem examination also revealed a fracture of the left tibia and fibula. The medical certificates of the police personnel who had allegedly received injuries at the hands of the deceased with a knife were also obtained from the Government Hospital, Valsad. The investigation found that the deceased had been shot in self defence by the police on which an application for abatement of proceedings was filed in the competent court. An order was passed by the Magistrate concerned on the 14th March, 2006 calling for a detailed report. The matter is still pending as of now.


On reference of the matter to the S.T.F. and the Monitoring Authority general notice was published in the Times Global (Times of India) dated 18th July, 2012. In addition notice was published in the Gujarat Samachar and Sandesh Bhavan on 18th July, 2012 and personal notices were served on Balvant Singh



Khatan Singh Sikh on the 12th July, 2012, the brother of the deceased. Nobody has come forward in response to any of the notices on behalf of the deceased.

The initial statement of Balvantsinh had been recorded by the police on the 18th January, 2006. In this statement he had deposed that the deceased Jogindrasinh was his step brother, their mother being common, and that about 12/13 years earlier he had abandoned his family and entered the world of crime which included the murder of his father and that he had thereafter broken all relations with him. He further stated that the deceased had not been home since long and the police was looking out for him on account of the many criminal cases that had been registered against him and that he had come to know that he had been shot and killed by the police in self defence on which he alongwith other members of the Labana community had gone to the Valsad Hospital and taken possession of the dead body after the completion of the post mortem examination and had performed the last rites. A statement to the same effect was made on 7th September, 2013 during the course of further investigation by the S.T.F. and was recorded by D.S.P. A.M. Patel, the Investigating Officer.

At the time of discussion on this matter on 13th February, 2016 Mr. Prashant Bhushan, Mr. Somnath Vatsa, Mr. Rahul Sharma and Mr. I.S. Syed Advocates appeared on behalf of the petitioners and Mr. A.Y. Kogje Advocate on behalf of the S.T.F. Written submissions have also been filed by Mr. Bhushan in

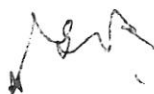


this matter. The first submission raised by Mr. Prashant Bhushan is that the story was inherently improbable in as much that in all nine shots which had hit the deceased appeared to be within two feet as the margins were inverted, greasy and smoky and uniformly of 0.5 cm and if the story as projected by the police was correct and that there had been some scuffle as a prelude to the firing, different characteristics such as distances, angles and dimensions ought to have been visible. He further stated that this uniformity appears to be the hall mark of an execution style killing. He referred to the statements of Dr. N.M. Labhani and Dr. Mittal B. Tandel recorded on 15th June, 2014 in which they clearly stated that there was smoke and grease on the entry wounds found on the body but there was no indication of smoke or grease on the clothes that the deceased had been wearing. Dr. Labhani also recorded his statement on 23rd April, 2013 which is to the same effect and also indicated that the shots had been fired from a distance of 4/5 feet. Mr. Prashant Bhushan has accordingly pointed out that if the deceased had been killed in the manner suggested by the police the smoke and grease residue would have been found on his shirt as well around the bullet holes. He has also emphasized that the incident was close to a residential area and though the statements of many residents had been recorded none had stated that they had actually seen the incident or heard the sound of gunfire though they had the knowledge that some incident had indeed taken place and has argued that the



deceased had been killed elsewhere and the body brought to this place. He has further submitted that the very antecedents of the deceased, in as much that he was an accused or involved in about 18 serious criminal cases over a period of 12 years, made him a primary target for a fake encounter. He has finally submitted that it was of the utmost importance to notice that the deceased had allegedly caused injuries to several police officials with a Rambo knife before it had been knocked out of his hand with a torch, but the medical evidence showed that none of the police officials had any cutting or penetrating injuries as they all appeared to have been caused with a blunt weapon and on the contrary as there was no serious damage to the motorcycle or any injuries in the shape of abrasions or contusions on the deceased, would in the circumstances, point to a different story.

Mr. A.Y.Kogje has strongly controverted the arguments raised by the learned counsel on the other side. He has pointed out that the argument that the shots had been fired from a uniform and very short range of less than two feet was not borne out from the record as in this situation signs of burning, scorching or blackening would have been visible on the clothes and body, the more so when weapons of high caliber i.e. a .38 bore revolver had been used. He has accordingly urged that this was not a case of an execution style cold blooded killing and that the incident had happened as per the police version. He has further argued that on being asked in clarification the two Doctors who had conducted the medico legal



examination of the injured police officers had stated that the injuries found on them could have been caused with a Rambo knife and as a matter of fact that there was no allegation that any injury had been caused with a Rambo knife and all that had been said was that he had attacked the police officers therewith. It has further been pointed out that the question of any witness being present at the time of the incident was remote in as much that the incident had happened suddenly after sundown and that the time gap between the arrival of the deceased on his motorcycle and the firing of 14 shots would have taken not more than a minute or two.

The first argument raised by Mr. Prashant Bhushan is with regard to the nature of the wounds on the dead body. As already indicated there were nine wounds of entry of almost uniform dimensions and surrounded by greasy and smoky margins. What is to be seen here is that could the dimensions and nature of the injuries (given that they have been caused within a distance of 2 feet as suggested by Mr. Bhushan) raise serious suspicion that the deceased had in fact been executed and not killed by the police in the manner suggested. As per Modi's Medical Jurisprudence and Toxicology(23rd Edition) page 726 if the shots had been fired within about 60 cm i.e. about 2 feet there ought to have been signs of tattooing around the injury. There is no such indication and what is said is that margins were greasy and smoky. This appears to be in consonance with the



opinion of the two Post Mortem Doctors who clarified yet further in their statements recorded by the S.T.F. on 23rd April, 2013 that the shots appeared to have been fired from a distance of 4/5 feet. It is true that there appears to be no greasy or smoky residue around the bullet holes on the clothes worn by the deceased and no explanation has been given by the Doctors for this absence as in the statement of Dr. Tandel recorded on the 14th June, 2014 he again stated that there was no presence of smoke or grease noticed by them on the clothes and as such they had handed over the clothes to the police on completion of the post mortem. The explanation is, however, available in Dr. B.R.Sharma's Forensic Science in Criminal Investigation and Trials at page 460. The relevant paragraph 9.10.3.4. Dirt Ring as under:-

“9.10.3.4 Dirt ring

Dirt is deposited by some projectile around the wound. The projectiles often carry grease on them. Dirt gets collected on the grease which, in turn, is deposited around the wound, when they enter the body.

In shotgun ammunition, shots are rubbed with graphite. A small amount of graphite is carried by the shots, which they deposit around the hole when entering the body.

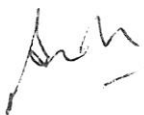


Dirt may be picked up by the projectile while passing through a medium (clothes or mud walls), or, in ricochet, from the surface from which the projectile has ricocheted. This dirty may be deposited around the entrance hole.

Existence of a dirt ring indicates the entrance side of a firearm injury.

It does not give range."

It is evident, therefore, that the greasy and smoky wounds represented dirt rings, and were not marks of blackening and tattooing which could fix the range of fire and the dirt ring was expected to be only around the wound of entry. The F.S.L. examined the clothes taken off the deceased's dead body and in its report dated 3rd June, 2006 the Laboratory opined that three of the four holes found on the trousers were bullet holes whereas no opinion could be given with regard to the fourth. Likewise the Laboratory found that hole Nos. 1 to 6 and 7 and 8 on the shirt worn by the deceased had been caused due to fire arm discharge whereas no opinion could be given with regard to hole number five. The holes found on the vest and underwear could not be conclusively said to be bullet holes. In this view of the matter no burning or blackening signs had been detected on the dead body as the shots had been fired from 4/5 feet or more and as such could not have been reflected on the clothes as well. On the contrary the positive findings of the F.S.L. is that many of the holes found on the trousers and shirt worn by the deceased were



in fact bullet holes. The suggestion made by Mr. Bhushan that the deceased had been killed elsewhere and his body was brought to the spot is not acceptable as it defies logic for the simple reason that the police would not kill a person in a remote area and throw the body in the midst of a residential area. On the contrary the statements of many local residents have been recorded and they did say that some incident had taken place on the day and time in question and they include Jogindernath Chatterji, Babliben, Sonalben, Devchand Patel, Bhanuben, Hemantbhai and Yogitaben.

The story is further borne out of the fact that at the time of recording of the panchnama on 17th January, 2006 at about 10.30 p.m. the description of the motorcycle used by the deceased was given and it was noted that the signal lights of the left side of the motorcycle had been broken and there appeared to be skid marks of the tyres when the motorcycle had slipped. In addition there was blood lying all around including a blood stained Rambo knife. To say, therefore, that no glass pieces had been found at the spot is incorrect. Likewise, the blood stained earth picked up from the spot and the blood stains found on the Rambo knife were of the blood group of the deceased, as on account of multiple gunshot wounds there had been profuse bleeding. The presence of blood stains matching with the deceased clearly fixes not only the place of incident but the additional fact that the knife had been used by the deceased.



I have gone through the English translation of the certificates issued with regard to the injuries on the police personnel allegedly caused by the deceased with a Rambo knife. Mr. Bhushan has in his written submissions pointed out that as per the English Translation of the injury statements the injuries are said to have been caused by a sharp cutting object though the original documents which are in the file indicate that at least in three cases i.e. in the case of Satishbhai, Jitender and Rupsinh the injuries seem to have been wrongly translated as having been caused with a sharp cutting object instead of a hard and blunt one. Be that as it may, the facts indicate that the deceased was in fact taken by surprise by the presence of the police party looking for him and he had fallen from the motorcycle in an attempt to escape. In the reconstruction made by the F.S.L. he is shown to be surrounded by about 10 police personnel and the normal tendency in such a situation would be to flay his arms in an attempt to intimidate the police personnel with a knife and in that eventuality the injuries could have been caused by any part of the knife and not necessarily the sharp or pointed one. Moreover the police officers were conscious of the fact that the deceased was a man of desperate character and they would have kept a little distance away from him. It, therefore, appears that the mere fact that the injured policemen did not appear to have cutting injuries does not in any way detract from the police version. The F.S.L.



examination of the spent cartridges as also the bullets recovered from the dead body shows that they matched with the revolvers that had been used.

I find that in the present case there could be some suspicion about the killing of the deceased in the light of the fact that he was a notorious criminal and could, therefore, possibly be a target for the police but in the absence of any cogent evidence linking and suggesting that the deceased had been killed in cold blood, I am of the opinion that no further action is called for in this case.

I-C.R.No. 8/2003 D.C.B. Police Station Ahmedabad City, under Sections 120-B, 212, 121A, 122, 123, 307, 353, 186 and 224 I.P.C. and 25(1)B(A) of the Arms Act and u/s 135(1) of B.P.Act

Only a very concise description of the facts need to be given in the background that the matter has been concluded by a Court's order. In this case two persons alleged to be terrorists, Ganesh Khunte and Mahendra Jadav, were killed in a police encounter on the 23rd June, 2003. In all there were eight accused of whom Ganesh Khunte and Mahendra Jadav were killed, four were acquitted and three were convicted and one discharged by the POTA court. Two sets of appeals were taken before the High Court, one by the State of Gujarat seeking the conviction of the acquitted accused and an increase in the quantum of sentence of those who had been convicted, and the second by those who had been convicted.



Both sets of appeals were dismissed by the High Court vide its judgment dated 21st November, 2013. This matter was referred to the Monitoring Authority consequent to the orders of the Supreme Court in Writ Petitions (Criminal) Nos. 31 of 2007 and 83 of 2007 and came up for final discussion before the Monitoring Authority on the 13th February, 2016 alongwith several other cases and arguments addressed by Mr. Prashant Bhushan Advocate, Mr. A.J.Yagnik, and Mr. Somnath Vatsa Advocates for the petitioners and Mr. Alpesh Y. Kogje, Advocate for the S.T.F., were heard. The order passed by me on that date is quoted below in extenso to avoid repetition:-

“In the case mentioned at Serial No.2 (C.R.No.08 of 2003) Mr. Bhushan and Mr. Yagnik, learned counsel for the petitioners, have argued that Ganesh Khunte and Mahendra Jadav were victims of a fake encounter and in this connection have referred to some of the evidence more particularly the Post Mortem Report to support their assertion. I have gone through the relevant facts with the help of the learned counsel on both sides as well as of the Investigating Officer. The allegations are that Ganesh Khunte, Mahendra Jadav and several others were said to be involved in waging war against the State, attempts to murder Police Officers and conspiracy to murder political figures in Gujarat. Ganesh Khunte and Mahendra Jadav were gunned down by the police in an encounter on 23rd June, 2003 whereas the others were brought to trial under various sections of the Prevention of Terrorism Act, 2002(POTA) read with Section 120-B of the Indian Penal Code. One of the accused was discharged, three were convicted and four were acquitted vide



judgment of the POTA Court dated 22nd June, 2007. The Court while dealing with the question as to whether Ganesh Khunte and Mahendra Jadav had been victims of a fake encounter observed as under:-

“Having considered the evidence as well as the arguments of the prosecution as well as defence, I am of the opinion that this court has not to decide whether it is a fake encounter or real encounter, but this Court has to decide whether both the deceased accused made an attempt to murder of (sic) the Police Officers.”

The Court then concluded:-

“ So, I am of the view that deceased Ganesh Khunte and Mahendra Jadav made an attempt to murder Police Officers and, therefore, in self defence, Police Officers fired and both the accused were injured and fell down.”

In other words the Court had at one stage observed that no opinion was to be rendered as to whether it was a fake or real encounter but subsequently there is a categoric finding that the police party was justified in killing Ganesh Khunte and Mahendra Jadav as they did so in self defence inferring that there was nothing to suggest that it was a fake encounter. Two sets of appeals were filed before the High Court, one by the accused who had been convicted and the other by the State seeking to challenge the acquittal of some of the accused and for seeking enhancement of the sentence of those convicted. Both sets of appeals were dismissed by the High Court vide its judgment dated 21st November, 2013 but while doing so (in Para 13 of the judgment) made the following observations:-



“We are unable to persuade ourselves that no case is made out against the accused nos. 5 to 7 under POTA considering the observations and conclusion arrived at by the trial court which are just and proper. We are convinced that the decisions cited before the learned trial judge have been rightly considered in its true perspective. It has been proved by cogent evidence that the deceased namely Ganesh Khunte and Mahendra were terrorists. The accused who were found guilty have served their term. We are considering the appeals in their totality. The evidence of PW.1 inspires confidence. The evidence of PW.2 corroborates with that of PW.1. The evidences which have been placed on record are so clinching against the accused who have been found guilty of conspiring to do away to death late Shri Bhatt, the then Law Minister with Government of Gujarat and one Mr. Barot.”

Mr. Prashant Bhushan the learned counsel for the petitioners has argued that in the background that the question as to a fake encounter having been left undecided, it was open to the Monitoring Authority to go into the allegations and to determine the exact nature of the incident.

I am, however, of the opinion that in the light of the facts pointed out above, more particularly of the categoric findings against Ganesh Khunte and Mahendra Jadav made by the courts below on a judicial appraisal by the POTA Court and the High Court, it would be inappropriate for me to go into this matter as the judicial process already stands concluded. On this Mr. Bhushan states that he will make an application to the Supreme Court seeking a clarification as to the procedure to be followed in this



matter. He further states that the clarification will be sought, if possible, by the next date.”

“.....In the meanwhile learned counsel for the petitioners are requested to furnish their written submissions with respect to the matters taken up today within two weeks with copies to the S.T.F. as well as to Mr. Kogje who may submit their counters within two weeks with advance copies to the learned counsel for the petitioners. Copies of this order be supplied to the learned counsel immediately.”

Against the order aforesaid Criminal Misc. Petition No. 230 of 2017 was filed in the Supreme Court and was taken up by the Hon'ble Bench on the 6th January, 2017 leading to the order reproduced below:-

“The following observations have been recorded by Hon'ble Mr. Justice Bedi in his order dated 13.02.2015:

I am, however, of the opinion that in the light of the facts pointed out above, more particularly of the categoric findings against Ganesh Khunte and Mahendra Jadav made by the courts below on a judicial appraisal by the POTA Court and the High Court, it would be inappropriate for me to go into this matter as the judicial process already stands concluded. On this Mr. Bhushan states that he will make an application to the Supreme Court seeking a clarification as to the procedure to be followed in this matter. He further states that the clarification will be sought, if possible, by the next date.”

In view of the above, we find no justification to entertain the application, for clarification of the above order dated 02.03.2012.



CrI.MP. No. 230 of 2017 is accordingly dismissed.”

I am, therefore of the opinion that in the light of what has been observed above, no further proceedings are possible as of now. The matter is accordingly closed.

I-C.R.No. 94/2004 Police Station Vyara District, Surat ,
under Sections 307,332,353,392 I.P.C., & under
Sections 25(1)B,A, 27(2) the Arms Act

Subhash Bhaskar Nayyar (hereinafter called the deceased), a resident of Kullu, District Pathanamithitta (Kerala) was under police remand in I-C.R.No. 56 of 2004 registered with the Olpad Police Station, District Olpad, under Sections 302 etc. of the I.P.C. The investigation in that case was being conducted by PSI K.N.Patel. In order to make a comprehensive investigation the Superintendent of Police, Surat (Rural) formed a team of three officers on the 3rd June, 2004 comprising in-addition PSI S.G.Yadav and Inspector P.P.Pradhan. On the next day (the early morning of 4th June, 2004) the deceased told the complainant, Inspector K.N.Patel and the other two officers, that when he had been staying at Navapura he had hidden one Tamancha (country made weapon) in an old abandoned bungalow near the Railway Crossing. The police officer drew up a panchnama at



about 5 a.m. and requested two panches, Udeypratap and Kundansinh, to join their group. The police party comprising Inspector K.N.Patel, Inspector Pradhan, S.I. S.G.Yadav, H.C. Raghunath and several other police officials and two panches making a total of eight persons sat in a Tata 407 truck and left for Navapura, closely followed by three other Government vehicles holding several other police officials as well. At about 6.15 a.m. the deceased expressed his desire to answer the call of nature on which their vehicles were stopped near the Kasturba Asharam compound. Inspector K.N.Patel and S.I. Yadav alighted from the vehicle followed by the deceased and police constable Mahadev, HC Parkashbhai and Inspector Pradhan and they made the deceased stand on the left side of the road to answer the call of nature. The hands of the deceased were tied with a rope and he was handcuffed as well whereas the other end of the rope was in the hands of H.C. Mahadev who was standing behind the deceased and HC Parkash was standing towards his left and Inspector Patel and Inspector Yadav were standing on the right side at some distance when suddenly the deceased moved to his left and snatched the service revolver of HC Raghunath. He managed to jerk away the revolver from the person of the Head Constable and fired one round at the police personnel. Inspector Patel and Pradhan and S.I. Yadav fired one round each from their service revolvers hitting him on which the deceased fell down. He was sent to the Government Hospital Vyara where he was declared dead on arrival. On the



complaint of Inspector K.M.Patel C.R. No. 94 of 2004 under Section 307 etc. I.P.C. and under various Sections of the Arms Act was registered at Police Station Vyara on the 4th June, 2004 at about 8.00 a.m. and on instructions of S.P.Surat(Rural) investigation was taken up by Inspector M.S. Bharada. He visited the place of occurrence in the presence of panches Rameshbhai More and Pravin Sahebrao Kumavat at about 9.00 a.m. on 4th June, 2004. The dead body was also subjected to inquest panchnama late in the morning by Shri A.V. Vadher, S.D.M. The site was also inspected by Shri D.B.Patel, an officer of the F.S.L., who also examined the dead body and submitted a preliminary report whereas Shri D.M.Modi a Finger Print Officer from Surat also examined the revolver which had been snatched and fired by the deceased. The dead body was subjected to a post mortem examination by a panel of four doctors on the 5th June, 2004. The weapons used by the police officers and the empty cartridges were also taken into possession by the Inspector Bharada and these along with the hand wash and clothes of the deceased were sent to the F.S.L., Ahmedabad, for examination. On completion of the investigation Inspector Bharada recommended abatement of proceedings and an application to that effect was filed before the competent court on the 1st March, 2005 which was allowed on 17th November, 2007. On reference of the matter to the S.T.F. and the Monitoring Authority, an application under Section 173(8) of the Code of Criminal Procedure was moved before the Chief Judicial



Magistrate, Vyara who allowed the same and directed further investigation. The matter was thereafter initially entrusted to Smt. Usha Rada D.S.P. and subsequently to D.S.P. A.M.Patel w.e.f. 22nd October, 2012. D.S.P. Patel recorded the statements of the police officials and panch witnesses whose statements had been recorded in the initial investigation. He also got the report of the Magisterial Inquiry dated 14th March, 2005 conducted by Shri A.V. Vadher S.D.M., which supported the police version. The D.S.P. also recorded the statement of the elder brother of the deceased Suresh Bhaskar Nayar resident of Vazhamuttam, District Pathananhitta (Kerala) on 28th November, 2013 wherein he stated that his brother had been killed by Inspector P.P.Pradhan, S.I. S.G.Jadav and Constable Parkashbhai in a staged encounter. The statement of one of the doctors who had conducted the post mortem examination was also recorded on the 13th December, 2013 which supported the police version. D.S.P. Patel accordingly submitted his report that further investigation had not revealed anything new and that the deceased had been killed by the police personnel in self defence after he had first snatched the revolver from Constable Raghunath and fired at the police party.

Notice of the reference to the S.T.F. and the Monitoring Authority was conveyed to the general public vide notification issued in Times of India dated 18th July, 2012, Annexure 'A', and also in the Gujarat Samachar(Gujarati) and Sandesh Bhavan(Gujarati) published from Ahmedabad and also in Janmabhumi



(Malayalam) published on 5th August, 2012 from Trivandrum, Kannur, Kottayam and Kozhikode Personal notices were served on the 11th February, 2013 on Santosh Bhaskar Nayar, a friend of the deceased, and also on Suresh Bhaskar Nayar, brother of the deceased. Santosh Bhaskar Nayar appeared before me on the 18th February, 2013 and recorded his statement. He stated that he along with the deceased and some others had been arrested in an offence of robbery etc. and had served about 4/5 days in jail and on release they had started a retail business of clothes whereas the deceased had returned to Kerala to his native place but had returned to Surat after five or six months and had started living with a person named Ramesh who was involved in the liquor trade and that it had come to his notice after a few days that the deceased had been involved in a murder in Daman. He further stated that sometime later the deceased had come to his house at night where he persuaded him not to indulge in criminal activities and thereafter he left his residence but returned a few days later saying that his life was in danger. He also stated that he had advised the deceased on several occasions to go to Surat and to surrender before the police. He further stated that he had met Advocate Fareed Mastan and discussed the surrender of the deceased with him after it came to his notice that one Deepak Daruwala had been murdered and the deceased was being named as the accused and that after about 15 days it also came to his notice that the deceased had been arrested in Delhi and this fact had been flashed in the



newspapers with photographs. He went on to say that the deceased had been brought back from Delhi and was being taken from one Police Station to another and ultimately he received information that he was in the Olpad Police Station, but before he could go there as it was far away from his residence, Newspaper reports flashed that he had been killed in a police encounter, whereafter he had gone to the Civil Hospital, Surat and taken the dead body and cremated it. It will be seen that the deceased was a hardened criminal and he had also been discharged from the Army for misconduct and in this background the possibility that he had been killed in a staged encounter becomes more prominent. The evidence and circumstances need to be examined with more than usual care.

The matter came for final discussion before the Monitoring Authority on the 2nd July, 2016 and Mr. Parshant Bhushan Advocate, along with Mr. A.J.Yagnik and Somnath Vatsa Advocates, appeared on behalf of the petitioners. Written submissions have also been filed by Mr. Yagnik on behalf of the petitioners and by Shri R.C.Kodekar the learned counsel for the S.T.F.. It has been pointed out in the written submissions and even during the course of arguments, that the story projected was unbelievable as it would not have been possible for the deceased to have snatched the revolver of Constable Raghunath while his hands were tied with a rope and one hand was also handcuffed, in the light of the fact that both hands would be needed to cock and load the revolver. It has also been



submitted that suspicions were also raised as the police party consisted of fourteen policemen, two panches and the deceased, all in three police vehicles had chosen to go for the recovery at about 5 a.m. and as no traces of gunpowder had been found on the hands of the deceased as per the F.S.L. report the story that he had fired the revolver could not be believed. It has also been submitted that the nature of injuries and the fact that all three bullet wounds were on vital parts of the body was suggestive of a staged killing and in the given circumstances the firing would have been from a very close range and marks of scorching, blackening or burning ought to have been found on the dead body at the time of the post mortem examination. As against this Mr. Kodekar has submitted that in addition to the police party there were two independent eye witnesses, Udeypartap and Kundansinh, who had stated to the facts and had confirmed as to what had happened on the day in question by supporting the police version. It has also been submitted that as per an order received from the Magistrate, the police had been allowed to handcuff the deceased as he was a desperate character, accused in fourteen serious crimes, and as the holster from which the weapon had been snatched by the deceased was made of leather and had only a button over the flap and the fact that when the the revolver was pulled out of the holster the stitches of the holster had been dislodged and torn, clearly proves the police version. It has been submitted that the three bullet wounds received by the deceased were on vital but disparate parts of the body and this



would normally be the case in a sudden incident such as in the present one and as the deceased had fired two shots at the police party it would be normal for the police party to fire at the deceased on vital parts of the body so as to disable him from causing any damage.

The learned counsel have been heard and their submissions also considered.

The first argument raised by the learned counsel is with regard to the unnatural story projected and the circumstances under which the deceased was able to snatch the revolver from Constable Raghunath. It is indeed true that the hands of the deceased had been tied with a rope and one of them was handcuffed as well and the other end of the rope was in the hands of the police officials and it would, therefore, be difficult in normal circumstances, to catch hold and snatch away the revolver from HC Raghunath or to load it with the use of one hand. The deceased was however not a normal man as the facts tell a different story. He was a man of a deep criminal mind and even as per the statement of his brother, had been involved in a number of murders and in all 14 serious offences in the State of Gujarat and that he was an Army personnel dismissed on account of misconduct. He was thus a man with a ruthless streak and aggressive by nature and also familiar with the use of firearms. The argument with regard to the necessity of using two hands to load a revolver, is without merit. In Modi's Medical



Jurisprudence and Toxicology (23rd Edition) page 712 it has been observed that “a modern revolver is one in which cartridges are loaded into a rotating cylinder (or drum) in the rear of the breech of the barrel. The revolving cylinder (which rotates to right or left depending on the design) has a series of chambers (usually five to nine) into which cartridges are loaded. Cocking the revolver rotates the cylinder and aligns one of the chambers with the bore of a revolver barrel.” In contra distinction to a revolver, however, two hands are required to load a pistol. As Modi says a pistol may hold 6 to 14 cartridges or rounds which are generally fed into the chamber from the magazine in the grip of the frame of a pistol.” Furthermore the grip has to be held with one hand and the cocking piece has to be pulled backwards with the other to enable the cartridge to be pushed into the chamber from the magazine and when the cocking piece is released it pushes the cartridge into the barrel ready for firing. In view of the clear distinction between the firing systems of a revolver and a pistol, the argument that both hands would have been needed to fire a revolver, cannot be accepted.

The version given by the police finds support from the two panch witnesses, Udeyartap and Kundan Singh. Their statements had been recorded at the time of the investigation by the Gujarat police and again before the S.T.F. They clearly support the police version. The statements of the various police officials were recorded and they too supported the version given by the police officer.



Some arguments had been addressed by the learned counsel with respect to the nature of the injuries found on the deceased in the background in which the incident had happened. This argument would indeed require a look at the post mortem report and the forensic evidence collected soon after the incident.

The Post Mortem examination revealed the following bullet injuries:-

1. Firearm bullet entry wound present on left parietal region of skull size 1cm x 0.8 cms, with surrounding abrasion in an area of 0.2 x 0.1 cms, circular in shape, situated 8 cm above left eyebrow and 6 cm left to midline, margins inverted, brain matter and blood coming out from the wound.
2. Firearm bullet entry wound present over left side front of chest of size 1cm x 0.8 cms x chest cavity deep, with surrounding abrasion in an area of 0.3 x 0.1 cms, circular in shape, situated 23 cms below top of shoulder and 12 cms left to midline, margins inverted.
3. Oval shaped wound present over left side abdomen of size 1.3 x 0.8 cms x subcutaneous tissue deep with surrounding area contused and abraded in an area of 0.4 x 0.2 cm obliquely placed situated 119 cm above left heel and 10 cm left to midline.
4. Abrasion present over back of left side chest of size 2.5 x1.5 cm situated 22 cm below root of neck and 3cm left to midline. Reddish in colour.



Note: Above mentioned injuries Nos. 1, 2 and 3 are obliquely placed and abrasions are more broader at upper end than lower end and are read in colour.

It will be noticed that there was no charring or blackening meaning thereby that the shots had been fired from a distance beyond two or three feet. The bullet wounds caused great damage to the underlying parts of the body. The S.T.F. recorded the statements of the Doctors who had conducted the post mortem on the dead body and two bullets were recovered therefrom and handed over to the Investigating Officer as in the case of a revolver shot the bullet is often lodged in the dead body as it is a low velocity weapon. It will be seen that there was no charring or blackening around the three wounds of entry which clearly shows that the shot had been fired beyond 2 or 3 feet. This was to be expected as the weapon had been snatched away and the deceased as well as the police officer would have instinctively taken evasive action, when the firing had erupted. The reconstruction report sought by the S.T.F. was given on the 19th November, 2013 after examining the site and it was reported that the distance between the deceased and the police officers was 7 feet and the distance between the officers themselves was 2 feet. The reconstruction report also indicates that considering the height of the police officers and the deceased, the ground situation, and taking into account the direction of the bullets when they travelled within body of the deceased, the police version appeared to be in consonance with the facts. In this background, the police



officers were not bunched together, as contended by Mr. Prashant Bhushan, and as the incident happened very quickly and perhaps in seconds the fact that the shots hurriedly fired by the deceased, failed to hit any of the police officers, is not surprising.

The truthfulness of the police version is further, established by the report of the F.S.L. dated 9th November, 2004 relating to the holster from which the revolver had been snatched by the deceased. The report clearly shows that the holster was of the size which could take the revolver and that the stitching from one side had been detached. This clearly bears out that the weapon had been grabbed by the deceased from its holster and in the process the stitches had broken.

It has been submitted by Mr. Bhushan that if the deceased had indeed fired from the revolver, traces of gun powder etc. would have been detected on his hands. In the report of the F.S.L. dated 9th November, 2004 it was clearly observed that samples C and D of the hand wash of the left and the right hand respectively collected at the time of the post mortem examination "the presence of residues of nitrites and lead of fired cartridges (ammunition). It's presence has not been found." This indeed would be a significant matter but the primary report of the F.S.L. given on the 5th June, 2004 i.e. a day after the incident observed "the presence of fire arm residue was found on the right hand of the deceased." Mr. Kogje, has, in addition, referred to the letter dated 12th March 2014 addressed by



Mr. D.B.Patel Assistant Director, F.S.L. Ahmedabad to D.S.P. Patel in which in response to the query raised by the D.S.P. regarding presence or absence of firearm residue on the hands of the deceased, the Assistant Director opined as under:-

“ In the hand wash fire arms remnants presence PPM is taken. Thus at site the test regarding the presence of the fire arms discharge remnants is done, therefore, accept the same during the testing at site fire arms discharge remnants presence was detected in very minor proportion during the testing it might have been used up, thus in such circumstances during the laboratory testing in the hand wash the fire arms discharge remnants may not not be found.”

The language is slightly convoluted, but the meaning is clear.

To my mind, therefore, the absence of fire arm residue which was not detected in the analysis by the laboratory, would not be conclusive for the reasons given by the Assistant Director and quoted above .No further action is called for in this matter.

I-C.R.No. 336/2004 Police Station Umargaon
District,Valsad, under Sections 307 I.P.C., & under
Sections 25(1)B)/ 27(2) the Arms Act



This matter was taken up for final discussion before the Monitoring Authority on 13th February, 2016.

The deceased Sanjay, resident of Village Pavangau, District Kausambi, Uttar Pradesh had been arrested by the police of Police Station Umargaon, District Valsad in C.R. No. 336 of 2004 under Sections 332 and 307 of the Indian Penal Code and various sections of the Arms Act. Transfer warrants had been obtained by Inspector K.G.Erda of the Crime Branch, Valsad, with respect to the deceased in C.R. No. 315 of 2004 registered against him in Police Station Umargaon under Sections 489 (A) (B) (C) of the Indian Penal Code and he had been remanded to police custody till 29th November, 2004. While in police custody the deceased told Inspector Erda that he could get and circulate counterfeit currency notes on which the Inspector discussed the matter with his seniors and a decision was taken to take him to Umargaon in connection with the investigation. At about 4.30 a.m. on 26th November, 2004 Inspector Erda accompanied by ASI Manharbhai , HC Bhaskar Rao, HC Kantilal, Constable Satish, Constable Rupsinh, Constable Gumansinh and Commando APC Ganeshbhai and several others left for Umargaon. On the way the deceased complained of a vomiting sensation and on the directions of Inspector Erda he was taken to the Government dispensary, Bhilad at 5.30 a.m. The doctor on duty examined him and after he had been given



medical aid, the party left for Umargaon. About 2/3 kms away from Bhilad (at 6.00 a.m.) the deceased again complained of nausea and that he wanted to vomit on which the driver Gumansinh was directed to stop the vehicle. As the deceased had handcuffs on both hands, HC Bhaskar Rao removed the handcuff on the right hand while holding the handcuff on the other. ASI Manharbhai followed by the deceased and several police officers alighted with Commando Ganesh armed with a carbine standing on the right side of the deceased and the other members of the party standing around him. The deceased then stood up and made a pretense of vomiting but then suddenly pushed HC Bhaskar Rao aside and snatched the weapon of Constable Ganeshbhai and opened fire on ASI Manharbhai and HC Kantilalbai. The shot, however, missed its targets on which the deceased attempted to fire on Inspector Erda but before he could do so, the Inspector fired three rounds from his service revolver followed by three rounds from S.I. Yadav felling the deceased with the carbine slipping from his hands. The deceased, who was bleeding profusely, and HC Bhaskar Rao who too had suffered an injury were taken to the Bhilad dispensary but the Doctor declared the deceased to be dead on arrival. C.R. No. 336 of 2004 for offences punishable under Sections 332/307 and various Sections of the Arms Act was registered against the deceased at Umargaon Police Station at 7.55 a.m. on 26th November, 2004. The investigation was ultimately taken over by Sub Inspector R.R.Patel of Bhilad Police Station as the



incident had happened in the jurisdiction of that Police Station. The inquest on the dead body was conducted by Shri M.M.Chaudhary, Executive Magistrate, Umargaon. The post mortem examination was performed by a panel of two doctors, Dr. Srivastava and Dr. Patel of Bhilad Government dispensary. The place of the incident was inspected and three cartridge cases of .9 mm pistol were picked up from the spot along with blood stained earth. The hand wash of the deceased was also taken from the dead body along with other items and sent to the Forensic Science Laboratory for examination. The laboratory opined that shots that had hit the deceased had indeed been fired from the two weapons held by the police officers and that the bullet sample D matched with the carbine of Commando Ganeshbhai which had been snatched by the deceased and used to fire at the police officials. The F.S.L. also opined that the blood stained earth picked up from the spot contained human blood and in its report dated 29th March, 2005 confirmed that the hand wash of the deceased had traces of carbon on both hands which indicated that he had fired some weapon before he had been killed. The police accordingly filed an application for abatement of proceedings and an order to that effect was made on 26th April, 2005. On reference of this matter to the S.T.F. and the Monitoring Authority an application under Section 173(8) of the Code of Criminal Procedure was made and allowed on 23rd July, 2012 and at first Ms. Usha Rada, D.S.P. was entrusted with the inquiry. Subsequently, however, the



investigation was taken over by D.S.P. A.M. Patel. Notice of the further investigation was issued in the Newspapers Times Global (Times of India)etc. dated 18th July, 2012 Annexure A and also in the Hindustan Venture Media Ltd. (Hindi) dated 3rd August, 2012 published from Lucknow, Kanpur, Meerut, Gorakhpur, Bareilly, Allahabad, Aligarh and Agra. Notices were served personally on the father of the deceased, Shardaprashad, resident of Pavangau, District Kausambi, Uttar Pradesh on the 7th February, 2013. He appeared before me on the 2nd April, 2013 and stated that the story of the encounter was a lie and that he was unaware of what his son was doing in Gujarat. He further stated that his son was unmarried and that the watch and finger ring taken into possession from his body should be returned to him.

Mr. A.J.Yagnik, Advocate appeared on behalf of the petitioner and has raised several submissions during the course of hearing. He has first and foremost argued that the story that the deceased had snatched the carbine (an automatic weapon) from Commando Ganesh and had fired at the police personnel could not be believed as it would have taken some time for the weapon to be put on "unsafe" firing position and then loaded with a cartridge from the magazine into the chamber, the policemen could have easily disarmed him in the interregnum as there were so many surrounding him. He has further submitted that Constable Bhaskar Rao had also been injured in the incident and taken for examination to



hospital under injury certificate bearing No. 332/4822 and it was not clear as to how this injury had been sustained by him which too cast a serious doubt on the police version. It has also been submitted that injury on the finger of the deceased had not been explained and the fact that though the deceased is supposed to have fired with an automatic weapon no bullet injury had been sustained by the policemen though they had been bunched together, made the police story suspect. He has further submitted in this connection that as no spent cartridge case had been picked up from the spot is clearly indicative that the incident had not happened at the place in question and that if Nitrate traces had been found on the hands of the deceased would have supported the police version but the F.S.L. had in its report only opined that carbon traces had been found and there is no reference to any other chemical being found in the hand wash.

As against this Mr. Kogje has submitted that the deceased was a hardened criminal familiar with the use of fire arms and as such it was not difficult for him to load and fire the carbine machine gun after having snatched it away from Commando Ganeshbhai. He has further submitted that it was a matter of great significance that the police party had taken the deceased to the hospital for medical aid and also stopped the vehicle a second time in order to enable him to vomit and if it had been the case of a custodial killing there would have been no need for the police officers to indulge him in this manner. He has further submitted



that the injury found on the person of Constable Bhaskar Rao was perfectly in consonance with the facts on record.

In this case the eye witnesses to the offence were all primarily police officials as already referred to above. The police officers have unanimously supported the version given above. The two panch witnesses Hemant Kumar Soni and Mustaq Hussain too have supported the police version in its entirety. Hemant Kumar has stated that he had left his house at about 3.30 a.m. on 26th November, 2004 for his morning walk when he had come across a police party and it had requested him to act as panch and he had accepted that request. Mustaq Hussain stated that he had gone to the Railway Station to see off his brother Jakir Hussain who was to go by the Gujarat Queen and when he was returning home at about 3.30 a.m. he had been stopped along the way by one Kantibhai who told him that he was wanted in the office of the D.S.P. to act as panch. He too supported the police version.

It is true that the F.I.R. does not say that the weapon was ready for firing but in his statement recorded on 26th November, 2004 Commando Ganeshbhai stated that carbine gun was "on single shot action and after first fire and during second fire the aforesaid officers fired on the accused in their self defence and got him injured." The inference that can be drawn is that the carbine was ready for firing and as would be the case as the deceased was a hardened



criminal and as his handcuff had been removed in order to facilitate him to vomit the police personnel surrounding him would have normally been expected to be prepared for all eventualities. The injury present on the person of Bhaskar Rao finds contemporaneous support from the entry in the Register bearing No. 332/4822. Dr. Lelaben who medico legally examined Bhaskar Rao on 26th November, 2004, confirmed that the deceased had been brought to the hospital complaining of a stomach pain in the early morning of 26th November, 2004 at about 5.15 a.m. and that the police party had thereafter left along with the patient. She further stated that at about 6.30/7.00 a.m. the same morning the police personnel had returned with the same person who had been treated by her earlier, as also the injured Bhaskar Rao, and that she had given her statement in the inquest proceedings as well. The implication of the doctor's statement is that police party including the deceased had gone to the hospital early in the morning of 26th November, 2004 stands proved on the record. The other inference is that had it been the intention of the police to indulge in a custodial killing the exercise of taking the deceased to the hospital half an hour earlier, would have been unnecessary and meaningless. The fact that the deceased had fired a weapon is proved by the report of the F.S.L. dated 26th November, 2004 where in answer to a query by the police officer as to whether there were carbon traces in the hand wash of the deceased, the reply had been that carbon traces had been found in the hand



wash taken from both hands. It has been pointed out by Mr. Yagnik that carbon was an element which was not found on the hands after firing from a weapon and that the presence of carbon traces would, therefore, not lead to the inference that the hands had been used to fire a weapon. To my mind this argument is unsustainable. In Dr. B.R.Sharma's Forensic Science in Criminal Investigation and Trials (Fourth edition) page 440 it finds mention that carbon traces can also be found on the hands in the case of gun fire. The presence of carbon traces on both hands indicates that the weapon that had been held by the deceased was an automatic one and such a weapon can be fired accurately only with two hands, with one hand being used to steady the weapon and the other to press the trigger. It is clear from the record that the deceased was a notorious character and was an accused in about 13 cases including very serious ones in which he had used fire arms. The submission that if the deceased had indeed used an automatic weapon greater damage would have been caused to the policemen who were bunched around him as a large number of rounds would have been automatically released and is also not tenable. It has come in evidence that a carbine is generally loaded with 20 rounds but Commando Ganeshbhai in his statement has said that the weapon was on single shot mode and not on automatic mode. Moreover, a look at the reconstruction map would reveal that the policemen were not bunched together but were all around the deceased at various distances. In any case, as the weapon



was on single fire mode explains why it had been easy for the police officers to shoot the deceased before he could cause too much damage. I am, therefore, of the opinion that no further action is called for in this case.

I-C.R.No. 244/2005 Police Station Umargam
District, Valsad, under Sections 307 I.P.C., & under
Sections 25(1)B)/ 27(2) the Arms Act

This matter was taken up for final discussion in the meeting of the Monitoring Authority held on the 19th November, 2016.

On 9th October, 2005 intelligence was received by Sub Inspector Prag P. Vyas and the special police group that Haji Haji Ismail (hereinafter called the deceased) a resident of Jamsalaya, District Jam Nagar and a notorious smuggler would be going to Chotila on National Highway No.8 in his Maruti Zen car No. MH-4J-A-8196. The above information was conveyed to Sub Inspector S.K. Shah and to the Superintendent of Police, Valsad, and it was planned to seal a part of National Highway No.8 and to arrest him. On this Inspector K.G.Erda in his official jeep bearing Registration No. GJ-15-G-521 accompanied by ASI Manhar Baburao, Police Constable Maheshbhai, Sub Inspector S.K.Shah, Sub Inspector Prag P. Vyas and a large number of police personnel cordoned off part of the



Mumbai- Ahmedabad Road with iron barricades. They also posted Constable Rupsinh with a walkie-talkie set in a strategic place from where he could see the deceased driving down towards the police check point and to convey the information to the police party. The police party also blocked one side of the Highway leaving only one side to traffic in both directions. At about 3.05 a.m. on 9th October, 2005 Constable Rupsinh radioed Inspector Erda that the Maruti Zen in question had passed by village Achhad. The police party was accordingly alerted. About 10 minutes later the Zen car came to the check point and a signal was made to the driver to stop the vehicle. The driver stopped the vehicle a little head of the jeep of Inspector Erda and came out of the car firing at the Inspector. The Inspector and the other officers with him ran behind the police gypsy standing close by and firing between the two sides continued for sometime. The deceased, was thereafter hit and as he was seriously injured he was taken to the Civil Hospital, Bhilad where he succumbed to his injuries during treatment. Case C.R.No. 244 of 2005 under Section 307 of the Indian Penal Code and various Sections of the Arms Act was registered at Police Station Umargaon against the deceased and the investigation was entrusted to D.S.P. P.K.Chaudhary. The inquest proceedings were drawn up at the Community Health Centre, Bhilad between 7.30 to 9.30 a.m. in the presence of witnesses and the scene of the incident was also inspected later that morning. As per the police version 20 shots in all had been fired at the



deceased, 5 rounds by Inspector Erda, 2 by S.I. Monpara, 4 by S.I. J.M.Yadav, 5 by S.K.Shah and 4 by S.I. Vyas. The 20 empty shells were handed over to the Investigation Officer alongwith the weapons that had been used by the police officials. D.S.P. Chaudhary also sent the following articles to the F.S.L. for examination:-

1. Mark A-two used cartridge shells.
2. Mark B- .32 bore cartridge empty case.
3. Mark F-.32 bore revolver and live cartridge in it-1 and used cartridge-5
4. Mark G-.32 bore pistol in which two live cartridges-2
5. Mark H- two used cartridge copper metal like pieces and one cartridge cap.
6. Mark I-9 mm cartridge empty shells-13
7. Mark J-.38 bore used cartridge sheels-5
8. Mark K-.38 bore used cartridges shells-2

The .32 bore weapons had been allegedly fired by the deceased and the .38 bore and 9 mm weapons by the police. After investigation the D.S.P. ultimately opined that the police officers had fired in self defence and were justified in killing the deceased and as he was in the meanwhile dead, the matter should be closed as



having abated. An application for abatement of the proceedings was allowed on the 5th May, 2006.

On reference of the matter to the S.T.F. and the Monitoring Authority an application was moved under Section 173(8) of the Cr.P.C. for further investigation and was allowed on 22nd January, 2013. The matter has now been further investigated by D.S.P. A.M.Patel.

Notice of the reference to the S.T.F. and the Monitoring Authority was conveyed to the general public vide notification issued in Times of India dated 18th July, 2012 and also in the Lokmat Media Ltd.(Hindi) published on 5th August, 2012 from Nagpur, Akola, Jalgaon, Nasik, Aurangabad, Ahmadnagar, Solapur, Mumbai, Kolhapur and Pune appended as Annexure 'A'. Personal notice was served on 12th July, 2012 on Hanif Haji Sambhaniya and on 7th February, 2013 to Mehboob H. Sambhaniya, sons of the deceased, but nobody has come forth to appear before the Monitoring Authority. In further investigation D.S.P. Patel recorded the statements of the police officials who had been involved in the encounter including Inspector Erda and he reiterated the facts as narrated above and named the various police officials who had been deputed with him to apprehend the deceased. He stated that in the course of firing ASI Manhar Baburao and Police Constable Maheshbhai too had been injured and had been taken to the Civil Hospital, Bhilad for treatment. He also reiterated the number of shots that had



been fired and by whom. D.S.P. Patel also recorded the statements of the following police officials on 26th June, 2013:-

1. ASI Manharbhai
2. ASI Kantibhai
3. APC Satish Sayajirao
4. APC Mahesh Ravan
5. APC Rupsinh
6. ASI Prahlad
7. APC Rupabhai
8. APC Anil Bhai

The statements of other policemen who were part of the nakabandi were also recorded on different dates and they all unanimously supported the police version of the encounter. D.S.P. Patel also stated that he had gone to Mumbai on the 8th August, 2014 and made inquiries about the heirs of the deceased but they were not found and as such their statements could not be recorded and though he had served notices on the sons of the deceased on 12th July, 2012 and 7th February, 2013 they had not appeared before the Monitoring Authority. It was, however, pointed out that Mehboob Sambhaniya son of the deceased, had been arrested for an offence under the Arms Act on 10th October, 2005 though he had been acquitted subsequently.



In the background that the entire eye witness account has been furnished by the same set of police officers who had been involved in the incident special importance has to be attached to see if it was in consonance with the Forensic and Medical evidence which has come on record. The case of the police is that the deceased had been told to stop his car by a gesture but he had moved a little ahead and then had come out firing with a pistol and revolver in his hands. When the site was examined on 9th October, 2005 at about 10.00 a.m. in the presence of an officer from the F.S.L. one .32 bore revolver with three empty shells in the magazine was found in front of the Maruti Zen car whereas a .32 bore pistol alongwith two live cartridges in the magazine was also found almost 40 inches away. The hand wash of the deceased was also taken. Along with the revolver five used empty shells and one live shell were also recovered. The suggestion is that these were the two weapons that the deceased had used while firing at the police party. These items were sent to the F.S.L. along with the clothes and hand wash of the deceased and several other items which will be referred to as the matter proceeds. The dead body was also subjected to a post mortem on the 9th October, 2005 and the following injuries were found thereon:

1. Right upper chest lateral 1/3rd _____ clavicular region through and through bullet wound anteriorily 1.5 cm x 1.5cm red colour---blackening



edge inverted entry wound direction anterior to posterior and below medially.

2. Right chest back 8cm from midline upper part of scapular region exit wound 2cmX1.5cm everted edge red colour with active bleeding.
3. Right chest anteriorly on anterior axillary line at 10cm below and lateral to the right nipple through and through. Bullet wound 1.5cm x 1.5 cm edge inverted red colour with blackening entry wound direction anterior to posteriorly straight.
4. Right chest posteriorly on posterior axillary line at the level of interior angle of scapula bullet exit wound 2cm x 1.5 cm everted edge red colour with active bleeding.
5. Left upper abdomen anteriorly through and through bullet wound at the level of vertical nipple line from left nipple and 7 cm below to left costal margin. 2cm x 2cm edge inverted red colour with blackening, direction left to right with slightly_____.
6. Right upper abdomen anteriorly bullet exit wound with a palpable bullet 3cm x 2 cm edge everted and red colour at the level of just outer to right nipple vertical line 8 cm below to right costal margin.



7. Left lower abdomen anteriorly through and through bullet wound at the level of 10 cm below and lateral to umbilicus 1.5 cm x 1.5 cm red colour edge inverted, direction right to left _____.
8. Left lower abdomen anteriorly bullet exit wound on left iliac bone level 2cm x 1.5 cm edge everted and red colour with bleeding.
9. Right thigh antero lateral region through and through bullet wound at 7cm below from iliac bone 1.5cm x 1.5cm edge inverted red colour with blackening direction-left to right straight.
10. Right gluteal region exit bullet wound 10 cm below and posterior from iliac bone 2cm x 1.5 cm edge everted with blackening.
11. Left leg upper 1/3 posteriorly through and through. Bullet wound 10 cm below later to mid _____ fossa 1.5 cm x 1.5 cm edge-everted red colour with blackening direction _____ to below and medially.
12. Left leg upper 1/3rd on calf mid part exit and bullet wound 2cm x 2cm edge everted and red colour with bleeding.

In further investigation , Dr. Champakbhai Patel who alongwith Dr. A.K.Sinh had conducted the postmortem on the dead body on the afternoon of 9th August, 2005 re-recorded his statement before the S.T.F. and he pointed out that there were a total of six entry wounds on the dead body with five of them having blackened edges and six exit wounds and that in injury No.3 there appeared to be two holes of



the same bullet hole as one bullet had passed out the the body and the other one had remained inside and had been recovered during post mortem and handed over to the Investigators. It appears to me, therefore, that there is some ambiguity with regard to the number of shots that had hit the deceased inasmuch as that six wounds of entry were detected and six exit holes and one bullet had remained lodged in the dead body. However, an argument of great significance has been addressed by Mr. I.H.Syed and Mr. Rahul Sharma Advocates in the light of the observation made by the Doctor in the post mortem proceedings as supported by the forensic evidence, that the nature of bullet wounds belied the police version.

It will be seen that out of the six wounds of entry, five had blackening round them meaning thereby that these shots had been fired from a close range. Significantly also, of the six entry wounds, wound Nos. 1,3,5 and 7 were on the front of the body and Nos. 9 and 10 on the back. This is clearly borne out from the injuries reproduced above and also from the drawing made by the doctors in the post mortem report showing the situs of the bullet wounds. The clothes worn by the deceased had been referred to the Ballistic Department of the F.S.L. and a report rendered on 15th May, 2006. In this report reference is made to the trousers and shirt worn by the deceased and marked as L-1 and L-2 respectively. Four bullet holes were detected on the trousers and thirteen on the shirt. The details of the bullet holes are hereunder:-



<u>No.</u>	<u>Approximate size (cm)</u>	<u>Area</u>
1.	Diameter 0.9 cm	right side in front
2.	Diameter 0.8 cm	right side in front
3.	Diameter 0.8 cm	right side in front
4.	Size 2.5 x 2	on the back
5.	Size 0.9	on the back
6.	Size 1.5.x1	on the back
7.	Diameter 0.8	on the back
8.	Size 1x1.5	on the back
9.	Diameter 0.8	in front, near left pocket
10.	Diameter 0.9	near hole 10,11 and 12
11.	Diameter 0.9	in one line in front side
12.	Diameter 0.9	
13.	Diameter 1.2	right sleeve on upper part

The Laboratory found as under:-

1. On sample L/1(pant) and L/2(shirt) holes there was no presence of nitrite found. On the said samples the holes can be caused by 9 mm bullets. The hole Nos. 1,2 and 3 on the Sample L/1 and Hole Nos. 1,2,3,5,7,9,10,11 and 12 on the sample L/2 appeared to be entrance holes. Holes No. 4,6 and 8 on

[Handwritten signature]

the sample L/2 appeared to be exit holes. Sample L/1 and L/2 holes respectively No.4 and 13 whether they are entrance or exit holes. In this regard definite opinion cannot be given.

In Sample 1 to 5 and 8 to 14 are exit or entrance holes or not, in this regard definite opinion cannot be given.

Sample 7(bullet) one used 9 mm cartridge bullet on which on the right side there is curve and 6 lands and six grooves marks are found.”

Note:- .38 bore and 9 mm bore are identical only the unit of measurement is different

The Laboratory categorically opined that the holes on the shirt and the trousers could have been caused by 9 mm bullets. These were indeed the weapons that were being carried by the police officers. It is also extremely significant that the Laboratory in the aforesaid report clearly found that there was no presence of nitrites in the hand wash of the deceased that had been forwarded to it. The inference is that the deceased had not used any firearm.

On the above facts Mr. I.H.Syed and Mr. Rahul Sharma Advocates have argued that findings in the post mortem report read with the facts of the case as given by the police, the story projected was completely unbelievable as admittedly the police personnel were all armed with handguns (revolvers and




pistols) and the Doctors had found the signs of blackening around five of the entry wounds and in the case of a hand gun the blackening would be present only if the shots had been fired within a distance of two feet or so, and not from 15 or 20 feet as claimed by the police. He has referred to Dr. Modi's Book Medical Jurisprudence and Toxicology(23rd Edition) at page 721 that "blackening is found if a fire arm like a shot gun is discharged from a distance of not more than 3 feet and a revolver or pistol discharged within about 2 feet." It is significant that blackening is not to be confused with scorching or burning which is caused from a yet closer range. The post mortem thus clearly reveals that the distance between the weapons and the deceased was at the most 2 feet, suggestive of a custodial killing. Mr. Syed has submitted that the police version was completely falsified as the wounds on the dead body could not have been caused in the manner suggested. He has re-emphasized that the distance between the deceased and the weapon was at the most 2 feet though as per the police version the distance was in fact much greater. He has in this connection referred me to the site plan which had been drawn up by the S.T.F. and was not part of the record earlier and pointed out to file D page 139 which curiously does not show the distance from which the firing took place. To my mind, this plan is therefore incomplete and inaccurate. The panchnama prepared at the time of the further investigation on 25th June, 2014 however, indicates that the firing had taken place from a distance of 17 feet. This



confirms the panchnama recorded by the Gujarat police at the initial stage which indicated "at the said place of incident on the East of the Maruti Zen car lying there and on the "other side on the corner" at about 17 feet distance one official police crime gypsy is parked." As a matter of fact from the facts that emanate from the record and the arguments raised by the learned counsel, the distance between the deceased and the police party is shown to be much greater than 17 feet. Mr. Syed has given the dimensions of the Gypsy and Maruti Zen and put a sketch of the situation in the written submissions and has pointed out that the aforesaid particulars taken from Wikipedia shows that the distance could not be less than 24.75 feet. In the complaint made by Inspector Erda at about 4.00 a.m. on 9th October, 2005 the significant observations when translated from Gujarati to English are as under:-

" Since the Maruti Zen bearing said registration coming towards Bhilad from Nandigaam at about 04.00 hours, tried to stop by showing light of battery, lathis (sticks) of the policemen and hands, he stopped his Maruti Zen in front of my Gypsy. Since the driver of the Zen alighted from the driver side and suddenly opened fire on me from his weapon, I came behind my Gypsy and Police Sub-Inspector and policemen accompanied me also came behind the Gypsy. Hence, he continuously fired on me and the police personnel from the front side under the obstruction/shadow of his Maruti



Zen. So myself and the police officers accompanied with, fired on him, hence driver of Maruti Zen fell down on the road....”

This fact is further supported by the statement of Inspector K.G.Erda recorded by DSP Patel during further investigation wherein he says that (after giving the details of arrival of the Maruti Zen at the police check point) when the firing commenced both the police party and the deceased had moved behind their respective vehicles. Curiously, however, in the reconstruction made during the further investigation on 25th June, 2014 paragraph L reads as under:-

“L. The accused and the person firing were alive therefore the body situation would keep changing therefore at the time of the incident the definite situation cannot be clear therefore with regard to the firing angle or distance the definite opinion cannot be given.”

To my mind this observation ignores the observations recorded in the post mortem examination with regard to the blackening of the wounds of entry on the person of the deceased and the evidence referred to above. It is, therefore, crystal clear that firing on the deceased was from a distance of two feet or less completely falsifying the police version and being suggestive of a custodial killing.

The arguments raised Mr. R.C.Kodekar that the distance could not have been properly verified as there was no blackening on the clothes of the



deceased cannot be accepted in the light of the positive findings referred to above that the holes found on the clothes of the deceased had been caused by 9 mm bullets. It will be seen that the marks on the body were of blackening and not scorching. Had it been a case of scorching there would have undoubtedly been burn injuries on the dead body and the clothes. The fact that the deceased had died of police bullets is admitted. It is true, that as per the report of the F.S.L. dated 10th April, 2006 the two weapons used by the deceased, one a .32 bore revolver and the other a .32 bore pistol, had been used prior to their examination but this fact by itself or that there were some simple injuries on two of the police officers would not lead to the complete demolition of the findings mentioned above. My Syed, in reply, has pointed out that the police party comprised hardened and experienced police officers and were expected to make an attempt to cover up the custodial killing. The fact that as many as 20 rounds had been fired at the deceased from almost point blank range are indicative of a cold blooded murder.

The suggestion in the complaint that the deceased was a notorious smuggler appears to be doubtful on record. I had made inquiries from the S.T.F. office on this matter and the following reply dated 3rd January, 2018 was received:-

“With reference to the above mentioned subject, I would like to inform your goodself respectfully that the following offences were



registered against deceased Haji Haji Ismail R/o Jam Salaya (Gujarat) and at present Lonawala Di-Thane (Maharashtra):

- (1) DCB Bandra Mumbai II Crime Reg.No.84/98 U/s 25(1)(A)(A) of the Arms Act.
- (2) Kalyanpur Police Station District Jamnagar i.Crime Reg. No. 62/1993 U/s 121,121(a),122 of the IPC and 25(1)(a) of the Arms Act and U/s 3,4,5 of TADA Act.
- (3) Customs & Gold and other articles offence in which there were warrants issued against him.
- (4) In Coteposa, in five warrants he was wanted and he was also involved in the smuggling of weapons."

This is an evasive reply. It does not reveal the nature of the cases and the result of the prosecution/proceedings if any. No firm conclusion can be arrived at with regard to his antecedents.

At the initial stage I had laid down two tests which to my mind needed to be satisfied if a prima facie finding against the police officers had to be recorded. I am of the opinion that in the light of the facts mentioned above the two tests are satisfied and the matter needs to be brought to trial. I, therefore, recommend that at the initial stage the five officers who had fatally shot at the



deceased and are named in the complaint i.e. Inspector K.G.Erda, PSI L.B.Monpara, PSI J.M. Yadav, PSI S.K.Shah and PSI Prag P.Vyas are brought to trial for murder and other offences. If it is found on evidence during trial that others too were involved in the murder they too should be brought in and prosecuted in due course of law.

I-C.R.No. 25/2002 Police Station D.C.B. Ahmedabad ,
under Sections 307,332,224,186 I.P.C., & under
Sections 25(1)B,A, 27 the Arms Act

This matter came up for final discussion before the Monitoring Authority on the 19th November, 2016 although the final record of the case had been completed on the filing of the affidavit of Mr. Tirth Raj dated 2nd February, 2018.

Sameerkhan alias Nawabkhan Sarfrazkhan Pathan (hereinafter called the deceased) resident of Khanja Darwaja, Jamalpur, Ahmedabad was in police custody in connection with C.R.No. 1-302 of 1996 of Police Station Naranpura. The allegation against the deceased was that he along with his cousin Sahistakhan resident of Jamalpur had snatched a gold chain of Geetaben at about 3.00 p.m. on 10th May, 1996 and while trying to run away they had been caught by UPC



Vishnubhai UPC Anil Kumar who were on duty at that time and in the scuffle that had followed Sameerkhan had stabbed Police Constable VishnubhaiJhalla killing him at the spot and had then run away whereas Sahistakhanhad been arrested, tried and sentenced to imprisonment for life. As per the police version the deceased had come in contact with Muslim Jehadi organizations and on the basis of a passport illegally obtained from Bhopal had got one month's visa to visit Pakistan had gone stayed there and had in that country for three years during which period he had obtained training in weapons from the Jaish-e-Mohammad at places such as Karachi, Lahore, Rawalpindi etc. and had thereafter re-entered India through Nepal with the assistance of the I.S.I. and established hide outs in Mumbai, Rajkot and Bhopal etc. It is further the police version that after the attack on the AkshardhamMandir, the deceased had been directed by Rizvan of the Jaish-e-Mohammad who was a resident of Pakistan to go to Ahmedabad and kill the then Chief Minister Mr. NarendrabhaiModi. The deceased was, however, arrested by the Crime Branch and C.R. No. 23 of 2002 under Sections 120-B, 121, 121(A),122,197, 198,212,216, 419, 465, 476, 468, 471, 511 of the Indian Penal Code and various sections of Indian Passport Act was registered against him on 30th September, 2002 at D.C.B. Police Station Ahmedabad City. sWhile the deceased was in custody in the aforesaid matter a transfer warrant was obtained from the Judicial Magistrate Ist Class for investigation in C.R. No. 302 of 1996



Naranpura Police Station by Inspector R.C.Pathak of the Crime Branch, Ahmedabad City who handed over the deceased to Police Inspector K.M. Vaghela who arrested him in C.R No. 302/96 P.S. Naranpura as well. During the course of interrogation the deceased agreed to show to the police the murder site where Police Constable Vishnubhai had been killed on 10th May, 1996. Accordingly Inspector K.M.Vaghela along with Inspector J.G.Parmar, S.I. B.J.Sadavrut, Inspector A.A.Chauhan, Inspector T.A.Barot, H.C. Nijamuddin and a large number of other police officials in a Government vehicle left from the Gaekwad Haveli to the place to be pointed out by the deceased. The deceased told them to stop opposite the S.T.D. Booth in front of the Usmanpura road whereupon he and the other officers alighted from the vehicle. The deceased was handcuffed on his right hand while the other end was with HC Nijamuddin. The deceased made a pretext of showing the place where the incident had happened but suddenly jumped up and got forced the release of the handcuff held by Constable Nijamuddin and then snatched the loaded revolver of Inspector K.M.Vaghela from the pouch tied on his waist and fired two rounds at him to kill him and to run away. Inspector Vaghela lay down on the ground to save himself and before the deceased could cause more damage Inspector Tarun Barot and Inspector A.A.Chauhan (since deceased) fired two rounds and one round respectively on the deceased hitting him on the head and the chest. He was immediately taken to the Civil Hospital, Ahmedabad in the



Government vehicle but was declared dead by duty Dr. Preeti Shah at 2.50 a.m. C.R.No. 25 of 2002 was accordingly registered under Sections 307,332,224, 186 I.P.C. and various Sections of the Arms Act at D.C.B. Police Station Ahmedabad. The inquest on the dead body of the deceased was held by the Sub Divisional Magistrate, Ahmedabad at 10 a.m. on 22nd October, 2002 and hand wash of the deceased was collected in the presence of witnesses at about the same time. The place of the incident was inspected later in the after noon in the presence of a Scientific Officer of the Mobile F.S.L. Gujarat who submitted his report dated 22nd October, 2002. The dead body was also subjected to a post mortem examination and three bullet wounds were found thereon. The hand wash and the weapons used during the incident and the bullets extracted from the dead body were also taken into possession and sent to the F.S.L. On the direction the D.G.P. Gujarat State issued on 27th October, 2002, the investigation in this matter was entrusted to the C.I.D. (Crime), Gandhinagar, the Assistant Commissioner of Police, Crime Branch, Ahmedabad City and Inspector N.K.Chudasma of the C.I.D. Crime Branch of the City Ahmedabad Zone had taken over the investigation on 30th October, 2002 and subsequently D.S.P. I.K.Yadav investigated the matter from 8th November, 2002 to 1st May, 2003. The investigation was, thereafter taken over by D.S.P. H.K.Sharma of the C.I.D. Crime from D.S.P. Yadav on 1st May, 2003 and on concluding that the police version leading to the death of the deceased was



reiterated the story given earlier. DSP Patel also had the reconstruction drawn up on 17th July, 2014 in the presence of the police officers and others present at the time of the incident. D.S.P. Patel also observed that the statements which had been recorded by DSP Yadav from 8th November, 2002 to 1st May, 2003 when he had been assigned the investigation could not be taken into account as he had pressurized the witnesses and threatened them to make statements and to sign them implicating the police officers. The statement of D.S.P. Yadav who had also retired in the meanwhile was also recorded by DSP Patel on 11th December, 2015 and he reiterated that he had taken the statements aforementioned under signatures as per instructions of the higher officers. D.S.P. Patel at the conclusion of his investigation found that the investigation made earlier was in order, the deceased was a notorious criminal and terrorist who had been deputed by his handlers in Pakistan to cause damage in India and that he had been shot dead in self defence by the police officers after he had snatched revolver of Inspector K.M. Vaghela and fired at the police officers.

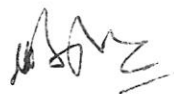
A general notice of the matter for further investigation by the S.T.F. under the supervision of the Monitoring Authority was published in the Times of India dated 18th July, 2012. In addition notices were published in the Gujarat Samachar and Divyabhaskar published from Ahmedabad, Baroda, Bhuj, Rajkot and Surat on 18th July, 2012 and personal notices were served on Ayazkhan



nephew of the deceased, Sahistakhan Pathan his cousin, Sarfarazkhan his father and Mr. A.J. Yagnik Advocate, practising in the Gujarat High Court, representing the family of the deceased. They appeared before me on the 2nd April, 2013 and their statements were recorded. Sarfarazkhan stated that on a date which he could not recall after so many years his younger son Sahejadkhan had come to him and told him that a policeman had been killed by Sameerbhai and when he had reached home he had found a police party present there. He was told that he should produce the deceased failing which he and his younger son would be tortured. He further stated that he and his son were taken into custody and tortured mercilessly which had made him a cripple and he was accordingly discharged from his service. He further said that in 2002 HC Nijamuddin had taken him to the Crime Branch and he was asked to identify his son Samirkhan who had been arrested in the meanwhile, and that Inspector J.G. Parmar had used abusive words against his son and called him a terrorist. He deposed that Ashish Khetan of the Tehelka newsmagazine had come to Ahmedabad from Delhi and he had taken him to I.G. Police Mr. Tirth Raj's office where Mr. Tirth Raj admitted amongst other matters the involvement of senior persons in the cover up of the murder. He further stated that he had gone to the hospital and met the doctor who had told him that the shots had been fired from a very close range. He further said that report given by Inspector Yadav was the correct one and that his son had been taken out



deputed to carry out assassination of Hindu leaders and that the purpose of this group and indeed of Pakistan was to create problems for India with the intention of grabbing the State of Jammu and Kashmir and to carry out sabotage and destruction in Kashmir and other areas thereby posing great danger to the secularism, unity and integrity of the country. In this complaint Inspector Vaghela had also highlighted that the deceased had visited Pakistan on a illegal passport and stayed in Pakistan for three years where he had taken training in the use of weapons at Rawalpindi, Lahore and Karachi etc. and had re-entered India with the help of the ISI through Nepal and created contacts in Maharashtra, Rajasthan and other places and he had accordingly been arrested by the Crime Branch in C.R. No. 23 of 2002 under various Sections of the Indian Penal Code and the Passport Act. To my mind this lengthy introduction in C.R.No.25/2002 which has been summarized by me in a few lines would not reflect the reality of the situation. C.R.No.23 pertained to fifteen accused in all. Finding no evidence against them, the defence counsel filed discharge applications in December, 2002 and January 2003 though in the meanwhile Sameerkhan was dead. These applications were allowed by the Additional Sessions Judge, Ahmedabad vide order dated 2nd January, 2004 and Criminal Revision No.8 of 2004 filed by the State was dismissed on 2nd April, 2004 by the High Court. Special Leave Petition (Criminal) 3504 of 2004 filed against the order of the High Court in the Supreme Court



S.L.P. was dismissed on the 6th December, 2005. The allegations made by the prosecution were completely disbelieved by the courts right upto the Supreme Court. It was observed inter alia that as per the prosecution, the deceased had gone to Pakistan on the 13th January, 1998 whereas the passport under which he was supposed to have travelled, had been issued on the 27th March, 1998 and that too in the name of Nawab Khan and that no person by that name had gone to Pakistan. That is another matter which belies the police version and is a glaring contradiction. On one side it is said that the deceased was a dreaded terrorist and fully trained to cause maximum damage and mayhem but from the facts which have come out on record, a very casual approach had been followed by the police officers when they had taken him for site inspection on the day in question and had ignored the vital security details. As a matter of fact the rule of handcuffing of prisoner as given in the notification G.L.H.D.No. MIS-1065/35442-C dated 28th August, 1966 and I.G.P's No.G/1909(G/34/44) dated 14th July, 1966, specifically provides that "the handcuffing of prisoners is a matter which shall be left to the discretion of the senior responsible Police Officers concerned, as much depends on the character, disposition and behavior of the prisoner or prisoners and not necessarily on the type of alleged crime in which he or they are involved. The handcuffs should normally be used by the police only where the prisoner is violent, disorderly, obstructive or is likely to attempt to escape or to commit suicide."



(These instructions are available in File A Part 2 page 729). It will be seen that the precautions which were to be taken for handling a dangerous person were categorical, and as per the story given by Inspector Vaghela and recorded in C.R.No.25 though he had eight cases registered against him over period of six years including the murder of a police constable (C.R.No.302 of 1996) for which the police party had brought him for site inspection, the deceased was not properly handcuffed and it appears to me that this was done deliberately so as to make out a plausible story to justify the killing. As a corollary to this finding another aspect of the matter needs to be discussed. It appears that letter dated 22nd October, 2002 had been addressed by Mr. Chitranjan Singh, Incharge Police Commissioner Ahmedabad City to Mr. P.P.Pandey, Joint Commissioner of Crime, Ahmedabad City raising certain queries which had to be answered in the light of the queries raised by the National Human Rights Commission. Pertinently paragraph 6 of this communication questioned the delay in getting the transfer warrant in C.R.No. 302/96 (on 21st October, 2002) when the case had been transferred to the Crime Branch on 1st October, 2002. Reference was also made in paragraph 8 to question as to why the procedure for keeping prisoners handcuffed was not adopted and paragraph 9 referred to the anxiety to take the prisoner for site inspection late at night and that too immediately. Another letter dated 23rd October, 2002 was addressed by Mr. Chitranjan Singh in which he raised another pertinent point that



after the investigation in C.R. No. 302 of 1996 had been transferred to the Crime Branch on 1st October, 2002 the investigation had also been handed over to Inspector G.J.Parmar vide office order dated 2nd October, 2002 and in that eventuality if a transfer warrant had to be taken for the custody of the deceased (accused) it should have been obtained by Inspector Parmar but the transfer warrant had in fact been obtained by Inspector K.M.Vaghela. It appears that no reply was received to these two letters and the matter was further referred for investigation to C.I.D. Crime and D.S.P. I.K.Yadav was entrusted the investigation. The question raised by Mr. Chitranjan Singh do create a suspicion about what had happened.

The Medical and Forensic evidence when read together again casts a very serious doubt on the story projected by the police. The post mortem examination was performed by a panel of doctors including Dr. Dharmesh and Dr. Kiran Pensuria on the 22nd October, 2002. The following gunshot wounds were found on the dead body:-

1. Entry wound present over left temporal region, 11 cm above it mastoid, 9 cm left to midline. Wound is circular with blackened, inverted margins 0.5 cm diameter in size.
2. Exit wound present over right side of occipital region, 1.5 cm x 0.5 cm size. Margins irregular 8 cm posterior to mastoid process.



3. Entry wound present on front of right side of chest 1 cm in diameter, 127 cm above right heel lies in 6th right intercostals space and is circular is 1cm away from midline and 13 cm below external notch. Margins contused, abraded with blackening in 7th intercostals space 1.2 cm in diameter 126 cm above left heel 3.5 cm left to midline. Margins contused abraded.
4. Entry wound present over left side of chest on anterior aspect in 7th intercostal space 1.2 cm in diameter 126 cm above left heel. 3.5 cm left to midline. Margins contused abraded.
5. Multiple small bruised present over back of chest on left side in area of 10 cm x 5 cm and is 129 cm above left heel. Bullet seen and palpated externally underneath skin.

It will be observed that two of the wounds of entry have blackened margins whereas injury No.4 which is also a wound of entry had contused and abraded margins. It is the admitted case that .38 bore revolvers had been used by Inspector Tarun Barot and Inspector K.K.Chauhan and in this view of the matter injury Nos. 1 and 3 had been inflicted from a range of less than 2 feet. In Modi's Medical Jurisprudence and Toxicology 23rd Edition page 721 it has been observed that "blackening is found, if a fire arm like a shotgun is discharged from a distance of not more than three feet and a revolver or a pistol discharged within about two feet." The statement of Dr. Kiran Pensuria had also been recorded at the time of the



initial investigation on the 17th December 2002 and her categorical opinion which is quoted below was that bullet injury No.1 had been inflicted by a shot from three feet or less whereas entry wound in the chest is (injury No.3) "battered and is blackened around it, which could be due to concentration of the gun powder, since the bullet must have been fired from so close that the flame created by the firing, the skin could have been burnt. The hold (sic), which appears on the front portion of the shirt put on by the deceased being of terri cotton made, the fibers of thread appears to have burnt, since had it been the cotton shirt, the fibers would have appeared to be torn, but since there is synthetic yarn in this shirt, they appeared to have burnt and have become round shaped at the end, which is called 'singeing' in English language. Thus it can be said that the firing must have been done from the front side by standing very near. This bullet went past piercing the heart and the left lung and also piercing the cavity between the heart and lung and was stuck between the eighth and ninth rib on the backside." In other words the firing had been made from a very short distance stands proved. In the reconstruction report submitted by the F.S.L. on 1st August, 2014 it was observed thus:-

" During the direction at the time of reconstruction, the distance between the lid of gutter and the dummy accused has been measured as 8 feet 3 inches, the distance of HC Nijamuddin, who was standing on the right of the accused is 1 foot and 6 inches, the distance of the



dummy of Shri K.M. Vaghela, PI (now in Sabarmati jail) was measured as 3 feet. The distance of Shri T.A. Barot, PI and dummy of Shri A.A. Chauhan, PI who were standing behind the dummy-accused on cross towards north are 6 feet and 5 feet 2 inches respectively and the distance in-between these two were about 2 feet."

A bare reading of this report falsifies the police story as the injuries found on the dead body could not have been caused from a distance of 5 to 6 feet but had been caused from a closer, almost point blank range. It can always be argued that vital mistakes can be made by a witness after a length of time. To my mind this argument is not available here as those indicated were experienced police officers familiar in the use of the fire arms and with hind sight, could have moulded their statements to suit their case.

There is another aspect which needs to be taken into account as per the counsel. Injury No.1 was on the left temporal region with blackened and inverted margins. The exit of injury No.1 was injury No.2 on the occipital region posterior to the mastoid process which indicates that the bullet had gone through the head and the trajectory was from left to right and upwards to downwards. This also falsifies the police version in as much as the facts which have been projected even in the reconstruction appear to suggest that the deceased and the police officers had been almost face to face. However, as injury No.1 has been caused



from a very close range and the bullet had travelled downwards it would mean that the Police officer was standing very near and above the deceased otherwise it would not have been possible to have the trajectory as shown. If the two police officers i.e. Inspector Barot and Inspector Chauhan had in fact been 5 or 6 feet away from the deceased, the trajectory indicated would not have been possible. It is, therefore, obvious that the police officers were close and towering over the deceased and he was probably sitting on the ground and perhaps cringing for his life. Mr. Kodekar's argument that the difference between the height of the deceased and the two police officers could well have determined the trajectory of the bullet. This submission is, however, falsified by referring to the reconstruction report rendered on 17th July, 2014 which reveals that height of Inspector Vaghela was about 5 feet 9 inches Inspector Barot 5 feet 8 inches and the deceased was about 5 feet 11 inches. This in fact shows that the deceased was taller than the police officers.

There is also another startling aspect of the matter which needs to be examined. After the matter had been entrusted to D.S.P. Yadav for investigation he had raised certain issues and asked for some records. Some of these issues were common with those that been raised by Mr. Chitranjan Singh in his letters dated 22nd October, 2002 and 23rd October, 2002 referred to above. D.S.P. Yadav in a note recorded on the 20th March 2003 sought some information from the Crime




Branch primarily to see as to how the matter was being handled by Inspector Vaghela and Inspector S.S.Chudasma who had recorded the statements of the only two independent witnesses of the incident, Navin Chander Patel and Pawan Kumar Aggarwal, but investigation had shown that their presence at the place of the incident had not been possible and that they were created witnesses. Vide this note D.S.P. Yadav also expressed some reservations as to how the injuries had been suffered by the deceased. He also complained that whenever he had made an attempt to meet and clarify the position from the officers of the Crime Branch they had refused to meet him on one pretext or the other. A reply was received from Mr. D.V.Vanzara, D.C.P. Crime Branch, Ahmedabad City vide letter No. G/725/Crime/706/2002 dated 21st December, 2002. Mr. Vanzara admonished D.S.P. Yadav for what he felt was over reach on his part and observed:

“ From the language used in the letters written by your good self is unnecessarily making an attempt to suggest that your role is not limited at I.Q of I-C.R. No. 25 of 2002, but instead your goodself is a Supervising Authority of the Crime Branch. Whenever, a suspect or an accused involved in a offence is found by an office of the Crime Branch, then in the interest of justice when to arrest him that has to be taken by the concerned officer as per the provisions of law and for the purpose of supervising him, there are officers of the rank of A.C.P.,



D.C.P. Joint Commissioner of Police and upto the Commissioner of Police in Crime Branch and in other words, the aforesaid work is either mine of my superior officers, and therefore, as an I.O. of C.R. No. 25 of 2002 registered with D.C.B. Police Station is irrelevant and outside the purview of work of your goodself".and again

"Hence, the question as to why the accused was not arrested in connection with the offences in which he was wanted between 27.09.2001 to 01.10.2002, is wholly irrelevant and outside the purview of the work of your goodself. The officers of the Crime Branch are very well aware as to when an accused like Samirkhan or a suspect is to be arrested or not to be arrested or to release them in the interest of justice and that you have no right to interfere with the work of the Crime Branch by raising such points. As stated earlier, these facts pertains to only I-C.R.No. 23 of 2002, the investigation, wherein is being conducted by the Crime Branch, whereas the investigation being conducted by your goodself is limited to I-C.R.No.25 of 2002, and therefore, you are requested to carry out an honest and neutral investigation in that regard. It is further to state to your goodself that while making correspondence with us in such an important case, your



goodself should update your knowledge of law and then to quote the Sections of law.”

D.S.P. Yadav was also rebuked for doubting the presence of the two eye witnesses referred to in his note. D.S.P. Yadav's note and Mr. Vanzara's reply when read together clearly reveal that there was an intention to put impediments in the way of the investigation and rather than answer the queries raised by the I.O. and to dispel his misgivings, the D.C.P. gave an unpleasant and meaningless reply. It will be seen that the investigation into the three matters i.e. C.R. No. 302 of 1996, C.R. No. 23 of 2002 and C.R. No. 25 of 2002 had got so deeply intertwined as they overlapped and the allegations against the deceased in the last two matters were almost identical. The queries raised by D.S.P. Yadav were relevant to come to a positive finding with regard to the investigation more particularly in the light of the fact that Mr. Chitranjan Singh, Incharge Police Crime Branch, who was Mr. Vanzara's senior, too had raised somewhat similar queries with regard to the investigation. Further events showed the significance of these observations as the deceased and his co-accused were discharged in C.R.No.23 of 2002 with a positive finding that there was no evidence against them. As a matter of fact D.S.P. Yadav wrote a letter to the Additional D.G.P. C.I.D. Crime and Railways, Gandhinagar bearing No. Outward/598/9 Inward-817 dated 30th December, 2002 regarding the letter written by D.C.P. Vanzara and referred to above (amongst others) in which



he set out the justification for the information sought by him and the obstacles being put in the way of investigation in C.R. No. 25 of 2002 as also threats of physical harm being held out to him. It appears, however, that the investigation was taken away from D.S.P. Yadav and handed over to D.S.P. H.K.Sharma on the 1st May, 2003. D.S.P. Sharma gave a clean chit to the police officials involved.

There is another aspect of the investigation which requires consideration. Sarfarazkhan father of the deceased, had in addition to the statement recorded by me which has been referred to above, filed an affidavit dated 10th May, 2017 in which he deposed that D.S.P. Yadav, after investigation, had concluded that his son had been killed in a fake encounter but he had been prevented from submitting a charge-sheet on account of departmental and political pressure and on the contrary several police officers of the Crime Branch had threatened him with dire consequences if he continued with the investigation and that they had also made complaints against him accusing him of bias. He also deposed that on the allegations made against D.S.P. Yadav a departmental inquiry had been held by Mr. Tirth Raj, Inspector General of Police, who in a report written in hand absolved of him any wrong doing and in addition came to the other significant conclusion that the deceased had been killed in a fake encounter but on instructions from the then Minister of State for Home and Law and Justice and the D.G.P. Chakraborty the report and all inculpatory material had been destroyed. He, further



stated that several other persons including Mr. Anand Yagnik, Advocate, had read the report written by Mr. Tirth Raj and that a sting operation carried out by Ashish Khetan of the Tehelka News magazine in the year 2007 Mr. Tirth Raj had discussed the issues of the fake encounter and allied matters which had been videographed, which proved that the allegations against the police officers were correct. Mr. Tirth Raj was requested to file a reply to the affidavit but no affidavit was forthcoming for sometime but a reply was filed by D.S.P. A.M.Patel instead of Mr. Tirth Raj. On receiving this reply I made an order dated 15th October, 2017 that the so called affidavit filed by D.S.P. Patel was not acceptable for the reasons mentioned therein and it was directed that Mr. Tirth Raj himself should file the affidavit limiting his reply to the effect "whether an inquiry had been held by him or any report was in existence consequent thereto". Mr. Tirth Raj thereafter filed a short affidavit in which he categorically denied that any departmental inquiry had been held by him or any conclusions drawn and that he had never been assigned any inquiry or conducted any departmental inquiry against D.S.P. Yadav and no report had been prepared by him and that there was no question of any political interference. Sarfarazkhan thereafter filed yet another affidavit dated 4th November, 2017 wherein he sought to clarify that when he had referred to a departmental or administrative inquiry he did not mean it be understood as in service jurisprudence, but an inquiry which had been entrusted to a senior Police



Officer to look into complaints made amongst police officers and he also reiterated the allegations made in the earlier affidavit dated 10th May, 2017 and clarified that Mr. Tirth Raj had prepared a 20 page report in his own handwriting indicting several police officers as also some persons from the Chief Minister's office. In paragraph 5 of this affidavit Sarfarazkhan deposed that a sting operation had been carried out by Ashish Khetan of the Tehelka Weekly and that he had accompanied Ashish Khetan when he had met Mr. Tirth Raj though he (deponent) was unaware that the correspondent was carrying a spy camera to record the discussion and in this sting operation he had referred to the 20 pages report which he had prepared and admitted that there had been a large scale cover up in the encounter death. A copy of the video recording the conversation and a transcript of the conversation was also appended alongwith the affidavit. An affidavit dated 2nd February, 2018 in reply has been filed by Mr. Tirth Raj in which he has admitted the recording but once again denied that any departmental or any other inquiry whatsoever with respect to D.S.P. Yadav had been held by him and as a necessary corollary there was no question of having prepared any report. He also denied that he had handed over four uncertified documents referred to in Sarfarazkhan's affidavit during the clandestine sting operation as there would have been no reason whatsoever for him to carry these documents which were purportedly relating to



the record of the Commissioner of Police, Ahmedabad City and others. Paras No.8 and 9 of the affidavit are reproduced below:-

“8. Regarding the contents of Tehelka sting operation, I affirm that my informal discussion/assertions/observations figuring therein were not based on any official record, official findings, personal knowledge of the related events, first hand information regarding the events or any inquiry/investigation personally conducted by me. I submit that the assertions/observations attributed to me on the basis of the Tehelka sting operation were my personal views, opinion and misgivings about the event in question and police encounters in general, and the same had their roots in what I had gathered from the media, through the grapevine and from unconfirmed inputs from the informal channels.

9. It may also be pertinent to clarify that the events pertaining to the encounter-death of ShriSamirkhan related to the period from October-2002 (when the encounter-death of the deceased had taken place) to December-2003 (when a final report seeking abated summary was filed by the State CID (Crime) in the jurisdictional Court), and that I had remained on Central Deputation outside Gujarat from January 1999 to June 2003. Hence, I submit that it was not physical possible



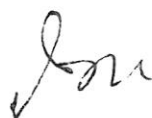
for me to have any "personal knowledge" of any of the events that had allegedly taken place during the period of my absence from Gujarat. It was also not possible for me to have "derived knowledge" of the alleged events, as I had no occasion whatsoever to investigate the case, supervise its investigation, conduct any inquiry into any application from any of the parties concerned or to conduct any inquiry into the encounter-death in question. In the absence of "personal knowledge" as well as "derived knowledge" my informal discussion cannot constitute tenable ground to maintain that ShriSamirkhan was killed in a fake encounter or to claim that some administrative/political authorities had a dubious role to play in projecting that encounter as a genuine one. Without having any access to the official record, I had made generalized and off-the-cuff remarks in empathizing with the father of the deceased and he deceased's brother(who later turned out to be the media person who had clandestinely recorded part of my casual and purely informal conversation) who had presented themselves before me as victims of alleged high-handedness of State authority and has persons who desperately wanted to be somehow helped and guided in their pursuit for a legal remedy. While aiming at not hurting or not being rude to



the close relatives of a person killed in exchange of fire with the police and in my bid to escape their insistence for a copy of my inquiry report that really did not exist, I did give evasive replies that could satisfy them and also convince them as to how their Advocate's contentions and methodology could be given a chance."

A summary of these two paragraphs would reveal that the factum of the recording has not been denied but some of the allegations that have been made particularly to the enquiry report and to the destruction and substitution of documents, have been specifically denied. It has been explained that the observations were made in an informal discussion not based on any official records and were his personal views which had been gathered from the media and informal channels, the more so that he had remained on Central deputation out of Gujarat from January 1999 to June 2003 and it was, therefore, not possible for him to have any personal knowledge of the events of the time. He has accordingly condemned the sting operation as being "clandestinely recorded" and thus could not be relied upon to confirm any information regarding the genuineness or otherwise of the encounter in question.

It is true that the explanation tendered and some of the conclusions drawn by Mr. Tirth Raj with respect to the sting operation are perhaps justified and fair as the recording was surreptitious and he was not in any way involved or



connected with the investigation in C.R. No. 25 of 2002 i.e. encounter death of Samirkhan and he can well complain lack of any personal knowledge as to what had transpired. It can also be safely assumed that despite the fact that Mr. Tirth Raj has referred to certain documents and he had immediately handed over four of them to Ashish Khetan the explanation furnished by him in his affidavit has to be accepted for the reasons given above but with some deep reservations. The encounter was of the year 2002 and Mr. Tirth Raj had returned to Gujarat after completion of his deputation period in 2003. The sting operation was of the year 2007. In this sequence of events Mr. Tirth Raj cannot simply pass off the recording as gossip picked up through conversation and media channels or justify his conversation as showing empathy for an aggrieved father. The affidavits filed by Sarfarazkhan, the replies thereto by way of affidavit and the video-recording aforementioned refer to some very senior functionaries of the State Government, both political as well as administrative. The persons so named are not before me in any of the proceedings in the light of the fact that my mandate is a limited one and is confined to the determination as to whether the 17 encounters which have been referred to the Monitoring Authority and the S.T.F. were stage managed custodial killings or genuine encounters. In this view of the matter, I am not called upon to comment on all the allegations levelled by Sarfarazkhan or on all the answers made by Mr. Tirth Raj. The broad principle which has to be kept in mind is that no



person should be prejudicially effected unless he or she has been heard. This principle finds notice in Section 8(b) of the Commission of Inquiry Act, 1952 which inter alia provides that if the conduct of any person is required to be examined by the Inquiry Commission and if the reputation of any person can be prejudicially effected, the Commission shall give a notice to that person so that he can be heard in his defence. Concededly this provision cannot be applied to the proceedings of the Monitoring Authority but the principle behind the provision must be read into the present proceedings as well. I, therefore, deem it inappropriate to make any comment on the allegations, charges and counter charges that have been made by Sarafarazkhan or Mr. Tirth Raj with respect to the individuals concerned. [However, Mr. Tirth Raj's recording, which I have seen twice over, and the conviction and the confidence with which he has spoken out confirm my suspicion that there was something drastically amiss in the death and investigation in Sameerkhan's case. I, therefore, deem it appropriate to use the information conveyed in the recording for the limited purpose of finding yet further support for my conclusion that the killing of the deceased was indeed the result of a fake encounter. I am therefore, of the opinion that Inspector K.M.Vaghela and Inspector T.A.Barot at the first instance be prosecuted for murder and other relevant offences and if it is found during the trial that there is



evidence against others as well, they too should be brought in as per law. Inspector A.A.Chauhan has since passed away. No proceedings against him are possible. J

There is one final matter which needs to be taken care off. Sarfarazkhan has filed an application dated 16th May, 2017 seeking compensation on account of his son's murder. He has pointed out that the allegations made against him in C.R. No. 25 of 2002 registered by the Crime Branch, Ahmedabad had resulted in the discharge of the co-accused of the deceased with a positive finding that there was no evidence with regard to the allegations made and that he (Sameerkhan) being dead could not be formally discharged. He has further stated that he had been working as a bus driver in the Ahmedabad Municipal Corporation and had been in service for more than 30 years but had been dismissed from service after his son had been declared an absconder and was accordingly not receiving any retirement benefits. He further stated that after his dismissal he had worked as a driver with Mr. Anand Yagnik Advocate, upto 2014 but on account of poor health and eyesight he had resigned from that job as well that his income of Rs.100/- per day was derived from hiring out his three wheeler auto. He further stated that he had two sons initially, and whereas Sameerkhan had been killed in 2002, the second son, Shezadkhan, had died of Tuberculosis in the year 2015 and due to these factors he was now called upon to look after his widow and children as well. A response was sought from the S.T.F. An affidavit has been filed by



D.S.P. Patel wherein the facts given by Sarfarazkhan with respect to his family details have not been denied. It has been admitted that Shezadkhan's wife and her two children aged 16 and 4 years have also to be maintained.

Admittedly Sameerkhan deceased was unmarried and as per the statement made by his father was a rickshaw puller by profession. In the light of the facts pointed out by Sarfarazkhan in his application and the prolonged litigation which has been tortuous and agonizing for the family and in the light of the conclusions drawn by me that the deceased had met a custodial death, I deem it appropriate to grant a sum of Rs.10 lakhs as compensation to Sarfarazkhan.

Harjit Singh Bedi

Justice Harjit Singh Bedi

Dated: February 26, 2018.

RSK

TIMES GLOBAL

THE TIMES OF INDIA, AHMEDABAD, WEDNESDAY, JULY 11, 2012

11	Bhajan Maheshwar Mev, ro 18th village, Band, Anand	Band PS, Anand Dist. CR No 1716	26-12-08 at 6:15 hrs. Min. village Band, Anand
12	Subhash Bhaskar Near ro Kadh, PS Pimpri, Dist. Pimpri, Kadi	Vyas PS, Band Road CR No 1408	4-4-08 at 6:20 hrs. Near Vetharvad Pimpri, Band
13	Sanyo @ Sanyo @ Rajal ro Sharda Prasad Chaudhary ro Room of Sanyo, near Bhalad Railway Station (West), Umergam, Mahad	Umergam PS, Valud Dist. CR No 13604	26-11-04 at 6:10 hrs. Near BK Farm, Dabhi village, Bhalad Sanyo Road, Umergam, Valud
14	Diagnyoo Hunda Machhar ro Village, Nagardah, Post Patel, Dist. Jabal, MP	Vijn Town PS, Valud Dist. CR No 22105	25-8-04 at 16:15 hrs. Behind Workshop Company Village Maru, Valud
15	Maj Nig Ismail ro Jan Salaya, Jamnagar Churnali at Lonavala, Dist. Thane	Umergam PS, Valud Dist. CR No 24405	9-10-07 at 16:00 hrs. Village Nandpur NH 8 Bhalad CP Umergam, Valud
16	Joginder Singh Khuman Singh Subh, ro 1, Lohans, At Billimora, Sids Camp, Ni, Sarthar Market, Devsar, Unadivi, Dist. Navan	Valud City, Valud Dist. CR No 11408	1-11-06 at 11:45 hrs. 'Naxal' Wada village, Sarthar Camp, Valud
17	Sanu Khan Sarfaraz Khan Pablu ro Khan Jahan, Deriya, Jamnagar, Ahmedabad	DCB PS, Ahmedabad City CR No 2507	22/10/2007 at 00:55 hrs. Near Umergam Garden, Ahmedabad

D. WHEREAS, the Monitoring Authority and STF are of the view that the person(s) and public in the facts and circumstances have to be given an opportunity of being heard and to furnish the Monitoring Authority and STF the statements(s) relating to the aforesaid matters or to produce document(s), if any, germane and relevant to the aforesaid subject matters of investigation/inquiry.

E. NOW, THEREFORE, the Monitoring Authority and Special Task Force appointed hereby issue this notice inviting all individuals, group of persons, associations, institutions, and organizations, having knowledge directly or indirectly of the facts and circumstances relating to the matter referred to the Monitoring Authority and Special Task Force to furnish to the Monitoring Authority and/or Special Task Force statement(s) relating to the above terms of reference. Such statement(s) should be in the form of written application(s)/representation(s), duly signed by the person(s). Person(s) submitting such written application(s)/representation(s) should also mention their correspondence addresses). Further, person(s), furnishing statement shall also furnish to the Monitoring Authority and/or Special Task Force along with the statement a list of documents, if any, on which he/she propose(s) to rely, and (forward to the Monitoring Authority and/or Special Task Force, wherever practicable, the originals or true copies of such of the documents as may be in his/her possession or control and shall state the name and address of the person(s) from which the remaining documents may be obtained. Person(s), who submit such statement of fact/allegations, can be summoned to appear before the Monitoring Authority and/or Special Task Force.

G. The written application/representations along with the documents, could be sent to The Monitoring Authority/Special Task Force, Bunglow No G-1, 201/1 & 203/2, Sector-30, Gandhinagar, Gujarat or personally handed over to officers authorized by the Monitoring Authority/Special Task Force in their behalf within eight weeks from the date of publication of this notice.

Issued under the Orders of the Chairman, Monitoring Authority
Sd/
(R.S. Sarval) Deputy Superintendent of Police and Member, Special Task Force

No.: MA/STF/MSB/2/2012
Date: 16/07/12

MONITORING AUTHORITY AND SPECIAL TASK FORCE

of the Bombay Police Act 1947

to be held and deal with and to investigate all cases of deaths which, according to the provisions of any Police Officers of the State or near relatives of the victims was the result of an encounter by the police force

Bangalore No. G-1, 201/1 & 203/2 Sector-30, Gandhinagar, Gujarat

PUBLIC NOTICE

WHEREAS some incidents of death due to police encounters had occurred in Gujarat State, affecting human rights and causing public concern, and the Government of Gujarat, in exercise of its powers conferred under section 4, 5(a) and 7A of the Bombay Police Act, 1951, had constituted a Monitoring Authority and a Special Task Force (STF) vide Notification No. OG/47883/1/KAV/10/2010/1996, dated 16th September, 2010, to go into and to deal with and to investigate all cases of deaths which, according to the claim of any Police Officers of the State or near relatives of the victim was as a result of an encounter by the police force.

WHEREAS, the Hon. Supreme Court of India vide its order dated 02/03/12 has directed fit and proper to request Hon. Mr. Justice H. S. Bedi, former Judge of Supreme Court of India, to head and monitor the investigation of the cases of alleged (fake) encounters, as enumerated in the Writ Petition (CRL) No 31 of 2007 and Writ Petition (CRL) 83 of 2007 with the following term of reference:

- to look into all the cases of alleged fake encounters as enumerated in these two Writ Petitions and to have them thoroughly investigated
 - to pass directions, if the Chairman of the Monitoring Authority considers it just, reasonable and proper, for grant of interim or final monetary compensation to the kin of the victims of the alleged fake encounters.
- C. WHEREAS the cases of alleged fake encounters entrusted to the Chairman of the Monitoring Authority vide the aforesaid order are as follows:-

No.	Name and Address of person killed in Police Encounter	Officer registered	Date, Time and Place of Encounter
1	Chand Chama, ro Muzab	DCB PS, Ahmedabad City CR No. 803	23-6-03 at 02:30 hours. Gandh Road, Panch Kava Kapad Bazar, Near Trading Company, Ahmedabad City
2	Mahendra Chandrakant Jadhav, ro Akshar nagar, Barambhi Bhamra, Siddhi Vinayak Chai, Bhamra No. 3, Mumbai	DCB PS, Ahmedabad City CR No. 803	23-6-03 at 07:30 hours. Gandh Road, Panch Kava Kapad Bazar, Near Trading Company, Ahmedabad City
3	Ranjit @ Jai Poyabhai Devi Poojari, ro Kadam Para, Rajkot	B Division PS, Rajkot City CR No. 40904	17-1-04 at 17:30 hours. Near Baysp Crestonstom, Kanam Vaji Wadi, Rajkot City
4	Bhisham @ Salim Gajghabar Moyana, ro Chakra Housing Board, Near Kadh Siddhi Vinayak Society, Rajkot	B Division PS, Rajkot City CR No. 18006	4-3-04 at 12:30 hrs. Gujarat Housing Board, III Floor, Near Kadh Siddhi Vinayak Society, Rajkot
5	Atul Raju Mishra, ro Hanuman, Bihar	Pradhana PS, Sarai City CR No. 3403	11-3-03 at 18:30 hrs. Bhamra Jyevai Road, Ni, Sonmohar Society, Sarai
6	Mahesh Dnyesh Gadhwani, ro Gadhwani Chaudh, Uttaranchal	Umer PS, Sarai City CR No. 3404	21-1-04 at 1:40 hrs. Aysa Apartments, City Lane Road, Sarai
7	Kalyan Kalyan Singh Chakr, ro Shalvi village, Thakia Khabla, Shalvi Bagan, U. P.	Karai Bugh PS, Valudara City CR No. 22704	16-6-04 at 18:15 hours. On Canal, Minarsh Minarsh Road, Harra village, Valudara City
8	Shri Jagan Dada ro Pablu village, ro Chaudhara, Ahmedabad	Valud PS, Anand Dist. CR No. 13504	14-3-04 between 02:15-02:30 hrs. Near Sudan Railway Crossing, Valud, Anand
9	Prady @ Mohan Bhawanji Bhandari ro Bhalad, Pimpri, Bhamra	Bhandari PS, Anand Dist. CR No. 7605	9-6-05 at 2:30 hrs. Near village Bhandari, Anand
10	Prady @ Mohan Bhawanji Bhandari ro Bhalad, Pimpri, Bhamra	Bhandari PS, Anand Dist. CR No. 12405	18/7/05 21:25 hrs. Near Murchising Vadi, after Railway crossing, Bhandari Anand

निगरानी प्राधिकरण तथा विशेष जांच दल

मुंबई पुलिस अधिनियम १९५१ की धारा ४, ५(ए) और ७(ए) के तहत प्राप्त अधिकारों द्वारा स्थापित
 ऐसे कर्मों की जांच और तकतीरा हेतु जिसमें मांगे गए लोगों की मूल्य राज्य के पुलिस अफसर/ अफसरों
 या मांगे गये लोगों के रिश्तेदारों के कंधनानुसार पुलिस मुठभेड़ का परिणाम था।

गाला नंबर जी-१, २०१/१ व २०१/२
 रोड नं. ३०, गांधीनगर, गुजरात

सार्वजनिक सूचना

- अ गुजरात सरकार ने मुंबई पुलिस अधिनियम, १९५१ की धारा ४, ५(ए) और ७(ए) के तहत प्राप्त अधिकारों द्वारा दिनांक १६ फरवरी २०१० के अधिसूचना क्रमांक GG/47/SB/1/KAV/10/2010/11998 द्वारा एक निगरानी प्राधिकरण तथा विशेष जांच दल का गठन किया था।
- ब जबकि भारतीय भारत के उच्चतम न्यायालय ने अपने ता. ०२/०३/२०१२ के आदेशानुसार भारतीय न्यायवर्ति (निवृत्त) जी एम एस डेवी जो उच्चतम न्यायालय में दाखिल २००७ की रिट याचिका (CARL) क्र. ३१ और २००७ की रिट याचिका (CARL) क्र. ८३ में दायित्व कथित फर्जी मुठभेड़ के मामलों की निम्न संदर्भ से जांच दल की निगरानी और अध्यक्ष से अनुरोध किया-
- इन दोनों रिट याचिका में उल्लेखित सभी फर्जी मुठभेड़ के मामलों की अच्छी तरह से जांच हो।
 - आप निगरानी प्राधिकरण के अध्यक्ष को ठीक व तर्कसंगत लगता है तो वे इन कथित फर्जी मुठभेड़ में मांगे गए लोगों के रिश्तेदारों व राज्यों को अतीम या आखिरी मुआवजा देने के दिशा निर्देश दें।
 - अपील आदेश अनुसार निगरानी प्राधिकरण के अध्यक्ष को जिस कथित फर्जी मुठभेड़ की निगरानी दी गई है वे हैं :-

क्र.सं.	पुलिस मुठभेड़ में मांगे गए व्यक्तियों के नाम व पता	पंजीकृत अपराध	मुठभेड़ की तारीख, समय व स्थान
१	गणेश धुटे पता- मुंबई	डीसीबी पी.एस. अहमदाबाद सिटी सी.आर. नं. फर्स्ट ८/०३	२३-६-०३, २.३० बजे, गांधी रोड, पांच कुचा, कापड़ बाजार, ट्रेडिंग कंपनी के पास, अहमदाबाद सिटी
२	महेन्द्र बंडरकात जाधव, पता- अक्षर नगर, प्रतोष धवन, सिद्ध विनायक जाल, रूप नं. ५, मुंबई	डीसीबी पी.एस. अहमदाबाद सिटी सी.आर. नं. फर्स्ट ८/०३	२३-६-०३, २.३० बजे, गांधी रोड, पांच कुचा, कापड़ बाजार, ट्रेडिंग कंपनी के पास, अहमदाबाद सिटी
३	अनिल बिशिन मिश्रा पता- हानपुर, बिहार	पांडेसरा पी.एस. सूत सिटी सी.आर. नं. फर्स्ट ३४/०३	१९-३-०३, १८.३० बजे, भेस्तान जियावर रोड, तामैवर सोसायटी के पास, सूत
४	महेश दीपक गडवली पता- गडवली चौकी, उतराचल	उमरा पी.एस. सूत सिटी सी.आर. नं. फर्स्ट ३६/०४	२१-१-०४, १.०० बजे, आजका अपार्टमेंट के पास, सिटी लाइन रोड, सूत
५	रघुचण्ड हतपालसिंग-ठाका पता- डिकनेली, तालुका छेकडा जिला- बांगपूर, यू पी	कोरली जग, पी.एस. बरोडा सिटी, सी.आर. नं. फर्स्ट २२७/०४	१४-८-०४, १८.१५ बजे, केनाल पे, मोटनथ महादेव रोड, गांव हरणी, बडोडा सिटी
६	राजेश उर्फ मिटु श्रीलक्ष्मण पांडे पता- बीना कोठी, लोदीपुर, पटना, बिहार	बोरसद पी.एस. जिला- आणंद सी.आर. नं. फर्स्ट ७६/०५	१-४-०५, २.३० बजे, बेदडा गांव के पास, आणंद
७	संध्या भास्कर नायर, पता- कुंतु पुलिस स्टेशन, पटनापुरम, पि. पतानमतीता, केरला	ब्यारा पी.एस. सूत डिस्ट्रिक्ट, सी.आर. ९०/०४	४-६-०४, ६.३० बजे, बहोबाडी पाटीय के पास, सूत
८	मनव उर्फ सबू उर्फ एहल शारदाप्रसाद चौधरी, पता- सरताज का कमरा, पिलाड राजेश स्टेशन के पास, उमरागांव, बलसाड और धनगांव पुरा, मुफ्ती पुलिस स्टेशन, चयाल, कोसबी, यू पी	उमरागांव पी.एस., बलसाड डिस्ट्रिक्ट, फर्स्ट ३३६/०४	२६-११-०४, ६.१० बजे आर.के. फार्म के पास, गांव देहाली, पिलाड- सजान रोड, उमरागांव, बलसाड
९	हुनारिया हिमला मछार पता- गांव- नागाणखेडी, पोस्ट पिटोल, जिला- जाबुआ, मध्यप्रदेश	वापी टाउन पी.एस. जिला- बलसाड, सी.आर. नं. फर्स्ट २२१/०५	२५-८-०५, १६.१५ बजे, वेल्सपन कंपनी के पीछे, गांव- मर्राई, बलसाड
१०	हाजी हाजी इस्माइल, पता- जाम-सलाया, जामनगर और लोनाबाला, जिला- ठाणे	उमरागांव पी.एस. जिला- बलसाड, सी.आर. नं. फर्स्ट २४४/०५	१-१०-०५, ४.०० बजे, गांव- नदीधाम, एन.एच-८, पिलाड ओ.पी., उमरागांव, बलसाड

- जबकि, निगरानी प्राधिकरण तथा विशेष जांच दल का मानना है कि कोई व्यक्ति/ व्यक्तियों और सामान्य नागरिक को उपरोक्त जांच या तकतीरा के विषय से संलग्न अपनी बात कहने का और निगरानी प्राधिकरण तथा विशेष जांच दल के समक्ष बयान देने का या दस्तावेज प्रस्तुत करने का मौका देना चाहिए।
- अतः निगरानी प्राधिकरण तथा विशेष जांच दल यह नोटिस जारी कर इसके माध्यम से हर व्यक्ति, तप, संस्था, संगठन और की निम्नके पास इस विषय के संदर्भ में अधिकृत ज्ञान या हकीकत की जानकारी हो या निगरानी प्राधिकरण तथा विशेष जांच दल द्वारा जारी विवाद के संदर्भ में जानकारी देना चाहते हो, उन्हें आमंत्रित करता है। यह हकीकत हस्ताक्षर करके लिखित आवेदन/ अध्यावेदन के स्वरूप में प्रस्तुत कर सकते हैं तथा उसमें अपना पता बताना जरूरी होगा। इसके अलावा जो व्यक्ति/ व्यक्तियों अपने बयान के साथ कोई दस्तावेज, जिस पर वे आधार रखते हो, निगरानी प्राधिकरण तथा विशेष जांच दल के समक्ष मूल या सही नकल के रूप में प्रस्तुत करेंगे और अगर ज्यादा दस्तावेज किसी व्यक्ति/ व्यक्तियों के पास से प्राप्त हो सके ऐसा हो तो उस व्यक्ति का नाम और पता बताएंगे।
- व्यक्ति/ व्यक्तियों, जो ऐसे तथ्य/आरोप वाले कथन प्रस्तुत करेंगे। उसे निगरानी प्राधिकरण तथा/अथवा विशेष जांच दल के समक्ष सबूत प्रस्तुत होने के लिए बुलाया जा सकता है।
- लेखित आवेदन/ अध्यावेदन/ दस्तावेजों सहित निगरानी प्राधिकरण तथा विशेष जांच दल को उसके पते- निगरानी प्राधिकरण तथा विशेष जांच दल, गाला नं. जी-१, २०१/१ और २०१/२, सेक्टर-३०, गांधीनगर, गुजरात के पते पर अथवा सबूत निगरानी प्राधिकरण तथा विशेष जांच दल द्वारा अधिकृत अधिकारी को यह नोटिस जारी होने के आठ सप्ताह के भीतर मिले इस तरह सुरक्षित करें।

अध्यक्ष निगरानी प्राधिकरण के आदेश से जारी।

(के.एस. सवाणी)
 पुलिस सुपरींटेंडेंट एवं सदस्य,
 विशेष जांच दल।

मुंबई पुलिस अधिनियम 1951 की धारा 4, 5(ए) और 7 (ए) के तहत प्राप्ति अधिकारों द्वारा स्थापित

गैस केसे को जांच और तफ़्तीश हेतु जिसमें मारे गए लोगों की मृत्यु राज्य के पुलिस अधिसूचना/अफसरों को मारे गये लोगों के रिश्तेदारों के कथनानुसार पुलिस मुठभेड़ का परिणाम था।

बंगला नंबर जी - 1, 201/1 व 201/2
मक़दर - 30 गांधीनगर, गुजरात

सांख्यिक सूचना

उत्तम सरकार ने मुंबई पुलिस अधिनियम 1951 की धारा 4, 5(ए) और 7 (ए) के तहत प्राप्त अधिकारों द्वारा दिनांक 16 सितम्बर 2010 के अधिनियम का क्रमांक GG/47/SB/1/KAV/10/2010/11996 द्वारा एक निगरानी प्राधिकरण तथा विशेष जांच दल का गठन किया था।

उक्त प्राधिकरण/विशेष जांच दल ने अप्रैल 2012 तक मुठभेड़/प्राप्त अधिकारों द्वारा प्राप्त (CRL) की एक सूची को तैयार करने में सक्षम होना और प्रत्येक (CRL) के 11 और 2007 की गैस केसे (CRL) के 93 में दस्तावेज कथित फ़र्जी मुठभेड़ के मामले को निराकरण से जान दल को निगरानी और अभ्यक्ष से अनुरोध किया।

इस दोनो रिट याचिका में उल्लेखित सभी फ़र्जी मुठभेड़ के मामले की अच्छी तरह से जांच हो।

आज निगरानी प्राधिकरण के अध्यक्ष को ठीक व ज़रूरत तलाश है तो वे इन कथित फ़र्जी मुठभेड़ में मारे गए लोगों के रिश्तेदारों/वशों को अंतरिम या अंतिम मुआवज़ा देने के दिशा निर्देश दें।

उपरोक्त आदेश अनुसार निगरानी प्राधिकरण के अध्यक्ष को जिस कथित फ़र्जी मुठभेड़ की निगरानी दी गई है वे हैं -

पुलिस मुठभेड़ में मारे गए व्यक्तियों के नाम व पता	पंजीकृत अपराध	मुठभेड़ की तारीख, समय व स्थल
मंगेश खूटे पता- मुंबई	डॉसीबी पी एस, अहमदाबाद सौटी, सी.आर. नं. फ़स्ट 8/03	23-6-03, 2 30 बजे, गांधी रोड, पाच कुवा, कापड बाजार, ट्रेडिंग कंपनी के पास, अहमदाबाद सौटी
महेंद्र बदकात जाधव पता- अक्षयनगर, तालोच धवन, सीधो विनायक चाल, रूप नं. - 5 मुंबई	डॉसीबी पी एस, अहमदाबाद सौटी, सी.आर. नं. फ़स्ट 8/03	23-6-03, 2 30 बजे, गांधी रोड, पाच कुवा, कापड बाजार, ट्रेडिंग कंपनी के पास अहमदाबाद सौटी
अमित दीपन शिवा पता- शरपुर, बिहार	पांडेसरा पी एस, सूरत सौटी, सी.आर. नं. फ़स्ट 34/03	11-3-03, 18 30 बजे भेखान जाधव रोड, रामेश्वर सोसायटी के पास, सूरत
महेश दीपक गडबाली पता- गडबाली चौकी, उतरांचल	उमरा पी एस, सूरत सौटी, सी.आर. नं. फ़स्ट 36/04	21-1-04, 1.00 बजे, आजवा एपार्टमेंट के पास, सौटी लाइव रोड, सूरत
ब्रजय हरशतसिंध डाका पता- डीकोली, तालुका खेकडा जिला- बगान, पू. श्री	कौली बाग पी एस बरोडा सौटी, सी.आर. नं. फ़स्ट 227/04	14-8-04, 18-15 बजे, केनाल पै, मोटसाय, महादेव रोड, गांव हरणी, न डीटा सिटी
राजेश्वर उर्फ सीटू श्रीलक्ष्मण पांडे पता- कोटी, लोदीपुरा पटना, बिहार	बोसरा पी एस, जिला-आनंद, सी.आर. नं. फ़स्ट 76/05	9-4-05, 7-30 बजे, वेदराजा गांव के पास, आनंद
सुभाष भास्कर नाथर पता- कुतुब पुलिस स्टेशन, पटनापुरम, जि. पतनामाली, केरल	व्यारा पी एस, सूरत डिस्ट्रिक्ट, सी.आर. नं. फ़स्ट 94/04	4-6-04, 6-20 बजे, वहीराबाडी पार्टीया के पास सूरत
मजबूत उर्फ सजू उर्फ राहुल शारदाप्रसाद चौधरी पता- सतारवा का कमरा, धिलाड रेलवे स्टेशन के पास, उमरागांव, बलसाड और पवनगांव गुवा मुक्ती पुलिस स्टेशन, बदाय, कोसबी, पू. पी	उमरागांव पी एस, बलसाड डिस्ट्रिक्ट, फ़स्ट 336/04	26 11 04, 6-10 बजे आर के, फार्म के पास, गांव-देहाली, भीलाड-संजान रोड, उमरागांव, बलसाड
हृदयेश होमल पता- गांव- नागणखेडी, पोस्ट- पीटोल, जिला- आंबुआ, मध्यप्रदेश	वापी, टाउन पी एस, जिला- बलसाड सी.आर. नं. फ़स्ट 221/05	25-8-05, 16-15 बजे, वेल्सपन कंपनी के पीछे, गांव-पारुई, बलसाड
हजरे हजरे इस्माइल पता- जाम मलया, जामनगर और लोनावाला, जिला- धारण	उमरागांव पी एस, जिला- बलसाड, सी.आर. नं. फ़स्ट 244/05	9-10-05, 04.00 बजे, गांव- नंदोगाम, एन एच - 8, भीलाड ओ.पी. उमरागांव, बलसाड

अबकि, निगरानी प्राधिकरण तथा विशेष जांच दल का मानना है कि कोई व्यक्ति/व्यक्तियों और सामान्य नागरिक को उपरोक्त जांच या तफ़्तीश के विषय से संलग्न/अपनी ज्ञात-कृत/दे का और निगरानी प्राधिकरण तथा विशेष जांच दल के समक्ष बयान देने का या दस्तावेज प्रस्तुत करने का सीका देना चाहिए।

अतः निगरानी प्राधिकरण तथा विशेष जांच दल, यह नोटिस जारी कर इसके माध्यम से हर व्यक्ति, संघ, संस्था, संगठन आदि, की जिनके पास इस विषय के संदर्भ में अधिकृत ज्ञान या हकीकत को जानकारी हो या निगरानी प्राधिकरण तथा विशेष जांच दल द्वारा जारी विषय के संदर्भ में जानकारी देना चाहते हो, उन्हें आमंत्रित करता है। प्रत्येक हकीकत हस्ताक्षर करके लिखित आवेदन/अभ्यावेदन के स्वरूप में प्रस्तुत कर सकते हैं, तथा उनमें अपना पता बताया ज़रूरी होगा। इसके अलावा जो व्यक्ति/व्यक्तियों अपने बयान के साथ कोई दस्तावेज, जिस पर वे आधार रखते हैं, निगरानी प्राधिकरण तथा विशेष जांच दल के समक्ष मूल या सही नकल के रूप में प्रस्तुत करेंगे, और अगर ज्यादा दस्तावेज किसी व्यक्ति/व्यक्तियों के पास से प्राप्त हो सके ऐसा हो तो उस व्यक्ति का नाम और पता बताया।

व्यक्ति/व्यक्तियों, जो ऐसे तथ्य/आरोप वाले कथन प्रस्तुत करेगा उसे निगरानी प्राधिकरण तथा/अथवा विशेष जांच दल के समक्ष तबत प्रस्तुत होने के लिए बुलाया जा सकता है।

लिखित आवेदन/अभ्यावेदन दस्तावेजों सहित निगरानी प्राधिकरण तथा विशेष जांच दल को उसके पते- निगरानी प्राधिकरण तथा विशेष जांच दल, बंगला नं. जी-1, 201/1 और 201/2, मक़दर-30, गांधीनगर, गुजरात के पते पर अधिकांश तबत निगरानी प्राधिकरण तथा विशेष जांच दल द्वारा अधिकृत अधिकारों को या नोटिस जारी होने के आठ घंटा के भीतर मिले इस तरह सुनिश्चित करे।

अध्यक्ष निगरानी प्राधिकरण के आदेश से जारी।

ह0/-
(के.एस. सबाणी)
पुलिस उपाधिकक्षक एवं
सदस्य, विशेष जांच दल

Muzaffar - 11
Bhagwan - 7
AUGUST - 11
AGRO - 11